

Dated 19 DECEMBER 2023

SATURN RESOURCES LTD

and

**THE STANDARD BANK OF SOUTH AFRICA LIMITED
(ACTING THROUGH ITS ISLE OF MAN BRANCH)**

and

**NEDBANK LIMITED
(ACTING THROUGH ITS NEDBANK CORPORATE AND INVESTMENT BANKING DIVISION)
acting as Arrangers**

and

**THE STANDARD BANK OF SOUTH AFRICA LIMITED
(ACTING THROUGH ITS CORPORATE AND INVESTMENT BANKING DIVISION)
acting as Agent**

and

**THE STANDARD BANK OF SOUTH AFRICA LIMITED
(ACTING THROUGH ITS CORPORATE AND INVESTMENT BANKING DIVISION)
acting as Security Agent**

SENIOR TERM BRIDGE FACILITY AGREEMENT

 **NORTON ROSE FULBRIGHT**

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THIS AGREEMENT is dated 19 December 2023 and is made between:

- (1) **SATURN RESOURCES LTD**, a company incorporated in Mauritius with its registered office at No. 5 President John Kennedy Street, Rogers House, Port Louis, Mauritius and with company number 202512 (the **Borrower**);
- (2) **ETC HOLDINGS (MAURITIUS) LIMITED**, a company incorporated in Mauritius with its registered office at No. 5 President John Kennedy Street, Rogers House, Port Louis, Mauritius and with company number 101674 (the **Original Guarantor** and the **Parent**);
- (3) **THE STANDARD BANK OF SOUTH AFRICA LIMITED (ACTING THROUGH ITS ISLE OF MAN BRANCH)** and **NEDBANK LIMITED (ACTING THROUGH ITS NEDBANK CORPORATE AND INVESTMENT BANKING DIVISION)** as mandated lead arrangers (whether acting individually or together the **Arranger**);
- (4) **THE FINANCIAL INSTITUTIONS** listed in Schedule 1 (*The Original Lenders*) as lenders (the **Original Lenders**);
- (5) **THE STANDARD BANK OF SOUTH AFRICA LIMITED (ACTING THROUGH ITS CORPORATE AND INVESTMENT BANKING DIVISION)** as agent of the other Finance Parties (the **Agent**); and
- (6) **THE STANDARD BANK OF SOUTH AFRICA LIMITED (ACTING THROUGH ITS CORPORATE AND INVESTMENT BANKING DIVISION)** as security trustee for the Secured Parties (the **Security Agent**).

NOW IT IS HEREBY AGREED as follows:

Section 1

Interpretation

1 Definitions and Interpretation

1.1 Definitions

In this Agreement:

Accession Deed means a document substantially in the form set out in Schedule 6 (*Form of Accession Deed*)

Accounting Principles means, in respect of the relevant Obligor, generally accepted accounting principles in Mauritius, Guernsey or Tanzania (as applicable) including IFRS

Acquisition means the acquisition by the Borrower of the Target Shares pursuant to a Scheme and/or Offer (and, if applicable, the Squeeze-Out)

Acquisition Costs means all fees, costs and expenses, stamp, registration and other Taxes incurred by the Borrower and/or the Parent in connection with the Transaction Documents

Acquisition Documents means:

- (a) if the Acquisition is to be effected by way of a Scheme, the Scheme Documents;
- (b) if the Acquisition is to be effected by way of an Offer, the Offer Documents; and
- (c) any other documents designated in writing as an "Acquisition Document" by the Agent and the Borrower

Acquisition Purpose means the purpose set out in clause 3.1(a) (*Purpose*)

Act means the Companies (Guernsey) Law 2008, as may be amended from time to time

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

Additional Guarantor means a company which becomes an Additional Guarantor in accordance with clause 26 (*Changes to the Obligors*)

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

Alternative Term Rate means any rate specified as such in the applicable Reference Rate Terms

Alternative Term Rate Adjustment means any rate which is either:

- (a) specified as such in the applicable Reference Rate Terms; or
- (b) determined by the Agent (or by any other Finance Party which agrees to determine that rate in place of the Agent) in accordance with the methodology specified in the applicable Reference Rate Terms

Announcement means the announcement made by or on behalf of the Borrower (either alone or jointly with the Target) announcing a firm intention to make an Offer or, as the case may be, implement a Scheme, in each case in accordance with Rule 2.7 of the City Code

Announcement Date means the date on which the Announcement is made

Anti-Corruption Laws means any laws or regulations relating to anti-bribery or anti-corruption (governmental or commercial) that apply in any Relevant Jurisdiction, including, without limitation, laws that prohibit the corrupt payment, offer, promise or authorisations of the payment or transfer of anything of value (including gifts or entertainment), directly or indirectly to any government official, government employee or commercial entity to obtain a business advantage

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

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

Availability Period means the period from and including the Committed Date to and including the date falling eleven (11) Months after the date of this Agreement

Available Commitment means a Lender's Commitment minus:

- (a) the amount of its participation in any outstanding Utilisations; and
- (b) in relation to any proposed Utilisation, the amount of its participation in any other Utilisations 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

Break Costs means any amount specified as such in the applicable Reference Rate Terms

Business Day means a day (other than a Saturday or Sunday) on which banks are open for general business in London, Johannesburg, St Peter Port, Port Louis, Douglas and (upon accession of SMCL as Additional Guarantor or any other Additional Guarantor incorporated in Tanzania in accordance with this Agreement) Dar es Salaam and:

- (a) (in relation to any date for payment or purchase of a currency) the principal financial centre of the country of that currency; and
- (b) (in relation to the fixing of an interest rate in relation to a Loan) which is an Additional Business Day relating to that Loan or Unpaid Sum

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

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

Certain Funds Period means the period from (and including) the Committed Date to (and including) 11.59 p.m. London time on the earlier of:

- (a) if the Acquisition is being effected pursuant to a Scheme, the date on which the Scheme lapses (including, subject to exhausting any rights of appeal, if the Court refuses to sanction the Scheme), terminates or is withdrawn in accordance with its terms and the City Code or by order of the Court, other than:
 - (i) where such lapse, termination or withdrawal is as a result of the exercise of the Borrower's right to effect a switch from a Scheme to an Offer; or
 - (ii) on or prior to such event, the Borrower notifies the Agent with a Conversion Notice that a revised, amended or replacement Scheme or Offer is to be made and the Borrower issues applicable Scheme Documents or Offer Documents within twenty-eight (28) days of the date of that Conversion Notice;
- (b) if the Acquisition is being effected pursuant to an Offer, the date on which the Offer lapses, terminates or is withdrawn in accordance with its terms and the City Code, other than:
 - (i) where such lapse, termination or withdrawal is as a result of the exercise of the Borrower's right to effect a switch from an Offer to a Scheme; or
 - (ii) on or prior to such event, the Borrower notifies the Agent with a Conversion Notice that a revised, amended or replacement Offer or Scheme is to be made and the Borrower issues applicable Offer Documents or Scheme Documents within twenty-eight (28) days of the date of that Conversion Notice;

- (c) if the Announcement has not been released by such time, twenty-one (21) days following the date of this Agreement;
- (d) the date which is:
 - (i) in the event that Acquisition is effected by way of Scheme, subject to paragraph (iii) below, the date which is ten (10) Business Days after the first Utilisation Date;
 - (ii) in the event that Acquisition is effected by way of Offer, subject to paragraph (iii) below, the date which is the later of:
 - (A) ten (10) Business Days after the first Utilisation Date, unless no later than five (5) Business Days following such Utilisation the Borrower notifies the Agent in writing that a second Utilisation Request will be required to be issued in accordance with clause 4.4(b)(i); or
 - (B) (if applicable) ten (10) Business Days after the second Utilisation Date; or
 - (iii) if the Agent consents in accordance with clause 4.4(b)(ii) to additional Utilisations, a later date agreed between the Agent and the Borrower;
- (e) the date on which the Commitments have been cancelled in full subject to and in accordance with the terms of this Agreement;
- (f) the date on which the Target Shares have been transferred to the Borrower and all of the consideration payable under the Acquisition in respect of the Target Shares or proposals made or to be made under the City Code in connection with the Acquisition, have in each case been paid in full including in respect of the acquisition of any Target Shares to be acquired after the first Utilisation Date (including pursuant to a Squeeze-Out);
- (g) if the Acquisition is to be completed pursuant to a Scheme, the day falling forty-two (42) days following from 9 October 2024;
- (h) if the Acquisition is to be completed pursuant to an Offer, the day falling fifty-six (56) days following from 25 September 2024; and
- (i) the last day of the Availability Period,

or, in each case, such later time as agreed by all Lenders and provided that a switch from a Scheme to an Offer or from an Offer to a Scheme (or any amendments to the terms or conditions of a Scheme or Offer) shall not constitute a lapse, termination or withdrawal for the purposes of this definition

Certain Funds Utilisation means a Loan made or to be made under the Facility during the Certain Funds Period where such Loan is to be made solely for an Acquisition Purpose

Change of Control means:

- (a) the Parent ceases directly or indirectly to:
 - (i) have the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
 - (A) cast, or control the casting of, all the votes that might be cast at a general meeting of the Borrower;
 - (B) appoint or remove all the directors or other equivalent officers of the Borrower; or
 - (C) give directions with respect to the operating and financial policies of the Borrower with which the directors or other equivalent officers of the Borrower are obliged to comply; or
 - (ii) hold beneficially the entire issued share capital of the Borrower; or
- (b) following the end of the Certain Funds Period, the Borrower ceases to own directly the entire issued share capital of the Target (other than the Excluded Shares) or directly or indirectly the entire issued share capital (except for a proportion equal to the proportion that the Excluded Shares bears to the entire issued share capital of the Target) of SGHL or SMCL;
- (c) the Parent ceases directly or indirectly to:
 - (i) have the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
 - (A) cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of each member of the ETC Group;
 - (B) appoint or remove all, or the majority of, the directors or other equivalent officers of each member of the ETC Group; or
 - (C) give directions with respect to the operating and financial policies of each member of the ETC Group with which the directors or other equivalent officers of each member of the ETC Group are obliged to comply; and

- (ii) hold beneficially more than fifty per cent of the issued share capital of each member of the ETC Group;
- (d) the members of the ETC Group sell, transfer or otherwise dispose of all or substantially all of the assets of the ETC Group whether in a single transaction or a series of related transactions; or
- (e) EHL ceases to own directly the Excluded Shares except as a result of a Permitted Excluded Shares Transfer

Charged Property means the assets which from time to time are, or are expressed to be, the subject of the Transaction Security

City Code means the UK City Code on Takeovers and Mergers as issued and administered by the Takeover Panel, as may be amended from time to time

Clean-Up Default means an Event of Default referred to in clause 23.2(a) (*Other obligations*) (in relation to a Clean-Up Undertaking only)

Clean-Up Period means the period from the Closing Date until the date falling ninety (90) days after the Closing Date or such longer period agreed in writing by the Agent (acting on the instructions of all Lenders)

Clean-Up Undertaking means any of the undertakings specified in clauses 22.2 (*Acquisitions*), 22.3 (*Joint ventures*), 22.4 (*Negative pledge*), 22.5 (*Disposals*), 22.6 (*Arm's length basis*), 22.7 (*Loans or credit*), 22.8 (*No guarantees or indemnities*), 22.10 (*Financial Indebtedness*) and 22.12 (*Treasury Transactions*)

Closing Date means the date on which Completion occurs

Code means the US Internal Revenue Code of 1986

Committed Date means the date on which the Agent notifies the Borrower and the Lenders in accordance with clause 4.1(a) (*Initial conditions precedent*)

Commitment means:

- (a) in relation to an Original Lender, the amount set opposite its name under the heading "Commitment" in Schedule 1 (*The Original Lenders*) and the amount of any other Commitment transferred to it under this Agreement or assumed by it in accordance with clause 2.2 (*Increase*); and
- (b) in relation to any other Lender, the amount of any Commitment transferred to it under this Agreement or assumed by it in accordance with clause 2.2 (*Increase*),

to the extent not cancelled, reduced or transferred by it under this Agreement

Completion means the completion of the Acquisition in accordance with the relevant Transaction Documents

Compliance Certificate means a certificate substantially in the form set out in Schedule 14 (*Form of Compliance Certificate*)

Confidential Information means all information relating to the Borrower, any Obligor, the Group, the Target Group, EHL, the Finance Documents or a 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 a Facility from either:

- (a) the Borrower, the Parent, EHL, any member of the Group, the Target Group or any of their advisers; or
- (b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from the Borrower, the Parent, EHL, any member of the Group or the Target Group or any of their 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 38 (*Confidential Information*); or
 - (B) is identified in writing at the time of delivery as non-confidential by the Borrower, the Parent, EHL, any member of the Group or the Target Group or any of their advisers; or
 - (C) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Borrower, the Parent, EHL, the Group or the Target Group 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 recommended form of the LMA as set out in Schedule 7 (*LMA Form of Confidentiality Undertaking*) or in any other form agreed between the Borrower and the Agent

Conversion Notice has the meaning given to that term in clause 22.14(a) (*Conversion between Scheme and Offer*)

Court means the Royal Court of Guernsey

Court Meeting means the meeting of the Target Shareholders (and any adjournment thereof) to be convened by the Target at the order of the Court in connection with the Scheme for the purpose of considering, and, if thought fit, approving the Scheme

Court Order means the order of the Court sanctioning the Scheme as required by section 107 of the Act

Debt Purchase Transaction means, in relation to a person, a transaction where such person:

- (a) purchases by way of assignment or transfer;
- (b) enters into any sub-participation in respect of; or
- (c) enters into any other agreement or arrangement having an economic effect substantially similar to a sub-participation in respect of,

any Commitment or amount outstanding under this Agreement

Default means an Event of Default or any event or circumstance specified in clause 23 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default

Defaulting Lender means any Lender (other than a Lender which is a Sponsor Affiliate):

- (a) which has failed to make its participation in a Loan available (or has notified the Agent or the Borrower (which has notified the Agent) that it will not make its participation in a Loan available) by the Utilisation Date of that Loan in accordance with clause 5.4 (*Lenders' participation*);
- (b) which has otherwise rescinded or repudiated a Finance Document; or
- (c) with respect to which an Insolvency Event has occurred and is continuing,

unless, in the case of paragraph (a) above:

- (i) its failure to pay is caused by:
 - (A) administrative or technical error; or
 - (B) a Disruption Event, andpayment is made within three (3) Business Days of its due date; or
- (ii) the Lender is disputing in good faith whether it is contractually obliged to make the payment in question

Delegate means any delegate, agent, attorney or co-trustee appointed by the Security Agent

Disruption Event means either or both of:

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

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

EHL means Export Holdings Limited, a non-cellular company limited by shares registered in Guernsey with company number 57787

EHL Account Charge means the Guernsey law limited recourse third party account security interest agreement in respect of EHL's custody account held with Cannacord Genuity Wealth (International) Limited which contains, amongst other things, the shares in the Target owned legally or beneficially by EHL

EHL Share Charge means the Guernsey law limited recourse third party share security interest agreement in respect of all the shares in the Target owned legally or beneficially by EHL

Eligible Institution means any Lender or other bank, financial institution, trust, fund or other entity selected by the Borrower and which, in each case, is not a Sponsor Affiliate or a member of the Group

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

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

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

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

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

ETC Group means ETC Group (Mauritius) Limited, a company incorporated with limited liability and existing under the laws of Mauritius, (with registered number 095264), having its registered office at c/o Rogers Capital Corporate Services Limited, 3rd Floor, Rogers House. No.5, President John Kennedy Street, Port Louis, Mauritius and each of its Subsidiaries from time to time

Event of Default means any event or circumstance specified as such in clause 23 (*Events of Default*)

Excluded Shares means the shares in the Target held by EHL as at the date of this Agreement

Existing Target Financing means the financing under the USD20,000,000 Long Term Facility agreement entered in July 2022 between SMCL and Stanbic Bank Tanzania Limited

Facility means the term loan facility made available under this Agreement as described in clause 2.1 (*The Facility*)

Facility Office means:

- (a) in respect of a Lender, the office or offices notified by that Lender to the Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement; or
- (b) in respect of any other Finance Party, the office in the jurisdiction in which it is resident for tax purposes

Fallback Interest Period means, in relation to the period specified as such in the applicable Reference Rate Terms

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:

- (a) any letter or letters dated on or about the date of this Agreement between the Arranger and the Borrower (or the Agent and the Borrower or the Security Agent and the Borrower) setting out any of the fees referred to in clause 13 (Fees); and
- (b) any letter or letters between an Increase Lender and a Borrower entered into in accordance with clause 2.2(g) (Increase)

Finance Document means this Agreement, the Intercreditor Agreement, any Accession Deed, any Fee Letter, any Hedging Agreement, any Hedge Counterparty Accession Letter, any Reference Rate Supplement, any Transaction Security Document, any Utilisation Request, any Compliance Certificate and any other document designated in writing as a "Finance Document" by the Agent and the Borrower **provided that** where the term **Finance Document** is used in, and construed for the purposes of, this Agreement or the Intercreditor Agreement, a Hedging Agreement shall be a Finance Document only for the purposes of:

- (a) the definition of "Default";
- (b) the definition of "Material Adverse Effect";
- (c) the definition of "Transaction Document";
- (d) the definition of "Transaction Security Document";
- (e) clause 1.2(a)(v) (*Construction*);
- (f) clause 19 (*Guarantee and Indemnity*);
- (g) clause 23 (*Events of Default*) (other than clause 23.13 (*Acceleration*)); and
- (h) clause 38 (*Confidential Information*)

Finance Lease means any lease or hire purchase contract, a liability under which would, in accordance with the Accounting Principles, be treated as a balance sheet liability (other than a lease or hire purchase contract which would, in accordance with the Accounting Principles in force as at the date of this Agreement, have been treated as an operating lease)

Finance Party means the Agent, the Arranger, the Security Agent, each Lender and each Hedge Counterparty **provided that** where the term "Finance Party" is used in, and construed for the purposes of, this Agreement or the Intercreditor Agreement, a Hedge Counterparty shall be a Finance Party only for the purposes of:

- (a) the definition of "Secured Parties";

- (b) clause 1.2(a)(i) (*Construction*);
- (c) paragraph (c) of the definition of "Material Adverse Effect";
- (d) clause 19 (*Guarantee and Indemnity*);
- (e) clause 28 (*Conduct of Business by the Finance Parties*); and
- (f) clause 38 (*Confidential Information*)

Financial Indebtedness means any indebtedness for or in respect of:

- (a) moneys borrowed and debit balances at banks or other financial institutions;
- (b) any acceptance under any acceptance credit or bill discounting 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 Finance Leases;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis and meet any requirement for de-recognition under the Accounting Principles);
- (f) any Treasury Transaction (and, when calculating the value of that Treasury Transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that Treasury Transaction, that amount) shall be taken into account);
- (g) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution in respect of (i) an underlying liability of an entity which is not a member of the Group which liability would fall within one of the other clauses of this definition or (ii) any liabilities of any member of the Group relating to any post-retirement benefit scheme;
- (h) any amount raised by the issue of shares which are redeemable (other than at the option of the issuer) before the Termination Date or are otherwise classified as borrowings under the Accounting Principles;
- (i) any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind entering into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question or (ii) the agreement is in

respect of the supply of assets or services and payment is due more than ninety (90) days after the date of supply;

- (j) any amount raised under any other transaction (including any forward sale or purchase, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing or otherwise classified as borrowings under the Accounting Principles; and
- (k) the amount of any liability in respect of any guarantee for any of the items referred to in paragraphs (a) to (j) above

Foreign Exchange Hedge Counterparty means any Lender or an Affiliate of a Lender which provides the Borrower with Foreign Exchange Hedging relating to the Facility, New Shareholder Injections and/or Subordinated Liabilities in connection with the funding of the Acquisition

Foreign Exchange Hedging means the hedging of dollar/sterling foreign exchange risk arising in connection with the use of the Facility, any New Shareholder Injections and/or Subordinated Liabilities to fund the British pound sterling consideration in respect of the Acquisition

Foreign Exchange Hedging Agreement means any master agreement, cash collateral documentation, confirmation, schedule or other agreement entered into or to be entered into by the Borrower and a Foreign Exchange Hedge Counterparty for the purpose of Foreign Exchange Hedging in relation to the Facility, any New Shareholder Injections and/or Subordination Liabilities for the purposes of funding the Acquisition

Foreign Exchange Hedging Cash Collateral means any cash collateral to be provided by the Borrower in connection with the Foreign Exchange Hedging in accordance with the Foreign Exchange Hedging Agreements

Funding Rate means any individual rate notified by a Lender to the Agent pursuant to clause 12.3(a)(ii) (*Cost of funds*)

Funds Flow Statement means a funds flow statement in agreed form

General Meeting means the general meeting of the Target Shareholders (and any adjournment thereof) to be convened in connection with the Scheme for the purpose of considering, and, if thought fit, approving the shareholder resolutions necessary to implement the Acquisition

Group means the Borrower and each of its Subsidiaries for the time being including, from the end of the Certain Funds Period, the Target Group

Group Structure Chart means the group structure chart in the agreed form

Guarantor means the Original Guarantor or an Additional Guarantor, provided that for the purposes of clauses 8.2 (*Mandatory Prepayment and Cancellation*) and 20 (*Representations*) to

23 (*Events of Default*) each inclusive, and any relevant defined terms, Guarantor shall include each of the Target, SGHL and SMCL on and from the end of the Certain Funds Period (whether or not it has become a Guarantor in accordance with clause 26 (*Changes to the Obligors*))

Hedge Counterparty means any bank, financial institution, trust, fund or other entity which has become a Party as a “Hedge Counterparty” in accordance with clause 24.9 (*Accession of Hedge Counterparties*), which in each case has not ceased to be a Party as such in accordance with the terms of this Agreement, which for the avoidance of doubt excludes any Foreign Exchange Hedge Counterparty

Hedging Agreement means any master agreement, confirmation, schedule or other agreement entered into or to be entered into by the Borrower or SMCL and a Hedge Counterparty for the purpose of hedging the types of liabilities and/or risks which the Hedging Schedule (by reference to its form at the time that agreement is entered into) either requires or had required, to be hedged, which for the avoidance of doubt excludes any Foreign Exchange Hedging Agreement

Hedge Counterparty Accession Letter means a document substantially in the form set out in Schedule 12 (*Form of Hedge Counterparty Accession Letter*)

Hedging Schedule means the schedule in Schedule 13 (*Hedging Schedule*) describing the hedging arrangements to be entered into in respect of the gold price exposure risks of the Borrower or SMCL

Hedging Strategy means the hedging strategy set out in the Hedging Schedule

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

IFRS means UK adopted international accounting standards within the meaning of section 474(1) of the Companies Act 2006 to the extent applicable to the relevant financial statements

Impaired Agent means the Agent at any time when:

- (a) it has failed to make (or has notified a Party that it will not make) a payment required to be made by it under the Finance Documents by the due date for payment;
- (b) the Agent otherwise rescinds or repudiates a Finance Document;
- (c) (if the Agent is also a Lender) it is a Defaulting Lender under paragraphs (a) or (b) of the definition of “Defaulting Lender”; or
- (d) an Insolvency Event has occurred and is continuing with respect to the Agent;

unless, in the case of paragraph (a) above:

- (i) its failure to pay is caused by:
 - (A) administrative or technical error; or
 - (B) a Disruption Event; and

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

- (ii) the Agent is disputing in good faith whether it is contractually obliged to make the payment in question

Increase Confirmation means a confirmation substantially in the form set out in Schedule 9 (*Form of Increase Confirmation*)

Increase Lender has the meaning given to that term in clause 2.2 (*Increase*)

Insolvency Event in relation to an entity means that the entity:

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official;
- (e) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition is instituted or presented by a person or entity not described in paragraph (d) above and:
 - (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or

- (ii) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof;
- (f) has exercised in respect of it one or more of the stabilisation powers pursuant to Part 1 of the United Kingdom Banking Act 2009 and/or has instituted against it a bank insolvency proceeding pursuant to Part 2 of the United Kingdom Banking Act 2009 or a bank administration proceeding pursuant to Part 3 of the United Kingdom Banking Act 2009;
- (g) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (h) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets (other than, for so long as it is required by law or regulation not to be publicly disclosed, any such appointment which is to be made, or is made, by a person or entity described in paragraph (d) above);
- (i) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter;
- (j) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraph (a) to (i) above; or
- (k) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts

Intercreditor Agreement means the intercreditor agreement to be entered into on or prior to the entry into of any Hedging Agreement between, amongst others, the Lenders, the Security Agent and the Agent, in form and substance satisfactory to the parties thereto

Interest Period means, in relation to a Loan, each period determined in accordance with clause 11 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with clause 10.3 (*Default interest*)

Interpolated Alternative Term Rate means the rate (rounded to the same number of decimal places as the relevant Alternative Term Rate) which results from interpolating on a linear basis between:

- (a) either:

- (i) the applicable Alternative Term Rate (as at the Quotation Time) for the longest period (for which that Alternative Term Rate is available) which is less than the Interest Period of that Loan; or
 - (ii) if no such Alternative Term Rate is available for a period which is less than the Interest Period of that Loan, the applicable Overnight Rate (if any) for the Overnight Reference Day; and
- (b) the applicable Alternative Term Rate (as of the Quotation Time) for the shortest period (for which that Alternative Term Rate is available) which exceeds the Interest Period of that Loan

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

- (a) either:
- (i) the applicable Primary Term Rate (as of the Quotation Time) for the longest period (for which that Primary Term Rate is available) which is less than the Interest Period of that Loan; or
 - (ii) if no such Primary Term Rate is available for a period which is less than the Interest Period of that Loan, the applicable Overnight Rate (if any) for the Overnight Reference Day; and
- (b) the applicable Primary Term Rate (as of the Quotation Time) for the shortest period (for which that Primary Term Rate is available) which exceeds the Interest Period of that Loan

ITA means the Income Tax Act 2007

Joint Venture means any joint venture entity, whether a company, unincorporated firm, undertaking, association, joint venture or partnership or any other entity

Legal Opinion means any legal opinion delivered to the Agent under clause 4.1 (*Initial conditions precedent*) or clause 26 (*Changes to the Obligors*)

Legal Reservations means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;

- (b) the time barring of claims under the Limitation Acts, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim;
- (c) similar principles, rights and defences under the laws of any Relevant Jurisdiction; and
- (d) any other matters which are set out as qualifications or reservations as to matters of law of general application in the Legal Opinions

Lender means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party as a "Lender" in accordance with clause 2.2 (*Increase*) or clause 24 (*Changes to the Lenders and Hedge Counterparties*),

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

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

LMA means the Loan Market Association

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

Major Default means (except to the extent such circumstances apply to (or to any procurement obligation relating to) any member of the Group or the Target Group other than the Borrower, EHL and the Original Guarantor) any circumstances constituting an Event of Default (or a Default, in the case of clause 23.2 (*Other obligations*) insofar as it relates to clause 22.4(b)) under any of:

- (a) clause 23.1 (*Non-payment*) insofar as it relates to non-payment of principal, interest or fees (which fees are payable to a Finance Party pursuant to clause 13 (*Fees*) prior to the end of the Certain Funds Period) only;
- (b) clause 23.2 (*Other obligations*) insofar as it relates to any Major Undertaking or clause 3.1 only;
- (c) clause 23.3 (*Misrepresentation*) insofar as it relates to any Major Representation only;
- (d) clause 23.5 (*Insolvency*), provided that in relation to a Certain Funds Utilisation only:
 - (i) in paragraph (a)(i) of that clause the words "in writing" shall be deemed to be added after the words "or admits"; and

- (ii) in paragraph (a)(iii) of that clause the words "by reason of actual or anticipated financial difficulties" is added after the words "making payments";
- (e) clause 23.6 (*Insolvency proceedings*), provided that, in relation to a Certain Funds Utilisation only:
 - (i) in paragraph (a)(ii) of that clause the words "by reason of actual or anticipated financial difficulties " is added at the end after the word "EHL"; and
 - (ii) to the extent (in respect of paragraphs (a)(i) to (iii) (inclusive) of that clause), that formal legal proceedings or procedures (other than in relation to a suspension of payment of debts or a moratorium of any indebtedness) have been commenced;
- (f) clause 23.7 (*Creditors' process*);
- (g) clause 23.8 (*Unlawfulness and invalidity*), provided that, in relation to a Certain Funds Utilisation only, paragraph (a) of that clause shall relate to material provisions under the Finance Documents only; or
- (h) clause 23.11 (*Repudiation and rescission of agreements*) save that, in relation to a Certain Funds Utilisation only, the words "in writing" shall be deemed to be added after the words "or purports to rescind", "or purports to repudiate" and "evidences an intention to rescind or repudiate"

Major Representation means (except to the extent such representations or warranties apply to (or to any procurement obligation relating to) any member of the Group or the Target Group other than the Borrower, EHL and the Original Guarantor) a representation or warranty under any of clause 20.2 (*Status*) to clause 20.6(a) (*Validity and admissibility in evidence*) inclusive and clause 20.10 (*Holding Company*)

Major Undertaking means any of the undertakings specified in:

- (a) clauses 22.1 (*Merger*);
- (b) clause 22.2 (*Acquisitions*);
- (c) clause 22.3 (*Joint ventures*);
- (d) clause 22.4 (*Negative pledge*);
- (e) clause 22.5 (*Disposals*);
- (f) clause 22.7 (*Loans or credit*);
- (g) clause 22.8 (*No guarantees or indemnities*);

- (h) clause 22.9 (*Dividends and share redemption*);
- (i) clause 22.10 (*Financial Indebtedness*);
- (j) sub-clauses (b), (d)(iii), (d)(iv), (d)(v) only of clause 22.15 (*Scheme undertakings*);
- (k) sub-clauses (b), (c), (e)(ii), (e)(iii), (e)(iv), (e)(v), (e)(vi) and (f) only of clause 22.16 (*Offer undertakings*); and
- (l) clause 22.19 (*Holding Company*)

Majority Lenders means a Lender or Lenders whose Commitments aggregate more than 66⅔ per cent of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 66⅔ per cent of the Total Commitments immediately prior to that reduction)

Margin means the percentage rate per annum specified as such in the table below:

Rate (% per annum – nacm)	Period
3.50	From (and including) the date of the first Utilisation Date to (and including) the date falling three (3) Months after the first Utilisation Date
3.75	From (but excluding) the date falling three (3) Months after the first Utilisation Date to (and including) the date falling four (4) Months after the first Utilisation Date
4.00	From (but excluding) the date falling four (4) Months after the first Utilisation Date to (and including) the date falling five (5) Months after the first Utilisation Date
4.25	From (but excluding) the date falling five (5) Months after the first Utilisation Date

Market Disruption Rate means the rate (if any) specified as such in the applicable Reference Rate Terms

Material Adverse Effect means a material adverse effect on:

- (a) the business, operations, property or financial condition of (a) the Obligors or (b) the Group taken as a whole; or
- (b) the ability of an Obligor to perform its payment or other material obligations under the Finance Documents; or
- (c) the validity or enforceability of, or the effectiveness or ranking of any Security granted or purporting to be granted pursuant to any of, the Finance Documents or the rights or remedies of any Finance Party under any of the Finance Documents

Month means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, subject to adjustment in accordance with the rules specified as Business Day Conventions in the applicable Reference Rate Terms

New Lender has the meaning given to that term in clause 24 (*Changes to the Lenders and Hedge Counterparties*)

New Shareholder Injections means the aggregate amount subscribed for by any person (other than a member of the Group) for additional share capital in the Borrower which does not result in a Change of Control

Non-Consenting Lender has the meaning given to that term in clause 37.6 (*Replacement of Lender*)

Notifiable Debt Purchase Transaction has the meaning given to that term in clause 25.2(b) (*Disenfranchisement of Sponsor Affiliates*)

Obligor means the Borrower and each Guarantor, provided that for the purposes of clauses 8.2 (*Mandatory Prepayment and Cancellation*) and 20 (*Representations*) to 23 (*Events of Default*) each inclusive, and any relevant defined terms, Obligor shall include each of the Target, SGHL and SMCL on and from the end of the Certain Funds Period (whether or not it has become a Guarantor in accordance with clause 26 (*Changes to the Obligors*))

Obligors' Agent means the Borrower, appointed to act on behalf of each Obligor in relation to the Finance Documents pursuant to clause 2.4 (*Obligors' Agent*)

OFAC means the Department of the Treasury's Office of Foreign Assets Control of the United States of America

Offer means a takeover offer within the meaning of Section 337 of the Act made or to be made by the Borrower to effect the Acquisition with a minimum acceptance condition (as such term is understood in the City Code) of not less than ninety per cent (90%) in nominal value of the Target

Shares and of the voting rights attached to those shares made or to be made by the Borrower pursuant to the terms of the Offer Document as such takeover offer may from time to time be amended, or revised to the extent permitted in accordance with this Agreement

Offer Documents means, where the Acquisition is to be consummated by way of an Offer, the Offer Press Release, the Announcement in respect of the Offer, the offer documents to be sent by the Borrower to the Target Shareholders (and any other person with information rights) in respect of the Offer, and otherwise made available to such persons and in the manner required by Rule 24.1 of the City Code and any other document designated in writing as forming part of the Offer Documents by the Borrower and the Agent, and if applicable, any documents required to effect the Squeeze-Out Procedure

Offer Press Release means any announcement made by the Borrower that it has elected to exercise its right to implement the Acquisition by way of an Offer rather than a Scheme and made pursuant to paragraph 8(c) of Appendix 7 to the City Code

Original Jurisdiction means, in relation to the Borrower, the Parent and EHL, the jurisdiction under whose laws it is incorporated as at the date of this Agreement or, in the case of an Additional Guarantor, as at the date on which that Additional Guarantor becomes Party as a Guarantor

Overnight Rate means the rate (if any) specified as such in the applicable Reference Rate Terms

Overnight Reference Day means the day (if any) specified as such in the applicable Reference Rate Terms

Parent Share Charge means the Mauritian law share pledge and floating charge in respect of all the shares issued in the Borrower

Parent Subordination and Assignment Agreement means the subordination agreement and assignment of contractual rights under shareholder loans to be entered into by the Security Agent, the Parent and the Borrower

Party means a party to this Agreement and **Parties** means, as the context indicates, all of them

Perfection Requirements means, in respect of:

- (a) the Parent Share Charge:
 - (i) delivery of the original share certificates representing the shares held by the Parent in the Borrower to the Security Agent;
 - (ii) delivery of the blank share transfer form signed by the Parent to the Security Agent;

- (iii) inscription of the transfer in guarantee instrument in the share pledge register of the Borrower evidencing creation of the Security in the books of the Borrower; and
 - (iv) registration and inscription of the Parent Share Charge with the Registrar General and Conservator of Mortgages in Mauritius;
- (b) any guarantee provided in accordance with this Agreement by SMCL as Additional Guarantor or any other Additional Guarantor incorporated in Tanzania, registration of the guarantee with the Registrar of Companies at the Business Registration and Licensing Agency in Tanzania within 42 days from the date the guarantee was created; and
 - (c) the delivery of physical possession, making or procuring of the appropriate registrations, filings, endorsements, notarisations, stampings and/or notifications to the extent expressly required in accordance with the provisions of the Transaction Security Documents (and payment of any associated fees, costs or expenses)

Permitted Acquisition means

- (a) an acquisition of shares or securities pursuant to a Permitted Share Issue;
- (b) an acquisition with the prior written consent of the Agent (acting on the instructions of the Majority Lenders (acting reasonably));
- (c) (other than in respect of the Borrower) the incorporation (or establishment) of an entity or the acquisition of an "off the shelf" limited liability company which has not previously traded or incurred liabilities;
- (d) an acquisition pursuant to, or which constitutes or forms part of, a Permitted Reorganisation;
- (e) (in respect of the Parent only) any acquisition of shares in the Borrower as a result of the conversion of any Subordinated Liabilities into equity provided that (i) such acquisition of shares does not lead to a Change of Control and (iii) the shares acquired are subject to Transaction Security;
- (f) an acquisition by way of subscription for shares in any member of the Group (other than any Obligors) provided that the subscription price payable for such shares (when aggregated with the subscription price paid for any other such acquisition) does not exceed USD5,000,000 (or its equivalent in other currencies) in total during the term of this Agreement;
- (g) any acquisition by the Parent which it has legally committed to make prior to the Springing Covenant Date; and

- (h) an acquisition by a Guarantor of an asset sold, leased, transferred or otherwise disposed of by another Guarantor in circumstances constituting a Permitted Disposal

Permitted Disposal means any sale, lease, licence, transfer or other disposal which is on arm's length terms:

- (a) with respect to the Borrower:
 - (i) of cash in the course of day to day business and in a manner that would not otherwise be prohibited under the terms of any Finance Document;
 - (ii) arising as a result of any termination or close out of a Hedging Agreement or a Foreign Exchange Hedging Agreement in accordance with its terms and (in the case of a Hedging Agreement) the Intercreditor Agreement; and
 - (iii) arising as a result of any Permitted Security; and
- (b) with respect to any Guarantor:
 - (i) of trading stock or cash made by a Guarantor in the ordinary course of trading of that Guarantor;
 - (ii) of any asset by a Guarantor to another Guarantor, where such disposal does not lead to a Change of Control;
 - (iii) of assets (other than shares, mining licenses and other Authorisations, businesses, real property or Intellectual Property) in exchange for other assets comparable or superior as to type, value and quality (other than an exchange of a non-cash asset for cash);
 - (iv) of obsolete or redundant vehicles, plant and equipment for cash;
 - (v) of cash or cash equivalent investments in the course of day to day business and in a manner that would not otherwise be prohibited under the terms of any Finance Document;
 - (vi) arising as a result of any Permitted Security, Permitted Share Issue or Permitted Reorganisation;
 - (vii) arising as a result of any termination or close out of a Hedging Agreement or Treasury Transaction in accordance with its terms and (in the case of a Hedging Agreement) the Intercreditor Agreement;

- (viii) (in the case of the Parent only) any disposal which the Parent has legally committed to make prior to the Springing Covenant Date where such disposal does not lead to a Change of Control;
- (ix) (in the case of the Parent only) any disposal of any Subordinated Liabilities as a result of the conversion of such Subordinated Liabilities into equity in the Borrower provided that (i) such conversion does not lead to a Change of Control and (ii) the shares resulting from such conversion are subject to Transaction Security;
- (x) any disposal with the prior written consent of the Agent (acting on the instructions of the Majority Lenders (acting reasonably)); and
- (xi) of assets (other than shares, mining licenses and other Authorisations, businesses, real property or Intellectual Property) for cash where the higher of the market value and net consideration receivable (when aggregated with the higher of the market value and net consideration receivable for any other sale, lease, licence, transfer or other disposal not allowed under the preceding clauses) does not exceed:
 - (A) USD5,000,000 (or its equivalent in other currencies) in total during the term of this Agreement in respect of the Guarantors together (other than the Parent);
 - (B) the lesser of USD50,000,000 (or its equivalent in other currencies) or 10% of the Tangible Net Worth in total during the term of this Agreement in respect of the Parent

Permitted Excluded Shares Transfer means a transfer by EHL of all the Excluded Shares to the Borrower

Permitted Financial Indebtedness means:

- (a) with respect to the Borrower, Financial Indebtedness arising under the Finance Documents or in respect of any Subordinated Liabilities;
- (b) with respect to the Borrower, but no later than the first Utilisation Date, Financial Indebtedness arising under any Foreign Exchange Hedging Agreement;
- (c) with respect to any Guarantor, Financial Indebtedness:
 - (i) arising under the Finance Documents, subject to the terms of the Intercreditor Agreement;
 - (ii) in respect of SMCL only, arising under the Working Capital Facility;

- (iii) arising under a foreign exchange transaction for spot or forward delivery entered into in connection with protection against fluctuation in currency rates where that foreign exchange exposure arises in the ordinary course of trade, but not a foreign exchange transaction for investment or speculative purposes;
- (iv) arising under a Permitted Loan, a Permitted Guarantee or as permitted by clause 22.12 (*Treasury Transactions*);
- (v) in respect of the Parent only, existing as at the Springing Covenant Date;
- (vi) incurred with the prior written consent of the Agent (acting on the instructions of the Majority Lenders (acting reasonably));
- (vii) arising under the Existing Target Financing provided that such Financial Indebtedness is repaid in full on within 7 Business Days of the first Utilisation Date;
- (viii) under Finance Leases of vehicles, plant, equipment or computers, **provided that** the aggregate capital value of all such items so leased under outstanding leases by that Guarantor does not exceed USD15,000,000 (or its equivalent in other currencies) at any time in respect of the Guarantors together (including the Parent); and
- (ix) not permitted by the preceding clauses and the outstanding principal amount of which does not exceed:
 - (A) USD5,000,000 (or its equivalent in other currencies) in aggregate for the Guarantors together (other than the Parent) at any time; and
 - (B) USD10,000,000 (or its equivalent in other currencies) in aggregate for the Parent at any time

Permitted Guarantee means:

- (a) the endorsement of negotiable instruments in the ordinary course of trade;
- (b) any performance or similar bond guaranteeing performance by a member of the Group under any contract entered into in the ordinary course of trade;
- (c) any guarantee in respect of the Existing Target Financing provided that such guarantee is cancelled within 7 Business Days of the first Utilisation Date;
- (d) any guarantee by the Parent in respect of any obligations or liabilities of its Subsidiaries (other than the Borrower and Target Group), Affiliates or Holding Companies;

- (e) in respect of the Parent only, any guarantee existing as at the Springing Covenant Date;
- (f) any guarantee with the prior written consent of the Agent (acting on the instructions of the Majority Lenders (acting reasonably)); and
- (g) any guarantee constituting Permitted Financial Indebtedness

Permitted Holding Company Activity means activities, assets and liabilities:

- (a) arising under or in connection with any transaction contemplated in the Transaction Documents;
- (b) ownership of shares in Target;
- (c) under any Hedging Agreement and (no later than the first Utilisation Date) any Foreign Exchange Hedging Agreement;
- (d) arising as a result of the provision of administrative, management and advisory services provided by it to the Group;
- (e) incurred for or in connection with Taxes and administrative activities desirable to maintain its Tax status in its jurisdiction of incorporation;
- (f) in connection with making claims (and the receipt of any related proceeds) for rebates or indemnification in respect of Taxes incurred by it;
- (g) in connection with any litigation or court or other proceedings against it that are, in each case, being contested by it in good faith;
- (h) incurred or payments made by a holding company in respect of professional fees, employee costs, administration costs and Taxes in each case incurred in the ordinary course of its business as a holding company and not expressly prohibited under this Agreement;
- (i) relating to or arising from the ownership of cash balances at any time and the on-lending of cash intra-Group to a Guarantor other than the Parent;
- (j) relating to the payment of fees, costs and expenses, stamp, registration and other Taxes incurred in connection with the Acquisition or the Transaction Documents;
- (k) incurred as a result of operation of law; and/or
- (l) permitted by the Agent (acting on the instructions of the Majority Lenders (acting reasonably))

Permitted Loan means:

- (a) with respect to the Borrower, a loan made to another Obligor for the purposes of funding the repayment of the Existing Target Financing provided that any such loan made by the Borrower to SMCL with a tenure exceeding 365 days shall only be a Permitted Loan if it is registered with the Bank of Tanzania within 14 days of executing the underlying loan agreement or within 14 days of SMCL receiving proceeds of the loan into its bank account; and
- (b) with respect to any Guarantor:
 - (i) any trade credit extended by that Guarantor to its customers on normal commercial terms and in the ordinary course of its trading activities;
 - (ii) a loan made by that Guarantor to another Obligor;
 - (iii) any loan made by that Guarantor to a member of the Group which is not an Obligor so long as the aggregate amount of the Financial Indebtedness under any such loans does not exceed USD2,000,000 (or its equivalent in other currencies) at any time;
 - (iv) a loan made by that Guarantor to an employee or director of any Obligor if the amount of that loan when aggregated with the amount of all loans to employees and directors by that Guarantor does not exceed USD2,000,000 (or its equivalent in other currencies) at any time;
 - (v) in respect of the Parent only, existing as at the Springing Covenant Date;
 - (vi) a loan evidencing Subordinated Liabilities;
 - (vii) a loan with the prior written consent of the Agent (acting on the instructions of the Majority Lenders (acting reasonably)); and
 - (viii) in respect of the Parent only, any other loan so long as the aggregate amount of the Financial Indebtedness under any such loans does not exceed USD10,000,000 (or its equivalent in other currencies) at any time;

Permitted Reorganisation means a re-organisation of any member of the Group (other than the Borrower) with the prior written consent of the Agent (acting on the instructions of the Majority Lenders (acting reasonably))

Permitted Security means:

- (a) with respect to the Borrower:

- (i) any Transaction Security;
 - (ii) no later than the first Utilisation Date, any Foreign Exchange Hedging Cash Collateral;
 - (iii) any lien arising by operation of law and not as a result of any default or omission by any member of the Group; and
 - (iv) any netting or set-off arrangement entered into by the Borrower in the ordinary course of its banking arrangements for the purpose of netting its debit and credit balances; and
- (b) with respect to any Guarantor:
- (i) any Transaction Security;
 - (ii) any lien arising by operation of law and in the ordinary course of trading and not as a result of any default or omission by any member of the Group;
 - (iii) any netting or set-off arrangement entered into by any Obligor in the ordinary course of its banking arrangements for the purpose of netting its debit and credit balances;
 - (iv) any payment or close out netting or set-off arrangement pursuant to any Treasury Transaction or foreign exchange transaction entered into by a Guarantor which constitutes Permitted Financial Indebtedness, excluding any Security or Quasi-Security under a credit support arrangement;
 - (v) any Security arising in respect of any judgment or award for which an appeal or proceedings for review are being diligently pursued in good faith or in respect of which the relevant court is assessing the quantum of damages;
 - (vi) any Security arising by operation of law in respect of Taxes being contested in good faith or that are not yet due;
 - (vii) any Security or Quasi-Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to an Obligor in the ordinary course of trading and on the supplier's standard or usual terms and not arising as a result of any default or omission by any member of the Group;
 - (viii) any Quasi-Security arising as a result of a disposal which is a Permitted Disposal;

- (ix) any Security or Quasi-Security arising as a consequence of any Finance Lease permitted pursuant to paragraph (c)(viii) of the definition of "Permitted Financial Indebtedness";
- (x) any Security or Quasi-Security over assets of any member of the Target Group in connection with the Existing Target Financing provided that such Security or Quasi-Security is fully discharged and released within 7 Business Days of the first Utilisation Date;
- (xi) in respect of the Parent only, any Security or Quasi-Security existing as at the Springing Covenant Date;
- (xii) any Security or Quasi-Security with the prior written consent of the Agent (acting on the instructions of the Majority Lenders (acting reasonably)); and
- (xiii) any Security securing indebtedness the outstanding principal amount of which (when aggregated with the outstanding principal amount of any other indebtedness which has the benefit of Security given by any Obligor other than any permitted under paragraphs (i) to (ix) above) does not exceed:
 - (A) USD5,000,000 (or its equivalent in other currencies) at any time in respect of any Guarantors together (other than the Parent); and
 - (B) USD10,000,000 (or its equivalent in other currencies) at any time in respect of the Parent

Permitted Share Issue means an issue of:

- (a) ordinary shares by the Borrower to the Parent, paid for in full in cash upon issue and which by their terms are not redeemable and provided that (i) such shares are of the same class and on the same terms as those initially issued by the Borrower, (ii) such issue does not lead to a Change of Control and (iii) such shares are subject to Transaction Security; or
- (b) shares by the Target, SGHL or SCML provided that (i) such issue does not lead to a Change of Control and (ii) such shares by the Target are subject to Transaction Security in accordance with clause 22.22(a)(*Additional Transaction Security*)

Primary Term Rate means the rate specified as such in the applicable Reference Rate Terms

Proliferation List means:

- (a) Bureau of International Security and Non-proliferation (ISN) list;
- (b) Bureau of Verification, Compliance & Implementation (VCI) list;

- (c) Iran, North Korea, and Syria Non-proliferation Act (INKSNA) list;
- (d) Russian Federation Federal Financial Monitoring Service Weapons of Mass Destruction list;
- (e) Indonesian Funders of Proliferation of Weapons of Mass Destruction list;
- (f) Thailand Anti Money Laundering Office Sanctions list;
- (g) Kyrgyzstan Financial Intelligence Service (FIS) list;
- (h) Uzbekistan Department on Combating Economic Crimes - International Sanctions list;
- (i) Embargoed Country or Region Maritime Vessel list,

and any similar list maintained or a public announcement of a proliferation designation made by any Sanctions Authority, in each case as amended, supplemented or substituted from time to time.

Quarter Date means the last day of a Financial Quarter

Quasi-Security has the meaning given to that term in clause 22.4 (*Negative pledge*)

Quotation Day means the day specified as such in the applicable Reference Rate Terms

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

Quoted Tenor means, in relation to a Primary Term Rate or an Alternative Term Rate, any period for which that rate is customarily displayed on the relevant page or screen of an information service

Receiver means a receiver or receiver and manager or administrative receiver of the whole or any part of the Charged Property

Reference Rate Supplement means a document which:

- (a) is agreed in writing by the Borrower, the Agent (in its own capacity) and the Agent (acting on the instructions of Majority Lenders);
- (b) specifies the relevant terms which are expressed in this Agreement to be determined by reference to Reference Rate Terms; and
- (c) has been made available to the Borrower and each Finance Party

Reference Rate Terms means, in relation to:

- (a) a currency;
- (b) a Utilisation or an Unpaid Sum in that currency;
- (c) an Interest Period for that Utilisation or Unpaid Sum (or other period for the accrual of commission or fees in that currency); or
- (d) any term of this Agreement relating to the determination of a rate of interest in relation to such a Utilisation or Unpaid Sum,

the terms set out for that currency, and (where such terms are set out for different categories of Utilisation, Unpaid Sum or accrual of commission or fees in that currency) for the category of that Utilisation, Unpaid Sum or accrual, in Schedule 11 (*Reference Rate Terms*) or in any Reference Rate Supplement

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 Jurisdiction means, in relation to an Obligor, any other member of the Group and EHL:

- (a) its Original Jurisdiction;
- (b) any jurisdiction where any asset subject to or intended to be subject to the Transaction Security to be created by it is situated;
- (c) any jurisdiction where it conducts its business; and
- (d) the jurisdiction whose laws govern the perfection of any of the Transaction Security Documents entered into by it

Relevant Market means the market specified as such in the applicable Reference Rate Terms

Repeating Representations means each of the representations set out in clause 20 (*Representations*) other than the representations in clauses 20.8 (*No filing or stamp taxes*), 20.11 (*Acquisition Documents*) (following the end of the Certain Funds Period only), 20.10 (*Holding Company*) and 20.13 (*Group Structure Chart*)

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

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

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

Sanctioned Country means a country, region, or territory which is, or whose government is, at any time on any Sanctions List or subject to or target of any Sanctions, which countries, regions, and territories, as at the date of this Agreement, includes, without limitation, Cuba, Iran, North Korea, Sudan, the Crimea Region, Syria, Russia, the so-called Donetsk People's Republic and the so-called Luhansk People's Republic and the non-controlled regions of the oblasts of Zaporidja and Kherson

Sanctioned Person means a person that is:

- (a) listed on, or owned or controlled by a person listed on any Sanctions List; or
- (b) domiciled in, incorporated under the laws of, or owned or controlled by, or acting on behalf of, a person domiciled in or organized under the laws of a Sanctioned Country; or
- (c) otherwise the target of Sanctions

Sanctioned Transaction means the use of funds for the purpose of financing or providing any credit, directly or indirectly, to:

- (a) a Sanctioned Person; or
- (b) any other person or entity, if a Party has actual knowledge that the person or entity proposes to use the proceeds of the financing or credit for the purpose of financing or providing any credit, directly or indirectly, to a Sanctioned Person,

in each case to the extent that to do so is prohibited by, or would cause any breach of, Sanctions

Sanctions means the economic, financial, non-proliferation and/or trade sanctions laws, regulations, embargoes or restrictive measures administered, enacted, imposed or enforced from time to time by any Sanctions Authority

Sanctions Authority means any agency or person which is duly appointed, empowered or authorized to enact, administer, implement and/or enforce Sanctions, including (without limitation)

- (a) the United Nations;
- (b) the European Union;
- (c) the government of the United States of America;
- (d) the government of the United Kingdom;

- (e) OFAC;
- (f) the United States Department of State;
- (g) the United States Department of Commerce;
- (h) His Majesty's Treasury;
- (i) The Policy and Resources Committee of the States of Guernsey;
- (j) His Majesty's Procurer in Guernsey;
- (k) the government of the Republic of France; and
- (l) any governmental authority or agency of any of the foregoing

Sanctions List means any non-proliferation list and/or any of the lists of designated sanctions targets issued or maintained and made public by a Sanctions Authority from time to time, including (without limitation) as at the date of this Agreement:

- (a) in the case of OFAC, the Specially Designated Nationals and Blocked Persons List and the Consolidated Sanctions List;
- (b) in the case of the United States Department of State or the United States Department of Commerce, the Denied Persons List, the List of Statutorily Debarred Parties, the Entity List and the Terrorist Exclusion List;
- (c) in the case of HMT, the Consolidated List of Financial Sanctions Targets and the List of Persons Subject to Restrictive Measures in View of Russia's Actions Destabilising the Situation in Ukraine;
- (d) in the case of the European Union, the Consolidated List of Persons, Groups and entities Subject to EU Financial Sanctions; and
- (e) the Proliferation List.

Scheme means a scheme of arrangement under Part VIII of the Act between the Target and the Target Shareholders pursuant to which the Borrower will become the holder of the Target Shares, subject to any modification, addition or condition approved or imposed by the Court

Scheme Circular means a circular published and sent by the Target to the Target Shareholders setting out the terms and conditions of a Scheme and convening the Court Meeting and the General Meeting

Scheme Documents means (i) each Announcement in relation to a Scheme, (ii) the Scheme Circular, (iii) the Court Order, (iv) the Scheme Resolution, and (v) any other documents designated in writing as forming part of the Scheme Documents by the Borrower and the Agent

Scheme Effective Date means the date on which a copy of the Court Order is delivered to the Registrar of Companies in Guernsey or the date specified in the Court Order for the Scheme to become effective

Scheme Resolution means, where the Acquisition is implemented by way of Scheme, the resolutions referred to in the Scheme Circular and to be considered at the Court Meeting and the General Meeting

Secured Liabilities means, to the extent legally possible, all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each Obligor to any Secured Party under each Finance Document

Secured Parties means each Finance Party from time to time party to this Agreement and any Receiver or Delegate

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

SGHL means Shanta Gold Holdings Limited, a company incorporated under the laws of the Island of Guernsey with registered number 43134 and whose registered office is at 11 New Street, St Peter Port, Guernsey, GY1 2PF

SMCL means Shanta Mining Company Limited, a company incorporated in Tanzania with registered number 41557 and whose registered office is at Plot No. 498, House No. 202, Haile Selassie Road, Masaki, P.O. Box 79408, Dar es Salaam, Tanzania

Specified Time means a day or time determined in accordance with Schedule 8 (*Timetables*)

Sponsor Affiliate means the Borrower, the Parent, each of their respective Affiliates, any trust of which the Borrower, the Parent or any of their respective Affiliates is a trustee, any partnership of which the Borrower, the Parent or any of their respective Affiliates is a partner and any trust, fund or other entity which is managed by, or is under the control of, the Borrower, the Parent or any of their respective Affiliates

Springing Covenant Date has the meaning given to that term in clause 21.5(d) (*Parent Net Tangible Worth Compliance Certificate*)

Squeeze-Out means an acquisition of the Target Shares by the Borrower pursuant to the Squeeze-Out Procedure

Squeeze-Out Notice means a notice under section 337 of the Act given by the Borrower (or on its behalf) to a Target Shareholder who has not accepted the Offer implementing the Squeeze-Out Procedure

Squeeze-Out Procedure means the squeeze out or sell out procedures set out in Part XVIII of the Act, pursuant to which the Borrower may acquire any remaining Target Shares of a Target Shareholder that has not accepted the Offer

Subordinated Documents means each present or future agreement evidencing the terms of a shareholder loan or any other loan or advance from a Subordinated Lender to the Borrower

Subordinated Lenders means (a) the Parent and (b) any Subsidiary of the Parent as agreed between the Borrower and the Agent

Subordinated Liabilities means all present and future liabilities and obligations at any time of the Borrower to any Subordinated Lender, including those arising under any of the Subordinated Documents, both actual and contingent and whether incurred solely or jointly or in any other capacity together with any of the following matters relating to or arising in respect of those liabilities and obligations:

- (a) any refinancing, novation, deferral or extension;
- (b) any claim for damages or restitution; and
- (c) any claim as a result of any recovery by any person of a payment or discharge on the grounds of preference,

and any amounts which would be included in any of the above but for any discharge, non-provability or unenforceability of those amounts in any insolvency or other proceedings

Subsidiary means a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006 and in interpreting those provisions for the purposes of this Agreement, a company is to be treated as a member of a subsidiary even if its shares are registered in the name of (i) a nominee, or (ii) any party holding security over those shares, or that secured party's nominee

Takeover Panel means the UK Panel on Takeovers and Mergers

Tangible Net Worth means the aggregate of the value of consolidated total assets of the Parent less (a) the consolidated total liabilities of the Parent and (b) the value of consolidated total intangible assets of the Parent

Target means Shanta Gold Limited, a company incorporated under the laws of the Island of Guernsey with registered number 43133 and whose registered office is at 11 New Street, St Peter Port, Guernsey, GY1 2PF

Target Group means the Target and each of its Subsidiaries from time to time

Target Shareholders means the holders of the Target Shares other than the Excluded Shares

Target Shares means the entire issued and to be issued share capital of the Target other than the Excluded Shares

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

Term Fallback Option means either arrangement for interest calculation referred to in clause 13.1(g) (*Interest calculation if no Primary Term Rate*)

Term Reference Rate means:

- (a) the applicable Primary Term Rate as of the Quotation Time for a period equal in length to the Interest Period of that Loan; or
- (b) as otherwise determined pursuant to clause 12.1 (*Interest calculation if no Primary Term Rate*),

and if, in either case, that rate is less than zero, the Term Reference Rate shall be deemed to be zero

Termination Date means the earlier of:

- (a) the date falling twelve (12) Months after the date of this Agreement; and
- (b) the date falling six (6) Months after the first Utilisation Date

Total Commitments means the aggregate of the Commitments

Transaction Documents means:

- (a) the Finance Documents;
- (b) the Offer Documents and/or the Scheme Documents (as applicable); and
- (c) any loan agreement documenting any Subordinated Liabilities

Transaction Security means the Security created or expressed to be created in favour of the Security Agent pursuant to the Transaction Security Documents

Transaction Security Documents means:

- (a) the Parent Share Charge;
- (b) the EHL Account Charge;
- (c) upon being dated, the EHL Share Charge;
- (d) the Parent Subordination and Assignment Agreement; and
- (e) any other document entered into by any Obligor creating or expressed to create any Security over all or any part of its assets in respect of the obligations of any of the Obligors under any of the Finance Documents,

which, for the avoidance of doubt, excludes any Foreign Exchange Hedging Cash Collateral

Transfer Certificate means a certificate substantially in the form set out in Schedule 4 (*Form of Transfer Certificate*) or any other form agreed between the Agent and the Borrower

Transfer Date means, in relation to an assignment or a transfer, the later of:

- (a) the proposed Transfer Date specified in the relevant Assignment Agreement or Transfer Certificate; and
- (b) the date on which the Agent executes the relevant Assignment Agreement or Transfer Certificate

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

Unconditional Date means the date on which the Offer becomes, or is declared to be, unconditional in accordance with its terms and the requirements of the City Code

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

US means the United States of America

Utilisation means a Loan

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 relevant form set out in Schedule 3 (*Form of Utilisation Request*)

VAT means:

- (a) any value added tax imposed by the Value Added Tax Act 1994;
- (b) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- (c) any other tax of a similar nature, whether imposed in the United Kingdom or in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraphs (a) or (b) above, or imposed elsewhere

Working Capital Facility means the working capital facility dated 10 December 2021 provided by Stanbic Bank Tanzania Limited to SMCL, with a maximum commitment of \$10,000,000.

1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
 - (i) the **Agent**, the **Arranger**, any **Finance Party**, any **Lender**, any **Hedge Counterparty**, any **Foreign Exchange Hedge Counterparty**, any **Obligor**, any **Party**, any **Secured Party**, the **Security Agent** 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/or obligations under the Finance Documents and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with the Finance Documents;
 - (ii) a document in **agreed form** is a document which is previously agreed in writing by or on behalf of the Borrower and the Agent or, if not so agreed, is in the form specified by the Agent;
 - (iii) a Lender's **cost of funds** in relation to its participation in a Loan is a reference to the average cost (determined either on an actual or a notional basis) which that Lender would incur if it were to fund, from whatever source(s) it may reasonably select, an amount equal to the amount of that participation in that Loan for a period equal in length to the Interest Period of that Loan;
 - (iv) **assets** includes present and future properties, revenues and rights of every description;
 - (v) a **Finance Document** or a **Transaction Document** or any other agreement or instrument is a reference to that Finance Document or Transaction Document or other agreement or instrument as amended, novated, supplemented, extended or restated;

- (vi) a **group of Lenders** includes all the Lenders;
 - (vii) **guarantee** means (other than in clause 19 (*Guarantee and Indemnity*)) any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
 - (viii) **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;
 - (ix) a **person** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
 - (x) a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
 - (xi) a provision of law is a reference to that provision as amended or re-enacted from time to time; and
 - (xii) a time of day is a reference to London time.
- (b) Section, clause and Schedule headings are for ease of reference only.
- (c) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
- (d) A Default or Event of Default (other than a Major Default) is **continuing** if it has not been remedied or waived and a Major Default is **continuing** if it has not been waived.
- (e) A reference in this Agreement to a page or screen of an information service displaying a rate shall include:
- (i) any replacement page of that information service which displays that rate; and
 - (ii) the appropriate page of such other information service which displays that rate from time to time in place of that information service,

and, if such page or service ceases to be available, shall include any other page or service displaying that rate specified by the Agent after consultation with the Borrower.

- (f) A reference in this Agreement to a Central Bank Rate shall include any successor rate to, or replacement rate for, that rate.
- (g) Any Reference Rate Supplement relating to a currency overrides anything relating to that currency in:
 - (i) Schedule 11 (*Reference Rate Terms*); or
 - (ii) any earlier Reference Rate Supplement.
- (h) The determination of the extent to which a rate is "for a period equal in length" to an Interest Period shall disregard any inconsistency arising from the last day of that Interest Period being determined pursuant to the terms of this Agreement.

1.3 Currency symbols and definitions

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

1.4 Third party rights

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

1.5 Acting on Instructions

Where there is any reference in this Agreement or any other Finance Document to the Agent or the Security Agent acting reasonably or properly, or doing an act or coming to a determination, opinion or belief that is reasonable or proper, or any similar or analogous reference, the Agent or, as applicable, the Security Agent shall, where they have sought such instructions from the Majority Lenders (or any other group of instructing Lenders in accordance with the terms of this Agreement), be deemed to be acting reasonably and properly or doing an act or coming to a determination, opinion or belief that is reasonable if, as applicable, the Agent or Security Agent acts on the instructions of those Lenders. Where there is in this Agreement, or any other Finance Document, a provision to the effect that the Agent or the Security Agent is not to unreasonably withhold or delay its consent or approval, it shall be deemed not to have so withheld or delayed its consent or approval if the withholding or delay is caused by instructions being sought from the Majority Lenders (or any other group of instructing Lenders in accordance with the terms of this

Agreement) and it is not unreasonable for those Lenders to withhold or delay giving their consent or approval.

1.6 Guernsey Terms

- (a) For the purposes of clause 23.5 (*Insolvency*), an Obligor being unable to pay its debts includes that Obligor if a declaration has been made that its affairs are en état de désastre.
- (b) For the purposes of clauses 23.6 (*Insolvency Proceedings*) and 23.7 (*Creditors' Process*), (i) the commencement of proceedings towards the making of a declaration that the affairs of an Obligor are en état de désastre (or the making of such a declaration) and (ii) any steps being taken towards the making of an application for a preliminary vesting order in saisie proceedings in Guernsey in respect of realty of an Obligor (or the making of such a preliminary vesting order), shall be deemed to be an analogous procedure or step or an analogous process (as applicable).
- (c) Each Guarantor hereby waives any and all of its rights under the existing or future laws of Guernsey, whether by virtue of the droit de division or otherwise, to require that any liability under or in connection with any Finance Document be divided or apportioned with any other person or reduced in any manner whatsoever, and whether by virtue of the droit de discussion or otherwise, to require that recourse be had to the assets of any other person before any claim is enforced against it.

Section 2 **The Facility**

2 The Facility

2.1 The Facility

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

2.2 Increase

- (a) The Borrower may by giving prior notice to the Agent by no later than the date falling ten (10) Business Days after the effective date of a cancellation of:
 - (i) the Available Commitments of a Defaulting Lender in accordance with clause 7.5 (*Right of cancellation in relation to a Defaulting Lender*); or
 - (ii) the Commitments of a Lender in accordance with:
 - (A) Clause 7.1 (*Illegality*); or

(B) Clause 7.4(a) (*Right of cancellation and repayment in relation to a single Lender*),

request that the Commitments be increased (and the Commitments shall be so increased) in an aggregate amount up to the amount of the Available Commitments or Commitments so cancelled as follows:

- (1) the increased Commitments will be assumed by one or more Eligible Institutions (each an **Increase Lender**) each of which confirms in writing (whether in the relevant Increase Confirmation or otherwise) its willingness to assume and does assume all the obligations of a Lender corresponding to that part of the increased Commitments which it is to assume, as if it had been an Original Lender in respect of those Commitments;
 - (2) each of the Obligors and any Increase Lender shall assume obligations towards one another and/or acquire rights against one another as the Obligors and the Increase Lender would have assumed and/or acquired had the Increase Lender been an Original Lender in respect of that part of the increased Commitments which it is to assume;
 - (3) each Increase Lender shall become a Party as a "Lender" and any Increase Lender and each of the other Finance Parties shall assume obligations towards one another and acquire rights against one another as that Increase Lender and those Finance Parties would have assumed and/or acquired had the Increase Lender been an Original Lender in respect of that part of the increased Commitments which it is to assume;
 - (4) the Commitments of the other Lenders shall continue in full force and effect; and
 - (5) any increase in the Commitments shall take effect on the date specified by the Borrower in the notice referred to above or any later date on which the Agent executes an otherwise duly completed Increase Confirmation delivered to it by the relevant Increase Lender.
- (b) The Agent shall, subject to clause 2.2(c) below, as soon as reasonably practicable after receipt by it of a duly completed Increase Confirmation appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Increase Confirmation.

- (c) The Agent shall only be obliged to execute an Increase Confirmation delivered to it by an Increase 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 assumption of the increased Commitments by that Increase Lender.
- (d) Each Increase Lender, by executing the Increase Confirmation, 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 increase becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as it would have been had it been an Original Lender.
- (e) The Borrower shall promptly on demand pay the Agent and the Security Agent the amount of all costs and expenses (including legal fees) reasonably incurred by either of them and, in the case of the Security Agent, by any Receiver or Delegate in connection with any increase in Commitments under this clause 2.2.
- (f) The Increase Lender shall, on the date upon which the increase takes effect, pay to the Agent (for its own account) a fee in an amount equal to the fee which would be payable under clause 24.4 (*Assignment or transfer fee*) if the increase was a transfer pursuant to clause 24.6 (*Procedure for transfer*) and if the Increase Lender was a New Lender.
- (g) The Borrower may pay to the Increase Lender a fee in the amount and at the times agreed between the Borrower and the Increase Lender in a Fee Letter.
- (h) Neither the Agent nor any Lender shall have any obligation to find an Increase Lender and in no event shall any Lender whose Commitment is replaced by an Increase Lender be required to pay or surrender any of the fees received by such Lender pursuant to the Finance Documents.
- (i) An increase in the Commitments relating to the Facility will only be effective if the Increase Lender enters into the documentation required for it to accede as a party to the Intercreditor Agreement (to the extent that the Intercreditor Agreement exists at the date of such increase).
- (j) Clause 24.5 (*Limitation of responsibility of Existing Lenders*) shall apply *mutatis mutandis* in this clause 2.2 in relation to an Increase Lender as if references in that clause to:
 - (i) an **Existing Lender** were references to all the Lenders immediately prior to the relevant increase;
 - (ii) the **New Lender** were references to that **Increase Lender**; and

- (iii) a **re-transfer** and **re-assignment** were references to respectively a **transfer** and **assignment**.

2.3 Finance Parties' rights and obligations

- (a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor is a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with clause 2.3(c) below. The rights of each Finance Party include any debt owing to that Finance Party under the Finance Documents and, for the avoidance of doubt, any part of a Loan or any other amount owed by an Obligor which relates to a Finance Party's participation in a 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 that Obligor.
- (c) A Finance Party may, except as specifically provided in the Finance Documents, separately enforce its rights under or in connection with the Finance Documents.

2.4 Obligors' Agent

- (a) Each Obligor (other than the Borrower) by its execution of this Agreement or an Accession Deed irrevocably appoints the Borrower (acting through one or more authorised signatories) to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:
 - (i) the Borrower on its behalf to supply all information concerning itself contemplated by this Agreement to the Finance Parties and to give all notices and instructions, to make such agreements and to effect the relevant amendments, supplements and variations capable of being given, made or effected by any Obligor notwithstanding that they may affect the Obligor, without further reference to or the consent of that Obligor; and
 - (ii) each Finance Party to give any notice, demand or other communication to that Obligor pursuant to the Finance Documents to the Borrower,

and in each case the Obligor shall be bound as though the Obligor itself had given the notices and instructions or executed or made the agreements or effected the amendments,

supplements or variations, or received the relevant notice, demand or other communication.

- (b) Every act, omission, agreement, undertaking, settlement, waiver, amendment, supplement, variation, notice or other communication given or made by the Obligors' Agent or given to the Obligors' Agent under any Finance Document on behalf of another Obligor or in connection with any Finance Document (whether or not known to any other Obligor and whether occurring before or after such other Obligor became an Obligor under any Finance Document) shall be binding for all purposes on that Obligor as if that Obligor had expressly made, given or concurred with it. In the event of any conflict between any notices or other communications of the Obligors' Agent and any other Obligor, those of the Obligors' Agent shall prevail.

3 Purpose

3.1 Purpose

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

- (a) payment of all amounts payable pursuant to the Offer or Scheme (as applicable);
- (b) payment and/or reimbursement of the Acquisition Costs (other than periodic fees but, for the avoidance of doubt, including any fees due and payable on or prior to a Certain Funds Utilisation);
- (c) provided that the Scheme Effective Date has occurred or (as applicable) the Unconditional Date has occurred and the overall funding requirements of the Borrower are consistent with the Funds Flow Statement, payment of amounts (other than any premium) payable by the Borrower to any Foreign Exchange Hedge Counterparty in accordance with the Foreign Exchange Hedging; and
- (d) payment of all amounts payable in connection with the Existing Target Financing,

as described in the Funds Flow Statement.

3.2 Monitoring

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

4 Conditions of Utilisation

4.1 Initial conditions precedent

- (a) The Lenders will only be obliged to comply with clause 5.4 (*Lenders' participation*) in relation to any Utilisation if on or before the Utilisation Date for that Utilisation, the Agent has received (or waived or deferred, as applicable, the requirement to receive) all of the documents and other evidence listed in Part 1 (*Conditions Precedent to Initial Utilisation*) of Schedule 2 (*Conditions precedent*) in form and substance satisfactory to the Agent (acting on the instructions of all Lenders, each acting reasonably). The Agent shall notify the Borrower and the Lenders promptly upon being so satisfied.
- (b) Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent gives the notification described in clause 4.1(a) above, 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

Subject to clause 4.1 (Initial conditions precedent), the Lenders will only be obliged to comply with clause 5.4 (*Lenders' participation*) in relation to a Utilisation, if on the date of each Utilisation Request and (in relation to paragraphs (a), (b), (c) and (d)) on each proposed Utilisation Date:

- (a) no Major Default is continuing or would result from the proposed Utilisation;
- (b) all the Major Representations are true and accurate in all material respects and will remain true and accurate in all material respects immediately after the making of that Utilisation (to the extent not otherwise qualified by materiality);
- (c) no Change of Control has occurred;
- (d) there has been no sale, transfer or other disposal of all or substantially all of the assets of the Borrower or the Parent, whether in a single transaction or a series of related transactions;
- (e) the Agent has received (or waived or deferred, as applicable, the requirement to receive) all of the documents and other evidence set out below in form and substance satisfactory to the Agent (acting on the instructions of all Lenders, each acting reasonably):
 - (i) if the Acquisition is to be implemented by means of a Scheme, a certificate from the Borrower (signed by a director) addressed to the Agent:

(A) attaching copies (certified by the Borrower as true and correct copies but, for the avoidance of doubt, such documents are not required to be in form and substance satisfactory to the Agent) of the following documents:

- (1) the Announcement announcing the Scheme;
- (2) the Scheme Circular;
- (3) the Court Order; and
- (4) the resolutions passed at the Court Meeting and General Meeting of the Target;

(B) confirming that:

- (1) no Major Default has occurred and is continuing;
- (2) all regulatory and competition authority approvals for the Scheme and the Acquisition in all relevant jurisdictions (including without limitation Tanzania) as set out in the Scheme Circular have been obtained or waived (save for any such approvals in respect of which the Company would not be entitled, in accordance with Rule 13.5(a) of the City Code, to invoke as a condition to the Scheme so as to cause the Scheme not to proceed, to lapse or be withdrawn); and
- (3) all other terms and conditions of the Scheme (other than payment of the consideration for the Acquisition) have been satisfied, except as may be waived or declared or treated as satisfied pursuant to clause 22.15(d)(v) (*Scheme undertakings*);

(ii) if the Acquisition is to be implemented by means of an Offer, a certificate from the Borrower (signed by a director) addressed to the Agent:

(A) attaching copies (certified by the Borrower as true and correct copies but, for the avoidance of doubt, such documents are not required to be in form and substance satisfactory to the Agent) of the following documents:

- (1) a resolution of the board of directors of the Borrower approving the terms of, and the transactions contemplated by, the Offer Press Release, and the release of the Offer Press Release;
- (2) the Announcement announcing the Offer; and
- (3) the Offer Documents;

(B) confirming that:

- (1) no Major Default has occurred and is continuing;
 - (2) all regulatory and competition authority approvals for the Offer and the Acquisition in all relevant jurisdictions (including without limitation Tanzania) as set out in Offer Documents have been obtained or waived (save for any such approvals in respect of which the Borrower would not be entitled, in accordance with Rule 13.5(a) of the City Code, to invoke as a condition to the Offer so as to cause the Offer not to proceed, to lapse or be withdrawn); and
 - (3) all other terms and conditions of the Offer (other than payment of the consideration for the Acquisition) have been satisfied, except as may be waived or declared or treated as satisfied pursuant to clause 22.16(e)(vi) (*Offer undertakings*); and
- (f) the Scheme Effective Date has occurred or (as applicable) the Unconditional Date has occurred.

4.3 Certain Funds Period Restrictions

During the Certain Funds Period (save in circumstances where, pursuant to clause 4.2 (*Further conditions precedent*), a Lender is not obliged to comply with clause 5.4 (*Lenders' participation*) and subject as provided in clause 7.1 (*Illegality*)), none of the Finance Parties shall be entitled to:

- (a) cancel any of its Commitments to the extent to do so would prevent or limit the making of a Certain Funds Utilisation;
- (b) rescind, terminate or cancel this Agreement or the Facility or exercise any similar right or remedy or make or enforce any claim under the Finance Documents it may have to the extent to do so would prevent or limit the making of a Certain Funds Utilisation;
- (c) refuse to participate in the making of a Certain Funds Utilisation;
- (d) exercise any right of set-off or counterclaim in respect of a Utilisation to the extent to do so would prevent or limit the making of a Certain Funds Utilisation; or
- (e) cancel, accelerate or cause repayment or prepayment of any amounts owing under this Agreement or under any other Finance Document or exercise or take any steps to exercise any enforcement rights under any Transaction Security Document to the extent to do so would prevent or limit the making of a Certain Funds Utilisation,

provided that immediately upon the expiry of the Certain Funds Period all such rights, remedies and entitlements shall, subject to clause 23.14 (Clean-Up Period), be available to the Finance Parties notwithstanding that they may not have been used or been available for use during the Certain Funds Period.

4.4 Maximum number of Utilisations

- (a) Subject to paragraph (b), the Borrower may deliver only one (1) Utilisation Request.
- (b) If the Acquisition is to be effected by way of an Offer, the Borrower may deliver:
 - (i) two (2) Utilisation Requests if a second Utilisation is needed to effect Completion, provided that the Borrower notifies the Agent in writing no later than five (5) Business Days following the first Utilisation Date that a second Utilisation Request is required to be issued; or
 - (ii) more than two (2) Utilisation Requests, with the prior written consent of the Agent,

provided that no Utilisation may be made after expiry of the Certain Funds Period.

Section 3

Utilisation

5 Utilisation – Loans

5.1 Delivery of a Utilisation Request

The Borrower may utilise the Facility by delivery to the Agent of a duly completed Utilisation Request not later than the Specified Time.

5.2 Completion of a Utilisation Request for Loans

Each Utilisation Request for a Loan 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) the proposed Interest Period complies with clause 11 (*Interest Periods*); and
- (d) it is consistent with the Funds Flow Statement.

5.3 Currency and amount

- (a) The currency specified in a Utilisation Request must be dollars.
- (b) The amount of the proposed Utilisation must not exceed the Available Facility.

5.4 Lenders' participation

- (a) 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.
- (b) 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 prior to making the Loan.

5.5 Cancellation of Commitment

The Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period.

Section 4

Repayment, Prepayment and Cancellation

6 Repayment

The Borrower shall repay all Loans and all other amounts owing by it under the Finance Documents in full on the Termination Date.

7 Illegality, Voluntary Prepayment and Cancellation

7.1 Illegality

If, in any applicable jurisdiction, it becomes unlawful for a Lender to perform any of its obligations as contemplated by this Agreement or to fund, issue or maintain its participation in any Utilisation:

- (a) that Lender shall promptly notify the Agent upon becoming aware of that event;
- (b) upon the Agent notifying the Borrower, each Available 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 37.6 (Replacement of Lender), the Borrower shall repay that Lender's participation in the Loans on the last day of the Interest Period for each 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(s) shall be immediately cancelled in the amount of the participations repaid.

7.2 Voluntary cancellation

The Borrower may, if it gives the Agent not less than five (5) Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, cancel the whole or any part (being a minimum amount of \$1,000,000) of an Available Facility. Any cancellation under this clause 7.2 shall reduce the Commitments of the Lenders rateably under the Facility.

7.3 Voluntary prepayment of Loans

- (a) The Borrower may, if it gives the Agent not less than five (5) Business Days' (or such shorter period as the Majority Lenders may agree) prior notice prepay the whole or any part of any Loan but, if in part, being an amount that reduces that Loan by:
 - (i) a minimum amount of \$5,000,000; or
 - (ii) in respect of any part of a Loan drawn but not applied in accordance with clause 3.1 and the Funds Flow Statement (the "**Excess Amount**") within 20 Business Days of the end of the Certain Funds Period, an amount equal to the Excess Amount.
- (b) A Loan may only be prepaid after the last day of the Availability Period or, if earlier, the day on which the applicable Available Facility is zero.

7.4 Right of cancellation and repayment in relation to a single Lender

- (a) If:
 - (i) any sum payable to any Lender (other than an Original Lender) by an Obligor is required to be increased under clause 14.2(c) (*Tax gross-up*); or
 - (ii) any Lender claims indemnification from the Borrower or an Obligor under clause 14.3 (*Tax indemnity*) or clause 15.1 (*Increased Costs*),the Borrower may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Agent notice of cancellation of the Commitment(s) of that Lender and its intention to procure the repayment of that Lender's participation in the Utilisations.
- (b) On receipt of a notice referred to in paragraph (a) above in relation to a Lender, the Available Commitment(s) of that Lender shall be immediately reduced to zero.

- (c) On the last day of each Interest Period which ends after the Borrower has given notice under paragraph (a) above in relation to a Lender (or, if earlier, the date specified by the Borrower in that notice), the Borrower shall repay that Lender's participation in that Utilisation together with all interest and other amounts accrued under the Finance Documents and that Lender's corresponding Commitment(s) shall be immediately cancelled in the amount of the participations repaid.

7.5 Right of cancellation in relation to a Defaulting Lender

- (a) If any Lender becomes a Defaulting Lender, the Borrower may, at any time whilst the Lender continues to be a Defaulting Lender, give the Agent five (5) Business Days' notice of cancellation of each Available Commitment of that Lender.
- (b) On the notice referred to in paragraph (a) above becoming effective, each Available Commitment of the Defaulting Lender shall be immediately reduced to zero.
- (c) The Agent shall as soon as practicable after receipt of a notice referred to in paragraph (a) above, notify all the Lenders.

8 Mandatory Prepayment and Cancellation

8.1 For the purposes of this clause 8:

Sanctions Event means any representation or warranty made or deemed to be made by an Obligor pursuant to clause 20.12 (*Anti-Corruption Law and Sanctions*) of this Agreement or an Obligor does not comply with clause 22.18 (*Anti-Corruption and Sanctions Compliance*) of this Agreement or any similar provisions of the Finance Documents.

8.2 Upon the occurrence of:

- (a) a Change of Control;
- (b) (following the expiry of the Certain Funds Period) a Sanctions Event or a Sanctioned Transaction; or
- (c) the sale, transfer or other disposal of all or substantially all of the assets of the Borrower or the Parent or (following the expiry of the Certain Funds Period) any other Obligor or the Group whether in a single transaction or a series of related transactions,

the Borrower shall promptly notify the Agent and the Facility will be immediately cancelled and shall immediately cease to be available for further utilisation and all Utilisations, accrued interest and other amounts under the Finance Documents, shall become immediately due and payable within ten (10) days (or twenty (20) Business Days in respect of the occurrence of an event under paragraphs (c) or (d) of the definition of Change of Control) following such occurrence, provided

that, if a Change of Control results from the exercise by the Government of Tanzania of its rights pursuant to Section 10 of the Mining Act, [CAP 123 R.E 2019] to acquire any shares in SMCL, then the Agent (acting on the instructions of all the Lenders acting reasonably) shall consider any request by the Borrower to waive such Change of Control.

9 Restrictions

9.1 Notices of cancellation or prepayment

Any notice of cancellation, prepayment, authorisation or other election given by any Party under clause 7 (*Illegality, voluntary prepayment and cancellation*) shall (subject to the terms of those clauses) 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.

9.2 Interest and other amounts

Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and amounts (if any) payable under the Hedging Agreements in connection with that prepayment and, subject to any Break Costs, without premium or penalty.

9.3 No reborrowing

No Borrower may reborrow any part of the Facility which is prepaid.

9.4 Prepayment in accordance with Agreement

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

9.5 No reinstatement of Commitments

Subject to clause 2.2 (*Increase*), no amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.

9.6 Agent's receipt of notices

If the Agent receives a notice under clause 7 (*Illegality, voluntary prepayment and cancellation*) it shall promptly forward a copy of that notice or election to either the Borrower or the affected Lender, as appropriate.

9.7 Effect of repayment and prepayment on Commitments

If all or part of any Lender's participation in a Utilisation is repaid or prepaid and is not available for redrawing, an amount of that Lender's Commitment (equal to the amount of the participation which is repaid or prepaid) will be deemed to be cancelled on the date of repayment or prepayment.

9.8 Application of prepayments

Any prepayment of a Utilisation (other than a prepayment pursuant to clause 7.1 (*Illegality*) or clause 7.4 (*Right of cancellation and repayment in relation to a single Lender*)) shall be applied *pro rata* to each Lender's participation in that Utilisation.

Section 5

Costs of Utilisation

10 Interest

10.1 Calculation of interest

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

- (a) Margin; and
- (b) Term Reference Rate.

10.2 Payment of interest

The Borrower to which a Loan has been made shall pay accrued interest on that Loan on the last day of each Interest Period, provided that the Borrower may give an irrevocable written notice to the Agent at least five (5) Business Days prior to the last day of each Interest Period (other than the Interest Period for the third and sixth Month after the Utilisation Date) that it wishes for interest for that Interest Period to be capitalised in which case:

- (a) accrued interest on the Loan for that Interest Period shall be capitalised on the last day of such Interest Period and shall thereafter be treated as part of the principal amount of the Loan until paid in accordance with paragraph (b) below; and
- (b) all capitalised interest during any three (3) Month period shall (together with interest on such capitalised interest) be due and payable (and may not be capitalised) on the last day of the Interest Period for the third Month of such period.

10.3 Default interest

- (a) If an Obligor fails to pay any amount payable by it under a Finance Document on the date it is due and payable, interest shall accrue on the overdue amount from the date on which it is due and payable up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is two per cent (2%) per annum higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Agent (acting reasonably). Any interest accruing under this clause 10.3 shall be immediately payable by the Obligor on demand by the Agent.
- (b) If any overdue amount consists of all or part of a Loan and which became due on a day which was not the last day of an Interest Period relating to that Loan:
 - (i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
 - (ii) the rate of interest applying to the overdue amount during that first Interest Period shall be two per cent (2%) per annum higher than the rate which would have applied if the overdue amount had not become due.
- (c) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

10.4 Notifications

- (a) The Agent shall promptly notify the relevant Lenders and the Borrower of the determination of a rate of interest relating to a Loan.
- (b) The Agent shall promptly notify the Borrower of each Funding Rate relating to a Loan.
- (c) This clause 10.4 shall not require the Agent to make any notification to any Party on a day which is not a Business Day.

11 Interest Periods

11.1 Selection of Interest Periods and Terms

- (a) The Interest Period for each Loan or Unpaid Sum shall be one (1) Month or any other period agreed between the Borrower, the Agent and all the Lenders in relation to the relevant Loan, provided that an Interest Period for a Loan shall not extend beyond the Termination Date.

- (b) Each Interest Period for a Loan shall start on the Utilisation Date or (if already made) on the last day of its preceding Interest Period.

11.2 Non-Business Days

Any rules specified as "Business Day Conventions" in the applicable Reference Rate Terms for a Utilisation or Unpaid Sum shall apply to each Interest Period for that Utilisation or Unpaid Sum.

11.3 Consolidation of Loans

If two or more Interest Periods relate to Loans and end on the same date, those Loans will be consolidated into, and treated as, a single Loan on the last day of the Interest Period.

12 Changes to the Calculation of Interest

12.1 Interest calculation if no Primary Term Rate

- (a) *Interpolated Primary Term Rate*: If no Primary Term Rate is available for the Interest Period of a Loan, the applicable Term Reference Rate shall be the Interpolated Primary Term Rate for a period equal in length to the Interest Period of that Loan.
- (b) *Shortened Interest Period*: If paragraph (a) above applies but it is not possible to calculate the Interpolated Primary Term Rate, the Interest Period of the Loan shall (if it is longer than the applicable Fallback Interest Period) be shortened to the applicable Fallback Interest Period and the applicable Term Reference Rate shall be determined pursuant to the definition of **Term Reference Rate**.
- (c) *Alternative Term Rate*: If paragraph (a) above applies but no Primary Term Rate is available for the Interest Period of that Loan and it is not possible to calculate the Interpolated Primary Term Rate the applicable Term Reference Rate shall be the aggregate of:
 - (i) the Alternative Term Rate as of the Quotation Time for a period equal in length to the Interest Period of that Loan; and
 - (ii) any applicable Alternative Term Rate Adjustment.
- (d) *Interpolated Alternative Term Rate*: If paragraph (c) above applies but no Alternative Term Rate is available for the Interest Period of that Loan, the applicable Term Reference Rate shall be the aggregate of:
 - (i) the Interpolated Alternative Term Rate for a period equal in length to the Interest Period of that Loan; and
 - (ii) any applicable Alternative Term Rate Adjustment.

- (e) *Term Fallback Option*: If paragraph (d) above applies but it is not possible to calculate the Interpolated Alternative Term Rate then if "**fixed Central Bank Rate will apply as a fallback**" is specified in the Reference Rate Terms for that Loan, the Interest Period of that Loan shall (if it is longer than the applicable Fallback Interest Period) be shortened to the applicable Fallback Interest Period and the applicable Term Reference Rate shall be:
- (i) the percentage rate per annum which is the aggregate of:
 - (A) the Central Bank Rate for the Quotation Day; and
 - (B) any applicable Central Bank Rate Adjustment; or
 - (ii) if the Central Bank Rate for the Quotation Day is not available, the percentage rate per annum which is the aggregate of:
 - (A) the most recent Central Bank Rate for a day which is no more than five (5) days before the Quotation Day; and
 - (B) any applicable Central Bank Rate Adjustment.
- (f) *Cost of funds*: If paragraph (e) above applies but:
- (i) either:
 - (A) no Term Fallback Option is specified in the Reference Rate Terms for that Loan; or
 - (B) "**fixed Central Bank Rate will apply as a fallback**" is specified in the Reference Rate Terms for the Loan but there is no applicable Central Bank Rate; and
 - (ii) **Cost of funds will apply as a fallback** is specified in the Reference Rate Terms for that Loan,
- clause 12.3 (*Cost of funds*) shall apply to that Loan for that Interest Period.

12.2 Market disruption

If:

- (a) a Market Disruption Rate is specified in the Reference Rate Terms for a Loan; and
- (b) before the Reporting Time for that Loan the Agent receives notifications from a Lender or Lenders (whose participations in that Loan exceed twenty (20) per cent of that Loan) that

its cost of funds relating to its participation in that Loan would be in excess of that Market Disruption Rate,

then clause 12.3 (*Cost of funds*) shall apply to that Loan for the relevant Interest Period.

12.3 Cost of funds

- (a) If this clause 12.3 applies to a Loan for an Interest Period clause 10.1 (*Calculation of interest*) shall not apply to that Loan for that Interest Period and the rate of interest on each Lender's share of that Loan for that Interest Period shall be the percentage rate per annum which is the sum of:
- (i) the applicable Margin; and
 - (ii) the rate notified to the Agent by that Lender as soon as practicable and in any event by the Reporting Time for that Loan, to be that which expresses as a percentage rate per annum its cost of funds relating to its participation in that Loan.
- (b) If this clause 12.3 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.
- (c) Any alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Borrower, be binding on all Parties.
- (d) If this clause 12.3 applies pursuant to clause 12.2 (*Market disruption*) and:
- (i) a Lender's Funding Rate is less than the relevant Market Disruption Rate; or
 - (ii) a Lender does not notify a rate to the Agent by the relevant Reporting Time,
- that Lender's cost of funds relating to its participation in that Loan for that Interest Period shall be deemed, for the purposes of paragraph (a) above, to be the Market Disruption Rate for that Loan.
- (e) If this clause 12.3 applies the Agent shall, as soon as is practicable, notify the Borrower.

12.4 Break Costs

- (a) If an amount is specified as Break Costs in the Reference Rate Terms for a Loan or Unpaid Sum, the Borrower shall, within three Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs (if any) attributable to all or any part of that Loan or Unpaid Sum being paid by that Borrower on a day prior to the last day of an Interest Period for that Loan or Unpaid Sum.

- (b) Each Lender shall, as soon as reasonably practicable after a demand by the Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in respect of which they become, or may become, payable.

13 Fees

13.1 Commitment fee

- (a) The Borrower (or the Parent on its behalf) shall pay to the Agent (for the account of each Lender) a fee computed at the rate of:
 - (i) 0.50 per cent per annum on that Lender's Available Commitment from the date of this Agreement until the date falling six (6) Months after the date of this Agreement; and
 - (ii) 0.75 per cent per annum on that Lender's Available Commitment from the date falling six (6) Months after the date of this Agreement until the expiry of the Availability Period.
- (b) The accrued commitment fee is payable on the last day of each successive period of three Months from the date of this Agreement, 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.
- (c) No commitment fee is payable to the Agent (for the account of a Lender) on any Available Commitment of that Lender for any day on which that Lender is a Defaulting Lender.

13.2 Arrangement fee

The Borrower shall pay to the Arranger an arrangement fee in the amount and at the times agreed in a Fee Letter.

13.3 Agency fee

The Borrower shall pay to the Agent (for its own account) an agency fee in the amount and at the times agreed in a Fee Letter.

13.4 Security Agent fee

The Borrower shall pay to the Security Agent (for its own account) a security agent fee in the amount and at the times agreed in a Fee Letter.

Section 6

Additional Payment Obligations

14 Tax Gross-Up and Indemnities

14.1 Definitions

In this Agreement:

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

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

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

Tax Payment means either the increase in a payment made by an Obligor to a Finance Party under clause 14.2 (*Tax gross-up*) or a payment under clause 14.3 (*Tax indemnity*)

Unless a contrary indication appears, in this clause 14 a reference to **determines** or **determined** means a determination made in the absolute discretion of the person making the determination acting in good faith.

14.2 Tax gross-up

- (a) Each Obligor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) The Borrower shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Agent accordingly. Similarly, a Lender shall notify the Agent on becoming so aware in respect of a payment payable to that Lender. If the Agent receives such notification from a Lender it shall notify the Borrower.
- (c) If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

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

14.3 Tax indemnity

- (a) The Borrower shall (within five (5) Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.

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

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

- (A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes;
- (B) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction; or
- (C) under the law of any jurisdiction in which that Finance Party has a branch, agency or permanent establishment to which income or profits in respect of a Finance Document are attributable,

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

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

- (A) is compensated for by an increased payment under clause 14.2 (*Tax gross-up*);
- (B) has been compensated for by a payment under clause 14.5 (*Stamp taxes*) or clause 14.6 (*VAT*) or would have been but for the application of one of the exceptions in those clauses; or
- (C) relates to a FATCA Deduction required to be made by a Party.

- (c) A Protected Party making, or intending to make, a claim under paragraph (a) above shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Borrower.
- (d) A Protected Party shall, on receiving a payment from an Obligor under this clause 14.3, notify the Agent.

14.4 Tax Credit

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

- (a) a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and
- (b) that Finance Party has obtained and utilised that Tax Credit,

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

14.5 Stamp taxes

The Borrower shall pay and, within five (5) Business Days of demand, indemnify each Secured Party against any cost, loss or liability that Secured Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document, other than any stamp duty, registration and other similar Taxes payable on, in consequence of or in respect of any transfer or assignment (in whole or in part) by the Lender of any rights or obligations under a Finance Document except where such transfer or assignment takes place: (i) pursuant to clause 17 (*Mitigation by the Lenders*); (ii) where an Event of Default is continuing; and (iii) at the request of the Borrower.

14.6 VAT

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

consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).

- (b) If VAT is or becomes chargeable on any supply made by any Finance Party (the **Supplier**) to any other Finance Party (the **Recipient**) under a Finance Document, and any Party other than the Recipient (the **Relevant Party**) is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):
 - (i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
 - (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- (c) Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (d) Any reference in this clause 14.6 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).
- (e) In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Finance Party's VAT reporting requirements in relation to such supply.

14.7 FATCA information

- (a) Subject to paragraph (c) below, each Party shall, within ten (10) Business Days of a reasonable request by another Party:
 - (i) confirm to that other Party whether it is:
 - (A) a FATCA Exempt Party; or
 - (B) not a FATCA Exempt Party;
 - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
 - (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.
- (b) If a Party confirms to another Party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Paragraph (a) above shall not oblige any Finance Party to do anything, and paragraph (a)(iii) above shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:
 - (i) any law or regulation;
 - (ii) any fiduciary duty; or
 - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (a)(i) or (a)(ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.

14.8 FATCA Deduction

- (a) Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required

to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.

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

15 Increased Costs

15.1 Increased Costs

- (a) Subject to clause 15.2 (*Exceptions*) the Borrower shall, within three 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 after the date of this Agreement, (ii) compliance with any law or regulation made after the date of this Agreement, or (iii) the implementation or application of or compliance with Basel III or CRD IV or any other laws or regulation which implements Basel III or CRD IV (whether such implementation, application or compliance is by a government, regulator, that Finance Party or any of its Affiliates).
- (b) This clause 15 (*Increased Costs*) does not apply to the extent the Increased Cost is incurred by a Hedge Counterparty in its capacity as such.
- (c) In this Agreement:

Basel III means:

- (i) the agreements on capital requirements, a leverage ratio and liquidity standards contained in "Basel III: A global regulatory framework for more resilient banks and banking systems", "Basel III: International framework for liquidity risk measurement, standards and monitoring" and "Guidance for national authorities operating the countercyclical capital buffer" published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;
- (ii) the rules for global systemically important banks contained in "Global systemically important banks: assessment methodology and the additional loss absorbency requirement - Rules text" published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and
- (iii) any further guidance or standards published by the Basel Committee on Banking Supervision relating to "Basel III"

CRD IV means EU CRD IV and UK CRD IV

CRD V means EU CRD V and UK CRD V

EU CRD IV means:

- (i) Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms; and
- (ii) Directive 2013/36/EU of the European Parliament and the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms

EU CRD V means:

- (i) Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 and Regulation (EU) No 648/2012; and
- (ii) Directive 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures, as either of the same may be amended, supplemented or restated from time to time

Increased Costs means:

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

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

UK CRD IV means:

- (i) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institution and investment firms and

amending Regulation (EU) No 548/2012 as it forms part of domestic law of the United Kingdom by virtue of The European Union (Withdrawal) Act 2018 (the **EUWA 2018**);

- (ii) the law of the United Kingdom or any part of it, which immediately before the IP Completion Day (as defined in the European Union (Withdrawal Agreement) Act 2020) implemented Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87 EC and repealing Directives 2006/48/EC and 2006/49/EC and its implementing measures; and
- (iii) direct EU legislation (as defined in EUWA 2018), which immediately before the IP Completion Day (as defined in the European Union (Withdrawal Agreement) Act 2020) implemented EU CRD IV as it forms part of domestic law of the United Kingdom by virtue of EUWA 2018

UK CRD V means the parts of EU CRD V which form retained EU law (as defined in the European Union (Withdrawal) Act 2018 (as amended)), as amended by the Financial Holding Companies (Approval etc.) and Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) (EU Exit) Regulations 2020, and any applicable laws, regulations, rules, guidance or other applicable implementing measures from time to time of the Financial Conduct Authority, Prudential Regulation Authority, or other relevant UK regulator (or their successor) relating to the capital requirements regime for banks in the United Kingdom

15.2 Increased Cost claims

- (a) A Finance Party intending to make a claim pursuant to clause 20.1 (Increased Costs) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Borrower.
- (b) Each Finance Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount of its Increased Costs.

15.3 Exceptions

- (a) Clause 15.1 (*Increased Costs*) does not apply to the extent any Increased Cost is:
 - (i) attributable to a Tax Deduction required by law to be made by an Obligor;
 - (ii) attributable to a FATCA Deduction required to be made by a Party;

- (iii) compensated for by clause 14.3 (*Tax indemnity*) (or would have been compensated for under clause 14.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in clause 14.3(b) (*Tax indemnity*) applied);
 - (iv) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation; or
 - (v) attributable to the implementation or application of or compliance with the "International Convergence of Capital Measurement and Capital Standards, a Revised Framework" published by the Basel Committee on Banking Supervision in June 2004 in the form existing on the date of this Agreement (**Basel II**) or any other law or regulation which implements Basel II (whether such implementation, application or compliance is by a government, regulator, Finance Party or any of its Affiliates), which for the avoidance of doubt shall not include any changes pursuant to Basel III and/or CRD IV and/or CRD V (as applicable).
- (b) In this clause 15.2 reference to a **Tax Deduction** has the same meaning given to the term in clause 14.1 (*Definitions*).

16 Other Indemnities

16.1 Currency indemnity

- (a) If any sum due from an Obligor under the Finance Documents (a **Sum**), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the **First Currency**) in which that Sum is payable into another currency (the **Second Currency**) for the purpose of:
- (i) making or filing a claim or proof against that Obligor; or
 - (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,
- that Obligor shall as an independent obligation, within three Business Days of demand, indemnify each Secured Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.
- (b) Each Obligor 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.

16.2 Other indemnities

- (a) The Borrower shall within three Business Days of demand, indemnify the Arranger and each other Secured Party against any cost, loss or liability incurred by it as a result of:
- (i) the occurrence of any Event of Default;
 - (ii) a failure by an Obligor to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of clause 29 (*Sharing among the Finance Parties*);
 - (iii) 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 wilful default or gross negligence by that Finance Party alone); or
 - (iv) a Utilisation (or part of a Utilisation) not being prepaid in accordance with a notice of prepayment given by the Borrower.
- (b) The Borrower shall promptly indemnify each Finance Party, each Affiliate of a Finance Party and each officer or employee of a Finance Party or its Affiliate, against any cost, loss or liability incurred by that Finance Party or its Affiliate (or officer or employee of that Finance Party or Affiliate) in connection with or arising out of the Acquisition or the funding of the Acquisition (including but not limited to those incurred in connection with any litigation, arbitration or administrative proceedings or regulatory enquiry concerning the Acquisition), unless such loss or liability is caused by the gross negligence or wilful misconduct of that Finance Party or its Affiliate (or employee or officer of that Finance Party or Affiliate). Any Affiliate or any officer or employee of a Finance Party or its Affiliate may rely on this clause 16.2 subject to clause 1.4 (*Third party rights*) and the provisions of the Third Parties Act.

16.3 Indemnity to the Agent

The Borrower shall, with five (5) Business Days of demand, indemnify the Agent against:

- (a) any cost, loss or liability incurred by the Agent (acting reasonably) as a result of:
- (i) investigating any event which it reasonably believes is a Default;
 - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
 - (iii) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement; and

- (b) any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to clause 31.11 (*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.

16.4 Indemnity to the Security Agent

- (a) The Borrower shall, with five (5) Business Days of demand, indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability incurred by any of them as a result of:
 - (i) any failure by the Borrower to comply with its obligations under clause 18 (*Costs and expenses*);
 - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
 - (iii) the taking, holding, protection or enforcement of the Transaction Security;
 - (iv) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent and each Receiver and Delegate by the Finance Documents or by law;
 - (v) any default by any Obligor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents; or
 - (vi) acting as Security Agent, Receiver or Delegate under the Finance Documents or which otherwise relates to any of the Charged Property (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).
- (b) The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this clause 16.4 and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all moneys payable to it.

17 Mitigation by the Lenders

17.1 Mitigation

- (a) Each Finance Party shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in the Facility ceasing to be available or any amount becoming payable under or pursuant to, or cancelled pursuant to, any of clause 7.1 (*Illegality*), clause 14 (*Tax gross-up and indemnities*) or clause 15 (*Increased Costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.

17.2 Limitation of liability

- (a) The Borrower shall promptly indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under clause 17.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under clause 17.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

18 Costs and Expenses

18.1 Transaction expenses

The Borrower shall, within five (5) Business Days of demand, pay the Agent, the Arranger and the Security Agent the amount of all costs and expenses (including legal fees subject to any pre-agreed terms) reasonably incurred by any of them (and, in the case of the Security Agent, by any Receiver or Delegate) in connection with the negotiation, preparation, printing, execution and perfection of:

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

18.2 Amendment costs

If:

- (a) an Obligor requests an amendment, waiver or consent; or

- (b) an amendment is required pursuant to clause 31.10 (*Change of currency*),

the Borrower shall, within five (5) Business Days of demand, reimburse each of the Agent and the Security Agent for the amount of all costs and expenses (including legal fees subject to any pre-agreed terms) reasonably incurred by the Agent and the Security Agent (and, in the case of the Security Agent, by any Receiver or Delegate) in responding to, evaluating, negotiating or complying with that request or requirement.

18.3 Agent's and Security Agent's management time and additional remuneration

- (a) If an Event of Default has occurred and is continuing, any amount payable to the Agent or the Security Agent (as applicable) under clause 16.3 (*Indemnity to the Agent*), clause 16.4 (*Indemnity to the Security Agent*), this clause 18 and clause 27.11 (*Lenders' indemnity to the Agent and the Security Agent*) shall include the cost of utilising the Agent's or the Security Agent's (as applicable) management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Agent or the Security Agent (as applicable) may notify to the Borrower and the Lenders, and is in addition to any other fee paid or payable to the Security Agent or the Security Agent (as applicable). Any cost of utilising the Agent's or the Security Agent's management time or other resources pursuant to this clause shall include, without limitation, any such costs in connection with clause 25.2 (*Disenfranchisement of Sponsor Affiliates*).

- (b) Without prejudice to paragraph (a) above, in the event of:

- (i) an Event of Default;
- (ii) the Agent or the Security Agent (as applicable) being requested by an Obligor or the Majority Lenders to undertake duties which the Agent or the Security Agent (as applicable) and the Borrower agree to be of an exceptional nature or outside the scope of the normal duties of the Agent or the Security Agent (as applicable) under the Finance Documents; or
- (iii) the Agent or the Security Agent (as applicable) and the Borrower agreeing that it is otherwise appropriate in the circumstances,

the Borrower shall pay to the Agent or the Security Agent (as applicable) any additional remuneration that may be agreed between them or determined pursuant to paragraph (c) below.

- (c) If the Agent or the Security Agent (as applicable) and the Borrower fail to agree upon the nature of the duties, or upon the additional remuneration referred to in paragraph (b) above or whether additional remuneration is appropriate in the circumstances, any dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected

by the Agent or the Security Agent (as applicable) and approved by the Borrower or, failing approval, nominated (on the application of the Agent or the Security Agent (as applicable)) by the President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Borrower) and the determination of any investment bank shall be final and binding upon the Parties.

18.4 Enforcement and preservation costs

The Borrower shall, within three Business Days of demand, pay to each Secured Party the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of or the preservation of any rights under any Finance Document and the Transaction Security and any proceedings instituted by or against the Security Agent as a consequence of taking or holding the Transaction Security or enforcing these rights.

Section 7 Guarantee

19 Guarantee and Indemnity

19.1 Guarantee and indemnity

Each Guarantor irrevocably and unconditionally jointly and severally:

- (a) guarantees to each Finance Party punctual performance by each other Obligor of all that Obligor's obligations under the Finance Documents;
- (b) undertakes with each Finance Party that whenever another Obligor does not pay any amount when due under or in connection with any Finance Document, that Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and
- (c) agrees with each Finance Party that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Finance Party immediately on demand against any cost, loss or liability it incurs as a result of an Obligor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by a Guarantor under this indemnity will not exceed the amount it would have had to pay under this clause 19 if the amount claimed had been recoverable on the basis of a guarantee.

19.2 Continuing guarantee

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Obligor under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

19.3 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is made by a Finance Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Guarantor under this clause 19 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

19.4 Waiver of defences

The obligations of each Guarantor under this clause 19 will not be affected by an act, omission, matter or thing which, but for this clause 19, would reduce, release or prejudice any of its obligations under this clause 19 (without limitation and whether or not known to it or any Finance Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Obligor or other person;
- (b) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of a Finance Document or any other document or security including, without limitation, any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or

(g) any insolvency or similar proceedings.

19.5 Guarantor intent

Without prejudice to the generality of clause 19.4 (*Waiver of defences*), each Guarantor expressly confirms that it intends that this guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing Facility; refinancing any other indebtedness; making Facility available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

19.6 Immediate recourse

Each Guarantor waives any right it may have of first requiring any Finance Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under this clause 19. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

19.7 Appropriations

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full, each Finance Party (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Guarantor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from any Guarantor or on account of any Guarantor's liability under this clause 19.

19.8 Deferral of Guarantors' rights

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Agent otherwise directs, no Guarantor will exercise any rights which it may have by reason of performance by it of its

obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this clause 19:

- (a) to be indemnified by an Obligor;
- (b) to claim any contribution from any other guarantor of any Obligor's obligations under the Finance Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Finance Party;
- (d) to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which any Guarantor has given a guarantee, undertaking or indemnity under clause 19.1 (*Guarantee and indemnity*);
- (e) to exercise any right of set-off against any Obligor; and/or
- (f) to claim or prove as a creditor of any Obligor in competition with any Finance Party.

If a Guarantor receives any benefit, payment or distribution in relation to such rights it will promptly pay an equal amount to the Agent for application in accordance with clause 36 (*Payment mechanics*). This only applies until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full.

19.9 Additional security

This guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by any Finance Party.

Section 8

Representations, Undertakings and Events of Default

20 Representations

20.1 General

Each Obligor makes the representations and warranties set out in this clause 20 to each Finance Party, provided that:

- (a) only the Borrower shall make the representations and warranties under clause 20.11 (*Acquisition Documents*);

- (b) only the Borrower shall make the representations and warranties insofar and to the extent they relate to EHL; and
- (c) the Borrower shall, following the expiry of the Certain Funds Period, also make the representations and warranties set out in this clause 20 to each Finance Party in relation to each of the Target, SGHL and SMCL until such time as it becomes an Additional Guarantor.

20.2 Status

- (a) It and EHL is a limited liability corporation or company, duly incorporated and validly existing under the law of its Original Jurisdiction.
- (b) It and EHL has the power to own its assets and carry on its business as it is being conducted.

20.3 Binding obligations

Subject to the Legal Reservations and the Perfection Requirements:

- (a) the obligations expressed to be assumed by it and EHL in each Finance Document to which they are a party are legal, valid, binding and enforceable obligations; and
- (b) (without limiting the generality of paragraph (a) above), each Transaction Security Document to which it or EHL is a party creates (or will create upon its execution and delivery) the security interests which that Transaction Security Document purports to create (or will create upon its execution and delivery) and those security interests are valid and effective.

20.4 Non-conflict with other obligations

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

- (a) subject to the Legal Reservations and the Perfection Requirements, any law or regulation applicable to it or EHL;
- (b) its constitutional documents or those of EHL; or
- (c) any agreement or instrument binding upon it or EHL or any of their respective assets or constitute a default or termination event (however described) under any such agreement or instrument to an extent which could reasonably be expected to have a Material Adverse Effect.

20.5 Power and authority

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

20.6 Validity and admissibility in evidence

- (a) Subject to the Perfection Requirements, all Authorisations required:
 - (i) to enable it and EHL lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party; and
 - (ii) to make the Finance Documents to which it or EHL is a party admissible in evidence in its Relevant Jurisdictions,

have been obtained or effected and are in full force and effect except any Authorisation referred to in Clause 20.8 (*No filing or stamp taxes*), which Authorisations shall be obtained or effected and maintained in full force and effect promptly after the date of the relevant Finance Document.

- (b) All Authorisations necessary for the conduct of its business, trade and ordinary activities have been obtained or effected and are in full force and effect if failure to obtain or effect those Authorisations has or could reasonably be expected to have a Material Adverse Effect.

20.7 Governing law and enforcement

- (a) Subject to the Legal Reservations, the choice of governing law of the Finance Documents will be recognised and enforced in its Relevant Jurisdictions and the Relevant Jurisdiction of EHL.
- (b) Subject to the Legal Reservations, any judgment or arbitral award obtained in relation to a Finance Document in the jurisdiction of the governing law of that Finance Document will be recognised and enforced in its Relevant Jurisdictions and the Relevant Jurisdiction of EHL.

20.8 No filing or stamp taxes

Under the laws of its Relevant Jurisdictions and the Relevant Jurisdiction of EHL it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents except:

- (a) the Perfection Requirements and payment of associated fees;
- (b) the filing of the Parent Share Charge with the Registrar of Companies in Mauritius by the Parent; and
- (c) any Taxes payable in connection with entering into a Transfer Certificate or an Assignment Agreement or pursuant to any other transfer by a Lender of any of its rights or obligations under any Finance Document,

which registrations, filings, taxes and fees referred to in the Perfection Requirements will be made and paid promptly after the date of the relevant Finance Document.

20.9 No default

- (a) No Event of Default and, on the date of this Agreement, no Default is continuing or is reasonably likely to result from the making of any Utilisation or the entry into, the performance of, or any transaction contemplated by, any Finance Document.
- (b) No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or termination event (however described) under any other agreement or instrument which is binding on it or to which its assets are subject which has or is reasonably likely to have a Material Adverse Effect.

20.10 Holding Company

Except as may arise under the Transaction Documents, the Borrower has not traded or incurred any liabilities or commitments (actual or contingent, present or future) other than in connection with a Permitted Holding Company Activity.

20.11 Acquisition Documents

- (a) The relevant Announcement, the Scheme Circular and the Offer Document (each as applicable and only to the extent issued):

- (i) do not (or will not) contain any untrue material factual statement by the Borrower or omit any information which makes any material factual statement misleading in any material respect;
 - (ii) taken as a whole (and, if applicable, together with any addendum), contain all the material terms of the Scheme or the Offer (as applicable); and
 - (iii) comply in all material respects with the Act, the City Code and all other relevant laws and regulations, and the requirements, rules and regulations of the Court (subject to any waivers granted by the Takeover Panel).
- (b) All expressions of expectation, intention, belief and opinion of the Borrower and/or its directors contained in the Scheme Circular or the Offer Document (as applicable) have been honestly made on reasonable grounds after due and careful consideration by the Borrower.

20.12 Anti-Corruption Law and Sanctions

- (a) It and EHL and, following end of the Certain Funds Period, each member of the Group, conducts its businesses in compliance with all applicable Anti-Corruption Laws and Sanctions.
- (b) Neither it nor EHL nor, following the end of the Certain Funds Period, each member of the Group, nor to its knowledge (after due and careful enquiry), any of their respective directors, officers or employees:
- (i) is a Sanctioned Person; or
 - (ii) is engaged or is engaging, directly or knowingly indirectly, in any trade, business or other activities which could reasonably be expected to be in breach of applicable Sanctions; or
 - (iii) has received written notice or is otherwise aware of any claim, proceeding or investigation involving it with respect to a breach of applicable Sanctions.

20.13 Group Structure Chart

Assuming Completion has occurred, the Group Structure Chart delivered to the Agent pursuant to Part 1 (*Conditions Precedent to Initial Utilisation*) of Schedule 2 (*Conditions Precedent*) is true, complete and accurate in all material respects.

20.14 Times when representations are made

- (a) All the representations and warranties in this clause 20 are deemed to be made by the Borrower and the Original Guarantor on the date of this Agreement, the date of each Utilisation Request and each Utilisation Date.
- (b) The Repeating Representations are deemed to be made by each Obligor on the first day of each Interest Period.
- (c) All the representations and warranties in this clause 20 (except clause 20.11 (*Acquisition Documents*) and clause 20.13 (*Group Structure Chart*)) are deemed to be made by each Additional Guarantor on the day on which it becomes (or it is proposed that it becomes) an Additional Guarantor provided that any such representation and warranty shall be deemed to refer solely to such Additional Guarantor.
- (d) Each representation or warranty deemed to be made after the date of this Agreement shall be deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made.

21 Information Undertakings

The undertakings in this clause 21 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

21.1 Environmental Claims

Each Obligor shall (through the Borrower), promptly upon any Obligor becoming aware of the same, inform the Agent in writing of:

- (a) any Environmental Claim against the Borrower or the Parent or (following the end of the Certain Funds Period) any other member of the Group which is current, pending or threatened; and
- (b) any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced or threatened against the Borrower or the Parent or (following the end of the Certain Funds Period) any other member of the Group,

where that Environmental Claim, if determined against the Parent, the Borrower or that member of the Group (as applicable), has or could reasonably be expected to have a Material Adverse Effect.

21.2 Information: miscellaneous

The Borrower shall supply to the Agent:

- (a) promptly upon any Obligor becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against the Borrower or the Parent or (following the end of the Certain Funds Period) any other member of the Group and which:
 - (i) is reasonably likely to be adversely determined and, if adversely determined, could reasonably be expected to have a Material Adverse Effect; or
 - (ii) would involve a liability, or a potential or alleged liability, exceeding:
 - (A) \$500,000 (or its equivalent in other currencies) in respect of the Borrower,
 - (B) the lesser of \$50,000,000 (or its equivalent in other currencies) or 10% of the Tangible Net Worth in respect of the Parent; or
 - (C) \$2,500,000 (or its equivalent in other currencies) in respect of any member of the Group (other than the Borrower or the Parent);
- (b) promptly upon any Obligor becoming aware of them, the details of any judgment or order of a court, arbitral body or agency which is made against the Borrower or the Parent or (following the end of the Certain Funds Period) any other member of the Group and which is reasonably likely to be adversely determined and, if adversely determined, is reasonably likely to have a Material Adverse Effect;
- (c) promptly, such information as the Security Agent may reasonably require about the Charged Property and compliance of the Obligors with the terms of any Transaction Security Documents; and
- (d) promptly on request, such further information regarding the financial condition, assets and operations of the Borrower or the Parent or (following the end of the Certain Funds Period) any other member of the Group as any Finance Party through the Agent may reasonably request.

21.3 Notification of default

- (a) Each Obligor shall notify the Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon any Obligor becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).

- (b) Promptly upon a request by the Agent, the Borrower shall supply to the Agent a certificate signed by two of its directors or senior officers 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).

21.4 "Know your customer" checks

- (a) If:
 - (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
 - (ii) any change in the status of an Obligor (or of a Holding Company of an Obligor) or the composition of the shareholders of an Obligor (or of a Holding Company of an Obligor) after the date of this Agreement; or
 - (iii) a proposed assignment or transfer by a Lender of any of its rights and/or obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

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

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

21.5 Parent Net Tangible Worth Compliance Certificate

- (a) The Original Guarantor shall supply to the Agent:

- (i) as soon as they are available, but in any event within 180 days after the end of each of its financial years, its audited consolidated financial statements for that Financial Year;
 - (ii) as soon as they are available, but in any event within 60 days of 30 June and 30 December in each calendar year, its cumulative monthly management accounts for the six month period ending on that date; and
 - (iii) together with each set of audited consolidated financial statements and cumulative monthly management accounts referred to in paragraphs (i) and (ii) above, a Compliance Certificate.
- (b) Each Compliance Certificate shall certify the Tangible Net Worth and set out (in reasonable detail) computations as to calculation of Tangible Net Worth.
- (c) Each Compliance Certificate shall be signed by two directors of the Parent and shall be prepared by reference to the relevant financial statements and management accounts delivered with such Compliance Certificate.
- (d) If the Tangible Net Worth of the Parent as certified in any Compliance Certificate is less than £450,000,000 (four hundred and fifty million pounds sterling), then the **Springing Covenant Date** shall immediately occur and the relevant provisions of this Agreement shall apply at all times thereafter until the Termination Date.

22 General Undertakings

The undertakings in this clause 22 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force. To the extent that, following the expiry of the Certain Funds Period, any undertaking in this clause 22 applies to an Obligor but any of the Target, SGHL and SMCL have not become an Additional Guarantor, the undertaking shall be construed to also require the Borrower to procure that the Target, SGHL or SMCL (as applicable) will do or will not do (as applicable) such act or thing. The undertakings in this clause 22 (other than as set out in clause 22.18 (*Anti-corruption and Sanctions compliance*), clause 22.4(b) and clause 22.5(b)), insofar and to the extent they relate to the Original Guarantor, shall not be made prior to the Springing Covenant Date.

22.1 Merger

No Obligor shall enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction other than any Permitted Reorganisation.

22.2 Acquisitions

- (a) Except as permitted under paragraph (b) below, no Obligor shall:
- (i) acquire a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them); or
 - (ii) incorporate a company.
- (b) Paragraph (a) above does not apply to:
- (i) the Acquisition;
 - (ii) a Permitted Acquisition;
 - (iii) a Permitted Share Issue; or
 - (iv) except in the case of the Borrower, cash equivalent investments in the ordinary course of day to day business in a manner that would not otherwise be prohibited under the terms of any Finance Document.

22.3 Joint ventures

No Obligor shall:

- (a) enter into, invest in or acquire (or agree to acquire) any shares, stocks, securities or other interest in any Joint Venture; or
- (b) transfer any assets or lend to or guarantee or give an indemnity for or give Security for the obligations of a Joint Venture or maintain the solvency of or provide working capital to any Joint Venture (or agree to do any of the foregoing).

22.4 Negative pledge

In this clause 22.4, **Quasi-Security** means an arrangement or transaction described in paragraph (c) below.

Except as permitted under paragraph (d) below:

- (a) No Obligor shall create or permit to subsist any Security over any of its assets.
- (b) The Original Guarantor shall not, and the Borrower shall procure that EHL shall not, create or permit to subsist any Security over its Charged Property, other than Transaction Security.

- (c) No Obligor shall:
- (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by an Obligor;
 - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
 - (iii) 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
 - (iv) enter into any other preferential arrangement having a similar effect,
- in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.
- (d) Paragraphs (a) and (c) above do not apply to any Security or (as the case may be) Quasi-Security, which is Permitted Security.

22.5 Disposals

- (a) Except as permitted under paragraph (c) below, no Obligor shall enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset.
- (b) The Original Guarantor shall not, and the Borrower shall procure that EHL shall not, enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any of its Charged Property other than, in respect of EHL, a Permitted Excluded Share Transfer.
- (c) Paragraph (a) above does not apply to any Permitted Disposal.

22.6 Arm's length basis

- (a) Except as permitted under paragraph (b) below, no Obligor shall enter into any transaction with any person except on arm's length terms and for full market value except, where permitted under this Agreement, in relation to any Subordinated Liabilities.
- (b) Payment of fees, costs and expenses payable under the Transaction Documents in the amounts set out in the Transaction Documents delivered to the Agent under clause 4.1 (*Initial conditions precedent*) or otherwise agreed by the Agent in writing shall not be a breach of this clause 22.6.

22.7 Loans or credit

No Obligor shall be a creditor in respect of any Financial Indebtedness other than a Permitted Loan.

22.8 No guarantees or indemnities

No Obligor shall incur or allow to remain outstanding any guarantee in respect of any obligation of any person, other than pursuant to the Finance Documents or (in the case of a Guarantor only) a Permitted Guarantee.

22.9 Dividends and share redemption

(a) Except as permitted under paragraph (b) below), the Borrower shall not:

- (i) declare, make or pay any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital);
- (ii) repay or distribute any dividend or share premium reserve;
- (iii) pay or allow any member of the Group to pay any management, advisory or other fee to or to the order of any of the shareholders of the Borrower;
- (iv) redeem, repurchase, defease, retire or repay any of its share capital or resolve to do so; or
- (v) repay any principal, pay any interest or pay any other amounts payable in respect of any Subordinated Liabilities.

(b) The Borrower may repay any Financial Indebtedness owing to the Parent to the extent incurred by the Borrower for the purposes of meeting its obligations to pay the Finance Parties amounts of interest, fees, costs and expenses (but not principal) in accordance with this Agreement provided that:

- (i) no Event of Default has occurred and is continuing on the date of such repayment to the Parent or would result from the making of such repayment to the Parent; and
- (ii) the Borrower may not repay any Financing Indebtedness owing to the Parent in respect of the Subordinated Liabilities advanced by the Parent to the Borrower in accordance with clause 4.1 (*Initial conditions precedent*) and paragraph 6(g) of Part 1 (*Conditions precedent to initial Utilisation*) of Schedule 2 (*Conditions Precedent*).

22.10 Financial Indebtedness

- (a) Except as permitted under paragraphs (b) and (c) below, no Obligor shall incur or allow to remain outstanding any Financial Indebtedness.
- (b) Paragraph (a) above does not apply to Financial Indebtedness which is Permitted Financial Indebtedness.
- (c) The Borrower may only incur any Financial Indebtedness arising in respect of any Subordinated Liabilities if:
 - (i) such Subordinated Liabilities are documented in a loan agreement between the Borrower and a Subordinated Lender governed by English law;
 - (ii) the Subordinated Liabilities are subordinated and secured in favour of the Security Agent pursuant to the Parent Subordination and Assignment Agreement or otherwise on terms satisfactory to the Agent (acting reasonably), including, without limitation in relation to perfection and any legal opinions.

22.11 Financial assistance

Each Obligor shall comply in all respects with sections 331 and 303 of the Act and any equivalent legislation in other jurisdictions including in relation to the execution of any Accession Deed and payment of amounts due under this Agreement.

22.12 Treasury Transactions

No Obligor (other than the Parent) shall enter into any Treasury Transaction, other than:

- (a) in respect of the Borrower and SMCL only, the hedging transactions documented by the Hedging Agreements in accordance with the Hedging Strategy;
- (b) in respect of the Borrower only, the hedging transactions documented by the Foreign Exchange Hedging Agreements;
- (c) spot and forward delivery foreign exchange contracts entered into in the ordinary course of business and not for speculative purposes; and
- (d) any Treasury Transaction entered into for the hedging of actual or projected real exposures arising in the ordinary course of trading activities of a member of the Group and not for speculative purposes.

22.13 Additional Guarantors

The Borrower shall ensure that within 15 Business Days of the end of the Certain Funds Period, each of the Target, SGHL and SMCL shall accede as Additional Guarantors in accordance with this Agreement.

22.14 Conversion between Scheme and Offer

- (a) Subject to the terms of this Agreement and the consent of the Takeover Panel, the Borrower may give written notice to the Agent (a **Conversion Notice**) that it wishes to withdraw the Scheme and to launch the Offer instead.
- (b) The Borrower shall, within twenty-eight (28) days of the date of the Conversion Notice (or such longer period permitted by the Takeover Panel):
 - (i) use reasonable endeavours to ensure that the Scheme is withdrawn;
 - (ii) procure that the Offer Documents are issued.

22.15 Scheme undertakings

The undertakings in this clause 22.15 shall apply only where the Acquisition is being effected by way of a Scheme.

- (a) The Borrower will use reasonable endeavours to procure that the Scheme Circular is dispatched as soon as practicable and in any event within 28 days of the date of issue of the Announcement in respect of the Scheme, or such later date as may be approved by the Takeover Panel.
- (b) The Borrower will use reasonable endeavours to procure that the form and terms of the Scheme Circular do not vary in any respect which is material to the interests of the Lenders from the form and terms of the draft Announcement delivered as a condition precedent under Part 1 (*Conditions Precedent to Initial Utilisation*) of Schedule 2 (*Conditions Precedent*) unless:
 - (i) the Agent (acting on the instructions of all of the Lenders) has consented in writing to such change in advance (such consent not to be unreasonably withheld or delayed), it being acknowledged that such consent shall not be withheld or delayed in respect solely of an increase in the aggregate amount of cash payable for the Target Shares from that stated in the relevant Announcement where it is demonstrated that such increase will be funded entirely (directly or indirectly) by New Shareholder Injections or Subordinated Liabilities; or

- (ii) the variation is required by the City Code, the Takeover Panel, any applicable law or regulation, any applicable stock exchange or any applicable governmental or other regulatory authority.
- (c) The Borrower shall:
 - (i) subject to any applicable arms' length confidentiality restrictions or regulatory restrictions relating to the supply of such information, keep the Agent informed as to any material developments in relation to the progress of the Scheme (including any information which is material to any decision about whether to waive any conditions that the Borrower reasonably believes it is able to invoke under Rule 13.5(a) of the City Code so as to lapse the Scheme);
 - (ii) promptly on request (and, in any event, within three Business Days) provide the Agent with details of the current level of proxies received in respect of the Scheme; and
 - (iii) notify the Agent promptly following it becoming aware that the Court Order has been issued.
- (d) The Borrower shall:
 - (i) ensure that the Conversion Notice (if applicable), Announcement and all other Scheme Documents issued by it or on its behalf (and use reasonable endeavours to ensure that the Scheme Circular and all other documents issued by Target or on the Target's behalf), in each case, in connection with the Scheme comply in all material respects with the City Code (subject to any waiver or dispensation of any kind granted by the Takeover Panel or the requirement of the Court) and all applicable laws and regulations, save where noncompliance would not be prejudicial to the interests of the Lenders under the Finance Documents;
 - (ii) use reasonable endeavours to ensure that the conduct of the Scheme by the Target complies in all material respects with the City Code and all applicable laws and regulations;
 - (iii) not take any action (and procure, so far as they are legally able to do so, that no person acting in concert with it takes any action) which would compel it (or any person acting in concert with it) to make a mandatory offer to the Target Shareholders under Rule 9 of the City Code;
 - (iv) not increase, and ensure there is no increase in, the aggregate amount of cash payable for the Target Shares pursuant to the Scheme except to the extent that such

increase is funded entirely (directly or indirectly) by New Shareholder Injection or Subordinated Liabilities;

- (v) not waive or amend (and use reasonable endeavours to ensure there is no waiver or amendment to) or declare or treat as satisfied any condition of the Scheme where such waiver or consent would be prejudicial to the interests of the Lenders, except:
 - (A) where the Agent has given its consent (acting on instructions from all of the Lenders, such consent not to be unreasonably withheld or delayed by the Lenders);
 - (B) that relates to a condition which the Borrower reasonably considers that it would not be entitled, in accordance with Rule 13.5(a) of the City Code, to invoke so as to cause the Scheme not to proceed;
 - (C) to the extent required by the City Code, the Takeover Panel, any applicable law or regulation, any applicable stock exchange or any applicable governmental or other regulatory authority or the Court; or
 - (D) where such waiver or amendment is made for the purpose of extending the period in which the Target Shareholders may vote in respect of the Scheme (including by reason of adjournment of any meeting or court hearing); and
 - (vi) comply in all material respects with its obligations under the Act and the City Code as each applies to the Scheme, subject to any applicable waivers by the Takeover Panel or the requirements of the Court, save where non-compliance would not be prejudicial to the interests of the Lenders under this Agreement.
- (e) The Borrower shall, within five Business Days of receipt, deliver (or procure the delivery of) the Court Order to the Registrar of Companies in Guernsey and obtain evidence of the same.

22.16 Offer undertakings

The undertakings in this clause 22.16 shall apply only where the Acquisition is being effected by way of an Offer.

- (a) The Borrower shall despatch the Offer Document as soon as practicable and in any event within 28 days (or such longer period permitted by the Takeover Panel) of the date of issuing the Announcement in respect of the Offer.
- (b) The Borrower will use reasonable endeavours to procure that the form and terms of the Offer Document do not vary in any respect which is material to the interests of the Lenders from the form and terms of the draft Announcement delivered as a condition precedent

under Part 1 (*Conditions Precedent to Initial Utilisation*) of Schedule 2 (*Conditions Precedent*) except for the acceptance condition (which shall be in the usual form for an offer and which shall facilitate the completion of the Squeeze-Out Procedure), unless:

- (i) the Agent (acting on the instructions of all of the Lenders) has consented in writing to such change in advance (such consent not to be unreasonably withheld or delayed), it being acknowledged that such consent shall not be withheld or delayed in respect solely of an increase in the aggregate amount of cash payable for the Target Shares from that stated in the relevant Announcement where it is demonstrated that such increase will be funded entirely (directly or indirectly) by New Shareholder Injections or Subordinated Liabilities; or
 - (ii) the variation is required by the City Code, the Takeover Panel, any applicable law or regulation, any applicable stock exchange or any applicable governmental or other regulatory authority.
- (c) The Borrower shall not, and shall not permit any member of the Group to, amend, waive or modify the minimum number of Target Shares required to accept an Offer below the Minimum Acceptance Condition (as defined in paragraph I below).
- (d) The Borrower shall:
- (i) subject to any applicable arms' length confidentiality restrictions or regulatory restrictions relating to the supply of such information, keep the Agent informed as to any material developments in relation to the progress of the Offer (including any information which is material to any decision about whether to waive any conditions that the Borrower reasonably believes it is able to invoke under Rule 13.5(a) of the City Code so as to lapse the Offer or in respect of which it is required to notify the Target Shareholders) and provide the Agent with such information received in respect of the Offer as the Agent may reasonably request;
 - (ii) keep the Agent reasonably informed as to the status and progress of the Offer, the Squeeze-Out Procedures and any market purchases of Target Shares made; and
 - (iii) promptly on request (and, in any event, within three Business Days), provide the Agent with details of the current level of acceptances of the Offer.
- (e) The Borrower shall:
- (i) ensure that the Conversion Notice (if applicable), Offer Press Release and all other documents issued by it or on its behalf in connection with an Offer and the conduct of the Offer comply in all material respects with the City Code (subject to any waiver or dispensation of any kind granted by the Panel or the requirement of the Court)

and all applicable laws and regulations, save where non-compliance would not be prejudicial to the interests of the Lenders under the Finance Documents;

- (ii) not take any action (and procure, so far as they are legally able to do so, that no person acting in concert with it takes any action) which would compel it (or any person acting in concert with it) to make a mandatory offer to the Target Shareholders under Rule 9 of the City Code;
- (iii) not declare the Offer unconditional unless (i) it has achieved an acceptance level of at least ninety per cent. (90%) of each class of Target Shares to which the Offer relates (the **Minimum Acceptance Condition**) or (ii) the Borrower has become entitled under the Squeeze-Out Procedures to issue a Squeeze Out Notice (or such lower acceptance threshold agreed by the Lenders);
- (iv) without prejudice to paragraph (b) above, not increase, and ensure there is no increase in, the aggregate amount of cash payable for the Target Shares pursuant to the Offer, except to the extent that such increase is funded entirely (directly or indirectly) by New Shareholder Injections or Subordinated Liabilities;
- (v) after the Unconditional Date has occurred, not extend the time period available to Target Shareholders to accept the Offer other than as required by law, the City Code or the Takeover Panel;
- (vi) not waive or amend (and use reasonable endeavours to ensure there is no waiver or amendment to) or declare or treat as satisfied any condition of the Offer where such waiver or consent would be prejudicial to the interests of the Lenders, except:
 - (A) where the Agent (acting on instructions from all of the Lenders) has given its consent (such consent not to be unreasonably withheld or delayed by the Lenders);
 - (B) that relates to a condition which the Borrower reasonably considers that it would not be entitled, in accordance with Rule 13.5(a) of the City Code, to invoke so as to cause the Offer not to proceed;
 - (C) to the extent required by the City Code, the Takeover Panel, any applicable law or regulation, any applicable stock exchange or any applicable governmental or other regulatory authority or the Court; or
 - (D) where such waiver or amendment is made for the purpose of extending the period in which the Target Shareholders may accept the terms of the Offer;and

- (vii) comply in all material respects with its obligations under the Act and the City Code as each applies to the Offer, subject to any applicable waivers by the Takeover Panel and save where non compliance would not be prejudicial to the interests of the Lenders under this Agreement.
- (f) Within ten (10) Business Days (or such later date as agreed by the Agent (acting reasonably)) of the date on which the Borrower has (i) by virtue of the Offer acquired or unconditionally contracted to acquire, not less than ninety per cent. (90%) in value of the Target Shares and (in a case where the shares of any class of the Target Shares are voting shares) not less than ninety per cent. (90%) of the voting rights carried by those shares or (ii) become entitled under the Squeeze-Out Procedures to issue a Squeeze Out Notice, the Borrower shall:
 - (i) give notice to all the remaining Target Shareholders that it intends to acquire their shares pursuant to the Squeeze-Out Procedures;
 - (ii) purchase such shares as soon as reasonably practicable; and
 - (iii) comply with the provisions of the Squeeze-Out Procedures.

22.17 General Acquisition Undertakings

- (a) The Borrower agrees that it will deliver to the Agent copies of all publicity material, press releases and announcements intended to be published in relation to the Acquisition or the Facility as soon as practicable prior to their publication.
- (b) The Borrower agrees that where any publicity material, press releases and announcements intended to be published in relation to the Acquisition or the Facility refers to any Finance Party, it must be approved in writing by such party prior to its publication. No such approval shall be necessary where such announcement is required in order to comply with any relevant authorisation, law or regulation or the requirements, rules and regulations of any court, applicable regulatory authority or body relating to the Acquisition, or (for the avoidance of doubt), the Scheme, the Scheme Documents, the Offer or the Offer Documents provided that the Borrower shall in any event (where reasonably practicable) consult with the Finance Parties prior to any relevant publication in relation to its terms. It is agreed and acknowledged that a summary of this Agreement and any other applicable Finance Documents shall be included in the Scheme Documents or the Offer Documents as the case may be and a copy of this Agreement and any other applicable Finance Documents shall be made publicly available on the website of the Borrower and Target relating to the Acquisition in accordance with the requirements of the City Code.
- (c) Except to the extent necessary to comply with any obligations of confidentiality to any regulatory authority, the Borrower shall keep the Agent reasonably informed as to:

- (i) the terms and conditions of any assurance or undertaking proposed to be given by or on behalf of any member of the Group (or, so far as the Borrower is aware, any member of the Target Group) to any person for the purpose of obtaining any authorisation or clearance necessary in connection with the Acquisition; and
- (ii) any terms of conditions proposed in connection with any Authorisation necessary in connection with the Acquisition.

22.18 Anti-Corruption and Sanctions Compliance

- (a) Each Obligor shall (and the Borrower shall procure that EHL and, following the end of the Certain Funds Period, any other member of the Group shall) conduct its business in compliance with all applicable Anti-Corruption Laws and Sanctions.
- (b) Each Obligor shall (and the Borrower shall procure that EHL and, following the end of the Certain Funds Period, any other member of the Group shall) not:
 - (i) knowingly directly or indirectly use any of the proceeds of the Facility to pay to any person in any other manner which could reasonably be expected to result in the violation of any applicable Sanctions by any person (including without limitation, the other parties to this Agreement and the other Finance Documents);
 - (ii) make any payment under the Finance Documents with funds or assets obtained directly from transactions with, or that are the property of, or are beneficially owned by, any Sanctioned Person or any person located in or operating from a Sanctioned Country in breach of applicable Sanctions, or knowingly obtained in any other manner that could reasonably be expected to result in a violation of applicable Sanctions by any person participating in the transactions contemplated in the Finance Documents (including, without limitation, the other parties to this Agreement and the other Finance Documents);
 - (iii) fund, finance or facilitate any trade, business or other activities involving or for the benefit of any person that, at the time of such funding, financing or facilitation, is a Sanctioned Person or is located in country that is a Sanctioned Country in breach of applicable Sanctions or in any other manner in each case as would result in it or any Lender being in breach of applicable Sanctions; or
 - (iv) make available all or any part of the proceeds of the Facility in furtherance of an offer, payment, promise to pay, or authorisation of the payment or giving of money, or anything else of value, to any person in violation of any Anti-Corruption Laws.

22.19 Holding Company

The Borrower shall not trade, carry on any business, own any material assets or incur any material liabilities except for a Permitted Holding Company Activity.

22.20 Existing Target Financing

- (a) The Borrower shall procure that by 11:59 p.m. (London time) on the seventh Business Day after the first Utilisation Date, the Existing Target Financing has been repaid in full and all Security granted by a member of the Target Group in connection with the Existing Target Financing has been released and/or discharged.
- (b) If the proceeds of the Facility are not sufficient to repay the Existing Target Financing in full, the Borrower shall procure that any shortfall is funded in full by subscriptions for additional share capital by its existing shareholders or Subordinated Liabilities by 11:59 p.m. (London time) on the seventh Business Day after the first Utilisation Date.

22.21 Hedging Strategy

- (a) The Borrower shall ensure that all gold price hedging arrangements required by the Hedging Strategy in the Hedging Schedule are implemented in accordance with the terms of the Hedging Schedule and that such arrangements are not terminated, varied or cancelled except in accordance with the terms of the Intercreditor Agreement.
- (b) The Borrower shall, no later than the date that the first Hedging Agreement is executed by the Borrower or SMCL and the relevant Hedge Counterparty, enter into or procure that SMCL shall enter into (as applicable) the Intercreditor Agreement.

22.22 Additional Transaction Security

- (a) The Borrower shall, following the expiry of the Certain Funds Period, promptly following and in any event within fifteen (15) Business Days of written request by the Agent or such later date as agreed by the Agent (acting on the instructions of the Lenders), create Transaction Security in relation to its shares in the Target and any shareholder loans to the Target on terms acceptable to the Agent (acting on the instructions of all the Lenders, each acting reasonably) and procure that enforceability and due capacity, authority and execution opinions are received by the Agent on terms acceptable to it (acting on the instructions of all the Lenders, each acting reasonably) in relation to the relevant Transaction Security Document(s).
- (b) The Borrower shall, not later than completion of the Permitted Excluded Shares Transfer, create and perfect Transaction Security in relation to the Excluded Shares which it acquires as a result of the Permitted Excluded Shares Transfer on terms acceptable to the Agent

(acting on the instructions of all the Lenders, each acting reasonably) and procure that enforceability and due capacity, authority and execution opinions are received by the Agent on terms acceptable to it (acting on the instructions of all the Lenders, each acting reasonably) in relation to the relevant Transaction Security Document(s).

22.23 Accounts

The Borrower shall not open or maintain an account with any bank other than an Original Lender or any of its Affiliates, except with the prior written consent of the Agent.

22.24 Target Shares

The Borrower hereby irrevocably and unconditionally authorises the Security Agent to complete, date and release the EHL Share Charge and the notice pursuant to the EHL Share Charge, immediately upon the shares in the Target secured in accordance with the EHL Account Charge becoming materialised and certificated shares.

22.25 Refinancing mandate

- (a) The Borrower shall use reasonable endeavours to enter into a mandate letter with the Arrangers prior to the Announcement Date pursuant to which the Arrangers are mandated to refinance the Facility on terms acceptable to the Arrangers (acting reasonably).
- (b) If a mandate letter has not been entered into prior to the Announcement Date in accordance with paragraph (a), the Borrower shall enter into a mandate letter with the Arrangers no later than ten (10) Business Days after expiry of the Certain Funds Period pursuant to which the Arrangers are mandated to refinance the Facility on terms acceptable to the Arrangers.

23 Events of Default

Each of the events or circumstances set out in this clause 23 is an Event of Default (save for clause 23.13 (*Acceleration*) and clause 23.14 (*Clean-Up Period*)).

23.1 Non-payment

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

- (a) 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.

23.2 Other obligations

- (a) An Obligor or EHL does not comply with any provision of the Finance Documents (other than those referred to in clause 23.1 (*Non-payment*)).
- (b) An Obligor or EHL does not comply with any provision of any Transaction Security Document in so far as it concerns the protection or perfection of any Transaction Security.
- (c) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within fifteen (15) Business Days or (during the Certain Funds Period only) twenty (20) Business Days (or such later date as agreed by the Agent in writing) of the earlier of (i) the Agent giving notice to the Borrower and (ii) an Obligor or EHL becoming aware of the failure to comply, provided that this paragraph (c) shall not apply to, subject to paragraph (d) below, clause 22.4(b) (*Negative Pledge*) and clauses 22.13 (*Additional Guarantors*), 22.15(d) (*Scheme undertakings*), 22.16(e) (*Offer undertakings*), 22.18 (*Anti-corruption and Sanctions Compliance*), 22.20 (*Existing Target Financing*) or 22.22 (*Additional Transaction Security*).
- (d) No Event of Default under paragraph (a) above will occur if all of the following conditions are met:
 - (i) the failure to comply is in relation to clause 22.4(b) (*Negative Pledge*) only;
 - (ii) the failure to comply is completely outside the control of any Obligor;
 - (iii) the failure to comply occurs without act or omission of any Obligor; and
 - (iv) the failure to comply is capable of remedy and is remedied within five (5) Business Days of the earlier of (i) the Agent giving notice to the Borrower and (ii) an Obligor or EHL becoming aware of the failure to comply.

23.3 Misrepresentation

- (a) Any representation or statement made or deemed to be made by an Obligor or EHL in the Finance Documents or any other document delivered by or on behalf of any Obligor or EHL under or in connection with any Finance Document is or proves to have been incorrect or misleading when made or deemed to be made.
- (b) No Event of Default under paragraph (a) above will occur if the circumstances giving rise to the misrepresentation are capable of remedy and are remedied within fifteen (15) Business Days or (during the Certain Funds Period only) twenty (20) Business Days of the earlier of (i) the Agent giving notice to the Borrower and (ii) an Obligor or EHL becoming

aware of the misrepresentation, provided that this paragraph (b) shall not apply to clause 20.12 (*Anti-Corruption Law and Sanctions*).

23.4 Cross default

- (a) Any Financial Indebtedness of any Obligor (except any Subordinated Liabilities) is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of any Obligor is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any commitment for any Financial Indebtedness of any Obligor is cancelled or suspended by a creditor of any Obligor as a result of an event of default (however described).
- (d) Any creditor of any Obligor becomes entitled to declare any Financial Indebtedness of any Obligor (except any Subordinated Liabilities) due and payable prior to its specified maturity as a result of an event of default (however described).
- (e) No Event of Default will occur under this clause 23.4 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than:
 - (i) \$500,000 (or its equivalent in any other currency or currencies) in respect of the Borrower;
 - (ii) the lesser of \$50,000,000 (or its equivalent in any other currency or currencies) or 10% of the Tangible Net Worth in respect of the Parent; or
 - (iii) \$2,500,000 (or its equivalent in any other currency or currencies) in respect of any other Obligor (other than the Borrower or the Parent).

23.5 Insolvency

- (a) Any Obligor:
 - (i) is unable or admits inability to pay its debts as they fall due;
 - (ii) is deemed to, or is declared to, be unable to pay its debts under applicable law;
 - (iii) suspends or threatens to suspend making payments on any of its debts; or
 - (iv) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (excluding any Finance Party in its capacity as such) with a view to rescheduling any of its indebtedness.

- (b) The value of the assets of any Obligor is less than its liabilities (taking into account contingent and prospective liabilities).
- (c) A moratorium is declared in respect of any indebtedness of any Obligor. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

23.6 Insolvency proceedings

- (a) Any corporate action, legal proceedings or other procedure or step is taken in relation to:
 - (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Obligor or EHL;
 - (ii) a composition, compromise, assignment or arrangement with any creditor of any Obligor or EHL;
 - (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of any Obligor or EHL or any of its assets; or
 - (iv) enforcement of any Security over any assets of any Obligor,or any analogous procedure or step is taken in any jurisdiction.
- (b) Paragraph (a) shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of commencement.

23.7 Creditors' process

- (a) Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of any Obligor having an aggregate value of:
 - (i) \$500,000 (or its equivalent in any other currency or currencies) in respect of the Borrower;
 - (ii) the lesser of \$50,000,000 (or its equivalent in any other currency or currencies) or 10% of the Tangible Net Worth in respect of the Parent; or
 - (iii) \$2,500,000 (or its equivalent in any other currency or currencies) in respect of any other Obligor (other than the Borrower or the Parent).

- (b) Paragraph (a) shall not apply to any such process which affects any asset or assets of any Obligor (other than the Borrower) and which is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of commencement.

23.8 Unlawfulness and invalidity

- (a) It is or becomes unlawful for an Obligor or EHL to perform any of its obligations under the Finance Documents or any Transaction Security created or expressed to be created or evidenced by the Transaction Security Documents ceases to be effective or any subordination created under the Finance Documents is or becomes unlawful.
- (b) Any obligation or obligations of any Obligor or EHL under any Finance Documents are not (subject to the Legal Reservations) or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lenders under the Finance Documents.
- (c) Any Finance Document ceases to be in full force and effect or any Transaction Security ceases to be legal, valid, binding, enforceable or effective or is alleged by a party to it (other than a Finance Party) to be ineffective.

23.9 Cessation of business

Any Obligor suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business except where such suspension or cessation constitutes a Permitted Disposal.

23.10 Expropriation

The authority or ability of any Obligor to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any Obligor or any of its assets.

23.11 Repudiation and rescission of agreements

An Obligor or EHL (or any other relevant party other than a Finance Party) rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document or any of the Transaction Security or evidences an intention to rescind or repudiate a Finance Document or any Transaction Security.

23.12 Material Adverse Effect

Any event or circumstance occurs which in the opinion of the Majority Lenders (acting reasonably) has or is reasonably likely to have a Material Adverse Effect.

23.13 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:

- (a) by notice to the Borrower:
 - (i) cancel each Available Commitment of each Lender at which time each such Available Commitment shall immediately be cancelled and each Facility shall immediately cease to be available for further utilisation;
 - (ii) declare that all or part of the Utilisations, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, at which time they shall become immediately due and payable; and/or
 - (iii) declare that all or part of the Utilisations be payable on demand, at which time they shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders; and/or
- (b) exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

23.14 Clean-Up Period

- (a) Notwithstanding any other provision of any Finance Document:

- (i) any breach of a Clean-Up Undertaking; or
- (ii) any Event of Default constituting a Clean-Up Default,

which occurs during the Clean-Up Period will be deemed not to be a breach of undertaking or an Event of Default (as the case may be) if:

- (A) the circumstances giving rise to it have not been procured or approved by the Borrower, or by any other Obligor during the Clean-Up Period;
- (B) it would have been (if it were not for this clause 23.14) a breach of undertaking or an Event of Default only by reason of circumstances relating exclusively to

any member of the Target Group (or any obligation to procure or ensure in relation to a member of the Target Group);

- (C) it is capable of being remedied prior to the end of the Clean-Up Period and reasonable steps are being taken to remedy it;
 - (D) it is notified (with reasonable details of the event or circumstance and the steps being taken and proposed to be taken to remedy it) to the Agent as soon as reasonably practicable following any Obligor becoming aware of such circumstances or event; and
 - (E) it is not reasonably likely to have a Material Adverse Effect.
- (b) If the relevant circumstances are continuing on or after the end of the Clean-Up Period, there shall be a breach of undertaking or Event of Default, as the case may be notwithstanding the above (and without prejudice to the rights and remedies of the Finance Parties).

Section 9

Changes to Parties

24 Changes to the Lenders and Hedge Counterparties

24.1 Assignments and transfers by the Lenders

Subject to this clause 24 and to clause 25 (*Restriction on Debt Purchase Transactions*) a Lender (the **Existing Lender**) may:

- (a) assign any of its rights; or
- (b) transfer by novation any of its rights and obligations,

under any Finance Document to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (the **New Lender**).

24.2 Borrower consent

The consent of the Borrower is required for an assignment or transfer by an Existing Lender (or the entry into by an Existing Lender of any sub-participation, sub-contract or other agreement or arrangement having a substantially similar effect which in each case provides the counterparty with voting control in relation to this Agreement) during the Certain Funds Period, provided that such consent will not be unreasonably withheld or delayed if such assignment or transfer (or sub-participation, sub-contract or other agreement or arrangement) is:

- (a) to or with another Lender or an Affiliate of any Lender; or
- (b) to or with a fund which is a Related Fund of that Existing Lender,

and is approved by the Borrower's financial adviser for the purposes of Rule 2.7 and/or Rule 24.8 of the City Code.

24.3 Other conditions of assignment or transfer

- (a) An assignment will only be effective on:
 - (i) receipt by the Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that the New Lender will assume the same obligations to the other Finance Parties and the other Secured Parties as it would have been under if it had been an Original Lender;
 - (ii) the New Lender entering into the documentation required for it to accede as a party to the Intercreditor Agreement (to the extent that the Intercreditor Agreement exists at the date of such assignment); and
 - (iii) performance by the Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Agent shall promptly notify to the Existing Lender and the New Lender.
- (b) A transfer will only be effective if the procedure set out in clause 24.6 (*Procedure for transfer*) is complied with.
- (c) If:
 - (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
 - (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under clause 14 (Tax Gross-Up and Indemnities) or clause 15 (*Increased Costs*),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under that clause to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred. This paragraph (c) shall not apply in respect of an assignment or transfer made if an Event of Default is continuing or the transfer or assignment is made

to a replacement Lender in accordance with clause 7.4 (*Right of Repayment and Cancellation in Relation to a Single Lender*) or clause 37.6 (*Replacement of Lender*) or by a Defaulting Lender in accordance with clause 7.5 (*Right of Cancellation in relation to a Defaulting Lender*) or clause 37.8 (*Replacement of a Defaulting Lender*).

- (d) Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

24.4 Assignment or transfer fee

- (a) Subject to paragraph (b) below, the New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Agent (for its own account) a fee of \$2,000.
- (b) No fee is payable pursuant to paragraph (a) above if:
 - (i) the Agent agrees that no fee is payable; or
 - (ii) the assignment or transfer is made by an Existing Lender:
 - (A) to an Affiliate of that Existing Lender; or
 - (B) to a fund which is a Related Fund of that Existing Lender.

24.5 Limitation of responsibility of Existing Lenders

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
 - (i) the legality, validity, effectiveness, adequacy or enforceability of the Transaction Documents, the Transaction Security or any other documents;
 - (ii) the financial condition of any Obligor;
 - (iii) the performance and observance by any Obligor of its obligations under the Transaction Documents or any other documents; or
 - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Transaction Document or any other document,and any representations or warranties implied by law are excluded.

- (b) Each New Lender confirms to the Existing Lender, the other Finance Parties and the Secured Parties that it:
 - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender or any other Finance Party in connection with any Transaction Document or the Transaction Security; and
 - (ii) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.
- (c) Nothing in any Finance Document obliges an Existing Lender to:
 - (i) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this clause 24; or
 - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under the Transaction Documents or otherwise.

24.6 Procedure for transfer

- (a) Subject to the conditions set out in clause 24.2 (*Borrower consent*) and clause 24.3 (*Other conditions of assignment or transfer*) a transfer is effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate.
- (b) The Obligors and the other Finance Parties irrevocably authorise the Agent to execute any Transfer Certificate on their behalf, without any consultation with them.
- (c) Subject to clause 24.11 (*Pro rata interest settlement*), on the Transfer Date:
 - (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents and in respect of the Transaction Security each of the Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and in respect of the Transaction Security and their respective rights against one

another under the Finance Documents and in respect of the Transaction Security shall be cancelled (being the **Discharged Rights and Obligations**);

- (ii) each of the Obligors 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 that Obligor or other member of the Group and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;
- (iii) the Agent, the Arranger, the Security Agent, the New Lender and the other Lenders shall acquire the same rights and assume the same obligations between themselves and in respect of the Transaction Security 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 Arranger, the Security Agent and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and
- (iv) the New Lender shall become a Party as a "Lender".

24.7 Procedure for assignment

- (a) Subject to the conditions set out in clause 24.2 (*Borrower consent*) and clause 24.3 (*Other conditions of assignment or transfer*) an assignment may be effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.
- (b) The Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.
- (c) Subject to clause 24.11 (*Pro rata interest settlement*), on the Transfer Date:
 - (i) the Existing Lender will assign absolutely to the New Lender its rights under the Finance Documents and in respect of the Transaction Security expressed to be the subject of the assignment in the Assignment Agreement;
 - (ii) the Existing Lender will be released from the obligations (the **Relevant Obligations**) expressed to be the subject of the release in the Assignment Agreement (and any

corresponding obligations by which it is bound in respect of the Transaction Security); and

(iii) the New Lender shall become a Party as a "Lender" and will be bound by obligations equivalent to the Relevant Obligations.

(d) Lenders may utilise procedures other than those set out in this clause 24.7 to assign their rights under the Finance Documents (but not, without the consent of the relevant Obligor or unless in accordance with clause 24.6 (*Procedure for transfer*), to obtain a release by that Obligor from the obligations owed to that Obligor by the Lenders nor the assumption of equivalent obligations by a New Lender) **provided that** they comply with the conditions set out in clause 24.2 (*Borrower consent*) and clause 24.3 (*Other conditions of assignment or transfer*).

24.8 Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to the Borrower

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

24.9 Accession of Hedge Counterparties

(a) The Borrower or a Lender may request that a Lender or an Affiliate of a Lender becomes a Hedge Counterparty, with the prior approval of the Agent and (in the case of a request by a Lender) the Borrower, by delivering to the Agent a duly executed Hedge Counterparty Accession Letter.

(b) The relevant Lender or Affiliate will become a Hedge Counterparty when the Agent enters into the relevant Hedge Counterparty Accession Letter and the relevant Lender or Affiliate enters into the documentation required for it to accede as a party to the Intercreditor Agreement.

24.10 Security over Lenders' rights

In addition to the other rights provided to Lenders under this clause 24, each Lender may without consulting with or obtaining consent from any Obligor, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

(a) any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and

- (b) any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities,

except that no such charge, assignment or Security shall:

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

24.11 *Pro rata* interest settlement

- (a) If the Agent has notified the Lenders that it is able to distribute interest payments on a "*pro rata* basis" to Existing Lenders and New Lenders then (in respect of any transfer pursuant to clause 24.6 (*Procedure for transfer*) or any assignment pursuant to clause 24.7 (*Procedure for assignment*) the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period):
 - (i) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date (**Accrued Amounts**) and shall become due and payable to the Existing Lender (without further interest accruing on them) on the last day of the current Interest Period; and
 - (ii) the rights assigned or transferred by the Existing Lender will not include the right to the Accrued Amounts so that, for the avoidance of doubt:
 - (A) when the Accrued Amounts become payable, those Accrued Amounts will be payable for the account of the Existing Lender; and
 - (B) the amount payable to the New Lender on that date will be the amount which would, but for the application of this clause 24.11, have been payable to it on that date, but after deduction of the Accrued Amounts.
- (b) In this clause 24.11 references to "Interest Period" shall be construed to include a reference to any other period for accrual of fees.
- (c) An Existing Lender which retains the right to the Accrued Amounts pursuant to this clause 24.11 but which does not have a Commitment shall be deemed not to be a Lender for the purposes of ascertaining whether the agreement of any specified group of Lenders has

been obtained to approve any request for a consent, waiver, amendment or other vote of Lenders under the Finance Documents.

25 Restriction on Debt Purchase Transactions

25.1 Prohibition on Debt Purchase Transactions by the Group

The Borrower shall not, and shall procure that each other member of the Group and Sponsor Affiliate shall not, enter into any Debt Purchase Transaction or beneficially own all or any part of the share capital of a company that is a Lender or a party to a Debt Purchase Transaction of the type referred to in paragraphs (b) or (c) of the definition of **Debt Purchase Transaction**.

25.2 Disenfranchisement of Sponsor Affiliates

(a) For so long as a Sponsor Affiliate:

- (i) beneficially owns a Commitment; or
- (ii) has entered into a sub-participation agreement relating to a Commitment or other agreement or arrangement having a substantially similar economic effect and such agreement or arrangement has not been terminated,

in ascertaining:

(A) the Majority Lenders; or

(B) whether:

- (1) any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments; or
- (2) the agreement of any specified group of Lenders,

has been obtained to approve any request for a consent, waiver, amendment or other vote under the Finance Documents such Commitment shall be deemed to be zero and such Sponsor Affiliate or the person with whom it has entered into such sub-participation, other agreement or arrangement shall be deemed not to be a Lender for the purposes of paragraphs (A) and (B) above (unless in the case of a person not being a Sponsor Affiliate it is a Lender by virtue otherwise than by beneficially owning the relevant Commitment).

(b) Each Lender shall, unless such Debt Purchase Transaction is an assignment or transfer, promptly notify the Agent in writing if it knowingly enters into a Debt Purchase Transaction with a Sponsor Affiliate (a **Notifiable Debt Purchase Transaction**), such notification to be

substantially in the form set out in Part 1 of Schedule 10 (*Forms of Notifiable Debt Purchase Transaction Notice*).

(c) A Lender shall promptly notify the Agent if a Notifiable Debt Purchase Transaction to which it is a party:

- (i) is terminated; or
- (ii) ceases to be with a Sponsor Affiliate,

such notification to be substantially in the form set out in Part 2 of Schedule 10 (*Forms of Notifiable Debt Purchase Transaction Notice*).

(d) Each Sponsor Affiliate that is a Lender agrees that:

- (i) in relation to any meeting or conference call to which all the Lenders are invited to attend or participate, it shall not attend or participate in the same if so requested by the Agent or, unless the Agent otherwise agrees, be entitled to receive the agenda or any minutes of the same; and
- (ii) in its capacity as Lender, unless the Agent otherwise agrees, it shall not be entitled to receive any report or other document prepared at the behest of, or on the instructions of, the Agent or one or more of the Lenders.

25.3 Sponsor Affiliates' notification to other Lenders of Debt Purchase Transactions

Any Sponsor Affiliate which is or becomes a Lender and which enters into a Debt Purchase Transaction as a purchaser or a participant shall, by 5.00 pm on the Business Day following the day on which it entered into that Debt Purchase Transaction, notify the Agent of the extent of the Commitment(s) or amount outstanding to which that Debt Purchase Transaction relates. The Agent shall promptly disclose such information to the Lenders.

26 Changes to the Obligors

26.1 Assignment and transfers by Obligors

No Obligor or any other member of the Group may assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

26.2 Additional Guarantors

- (a) A member of the Group shall become an Additional Guarantor if:
 - (i) the Borrower and the proposed Additional Guarantor deliver to the Agent a duly completed and executed Accession Deed; and

- (ii) the Agent has received all of the documents and other evidence listed in Part 2 (*Conditions Precedent required to be delivered by an Additional Guarantor*) of Schedule 2 (*Conditions precedent*) in relation to that Additional Guarantor, each in form and substance satisfactory to the Agent.
- (b) The Agent shall notify the Borrower and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part 2 (*Conditions Precedent required to be delivered by an Additional Guarantor*) of Schedule 2 (*Conditions precedent*).
- (c) Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent gives the notification described in paragraph (c) above, 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.

26.3 Repetition of Representations

Delivery of an Accession Deed constitutes confirmation by the relevant Subsidiary that the representations and warranties referred to in clause 20.14(c) (*Times when representations made*) are true and correct in relation to it as at the date of delivery as if made by reference to the facts and circumstances then existing.

Section 10

The Finance Parties

27 Role of the Agent, the Security Agent and the Arranger

27.1 The Agent and the Security Agent

- (a) Each of the Arranger, the Lenders and the Hedge Counterparties appoints the Agent to act as its agent under and in connection with the Finance Documents.
- (b) The Security Agent declares that it holds the Charged Property on trust for the Secured Parties on the terms contained in this Agreement.
- (c) Each of the Arranger, the Lenders and the Hedge Counterparties authorises the Agent and the Security Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Agent and the Security Agent (as applicable) under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

- (d) Each Finance Party shall supply the Security Agent with any information that the Security Agent may reasonably specify as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent.
- (e) The Secured Parties shall not have any independent power to enforce, or have recourse to, any of the Transaction Security or to exercise any right, power, authority or discretion arising under the Security Documents except through the Security Agent.

27.2 Instructions

- (a) Each of the Agent and the Security Agent shall:
 - (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Agent or Security Agent (as applicable) in accordance with any instructions given to it by:
 - (A) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision; and
 - (B) in all other cases, the Majority Lenders; and
 - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above.
- (b) Each of the Agent and the Security 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 Finance Party or group of Finance Parties, from that Finance Party or group of Finance Parties) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Agent or the Security Agent (as applicable) may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
- (c) Save in the case of decisions stipulated to be a matter for any other Finance Party or group of Finance Parties under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Agent or the Security Agent (as applicable) by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties save for the Security Agent and the Agent.
- (d) The Agent or the Security Agent (as applicable) may refrain from acting in accordance with any instructions of any Finance Party or group of Finance Parties until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in

advance) for any cost, loss or liability which it may incur in complying with those instructions.

- (e) In the absence of instructions, each of the Agent and the Security Agent may act (or refrain from acting) as it considers to be in the best interest of (in the case of the Agent) all the Finance Parties and (in the case of the Security Agent) all the Secured Parties.
- (f) Neither the Agent nor the Security Agent is authorised to act on behalf of a Finance Party (without first obtaining that Finance Party's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (f) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Transaction Security Documents or enforcement of the Transaction Security or Transaction Security Documents.

27.3 Duties of the Agent and the Security Agent

- (a) The duties of the Agent and the Security Agent under the Finance Documents are solely mechanical and administrative in nature.
- (b) Subject to paragraph (c) below, each of the Agent and the Security Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent or the Security Agent (as applicable) for that Party by any other Party.
- (c) Without prejudice to clause 24.8 (*Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Borrower*), paragraph (b) above shall not apply to any Transfer Certificate, any Assignment Agreement or any Increase Confirmation.
- (d) Except where a Finance Document specifically provides otherwise, neither the Agent nor the Security Agent is obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (e) If the Agent or the Security Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (f) 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, the Arranger or the Security Agent) under this Agreement, it shall promptly notify the other Finance Parties.
- (g) Each of the Agent and the Security 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 others shall be implied).

27.4 Role of the Arranger

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

27.5 No fiduciary duties

(a) Nothing in any Finance Document constitutes:

- (i) the Agent or the Arranger as a trustee or fiduciary of any other person;
- (ii) the Security Agent as an agent, trustee or fiduciary of any Obligor.

(b) None of the Agent, the Security Agent or the Arranger shall be bound to account to any other Finance Party or (in the case of the Security Agent) any Secured Party for any sum or the profit element of any sum received by it for its own account.

27.6 Business with the Group

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

27.7 Rights and discretions

(a) Each of the Agent and the Security Agent may:

- (i) rely on any representation, communication, notice or document (including, without limitation, any notice given by a Lender pursuant to clause 25.2(b) or 25.2(c) (*Disenfranchisement of Sponsor Affiliates*)) believed by it to be genuine, correct and appropriately authorised;
- (ii) assume that:
 - (A) any instructions received by it from the Majority Lenders, the Lenders or any Finance Party or group of Finance Parties are duly given in accordance with the terms of the Finance Documents;
 - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
 - (C) in the case of the Security Agent, if it receives any instructions to act in relation to the Transaction Security, that all applicable conditions under the Finance Documents for so acting have been satisfied; and

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

as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.

- (b) Each of the Agent and the Security Agent may assume (unless it has received notice to the contrary in its capacity as agent or security trustee for the Finance Parties or Secured Parties (as applicable)) that:
 - (i) no Default has occurred (unless, in the case of the Agent, it has actual knowledge of a Default arising under clause 23.1 (*Non-payment*));
 - (ii) any right, power, authority or discretion vested in any Party or any group of Finance Parties has not been exercised;
 - (iii) any notice or request made by the Borrower (other than a Utilisation Request) is made on behalf of and with the consent and knowledge of all the Obligors; and
 - (iv) no Notifiable Debt Purchase Transaction:
 - (A) has been entered into;
 - (B) has been terminated; or
 - (C) has ceased to be with a Sponsor Affiliate.
- (c) Each of the Agent and the Security Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, each of the Agent and the Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Agent or the Security Agent (as applicable) (and so separate from any lawyers instructed by the Lenders and/or Hedge Counterparties) if the Agent or the Security Agent (as applicable) in its reasonable opinion deems this to be desirable.

- (e) Each of the Agent and the Security 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, by the Security 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.
- (f) Each of the Agent, the Security Agent, any Receiver and any Delegate may act in relation to the Finance Documents and the Security Property through its officers, employees and agents (including any Affiliate of the Agent or the Security Agent) and shall not:
 - (i) be liable for any error of judgment made by any such person; or
 - (ii) 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, the Security Agent's, Receiver's or Delegate's (as applicable) gross negligence or wilful misconduct.
- (g) Unless a Finance Document expressly provides otherwise each of the Agent and the Security Agent may disclose to any other Party any information it reasonably believes it has received as agent or security trustee under this Agreement.
- (h) Without prejudice to the generality of paragraph (g) above, the Agent:
 - (i) may disclose; and
 - (ii) on the written request of the Borrower or the Majority Lenders shall, as soon as reasonably practicable, disclose,the identity of a Defaulting Lender to the Borrower and to the other Finance Parties.
- (i) Notwithstanding any other provision of any Finance Document to the contrary, none of the Agent, the Security Agent or the Arranger is obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (j) Notwithstanding any provision of any Finance Document to the contrary, neither the Agent nor the Security Agent 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.

27.8 Responsibility for documentation

None of the Agent, the Security Agent, any Receiver, any Delegate or the Arranger is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Agent, the Security Agent, the Arranger, an Obligor or any other person in or in connection with any Finance Document or the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security; or
- (c) any determination as to whether any information provided or to be provided to any Finance Party or Secured 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.

27.9 No duty to monitor

Neither the Agent nor the Security Agent shall 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.

27.10 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Agent, the Security Agent or any Receiver or Delegate), none of the Agent, the Security Agent or any Receiver or Delegate will be liable (including, without limitation, for negligence or any other category of liability whatsoever) for:
 - (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document or the Transaction Security, unless directly caused by its gross negligence or wilful misconduct;

- (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Finance Document, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document or the Transaction Security;
- (iii) any shortfall which arises on the enforcement or realisation of the Security Property;
or
- (iv) without prejudice to the generality of clauses (i) to (iii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:

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

(B) the general risks of investment in, or the holding of assets in, any jurisdiction,

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

- (b) No Party (other than the Agent, the Security Agent, that Receiver or that Delegate (as applicable)) may take any proceedings against any officer, employee or agent of the Agent, the Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Agent, the Security Agent, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document, any Transaction Security and any officer, employee or agent of the Agent, the Security Agent, a Receiver or a Delegate may rely on this paragraph (b) subject to clause 1.4 (*Third party rights*) and the provisions of the Third Parties Act.
- (c) Neither the Agent nor the Security Agent will 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 or the Security Agent (as applicable) if the Agent or the Security Agent (as applicable) 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 or the Security Agent (as applicable) for that purpose.

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

- (i) any "know your customer" or other checks in relation to any person; or
- (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Finance Party or for any Affiliate of any Finance Party,

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

(e) Without prejudice to any provision of any Finance Document excluding or limiting the liability of the Agent, the Security Agent, any Receiver or any Delegate, any liability of the Agent, the Security Agent, any Receiver or any Delegate arising under or in connection with any Finance Document or the Transaction Security shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Agent, the Security Agent, any Receiver or any Delegate 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, the Security Agent, any Receiver or any Delegate at any time which increase the amount of that loss. In no event shall the Agent, the Security Agent, any Receiver or any Delegate 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, the Security Agent, any Receiver or any Delegate has been advised of the possibility of such loss or damages.

27.11 Lenders' indemnity to the Agent and the Security Agent

(a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, the Security Agent, each Receiver and each Delegate, within three Business Days of demand, against any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Agent, the Security Agent, each Receiver and each Delegate (as applicable) (otherwise than by reason of the gross negligence or wilful misconduct of the Agent, the Security Agent, each Receiver and each Delegate (as applicable)) (or, in the case of any cost, loss or liability pursuant to clause 31.11 (*Disruption to payment systems etc.*), notwithstanding the negligence, gross negligence or any other category of liability whatsoever of the Agent, the Security Agent, each Receiver and each Delegate (as applicable) but not including any claim based on the fraud of the Agent, the Security Agent,

each Receiver or each Delegate (as applicable)) in acting as Agent, Security Agent, Receiver or Delegate (as applicable) under the Finance Documents (unless the Agent, the Security Agent, Receiver or Delegate (as applicable) has been reimbursed by an Obligor pursuant to a Finance Document).

- (b) Subject to paragraph (c) below, the Borrower shall immediately on demand reimburse any Lender for any payment that Lender makes to the Agent, the Security Agent, Receiver or Delegate pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Agent, the Security Agent, Receiver or Delegate to an Obligor.

27.12 Resignation of the Agent and the Security Agent

- (a) Each of the Agent and the Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Finance Parties and (unless an Event of Default is continuing) the Borrower.
- (b) Alternatively each of the Agent and the Security Agent may resign by giving 30 days' notice to the other Finance Party and (unless an Event of Default is continuing) the Borrower, in which case the Majority Lenders (after consultation with the other Finance Parties and (unless an Event of Default is continuing) the Borrower) may appoint a successor Agent or successor Security Agent (as applicable).
- (c) If the Majority Lenders have not appointed a successor Agent or Security Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Agent or the retiring Security Agent (as applicable) (after consultation with the other Finance Parties and (unless an Event of Default is continuing) the Borrower) may appoint a successor Agent or Security Agent (as applicable).
- (d) If the Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Agent is entitled to appoint a successor Agent under paragraph (c) above, the Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Agent to become a party to this Agreement as Agent) agree with the proposed successor Agent amendments to this clause 27 and any other term of this Agreement dealing with the rights or obligations of the Agent consistent with then current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to the agency fee payable under this Agreement which are consistent with the successor Agent's normal fee rates and those amendments will bind the Parties.

- (e) The retiring Agent or Security Agent (as applicable) shall make available to the successor Agent or Security Agent (as applicable) such documents and records and provide such assistance as the successor Agent or Security Agent (as applicable) may reasonably request for the purposes of performing its functions as Agent under the Finance Documents. The Borrower shall, within three Business Days of demand, reimburse the retiring Agent or Security Agent (as applicable) 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.
- (f) The resignation notice of the Agent or the Security Agent (as applicable) shall only take effect upon:
 - (i) the appointment of a successor; and
 - (ii) (in the case of the Security Agent) the transfer of the Security Property to that successor.
- (g) Upon the appointment of a successor, the retiring Agent or Security Agent (as applicable) shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (e) above) but shall remain entitled to the benefit of clause 16.3 (*Indemnity to the Agent*), clause 16.4 (*Indemnity to the Security Agent*) and this clause 27 (as applicable) (and any agency fees for the account of the retiring Agent or the Security Agent (as applicable) shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (h) The Agent shall resign in accordance with paragraph (b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Agent pursuant to paragraph (c) above) if on or after the date which is one month before the earliest FATCA Application Date relating to any payment to the Agent under the Finance Documents, either:
 - (i) the Agent fails to respond to a request under clause 14.7 (*FATCA information*) and a Lender reasonably believes that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
 - (ii) the information supplied by the Agent pursuant to clause 14.7 (*FATCA information*) indicates that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
 - (iii) the Agent notifies the Borrower and the Lenders that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

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

27.13 Replacement of the Agent or the Security Agent

- (a) After consultation with the Borrower (unless an Event of Default is continuing), the Majority Lenders may, by giving 30 days' notice to the Agent or the Security Agent (or, at any time the Agent is an Impaired Agent, by giving any shorter notice determined by the Majority Lenders) replace the Agent or the Security Agent (as applicable) by appointing a successor Agent or the Security Agent (as applicable).
- (b) The retiring Agent or the retiring Security Agent shall (at its own cost if it is an Impaired Agent and otherwise at the expense of the Lenders) make available to the successor Agent or the successor Security Agent (as applicable) such documents and records and provide such assistance as the successor Agent or the successor Security Agent (as applicable) may reasonably request for the purposes of performing its functions as Agent or Security Agent (as applicable) under the Finance Documents.
- (c) The appointment of the successor Agent or the successor Security Agent (as applicable) shall take effect on the date specified in the notice from the Majority Lenders to the retiring Agent. As from this date, the retiring Agent or the retiring Security Agent (as applicable) shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) above) but shall remain entitled to the benefit of clause 16.3 (*Indemnity to the Agent*), clause 16.4 (*Indemnity to the Security Agent*) and this clause 27 (as applicable) (and any agency fees for the account of the retiring Agent or the retiring Security Agent (as applicable) shall cease to accrue from (and shall be payable on) that date).
- (d) Any successor Agent or any successor Security Agent (as applicable) 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.

27.14 Confidentiality

- (a) In acting as agent or trustee for the Finance Parties, the Agent or the Security Agent shall be regarded as acting through its agency or trustee division (as applicable) which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by another division or department of the Agent or the Security Agent, it may be treated as confidential to that division or department and the Agent or the Security Agent (as applicable) shall not be deemed to have notice of it.

27.15 Relationship with the Lenders

- (a) Subject to clause 24.11 (*Pro rata interest settlement*), the Agent may treat the person shown in its records as Lender or Hedge Counterparty at the opening of business (in the place of the Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office or, as the case may be, Hedge Counterparty:
- (i) entitled to or liable for any payment due under any Finance Document on that day; and
 - (ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,

unless it has received not less than five Business Days' prior notice from that Lender or Hedge Counterparty to the contrary in accordance with the terms of this Agreement.

- (b) Any Lender or Hedge Counterparty may by notice to the Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender or Hedge Counterparty under the Finance Documents. Such notice shall contain the address and (where communication by electronic mail or other electronic means is permitted under clause 33.6 (*Electronic communication*)) electronic mail address and/or any other information required to enable the transmission of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, electronic mail address (or such other information), department and officer by that Lender or Hedge Counterparty for the purposes of clause 33.2 (*Addresses*) and clause 33.6(a)(ii) (*Electronic communication*) and the Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender or Hedge Counterparty.

27.16 Credit appraisal by the Lenders and Hedge Counterparties

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

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document, the Transaction Security and any other agreement, arrangement or document entered into,

made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;

- (c) whether that Finance Party 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 Transaction Security, 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 or the Transaction Security;
- (d) the adequacy, accuracy or completeness of any information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property.

27.17 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.

27.18 Reliance and engagement letters

Each Finance Party and Secured Party confirms that each of the Arranger, the Agent and the Security Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by the Arranger, Agent or the Security Agent) the terms of any reliance letter or engagement letters relating to any reports or letters provided in connection with the Finance Documents or the transactions contemplated in the Finance Documents and to bind it in respect such reports or letters and to sign such letters on its behalf and further confirms that it accepts the terms and qualifications set out in such reports and letters.

27.19 No responsibility to perfect Transaction Security

The Security Agent shall not be liable for any failure to:

- (a) require the deposit with it of any deed or document certifying, representing or constituting the title of any Obligor to any of the Charged Property;
- (b) obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any Finance Document or the Transaction Security;
- (c) register, file or record or otherwise protect any of the Transaction Security (or the priority of any of the Transaction Security) under any law or regulation or to give notice to any person of the execution of any Finance Document or of the Transaction Security;
- (d) take, or to require any Obligor to take, any step to perfect its title to any of the Charged Property or to render the Transaction Security effective or to secure the creation of any ancillary Security under any law or regulation; or
- (e) require any further assurance in relation to any Security Document.

27.20 Insurance by Security Agent

- (a) The Security Agent shall not be obliged:
 - (i) to insure any of the Charged Property;
 - (ii) to require any other person to maintain any insurance; or
 - (iii) to verify any obligation to arrange or maintain insurance contained in any Finance Document,

and the Security Agent shall not be liable for any damages, costs or losses to any person as a result of the lack of, or inadequacy of, any such insurance.

- (b) Where the Security Agent is named on any insurance policy as an insured party, it shall not be liable for any damages, costs or losses to any person as a result of its failure to notify the insurers of any material fact relating to the risk assumed by such insurers or any other information of any kind, unless the Majority Lenders request it to do so in writing and the Security Agent fails to do so within fourteen days after receipt of that request.

27.21 Custodians and nominees

The Security Agent may appoint and pay any person to act as a custodian or nominee on any terms in relation to any asset of the trust as the Security Agent may determine, including for the purpose of depositing with a custodian this Agreement or any document relating to the trust created under this Agreement and the Security Agent shall not be responsible for any loss, liability, expense, demand, cost, claim or proceedings incurred by reason of the misconduct,

omission or default on the part of any person appointed by it under this Agreement or be bound to supervise the proceedings or acts of any person.

27.22 Delegation by the Security Agent

- (a) Each of the Security Agent, any Receiver and any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any right, power, authority or discretion vested in it in its capacity as such.
- (b) That delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions that the Security Agent, that Receiver or that Delegate (as the case may be) may, in its discretion, think fit in the interests of the Secured Parties.
- (c) No Security Agent, Receiver or Delegate shall be bound to supervise, or be in any way responsible for any damages, costs or losses incurred by reason of any misconduct, omission or default on the part of, any such delegate or sub-delegate.

27.23 Additional Security Agents

- (a) The Security Agent may at any time appoint (and subsequently remove) any person to act as a separate trustee or as a co-trustee jointly with it:
 - (i) if it considers that appointment to be in the interests of the Secured Parties;
 - (ii) for the purposes of conforming to any legal requirement, restriction or condition which the Security Agent deems to be relevant; or
 - (iii) for obtaining or enforcing any judgment in any jurisdiction,and the Security Agent shall give prior notice to the Borrower and the Finance Parties of that appointment.
- (b) Any person so appointed shall have the rights, powers, authorities and discretions (not exceeding those given to the Security Agent under or in connection with the Finance Parties) and the duties, obligations and responsibilities that are given or imposed by the instrument of appointment.
- (c) The remuneration that the Security Agent may pay to that person, and any costs and expenses (together with any applicable VAT) incurred by that person in performing its functions pursuant to that appointment shall, for the purposes of this Agreement, be treated as costs and expenses incurred by the Security Agent.

27.24 Acceptance of title

The Security Agent shall be entitled to accept without enquiry, and shall not be obliged to investigate, any right and title that any Obligor may have to any of the Charged Property and shall not be liable for, or bound to require any Obligor to remedy, any defect in its right or title.

27.25 Winding up of trust

If the Security Agent, with the approval of the Agent and each Hedge Counterparty, determines that:

- (a) all of the Secured Liabilities and any other obligations secured by the Security Documents have been fully and finally discharged; and
- (b) no Secured Party is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Obligor pursuant to the Finance Documents,

then:

- (i) the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Security Documents; and
- (ii) any Security Agent which has resigned pursuant to clause 27.12 (*Resignation of the Agent and the Security Agent*) shall release, without recourse or warranty, all of its rights under each Security Document.

27.26 Powers supplemental to Trustee Acts

The rights, powers, authorities and discretions given to the Security Agent under or in connection with the Finance Documents shall be supplemental to the Trustee Act 1925 and the Trustee Act 2000 and in addition to any which may be vested in the Security Agent by law or regulation or otherwise.

27.27 Disapplication of Trustee Acts

Section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Agent in relation to the trusts constituted by this Agreement. Where there are any inconsistencies between the Trustee Act 1925 or the Trustee Act 2000 and the provisions of this Agreement, the provisions of this Agreement shall, to the extent permitted by law and regulation, prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of this Agreement shall constitute a restriction or exclusion for the purposes of that Act.

28 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.

29 Application of Proceeds

29.1 Order of Application

Subject to clause 29.2 (**Prospective Liabilities**), all amounts from time to time received or recovered by the Security Agent pursuant to the terms of any Finance Document or in connection with the realisation or enforcement of all or any part of the Transaction Security (for the purposes of this clause 29, the **Recoveries**) shall be held by the Security Agent on trust to apply them at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law (and subject to the provisions of this clause 29), in the following order:

- (a) in discharging any sums owing to the Security Agent, any Receiver or any Delegate;
- (b) in payment of all costs and expenses incurred by the Agent or any Secured Party in connection with any realisation or enforcement of the Transaction Security taken in accordance with the terms of this Agreement; and
- (c) in payment to the Agent for application in accordance with clause 31.6 (*Partial Payments*).

29.2 Prospective Liabilities

Following action being taken under and pursuant to clause 23.13 (*Acceleration*) the Security Agent may, in its discretion, hold any amount of the Recoveries in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) for later application under clause 29.1 (*Order of Application*) in respect of:

- (a) any sum to the Security Agent, any Receiver or any Delegate; and
- (b) any part of the Secured Liabilities,

that the Security Agent reasonably considers, in each case, might become due or owing at any time in the future.

29.3 Investment of Proceeds

Prior to the application of the proceeds of the Recoveries in accordance with Clause 29.1 (*Order of Application*) the Security Agent may, in its discretion, hold all or part of those proceeds in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) pending the application from time to time of those moneys in the Security Agent's discretion in accordance with the provisions of this Clause 29.3.

29.4 Currency Conversion

- (a) For the purpose of, or pending the discharge of, any of the Secured Liabilities the Security Agent may convert any moneys received or recovered by the Security Agent from one currency to another, at a market rate of exchange.
- (b) The obligations of any Obligor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

29.5 Permitted Deductions

The Security Agent shall be entitled, in its discretion:

- (a) to set aside by way of reserve amounts required to meet, and to make and pay, any deductions and withholdings (on account of taxes or otherwise) which it is or may be required by any applicable law to make from any distribution or payment made by it under this Agreement; and
- (b) to pay all Taxes which may be assessed against it in respect of any of the Charged Assets, or as a consequence of performing its duties, or by virtue of its capacity as Security Agent under any of the Finance Documents or otherwise (other than in connection with its remuneration for performing its duties under this Agreement).

29.6 Good Discharge

- (a) Any payment to be made in respect of the Secured Liabilities by the Security Agent may be made to the Agent on behalf of the Finance Parties and any payment made in that way shall be a good discharge, to the extent of that payment, by the Security Agent.
- (b) The Security Agent is under no obligation to make the payments to the Agent under paragraph (a) above in the same currency as that in which the obligations and liabilities owing to the relevant Finance Party are denominated.

29.7 Intercreditor Agreement

This clause 29 shall be disapplied and replaced by the equivalent terms of the Intercreditor Agreement once it is entered into by all parties thereto.

30 Sharing among the Finance Parties

30.1 Payments to Finance Parties

If a Finance Party (a **Recovering Finance Party**) receives or recovers any amount from an Obligor other than in accordance with clause 31 (*Payment mechanics*) (a **Recovered Amount**) and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three 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 31 (*Payment mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within three 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 31.6 (*Partial payments*).

30.2 Redistribution of payments

The Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Finance Parties (other than the Recovering Finance Party) (the **Sharing Finance Parties**) in accordance with clause 31.6 (*Partial payments*) towards the obligations of that Obligor to the Sharing Finance Parties.

30.3 Recovering Finance Party's rights

On a distribution by the Agent under clause 30.2 (*Redistribution of payments*) of a payment received by a Recovering Finance Party from an Obligor, as between the relevant Obligor and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by that Obligor.

30.4 Reversal of redistribution

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

- (a) each Sharing Finance Party shall, upon request of the Agent, pay to the Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay) (the **Redistributed Amount**); and
- (b) as between the relevant Obligor and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Obligor.

30.5 Exceptions

- (a) This clause 29 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this clause, have a valid and enforceable claim against the relevant Obligor.
- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
 - (i) it notified the other Finance Party of the legal or arbitration proceedings; and
 - (ii) the other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

Section 11 Administration

31 Payment Mechanics

31.1 Payments to the Agent

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

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

31.2 Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to clause 31.3 (*Distributions to an Obligor*) and clause 31.4 (*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 Business Days' notice with a bank specified by that Party in the principal financial centre of the country of that currency (or, in relation to euro, in the principal financial centre of a Participating Member State or London, as specified by that Party).

31.3 Distributions to an Obligor

The Agent may (with the consent of the Obligor or in accordance with clause 32 (*Set-Off*)) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

31.4 Clawback and pre-funding

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

- (i) the Borrower to whom that sum was made available shall on demand refund it to the Agent; and
- (ii) the Lender by whom those funds should have been made available or, if that Lender fails to do so, the Borrower to whom that sum was made available, 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.

31.5 Impaired Agent

- (a) If, at any time, the Agent becomes an Impaired Agent, an Obligor or a Lender which is required to make a payment under the Finance Documents to the Agent in accordance with clause 31.1 (*Payments to the Agent*) may instead either:
 - (i) pay that amount direct to the required recipient(s); or
 - (ii) if in its absolute discretion it considers that it is not reasonably practicable to pay that amount direct to the required recipient(s), pay that amount or the relevant part of that amount to an interest-bearing account held with an Acceptable Bank within the meaning of paragraph (a) of the definition of **Acceptable Bank** and in relation to which no Insolvency Event has occurred and is continuing, in the name of the Obligor or the Lender making the payment (the **Paying Party**) and designated as a trust account for the benefit of the Party or Parties beneficially entitled to that payment under the Finance Documents (the **Recipient Party** or **Recipient Parties**).

In each case such payments must be made on the due date for payment under the Finance Documents.

- (b) All interest accrued on the amount standing to the credit of the trust account shall be for the benefit of the Recipient Party or the Recipient Parties *pro rata* to their respective entitlements.
- (c) A Party which has made a payment in accordance with this clause 31.5 shall be discharged of the relevant payment obligation under the Finance Documents and shall not take any credit risk with respect to the amounts standing to the credit of the trust account.
- (d) Promptly upon the appointment of a successor Agent in accordance with clause 27.13 (*Replacement of the Agent and the Security Agent*), each Paying Party shall (other than to the extent that that Party has given an instruction pursuant to paragraph (e) below) give all

requisite instructions to the bank with whom the trust account is held to transfer the amount (together with any accrued interest) to the successor Agent for distribution to the relevant Recipient Party or Recipient Parties in accordance with clause 31.2 (*Distributions by the Agent*).

- (e) A Paying Party shall, promptly upon request by a Recipient Party and to the extent:
- (i) that it has not given an instruction pursuant to paragraph (d) above; and
 - (ii) that it has been provided with the necessary information by that Recipient Party,
- give all requisite instructions to the bank with whom the trust account is held to transfer the relevant amount (together with any accrued interest) to that Recipient Party.

31.6 Partial payments

- (a) If the Agent receives a payment for application against amounts due in respect of any Finance Documents that is insufficient to discharge all the amounts then due and payable by an Obligor under those Finance Documents, the Agent shall apply that payment towards the obligations of that Obligor under the Finance Documents in the following order:
- (i) **first**, in or towards payment *pro rata* of any unpaid amount owing to the Agent, or the Security Agent under the Finance Documents;
 - (ii) **secondly**, in or towards payment *pro rata* of:
 - (A) any accrued interest, fee or commission due but unpaid to the Lenders under those Finance Documents;
 - (B) to the Hedge Counterparties of any accrued interest and fees due but unpaid under the Hedging Agreements; and
 - (C) to the Hedge Counterparties of any periodical payments (not being payments as a result of termination or closing out) due but unpaid under the Hedging Agreements;
 - (iii) **thirdly**, in or towards payment *pro rata* of:
 - (A) any principal due but unpaid under this Agreement; and
 - (B) any payments to the Hedge Counterparties as a result of termination or closing out due but unpaid under the Hedging Agreements;
 - (iv) **fourthly**, in or towards payment *pro rata* of any other sum due but unpaid under the Finance Documents.

- (b) The Agent shall, if so directed by the Majority Lenders and the Hedge Counterparties, vary the order set out in paragraphs (a)(ii) to (a)(iv) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by an Obligor.

31.7 Set-off by Obligors

- (a) All payments to be made by an Obligor under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.
- (b) Paragraph (a) above shall not affect the operation of any payment or close-out netting in respect of any amounts owing under any Hedging Agreement.

31.8 Business Days

- (a) Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

31.9 Currency of account

- (a) Subject to paragraph (b) below, dollars is the currency of account and payment for any sum due from an Obligor under any Finance Document.
- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.

31.10 Change of currency

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
 - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Agent (after consultation with the Borrower); and

- (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Market and otherwise to reflect the change in currency.

31.11 Disruption to payment systems etc.

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

- (a) the Agent may, and shall if requested to do so by the Borrower, consult with the Borrower with a view to agreeing with the Borrower such changes to the operation or administration of the Facility as the Agent may deem necessary in the circumstances;
- (b) the Agent shall not be obliged to consult with the Borrower in relation to any changes mentioned in paragraph (a) above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) the Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) above but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- (d) any such changes agreed upon by the Agent and the Borrower shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of clause 37 (*Amendments and Waivers*);
- (e) the Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this clause 31.11; and
- (f) the Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

31.12 Amounts paid in error

- (a) If the Agent pays an amount to another Party and as soon as reasonably practicable of the date of payment the Agent notifies that Party that such payment was an Erroneous

Payment then the Party to whom that amount was paid by the Agent shall within two (2) Business Days of demand refund the same to the Agent.

- (b) Neither:
 - (i) the obligations of any Party to the Agent; nor
 - (ii) the remedies of the Agent, (whether arising under this clause 31.12 or otherwise) which relate to an Erroneous Payment will be affected by any act, omission, matter or thing which, but for this paragraph (b), would reduce, release or prejudice any such obligation or remedy (whether or not known by the Agent or any other Party).
- (c) All payments to be made by a Party to the Agent (whether made pursuant to this clause 31.12 or otherwise) which relate to an Erroneous Payment shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.
- (d) In this Agreement, **Erroneous Payment** means a payment of an amount by the Agent to another Party which the Agent determines (in its sole discretion) was made in error.

32 Set-Off

Subject to clause 4.2 (*Further conditions precedent*), at any time following the occurrence of an Event of Default which is continuing, a Finance Party may set off any matured obligation due from an Obligor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to that Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

33 Notices

33.1 Communications in writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing (which shall include electronic mail) and, unless otherwise stated, may be made by electronic mail or letter.

33.2 Addresses

The address and electronic mail 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 with its name below;

(b) in the case of each Lender, each Hedge Counterparty or any other Obligor, that notified in writing to the Agent on or prior to the date on which it becomes a Party; and

(c) in the case of the Agent or the Security Agent, that identified with its name below,

or any substitute address, electronic mail 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 Business Days' notice.

33.3 Delivery

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

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

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

and, if a particular department or officer is specified as part of its address details provided under clause 33.2 (*Addresses*), if addressed to that department or officer.

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

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

(d) Any communication or document made or delivered to the Borrower in accordance with this clause 33.3 will be deemed to have been made or delivered to each of the Obligors.

(e) Any communication or document which becomes effective, in accordance with paragraphs (a) to (d) above, after 5:00 pm in the place of receipt shall be deemed only to become effective on the following day.

33.4 Notification of address and electronic mail address

Promptly upon changing its address or electronic mail address, the Agent shall notify the other Parties.

33.5 Communication when Agent is Impaired Agent

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

33.6 Electronic communication

- (a) Any communication or document to be made or delivered by one Party to another under or in connection with the Finance Documents may be made or delivered by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any such electronic communication or delivery as specified in paragraph (a) above to be made between an Obligor and a Finance Party may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication or delivery.
- (c) Any such electronic communication or document as specified in paragraph (a) above made or delivered by one Party to another will be effective only when actually received (or made available) in readable form and in the case of any electronic communication or document made or delivered by a Party to the Agent or the Security Agent only if it is addressed in such a manner as the Agent or Security Agent shall specify for this purpose.
- (d) Any electronic communication or document which becomes effective, in accordance with paragraph (c) above, after 5:00 pm in the place in which the Party to whom the relevant communication or document 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.
- (e) Any reference in a Finance Document to a communication being sent or received or a document being delivered shall be construed to include that communication or document being made available in accordance with this clause 33.6.

33.7 Direct electronic delivery by Borrower

The Borrower may satisfy its obligation under this Agreement to deliver any information in relation to a Lender by delivering that information directly to that Lender in accordance with clause 33.6 (*Electronic communication*) to the extent that Lender and the Agent agree to this method of delivery.

33.8 English language

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

34 Calculations and Certificates

34.1 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.

34.2 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.

34.3 Day count convention and interest calculation

- (a) Any interest, commission or fee accruing under a Finance Document will accrue from day to day and the amount of any such interest, commission or fee is calculated:
 - (i) 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); and
 - (ii) subject to paragraph (b) below, without rounding.

- (b) The aggregate amount of any accrued interest, commission or fee which is, or becomes, payable by an Obligor under a Finance Document shall be rounded to 2 decimal places.

35 Partial Invalidity

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

36 Remedies and Waivers

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

37 Amendments and Waivers

37.1 Required consents

- (a) Subject to clause 37.2 (*All Lender matters*) and clause 37.3 (*Other exceptions*), any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Borrower and any such amendment or waiver will be binding on all Parties.
- (b) The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this clause 37.
- (c) Without prejudice to the generality of clause 27.7(c), 27.7(d) and 27.7(e) (*Rights and discretions*), the Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement.
- (d) Each Obligor agrees to any such amendment or waiver permitted by this clause 37 which is agreed to by the Borrower. This includes any amendment or waiver which would, but for this paragraph (d), require the consent of all of the Guarantors.
- (e) Clause 24.11(c) (*Pro rata interest settlement*) shall apply to this clause 37.

37.2 All Lender matters

Subject to clause 37.4 (*Changes to reference rates*), an amendment, waiver or (in the case of a Transaction Security Document) a consent of, or in relation to, any term of any Finance Document that has the effect of changing or which relates to:

- (a) the definition of "Majority Lenders" in clause 1.1 (*Definitions*);
- (b) an extension to the date of payment of any amount under the Finance Documents;
- (c) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;
- (d) a change in currency of payment of any amount under the Finance Documents;
- (e) an increase in any Commitment or the Total Commitments, an extension of the Availability Period or any requirement that a cancellation of Commitments reduces the Commitments of the Lenders rateably under the Facility;
- (f) a change to the Borrowers or Guarantors other than in accordance with clause 26 (*Changes to the Obligors*);
- (g) any provision which expressly requires the consent of all the Lenders;
- (h) clause 2.3 (*Finance Parties' rights and obligations*), clause 4 (*Conditions of Utilisation*), clause 5.1 (*Delivery of a Utilisation Request*), clause 7.1 (*Illegality*), clause 8 (*Mandatory prepayment and cancellation*), clause 9.8 (*Application of prepayments*), clause 24 (*Changes to the Lenders and Hedge Counterparties*), clause 26 (*Changes to the Obligors*), this clause 37, clause 43 (*Governing law*) or clause 44 (*Enforcement*);
- (i) (other than as expressly permitted by the provisions of any Finance Document) the nature or scope of:
 - (i) the guarantee and indemnity granted under clause 19 (*Guarantee and Indemnity*);
 - (ii) the Charged Property; or
 - (iii) the manner in which the proceeds of enforcement of the Transaction Security are distributed;
- (j) the release of any guarantee and indemnity granted under clause 19 (*Guarantee and Indemnity*) or of any Transaction Security; or
- (k) the definitions of "Sanctioned Country", "Sanctioned Person", "Sanctioned Transaction", "Sanctions", "Sanctions Authority" or "Sanctions List" in clause 1.1 (*Definitions*) or clauses

8.1, 8.2(b), 20.12 (*Anti-Corruption Law and Sanctions*) or 22.18 (*Anti-Corruption Law and Sanctions Compliance*) and any cross-reference to such provisions,

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

37.3 Other exceptions

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

37.4 Changes to reference rates

(a) Subject to clause 37.1(a) (*Other exceptions*), if a Published Rate Replacement Event has occurred, any amendment or waiver which relates to:

(i) providing for the use of a Replacement Reference Rate in place of that Published Rate;

(ii)

(A) aligning any provision of any Finance Document to the use of that Replacement Reference Rate;

(B) enabling that Replacement Reference Rate to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Reference Rate to be used for the purposes of this Agreement);

(C) implementing market conventions applicable to that Replacement Reference Rate;

(D) providing for appropriate fallback (and market disruption) provisions for that Replacement Reference Rate; or

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

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

(b) In this clause 37.4:

Published Rate means:

- (a) the Alternative Term Rate for any Quoted Tenor;
- (b) an Overnight Rate; or
- (c) the Primary Term Rate for any Quoted Tenor

Published Rate Replacement Event means, in relation to a Published Rate:

(a) the methodology, formula or other means of determining that Published Rate has, in the opinion of the Majority Lenders, and the Borrower materially changed;

(b)

(i)

- (A) the administrator of that Published 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 Published Rate is insolvent,

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

- (ii) the administrator of that Published Rate publicly announces that it has ceased or will cease to provide that Published Rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide that Published Rate;
- (iii) the supervisor of the administrator of that Published Rate publicly announces that such Published Rate has been or will be permanently or indefinitely discontinued;
- (iv) the administrator of that Published Rate or its supervisor announces that that Published Rate may no longer be used; or
- (v) in the case of the Primary Term Rate for any Quoted Tenor for dollar, the supervisor of the administrator of that Primary Term Rate makes a public announcement or

publishes information stating that that Primary Term Rate for that Quoted Tenor is no longer, or as of a specified future date will no longer be, representative of the underlying market or economic reality that it is intended to measure and that representativeness will not be restored (as determined by such supervisor); or

- (c) in the opinion of the Majority Lenders and the Borrower, that Published Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.

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

Replacement Reference Rate means a reference rate which is:

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

and if replacements have, at the relevant time, been formally designated, nominated or recommended under both clauses, the "Replacement Reference Rate" will be the replacement under paragraph (B) above;

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

37.5 Excluded Commitments

If:

- (a) any Defaulting Lender fails 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 Lenders under the terms of this Agreement within ten (10) Business Days of that request being made; or
- (b) any Lender which is not a Defaulting Lender fails to respond to such a request (other than an amendment, waiver or consent referred to in clause 37.2(b), 37.2(c) and 37.2(e) (*All*

Lender matters) or such a vote within fifteen (15) Business Days of that request being made,

(unless, in either case, the Borrower and the Agent agree to a longer time period in relation to any request):

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

37.6 Replacement of Lender

(a) If:

- (i) any Lender becomes a Non-Consenting Lender (as defined in paragraph (d) below); or
- (ii) an Obligor becomes obliged to repay any amount in accordance with clause 7.1 (*Illegality*) or to pay additional amounts pursuant to clause 15.1 (*Increased Costs*), clause 14.2 (*Tax gross-up*), clause 12.2 (*Market disruption*) or clause 14.3 (*Tax Indemnity*) to any Lender,

then the Borrower may, on ten (10) Business Days' prior written notice to the Agent and such Lender, replace such Lender by requiring such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to clause 24 (*Changes to the Lenders and Hedge Counterparties*) all (and not part only) of its rights and obligations under this Agreement to an Eligible Institution (a **Replacement Lender**) which confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with clause 24 (*Changes to the Lenders and Hedge Counterparties*) for a purchase price in cash payable at the time of transfer in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Utilisations and all accrued interest (to the extent that the Agent has not given a notification under clause 24.11 (*Pro rata interest settlement*)), Break Costs and other amounts payable in relation thereto under the Finance Documents.

- (b) The replacement of a Lender pursuant to this clause 37.6 shall be subject to the following conditions:
- (i) the Borrower shall have no right to replace the Agent or Security Agent;
 - (ii) neither the Agent nor the Lender shall have any obligation to the Borrower to find a Replacement Lender;
 - (iii) in the event of a replacement of a Non-Consenting Lender such replacement must take place no later than thirty (30) after the date on which that Lender is deemed a Non-Consenting Lender;
 - (iv) in no event shall the Lender replaced under this clause 37.6 be required to pay or surrender to such Replacement Lender any of the fees received by such Lender pursuant to the Finance Documents; and
 - (v) the Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (a) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer.
- (c) A Lender shall perform the checks described in paragraph (b)(iv) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a) above and shall notify the Agent and the Borrower when it is satisfied that it has complied with those checks.
- (d) In the event that:
- (i) the Borrower or the Agent (at the request of the Borrower) has requested the Lenders to give a consent in relation to, or to agree to a waiver or amendment of, any provisions of the Finance Documents;
 - (ii) the consent, waiver or amendment in question requires the approval of all the Lenders; and
 - (iii) Lenders whose Commitments aggregate more than eighty (80) per cent of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than eighty (80) per cent of the Total Commitments prior to that reduction) have consented or agreed to such waiver or amendment,
- then any Lender who does not and continues not to consent or agree to such waiver or amendment shall be deemed a **Non-Consenting Lender**.

37.7 Disenfranchisement of Defaulting Lenders

- (a) For so long as a Defaulting Lender has any Available Commitment, in ascertaining:
 - (i) the Majority Lenders; or
 - (ii) whether:
 - (A) any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments under the Facility; or
 - (B) the agreement of any specified group of Lenders,

has been obtained to approve any request for a consent, waiver, amendment or other vote of Lenders under the Finance Documents, that Defaulting Lender's Commitments under the Facility will be reduced by the amount of its Available Commitments under the Facility and, to the extent that that reduction results in that Defaulting Lender's Total Commitments being zero, that Defaulting Lender shall be deemed not to be a Lender for the purposes of clauses (i) and (ii) above.

- (b) For the purposes of this clause 37.7, the Agent may assume that the following Lenders are Defaulting Lenders:
 - (i) any Lender which has notified the Agent that it has become a Defaulting Lender;
 - (ii) any Lender in relation to which it is aware that any of the events or circumstances referred to in paragraphs (a), (b) or (c) of the definition of Defaulting Lender has occurred,

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

37.8 Replacement of a Defaulting Lender

- (a) The Borrower may, at any time a Lender has become and continues to be a Defaulting Lender, by giving ten (10) Business Days' prior written notice to the Agent and such Lender replace such Lender by requiring such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to clause 24 (*Changes to the Lenders and Hedge Counterparties*) all (and not part only) of its rights and obligations under this Agreement to an Eligible Institution (a **Replacement Lender**) which confirms its willingness to assume and does assume all the obligations, or all the relevant obligations, of the transferring

Lender in accordance with clause 24 (*Changes to the Lenders and Hedge Counterparties*) for a purchase price in cash payable at the time of transfer which is either:

- (i) in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Utilisations and all accrued interest (to the extent that the Agent has not given a notification under clause 24.11 (*Pro rata interest settlement*)), Break Costs and other amounts payable in relation thereto under the Finance Documents; or
 - (ii) in an amount agreed between that Defaulting Lender, the Replacement Lender and the Borrower and which does not exceed the amount described in paragraph (i) above.
- (b) Any transfer of rights and obligations of a Defaulting Lender pursuant to this clause 37.10 shall be subject to the following conditions:
- (i) the Borrower shall have no right to replace the Agent or Security Agent;
 - (ii) neither the Agent nor the Defaulting Lender shall have any obligation to the Borrower to find a Replacement Lender;
 - (iii) the transfer must take place no later than thirty (30) days after the notice referred to in paragraph (a) above;
 - (iv) in no event shall the Defaulting Lender be required to pay or surrender to the Replacement Lender any of the fees received by the Defaulting Lender pursuant to the Finance Documents; and
 - (v) the Defaulting Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (a) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer to the Replacement Lender.
- (c) The Defaulting Lender shall perform the checks described in paragraph (b)(v) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a) above and shall notify the Agent and the Borrower when it is satisfied that it has complied with those checks.

38 Confidential Information

38.1 Confidentiality

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by clause 38.2 (*Disclosure of Confidential Information*)

and clause 38.3 (*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.

38.2 Disclosure of Confidential Information

Any Finance Party may disclose:

- (a) to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
 - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Agent or Security Agent and, in each case, to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
 - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Obligors and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
 - (iii) appointed by any Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under clause 27.15(b) (*Relationship with the Lenders*));
 - (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;

- (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
- (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
- (vii) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to clause 24.10 (*Security over Lenders' rights*);
- (viii) who is a Party; or
- (ix) with the consent of the Borrower,

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

- (A) in relation to paragraphs (b)(i), (b)(ii) and (b)(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
 - (B) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
 - (C) in relation to paragraphs (b)(v), (b)(vi) and (b)(vii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;
- (c) to any person appointed by that Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of

participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Borrower and the relevant Finance Party; and

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

38.3 Disclosure to numbering service providers

- (a) 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 one or more Obligors the following information:
 - (i) names of Obligors;
 - (ii) country of domicile of Obligors;
 - (iii) place of incorporation of Obligors;
 - (iv) date of this Agreement;
 - (v) clause 43 (*Governing law*);
 - (vi) the names of the Agent and the Arranger;
 - (vii) date of each amendment and restatement of this Agreement;
 - (viii) amounts of, and names of, the Facility (and any tranches);
 - (ix) amount of Total Commitments;
 - (x) currencies of the Facility;
 - (xi) type of Facility;
 - (xii) ranking of Facility;
 - (xiii) Termination Date for the Facility;

- (xiv) changes to any of the information previously supplied pursuant to clauses (i) to (xiii) above; and
 - (xv) 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.
- (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facility and/or one or more Obligors 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.
- (c) Each Obligor represents that none of the information set out in paragraphs (i) to (xv) of paragraph (a) above is, nor will at any time be, unpublished price-sensitive information.
- (d) The Agent shall notify the Borrower and the other Finance Parties of:
- (i) the name of any numbering service provider appointed by the Agent in respect of this Agreement, the Facility and/or one or more Obligors; and
 - (ii) the number or, as the case may be, numbers assigned to this Agreement, the Facility and/or one or more Obligors by such numbering service provider.

38.4 Entire agreement

This clause 38 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.

38.5 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.

38.6 Notification of disclosure

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

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to clause 38.2(b)(v) (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that clause during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this clause 38.

38.7 Continuing obligations

The obligations in this clause 38 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of twelve months from the earlier of:

- (a) the date on which all amounts payable by the Obligors under or in connection with the Finance Documents 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.

39 Confidentiality of Funding Rates

39.1 Confidentiality and disclosure

- (a) The Agent and each Obligor agree to keep each Funding Rate confidential and not to disclose it to anyone, save to the extent permitted by paragraphs (b) and (c) below.
- (b) The Agent may disclose:
 - (i) any Funding Rate to the Borrower pursuant to clause 10.4 (*Notifications*); and
 - (ii) any Funding Rate 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.

- (c) The Agent and each Obligor may disclose any Funding Rate, to:
- (i) 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 is to be given pursuant to this paragraph (i) 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 is otherwise bound by requirements of confidentiality in relation to it;
 - (ii) 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 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 relevant Obligor, as the case may be, it is not practicable to do so in the circumstances;
 - (iii) 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 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 relevant Obligor, as the case may be, it is not practicable to do so in the circumstances; and
 - (iv) any person with the consent of the relevant Lender.

39.2 Related obligations

- (a) The Agent and each Obligor acknowledge that each Funding Rate is or may be price-sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Agent and each Obligor undertake not to use any Funding Rate for any unlawful purpose.
- (b) The Agent and each Obligor agree (to the extent permitted by law and regulation) to inform the relevant Lender:
 - (i) of the circumstances of any disclosure made pursuant to clause 39.1(c)(ii) (*Confidentiality and disclosure*) except where such disclosure is made to any of the persons referred to in that clause during the ordinary course of its supervisory or regulatory function; and

- (ii) upon becoming aware that any information has been disclosed in breach of this clause 39.

39.3 No Event of Default

No Event of Default will occur under clause 23.2 (*Other obligations*) by reason only of an Obligor's failure to comply with this clause 39.

40 Bail-In

40.1 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.

40.2 Bail-in definitions

In this clause 40:

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

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

Bail-In Legislation means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 BRRD, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time;

- (b) in relation to the United Kingdom, the UK Bail-In Legislation; and
- (c) in relation to any state other than such an EEA Member Country and 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

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

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

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

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

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

41 Disclosure of Lender details by Agent

41.1 Supply of Lender details to Borrower

The Agent shall provide to the Borrower, within ten (10) Business Days of a request by the Borrower (but no more frequently than once per calendar month), a list (which may be in electronic form) setting out the names of the Lenders as at the date of that request, their respective Commitments, the address and electronic mail address (and the department or officer, if any, for whose attention any communication is to be made) of each Lender for any communication to be made or document to be delivered under or in connection with the Finance Documents, the electronic mail address and/or any other information required to enable the transmission of information by electronic mail or other electronic means to and by each Lender to whom any communication under or in connection with the Finance Documents may be made by that means and the account details of each Lender for any payment to be distributed by the Agent to that Lender under the Finance Documents.

41.2 Supply of Lender details at Borrower's direction

- (a) The Agent shall, at the request of the Borrower, disclose the identity of the Lenders and the details of the Lenders' Commitments to any:
 - (i) other Party or any other person if that disclosure is made to facilitate, in each case, a refinancing of the Financial Indebtedness arising under the Finance Documents or a material waiver or amendment of any term of any Finance Document; and
 - (ii) member of the Group.
- (b) Subject to paragraph (c) below, the Borrower shall procure that the recipient of information disclosed pursuant to paragraph (a) above shall keep such information confidential and shall not disclose it to anyone and shall ensure that all such information is protected with security measures and a degree of care that would apply to the recipient's own confidential information.
- (c) The recipient may disclose such information to any of its officers, directors, employees, professional advisers, auditors and partners as it shall consider appropriate if any such person is informed in writing of its confidential nature, except that there shall be no such

requirement to so inform if that person is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by duties of confidentiality in relation to the information.

41.3 Supply of Lender details to other Lenders

- (a) If a Lender (a **Disclosing Lender**) indicates to the Agent that the Agent may do so, the Agent shall disclose that Lender's name and Commitment to any other Lender that is, or becomes, a Disclosing Lender.
- (b) The Agent shall, if so directed by the Requisite Lenders, request each Lender to indicate to it whether it is a Disclosing Lender.

41.4 Lender enquiry

If any Lender believes that any entity is, or may be, a Lender and:

- (a) that entity (excluding any Original Lender) ceases to have an Investment Grade Rating; or
- (b) an Insolvency Event occurs in relation to that entity,

the Agent shall, at the request of that Lender, indicate to that Lender the extent to which that entity has a Commitment.

41.5 Lender details definitions

In this clause 41:

Investment Grade Rating means, in relation to an entity, a rating for its long-term unsecured and non credit-enhanced debt obligations of BBB- or higher by Standard & Poor's Rating Services or Fitch Ratings Ltd or Baa3 or higher by Moody's Investors Service Limited or a comparable rating from an internationally recognised credit rating agency

Requisite Lenders means a Lender or Lenders whose Commitments aggregate 15 per cent (or more) of the Total Commitments (or if the Total Commitments have been reduced to zero, aggregated 15 per cent (or more) of the Total Commitments immediately prior to that reduction).

42 Counterparts

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

Section 12

Governing Law and Enforcement

43 Governing Law

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

44 Enforcement

44.1 Jurisdiction of English courts

- (a) The courts of England have exclusive jurisdiction to settle 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**).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) Notwithstanding clauses (a) and (b) above, no Finance Party or Secured 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 and Secured Parties may take concurrent proceedings in any number of jurisdictions.

44.2 Waiver of Immunity

Each Obligor irrevocably and unconditionally:

- (a) agrees not to claim in any jurisdiction, for itself or in respect of its assets, immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process and waives such present or future immunity, whether claimed or not; and
- (b) consents generally to the giving of any relief or the issue of any process in connection with any proceedings, including the making, enforcement or execution against any property of any nature (irrespective of its use or intended use) of any order or judgement which may be made or given in any proceedings.

44.3 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in England and Wales):
 - (i) irrevocably appoints Vamara UK Limited with address at No. 1, 1 Royal Exchange, London EC3V 3DG as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
 - (ii) agrees that failure by an agent for service of process to notify the relevant Obligor of the process will not invalidate the proceedings concerned.
- (b) 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 (on behalf of all the Obligors) must immediately (and in any event within ten (10) days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may appoint another agent for this purpose.

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

Schedule 1
The Original Lenders

Name of Original Lender	Commitment
The Standard Bank of South Africa Limited (acting through its Isle of Man Branch)	\$75,000,000
Nedbank Limited, London Branch	\$75,000,000

Schedule 2

Conditions Precedent

Part 1

Conditions precedent to initial Utilisation

- 1 Obligors
 - (a) A copy of the constitutional documents of the Borrower, the Parent and EHL.
 - (b) A copy of a resolution of the board of directors of the Borrower, the Parent and EHL:
 - (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute, deliver and perform the Finance Documents to which it is a party;
 - (ii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
 - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.
 - (c) A copy of a resolution of each corporate shareholder of the Borrower approving the terms of the resolution referred to in paragraph (b) above.
 - (d) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above in relation to the Finance Documents and related documents.
 - (e) A certificate of the Borrower, the Parent and EHL (signed by a director) confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on the Borrower, the Parent and EHL (as applicable) to be exceeded.
 - (f) A copy of a resolution of the board of directors of the Borrower approving the terms of, and the transactions contemplated by, the Announcement announcing the Scheme, and the release of that Announcement.
 - (g) A certificate of an authorised signatory of the Borrower, the Parent and EHL certifying that each copy document relating to it specified in this Part 1 (*Conditions Precedent to Initial Utilisation*) of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of this Agreement.

2 Acquisition Documents

- (a) Near final draft of the Announcement.

3 Finance Documents

- (a) This Agreement executed by the Borrower.
- (b) The Fee Letters executed by the Borrower.
- (c) The Parent Share Charge executed by the Parent.
- (d) The EHL Account Charge executed by EHL.
- (e) The EHL Share Charge executed by EHL (left undated).
- (f) The Parent Subordination and Assignment Agreement executed by the Parent and the Borrower.
- (g) A copy of the custodian agreement in relation to the custody account in connection with the shares in the Target secured under the EHL Account Charge.
- (h) A duly executed notice to the EHL Account Charge.
- (i) A duly executed notice pursuant to the EHL Share Charge (left undated).

4 Legal opinions

The following legal opinions:

- (a) A legal opinion of Norton Rose Fulbright LLP, legal advisers to the Agent as to English law substantially in the form distributed to the Original Lenders prior to signing this Agreement.
- (b) A legal opinion of Ogier (Guernsey) LLP, legal advisers to the Agent and the Arranger as to Guernsey law substantially in the form distributed to the Original Lenders prior to signing this Agreement.
- (c) A legal opinion of BLC Robert & Associates, legal advisers to the Agent and the Arranger as to Mauritian law substantially in the form distributed to the Original Lenders prior to signing this Agreement.

5 Foreign Exchange Hedging

- (a) Each Foreign Exchange Hedging Agreement executed by the Borrower and the relevant Foreign Exchange Hedge Counterparty.

- (b) Evidence that all Foreign Exchange Hedging Cash Collateral has been provided in accordance with the Foreign Exchange Hedging Agreements.

6 Other documents and evidence

- (a) Evidence that any process agent referred to in clause 44.3 (*Service of process*) has accepted its appointment.
- (b) The Group Structure Chart which shows the Group assuming the Closing Date has occurred.
- (c) A balance sheet statement of the Borrower as at the date of this Agreement.
- (d) Evidence that the fees, costs and expenses then due from the Borrower pursuant to clause 13 (*Fees*), clause 14.5 (*Stamp taxes*) and clause 18 (*Costs and expenses*) have been paid or will be paid on or by the first Utilisation Date.
- (e) The Funds Flow Statement in a form agreed by the Borrower and the Agent detailing the proposed movement of funds on or before the Closing Date.
- (f) A certificate of the Borrower (signed by a director) detailing the estimated Acquisition Costs.
- (g) Evidence that the Parent has advanced Subordinated Liabilities or New Shareholder Injections in an amount of at least \$35,000,000 and £2,500,000 to the Borrower and such amount is held by the Borrower in immediately available and transferable funds for the purposes of the Acquisition.

Part 2
**Conditions precedent required to be
delivered by an Additional Guarantor**

- 1 An Accession Deed executed by the Additional Guarantor and the Borrower.
- 2 A copy of the constitutional documents of the Additional Guarantor.
- 3 A copy of a resolution of the board of directors of the Additional Guarantor:
 - (a) approving the terms of, and the transactions contemplated by, the Accession Deed and the Finance Documents and resolving that it execute, deliver and perform the Accession Deed and any other Finance Document to which it is party;
 - (b) authorising a specified person or persons to execute the Accession Deed and other Finance Documents on its behalf;
 - (c) authorising a specified person or persons, on its behalf, to sign and/or despatch all other documents and notices to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
 - (d) authorising the Borrower to act as its agent in connection with the Finance Documents.
- 4 If required pursuant to the laws of the jurisdiction of incorporation and/or the constitutional documents of the Additional Guarantor, a copy of a resolution of each corporate shareholder of the Additional Guarantor approving the terms of the resolution referred to in paragraph 3 above.
- 5 A specimen of the signature of each person authorised by the resolution referred to in paragraph 3 above.
- 6 A certificate of the Additional Guarantor (signed by a director) confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on it to be exceeded.
- 7 A certificate of an authorised signatory of the Additional Guarantor certifying that each copy document listed in this Part 2 (*Conditions Precedent required to be provided by an Additional Guarantor*) of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of the Accession Deed.
- 8 A copy of any other Authorisation or other document, opinion or assurance which the Agent considers to be necessary or desirable in connection with the entry into and performance of the transactions contemplated by the Accession Deed or for the validity and enforceability of any Finance Document or in connection with any applicable financial assistance requirements.

- 9 The latest audited (or unaudited if the Additional Guarantor is not legally required to prepare audited accounts) financial statements of the Additional Guarantor.
- 10 A legal opinion of the legal advisers to the Agent in the jurisdiction of incorporation of the Additional Guarantor (the **Applicable Jurisdiction**) as to the law of the Applicable Jurisdiction and in the form distributed to the Lenders prior to signing the Accession Deed.
- 11 If the proposed Additional Guarantor is incorporated in a jurisdiction other than England and Wales, evidence that the process agent specified in clause 44.3 (*Service of process*) has accepted its appointment.
- 12 In respect of the guarantee to be provided by SMCL as Additional Guarantor:
 - (a) approval or no-objection letter from the Governor of the Bank of Tanzania; and
 - (b) notification of the guarantee to be provided by SMCL as Additional Guarantor to the Mining Commission of Tanzania.

Schedule 3
Form of Utilisation Request

From: Saturn Resources Ltd

To: [Agent]

Dated:

Dear Sirs

Saturn Resources Ltd – [●] Senior Term Facility Agreement dated [●] (the "Facility Agreement")

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

2 We wish to borrow a Loan on the following terms:

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

(d) Currency of Loan: Dollar

(e) Amount: [●] or, if less, the Available Facility

(f) Interest Period: One Month

3 We confirm that each condition specified in clause 4.2 (*Further conditions precedent*) of the Facility Agreement is satisfied on the date of this Utilisation Request.

4 The proceeds of this Loan should be credited to [account].]

5 This Utilisation Request is irrevocable.

Yours faithfully

.....

authorised signatory for
Saturn Resources Ltd

Schedule 4

Form of Transfer Certificate¹

To: [●] as Agent[and [] as Security Agent]

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

Dated:

Saturn Resources Ltd – [●] Senior Term Facility Agreement dated [●] (the Facility Agreement)

- 1 We refer to the Facility Agreement [and to the Intercreditor Agreement (as defined in the Facility Agreement)]. This agreement (the **Agreement**) shall take effect as a Transfer Certificate for the purposes of the Facility Agreement [and as a Creditor Accession Undertaking for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement)]. Terms defined in the Facility Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
- 2 We refer to clause 24.6 (*Procedure for transfer*) of the Facility Agreement:
 - (a) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation and in accordance with clause 24.6 (*Procedure for transfer*) of the Facility Agreement all of the Existing Lender's rights and obligations under the Facility Agreement, the other Finance Documents and in respect of the Transaction Security which relate to that portion of the Existing Lender's Commitment(s) and participations in Utilisations under the Facility Agreement as specified in the Schedule.
 - (b) The proposed Transfer Date is [●].
 - (c) The Facility Office and address, electronic mail address and attention details for notices of the New Lender for the purposes of clause 33.2 (*Addresses*) of the Facility Agreement are set out in the Schedule.
- 3 The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in clause 24.5(c) (*Limitation of responsibility of Existing Lenders*) of the Facility Agreement.
- 4 The New Lender confirms that it [is]/[is not]*** a Sponsor Affiliate.

¹ Reference to Intercreditor Agreement and Security Agent to be included if the Intercreditor Agreement has been entered into at the date of transfer.

*** Delete as applicable.

- 5 [We refer to clause [] (*Change of Senior Lender*) of the Intercreditor Agreement. In consideration of the New Lender being accepted as a Senior Lender for the purposes of the Intercreditor Agreement (and as defined therein), the New Lender confirms that, as from the Transfer Date, it intends to be party to the Intercreditor Agreement as a Senior Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a Senior Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.]
- 6 This 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 Agreement.
- 7 This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
- 8 This Agreement has been entered into on the date stated at the beginning of this Agreement.

Note: The execution of this Transfer Certificate may not transfer a proportionate share of the Existing Lender's interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

THE SCHEDULE

Commitment/rights and obligations to be transferred

[Insert relevant details]

[Facility Office address, electronic mail address and attention details for notices and account details for payments,]

[Existing Lender]

[New Lender]

By:

By:

This Agreement is accepted as a Transfer Certificate for the purposes of the Facility Agreement by the Agent, [and as a Creditor Accession Undertaking for the purposes of the Intercreditor Agreement by the Security Agent,]and the Transfer Date is confirmed as [●].

[Agent]

By:

Schedule 5

Form of Assignment Agreement²

To: [●] as Agent[, [] as Security Agent] and Saturn Resources Ltd as Borrower, for and on behalf of each Obligor

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

Dated:

Saturn Resources Ltd – [●] Senior Term Facility Agreement dated [●] (the Facility Agreement)

- 1 We refer to the Facility Agreement [and to the Intercreditor Agreement (as defined in the Facility Agreement)]. This is an Assignment Agreement. This agreement (the **Agreement**) shall take effect as an Assignment Agreement for the purposes of the Facility Agreement [and as a Creditor Accession Undertaking for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement)]. Terms defined in the Facility Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
- 2 We refer to clause 24.7 (*Procedure for assignment*) of the Facility Agreement:
 - (a) The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Facility Agreement, the other Finance Documents and in respect of the Transaction Security which correspond to that portion of the Existing Lender's Commitment(s) and participations in Utilisations under the Facility 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 Utilisations under the Facility 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 [●].

² Reference to Intercreditor Agreement and Security Agent to be included if the Intercreditor Agreement has been entered into at the date of assignment.

- 4 On the Transfer Date the New Lender becomes Party to the relevant Finance Documents as a Lender [and Party to the Intercreditor Agreement as a Senior Lender (as defined in the Intercreditor Agreement)].
- 5 The Facility Office and address, electronic mail address and attention details for notices of the New Lender for the purposes of clause 33.2 (*Addresses*) of the Facility Agreement are set out in the Schedule.
- 6 The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in clause 24.5(c) (*Limitation of responsibility of Existing Lenders*) of the Facility Agreement.
- 7 The New Lender confirms that it [is]/[is not]*** a Sponsor Affiliate.
- 8 [We refer to clause [] (*Change of Senior Lender*) of the Intercreditor Agreement. In consideration of the New Lender being accepted as a Senior Lender for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement), the New Lender confirms that, as from the Transfer Date, it intends to be party to the Intercreditor Agreement as a Senior Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a Senior Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.]
- 9 This Agreement acts as notice to the Agent (on behalf of each Finance Party) and, upon delivery in accordance with clause 24.8 (*Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Borrower*), to the Borrower (on behalf of each Obligor) of the assignment referred to in this Agreement.
- 10 This 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 Agreement.
- 11 This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
- 12 This Agreement has been entered into on the date stated at the beginning of this Agreement.

Note: The execution of this Assignment Agreement may not transfer a proportionate share of the Existing Lender's interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

*** Delete as applicable.

THE SCHEDULE

Commitment/rights and obligations to be transferred by assignment, release and accession

[Insert relevant details]

[Facility Office address, electronic mail address and attention details for notices and account details for payments]

[Existing Lender]

[New Lender]

By:

By:

This Agreement is accepted as an Assignment Agreement for the purposes of the Facility Agreement by the Agent, [and as a Creditor Accession Undertaking for the purposes of the Intercreditor Agreement by the Security Agent,] and the Transfer Date is confirmed as [●].

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

[Agent]

By:

Schedule 6
Form of Accession Deed³

To: [●] as Agent [and [●] as Security Agent for itself and each of the other parties to the Intercreditor Agreement referred to below]

From: [*Additional Guarantor*] and Saturn Resources Ltd

Dated:

Dear Sirs

Saturn Resources Ltd – [●] Senior Term Facility Agreement dated [●] (the "Facility Agreement")

- 1 We refer to the Facility Agreement [and the Intercreditor Agreement]. This deed (the **Accession Deed**) shall take effect as an Accession Deed for the purposes of the Facility Agreement [and as a Debtor Accession Deed (as defined in the Intercreditor Agreement) for the purposes of the Intercreditor Agreement)]. Terms defined in the Facility Agreement have the same meaning in paragraphs 1-[3]/[4] of this Accession Deed unless given a different meaning in this Accession Deed.

- 2 [*Additional Guarantor*] agrees to become an Additional Guarantor and to be bound by the terms of the Facility Agreement and the other Finance Documents [(other than the Intercreditor Agreement)] as an Additional Guarantor pursuant to clause 26.2 (*Additional Guarantors*) of the Facility Agreement. [*Additional Guarantor*] is a company duly incorporated under the laws of [*name of relevant jurisdiction*] and is a limited liability company with registered number [●].

³ Reference to Intercreditor Agreement and Security Agent to be included if the Intercreditor Agreement has been entered into at the date of accession.

- 3 *[Additional Guarantor's]* administrative details for the purposes of the Facility Agreement [and the Intercreditor Agreement]are as follows:

Address:

E-mail:

Attention:

- 4 *[Additional Guarantor]* (for the purposes of this paragraph 4), the **Acceding Debtor** intends to give a guarantee, indemnity or other assurance against loss in respect of Liabilities under the following documents:

[Insert details (date, parties and description) of relevant documents]

the **Relevant Documents**.

IT IS AGREED as follows:

- (a) [Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Accession Deed, bear the same meaning when used in this paragraph 4.]
- (b) The Acceding Debtor and the Security Agent agree that the Security Agent shall hold all obligations expressed to be undertaken by the Acceding Debtor to pay amounts in respect of the Liabilities to the Security Agent as trustee for the Secured Parties (in the Relevant Documents or otherwise) and secured by the Transaction Security together with all representations and warranties expressed to be given by the Acceding Debtor (in the Relevant Documents or otherwise) in favour of the Security Agent as trustee for the Secured Parties on trust for the Secured Parties on the terms and conditions contained in the [Intercreditor Agreement].
- (c) [The Acceding Debtor confirms that it intends to be party to the Intercreditor Agreement as a Debtor, undertakes to perform all the obligations expressed to be assumed by a Debtor under the Intercreditor Agreement and agrees that it shall be bound by all the provisions of the Intercreditor Agreement as if it had been an original party to the Intercreditor Agreement.]
- (d) [In consideration of the Acceding Debtor being accepted as an Subordinated Lender for the purposes of the Intercreditor Agreement, the Acceding Debtor also confirms that it intends to be party to the Intercreditor Agreement as a Subordinated Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a Subordinated Lender and agrees that it shall be bound by all the provisions

of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement].⁴

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

THIS ACCESSION DEED has been signed on behalf of the Security Agent (for the purposes of paragraph [4]/[5] above only), signed on behalf of the Borrower and executed as a deed by [*Additional Guarantor*] and is delivered on the date stated above.

[Additional Guarantor]

[EXECUTED AS A DEED

)

By: [*Additional Guarantor*]

)

Director

Director/Secretary

OR

[EXECUTED AS A DEED

By: [*Additional Guarantor*]

Signature of Director

Name of Director

in the presence of

Signature of witness

Name of witness

Address of witness

⁴ Include this paragraph in this Accession Deed if the Subsidiary is also to accede as a Subordinated Lender to the Intercreditor Agreement.

Occupation of witness]

The Borrower

Saturn Resources Ltd

[*Borrower*]

By:

The Security Agent

[*Full name of Security Agent*]

By:

Date:

Schedule 7
LMA Form of Confidentiality Undertaking

[Letterhead of Transferor]

Date: [•]
To: [•] [*insert name of Potential Transferee*]
Re: The Agreement
Saturn Resources Ltd (the “**Borrower**”)
Date:
Amount:
Agent:

Dear Sirs

We understand that you are considering acquiring an interest in the Agreement which, subject to the Agreement, may be by way of novation, assignment, the entering into, whether directly or indirectly, of a sub-participation 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 or by way of investing in or otherwise financing, directly or indirectly, any such novation, assignment, sub-participation or other transaction (the “**Acquisition**”). In consideration of us agreeing to make available to you certain information, by your signature of a copy of this letter you agree as follows:

1. Confidentiality undertaking

You undertake (a) to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by paragraph 2 below and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to your own confidential information, and (b) until the Acquisition is completed to use the Confidential Information only for the Permitted Purpose.

2. Permitted disclosure

We agree that you may disclose:

- (a) to any of your Affiliates and any of your or their officers, directors, employees, professional advisers and auditors such Confidential Information as you shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph 2(a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information, except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) subject to the requirements of the Agreement, to any person:
 - (i) to (or through) whom you assign or transfer (or may potentially assign or transfer) all or any of your rights and/or obligations which you may acquire under the Agreement such Confidential Information as you shall consider appropriate if the person to whom the Confidential Information is to be given pursuant to this paragraph 2(b)(i) has delivered a letter to you in equivalent form to this letter;

- (ii) with (or through) whom you enter into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to the Agreement or the Borrower such Confidential Information as you shall consider appropriate if the person to whom the Confidential Information is to be given pursuant to this paragraph 2(b)(ii) has delivered a letter to you in equivalent form to this letter;
 - (iii) to whom information is required or requested to be disclosed by 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 such Confidential Information as you shall consider appropriate; and
- (c) notwithstanding paragraphs (a) and (b). above, Confidential Information to such persons to whom, and on the same terms as, a Finance Party is permitted to disclose Confidential Information under the Agreement, as if such permissions were set out in full in this letter and as if references in those permissions to Finance Party were references to you.

3. **Notification of Disclosure**

You agree (to the extent permitted by law and regulation) to inform us:

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

4. **Return of Copies**

If you do not enter into the Acquisition and we so request in writing, you shall return or destroy all Confidential Information supplied to you by us and destroy or permanently erase (to the extent technically practicable) all copies of Confidential Information made by you and use your reasonable endeavours to ensure that anyone to whom you have supplied any Confidential Information destroys or permanently erases (to the extent technically practicable) such Confidential Information and any copies made by them, in each case save to the extent that you or the recipients are required to retain any such Confidential Information by any applicable law, rule or regulation or by any competent judicial, governmental, supervisory or regulatory body or in accordance with internal policy, or where the Confidential Information has been disclosed under paragraph (b)(iii) above.

5. **Continuing Obligations**

The obligations in this letter are continuing and, in particular, shall survive and remain binding on you until (a) if you become a party to the Agreement as a lender of record, the date on which you become such a party to the Agreement; (b) if you enter into the Acquisition but it does not result in you becoming a party to the Agreement as a lender of record, the date falling twelve months after the date on which all of your rights and obligations contained in the documentation entered into to implement that Acquisition have terminated; or (c) in any other case the date falling twelve months after the date of your final receipt (in whatever manner) of any Confidential Information.

6. **No Representation; Consequences of Breach, Etc**

You acknowledge and agree that:

- (a) neither we, nor the Borrower nor any of our or their respective officers, employees or advisers (each a "**Relevant Person**") (i) make any representation or warranty, express or implied, as to, or assume any responsibility for, the accuracy, reliability or completeness of any of the Confidential Information or any other information supplied by us or the assumptions on which it is based or (ii) shall be under any obligation to

update or correct any inaccuracy in the Confidential Information or any other information supplied by us or be otherwise liable to you or any other person in respect of the Confidential Information or any such information; and

- (b) we may be irreparably harmed by the breach of the terms of this letter and damages may not be an adequate remedy; each Relevant Person may be granted an injunction or specific performance for any threatened or actual breach of the provisions of this letter by you.

7. **Entire Agreement: No Waiver; Amendments, Etc**

- (a) This letter constitutes the entire agreement between us in relation to your obligations regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.
- (b) No failure to exercise, nor any delay in exercising, any right or remedy under this letter will operate as a waiver of any such right or remedy or constitute an election to affirm this letter. No election to affirm this letter will be effective unless it is in writing. No single or partial exercise of any right or remedy will prevent any further or other exercise or the exercise of any other right or remedy under this letter.
- (c) The terms of this letter and your obligations under this letter may only be amended or modified by written agreement between us.

8. **Inside information**

You acknowledge 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 you undertake not to use any Confidential Information for any unlawful purpose.

9. **Nature of Undertakings**

The undertakings given by you under this letter are given to us and are also given for the benefit of the Borrower.

10. **[[Standstill**

You acknowledge and agree that neither you nor any other member of the Participant Group:

- (a) hold any shares in [offeree company] or are otherwise interested in shares carrying voting rights in [offeree company];
- (b) will:
 - (i) acquire or offer to acquire, or cause any other person to acquire or to offer to acquire, any shares in [offeree company] or other interests in shares carrying voting rights in [offeree company] until the end of the offer period (as defined in the Takeover Code) (the “Offer Period”); or
 - (ii) enter into an agreement or arrangement (whether or not legally binding) that would result in the acquisition of shares in [offeree company] or other interests in shares carrying voting rights in [offeree company] until the end of the Offer Period,

provided that nothing in this paragraph (b) shall prevent the acquisition of shares in [offeree company] or other interests in shares carrying voting rights in [offeree company] or the entry

into any agreement or arrangement that would result in the acquisition of such shares or other interests:

- (c) carried out in a client-serving capacity by any part of the trading operations of an entity in the Participant Group that is a recognised intermediary within the meaning of the Takeover Code;
- (d) with the consent of the Takeover Panel, by a member of the Participant Group as security for a loan in the normal course of business; or
- (e) in respect of security in respect of such shares or interests in shares that may be acquired in accordance with the terms of the Finance Documents.]/ **OR**

11. **[Information Barriers**

You acknowledge and agree that:

- (a) you have established information barriers between the persons or entities within the Participant Group which are responsible for:
 - (i) making decisions in relation to your or their participation in the Agreement; and
 - (ii) trading, or making investment decisions in relation to, equity investments,

and that those information barriers comply with the minimum standards for effective information barriers identified in Practice Statement No. 25 (“**Debt Syndication During Offer Periods**”) published by the Takeover Panel Executive on 17 June 2009 (as amended, supplemented or restated from time to time) (the “**Information Barriers**”); and

- (b) you will maintain the Information Barriers, and ensure that the Confidential Information may not be accessed by any persons or entities within the Participant Group who hold or may acquire shares in [offeree company] or who are or may be otherwise interested in shares carrying voting rights in [offeree company], until the end of the offer period (as defined in the Takeover Code).]]⁵

12. **Third Party Rights**

- (a) Subject to this 12 and to paragraphs 6 and 9, a person who is not a party to this letter 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 letter.
- (b) The Relevant Persons may enjoy the benefit of the terms of paragraphs 6 and 9 subject to and in accordance with this 12 and the provisions of the Third Parties Act.
- (c) Notwithstanding any provisions of this letter, the parties to this letter do not require the consent of any Relevant Person to rescind or vary this letter at any time.

13. **Governing Law and jurisdiction**

- (a) This letter (including the agreement constituted by your acknowledgement of its terms) (the “**Letter**”) and any non-contractual obligations arising out of or in connection with it (including any non-contractual obligations arising out of the negotiation of the transaction contemplated by this Letter) are governed by English law.

⁵ One of the two options should be included if facilities are being made available to finance a transaction which is subject to the City Code on Takeovers and Mergers. The first option is intended for use where the Potential Lender does not hold shares in the offeree company and is not otherwise interested in shares carrying voting rights in the offeree company. The second option is intended for use where the potential lender holds or may hold shares in the offeree company or is otherwise interested or may become interested in shares carrying voting rights in the offeree company.

- (b) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Letter (including a dispute relating to any non-contractual obligation arising out of or in connection with either this Letter or the negotiation of the transaction contemplated by this Letter).

14. **Definitions**

In this letter (including the acknowledgement set out below) terms defined in the Agreement shall, unless the context otherwise requires, have the same meaning and:

"Confidential Information" means all information relating to the Borrower, Sponsor, the Parent, the Group, the Customers, the Property, the Transaction Documents and/or any Facility which is provided to you in relation to the Finance Documents or any Facility by us or any of our affiliates or advisers, in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

- (a) is or becomes public information other than as a direct or indirect result of any breach by you of this letter; or
- (b) is identified in writing at the time of delivery as non-confidential by us or our advisers; or
- (c) is known by you before the date the information is disclosed to you by us or any of our affiliates or advisers or is lawfully obtained by you after that date, from a source which is, as far as you are aware, unconnected with the Group and which, in either case, as far as you are aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

"Group" means the Parent and its subsidiaries for the time.

"Parent" means [].

"Participant Group" means you, each of your holding companies and subsidiaries and each subsidiary of each of your holding companies (as each such term is defined in the Companies Act 2006) and each of your or their directors, officers and employees (including any sales and trading teams).

"Permitted Purpose" means considering and evaluating whether to enter into the Acquisition.

"Takeover Code" means The City Code on Takeovers and Mergers.

Please acknowledge your agreement to the above by signing and returning the enclosed copy.

Yours faithfully

For and on behalf of
[Seller]

[●]

Schedule 8 Timetable

Delivery of a duly completed U-3
Utilisation Request (clause 5.1 9.30 a.m.
(*Delivery of a Utilisation
Request*))

Agent notifies the Lenders of U-3
the Loan in accordance with Noon
clause 5.4 (*Lenders'
participation*)

"U" = date of utilisation or, if applicable, in the case of a Loan that has already been borrowed, the first day of the relevant Interest Period for that Loan.

"U - X" = X Business Days prior to date of utilisation.

Schedule 9

Form of Increase Confirmation⁶

To: [●] as Agent [[●] as Security Agent] and Saturn Resources Ltd as Borrower for and on behalf of each Obligor

From: [the *Increase Lender*] (the **Increase Lender**)

Dated:

Saturn Resources Ltd – [●] Senior Term Facility Agreement dated [●] (the Facility Agreement)

- 1 We refer to the Facility Agreement [and to the Intercreditor Agreement (as defined in the Facility Agreement)]. This agreement (the **Agreement**) shall take effect as an Increase Confirmation for the purposes of the Facility Agreement [and as a Creditor Accession Undertaking for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement)]. Terms defined in the Facility Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
- 2 We refer to clause 2.2 (*Increase*) of the Facility Agreement.
- 3 The Increase Lender agrees to assume and will assume all of the obligations corresponding to the Commitment(s) specified in the Schedule (the **Relevant Commitment(s)**) as if it had been an Original Lender under the Facility Agreement in respect of the Relevant Commitment(s).
- 4 The proposed date on which the increase in relation to the Increase Lender and the Relevant Commitment(s) is to take effect (the **Increase Date**) is [●].
- 5 On the Increase Date, the Increase Lender becomes party to the relevant Finance Documents as a Lender[and party to the Intercreditor Agreement as a Senior Lender (as defined in the Intercreditor Agreement)].
- 6 The Facility Office and address, electronic mail address and attention details for notices to the Increase Lender for the purposes of clause 33.2 (*Addresses*) of the Facility Agreement are set out in the Schedule.
- 7 The Increase Lender expressly acknowledges the limitations on the Lenders' obligations referred to in clause 2.2(i) (*Increase*) of the Facility Agreement.

⁶ Reference to Intercreditor Agreement and Security Agent to be included if the Intercreditor Agreement has been entered into at the date of assumption.

- 8 [The Increase Lender confirms that it is not a Sponsor Affiliate.]
- 9 [We refer to clause [] (*Creditor Accession Undertaking*) of the Intercreditor Agreement. In consideration of the Increase Lender being accepted as a Senior Lender for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement), the Increase Lender confirms that, as from the Increase Date, it intends to be party to the Intercreditor Agreement as a Senior Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a Senior Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.]
- 10 This 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 Agreement.
- 10 This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
- 11 This Agreement has been entered into on the date stated at the beginning of this Agreement.

Note: The execution of this Increase Confirmation may not be sufficient for the Increase Lender to obtain the benefit of the Transaction Security in all jurisdictions. It is the responsibility of the Increase Lender to ascertain whether any other documents or other formalities are required to obtain the benefit of the Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

THE SCHEDULE

Relevant Commitment(s)/rights and obligations to be assumed by the Increase Lender

[Insert relevant details]

[Facility Office address, electronic mail address and attention details for notices and account details for payments]

[Increase Lender]

By:

This Agreement is accepted as an Increase Confirmation for the purposes of the Facility Agreement by the Agent[, and as a Creditor Accession Undertaking for the purposes of the Intercreditor Agreement by the Security Agent] and the Increase Date is confirmed as [●].

Agent

By:

Schedule 10
Forms of Notifiable Debt Purchase Transaction Notice

Part 1

Form of Notice on Entering into Notifiable Debt Purchase Transaction

To: [●] as Agent

From: [*The Lender*]

Dated:

Saturn Resources Ltd – [●] Senior Term Facility Agreement dated [●] (the "Facility Agreement")

- 1 We refer to clause 25.2(b) (*Disenfranchisement of Sponsor Affiliates*) of the Facility Agreement. Terms defined in the Facility Agreement have the same meaning in this notice unless given a different meaning in this notice.
- 2 We have entered into a Notifiable Debt Purchase Transaction.
- 3 The Notifiable Debt Purchase Transaction referred to in paragraph 2 above relates to the amount of our Commitment(s) as set out below.

\$[*insert amount (of that Commitment) to which the relevant Debt Purchase Transaction applies*]

[Lender]

By:

Part 2

**Form of Notice on Termination of Notifiable Debt Purchase Transaction/
Notifiable Debt Purchase Transaction ceasing to be with Sponsor Affiliate**

To: [●] as Agent

From: [*The Lender*]

Dated:

Saturn Resources Ltd – [●] Senior Term Facility Agreement dated [●] (the Facility Agreement)

- 1 We refer to clause 25.2(c) (*Disenfranchisement of Sponsor Affiliates*) of the Facility Agreement. Terms defined in the Facility Agreement have the same meaning in this notice unless given a different meaning in this notice.
- 2 A Notifiable Debt Purchase Transaction which we entered into and which we notified you of in a notice dated [●] has [terminated]/[ceased to be with a Sponsor Affiliate].*
- 3 The Notifiable Debt Purchase Transaction referred to in paragraph 2 above relates to the amount of our Commitment(s) as set out below.

[\$insert amount (of that Commitment) to which the relevant Debt Purchase Transaction applies]

[Lender]

By:

* Delete as applicable

Schedule 11 Reference Rate Terms

CURRENCY: Dollars - Loans and accrual of commission or fees

Choice of Term Fallback Option

Fixed Central Bank Rate will apply as a fallback.

Cost of funds as a fallback

Cost of funds will apply as a fallback.

Definitions

Additional Business Days:

Any day other than:

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

Alternative Term Rate:

None specified.

Alternative Term Rate Adjustment:

None specified.

Break Costs:

The amount (if any) by which:

- (a) the interest which a Lender should have received for the period from the date of receipt of all or any part of its participation in the relevant 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 or 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.

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

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

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

(ii) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and

(iii) if an Interest Period begins on the last Business Day of a calendar month, that Interest

Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

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

Central Bank Rate:

(a) The short-term interest rate target set by the US Federal Open Market Committee as published by the Federal Reserve Bank of New York from time to time; or

(b) if that target is not a single figure, the arithmetic mean of:

(i) the upper bound of the short-term interest rate target range set by the US Federal Open Market Committee and published by the Federal Reserve Bank of New York; and

(ii) the lower bound of that target range.

Central Bank Rate Adjustment:

None specified.

Fallback Interest Period:

One (1) month

Market Disruption Rate:

The percentage rate per annum which is the Term Reference Rate.

Overnight Rate:

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

any correction, recalculation or republication by the administrator) by the Federal Reserve Bank of New York (or any other person which takes over the publication of that rate).

Overnight Reference Day:

The day which is two Additional Business Days before the Quotation Day.

Primary Term Rate:

The Term SOFR reference rate administered by CME Group Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant period published (before any correction, recalculation or republication by the administrator) by CME Group Benchmark Administration Limited (or any other person which takes over the publication of that rate).

Quotation Day:

- (a) Subject to paragraph (b) below, two Additional Business Days before the first day of the relevant Interest Period (unless market practice differs in the relevant syndicated loan market, in which case the Quotation Day will be determined by the Agent in accordance with that market practice (and if quotations would normally be given on more than one day, the Quotation Day will be the last of those days)).
- (b) If the Term Reference Rate is, or is based on, the Central Bank Rate, two Additional Business Days before the first day of the relevant Interest Period.

Quotation Time:

The Quotation Day.

Relevant Market:

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

Reporting Day:

- (a) Subject to paragraph (b) below, the Quotation Day.
- (b) If the Term Reference Rate is, or is based on the Central Bank Rate, the date falling one Business Day after the Quotation Day.

Reporting Times

Deadline for Lenders to report market disruption in accordance with clause 12.2 (*Market disruption*):

Close of business in London on the Reporting Day for the relevant Loan.

Deadline for Lenders to report their cost of funds in accordance with clause 12.3 (*Cost of funds*):

Close of business on the date falling five Business Days after the Reporting Day for the relevant Loan (or, if earlier, on the date falling five Business Days before the date on which interest is due to be paid in respect of the Interest Period for that Loan).

Schedule 12 Form of Hedge Counterparty Accession Letter

To: [Agent]

From: [Hedge Counterparty] (the **Hedge Counterparty**)

Date: [●]

Saturn Resources Ltd – [●] Senior Term Facility Agreement dated [●] (the Facility Agreement)

We refer to the Facility Agreement. This is a Hedge Counterparty Accession Letter. Terms defined in the Agreement have the same meaning in this Hedge Counterparty Accession Letter.

We refer to Clause 24.9 (*Accession of Hedge Counterparties*). The Hedge Counterparty agrees to become a Hedge Counterparty and to be bound by the terms of the Agreement as a Hedge Counterparty.

[Hedge Counterparty's] administrative details for the purposes of the Facility Agreement are as follows:

Address:

E-mail:

Attention:

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

[Hedge Counterparty]

By:

[Agent] (as Agent)

By:

Schedule 13 Hedging Schedule

1. Introduction

1.1 This Schedule constitutes the Hedging Strategy for the purposes of this Agreement. Under Clause 22.21 (*Hedging Strategy*) of this Agreement, the Borrower is obliged to ensure that all gold price hedging arrangements required by the Hedging Strategy are implemented in accordance with the terms of the Hedging Strategy.

1.2 The objective of the Hedging Strategy is to hedge the price risk of part of the Borrower's Group scheduled production of gold.

1.3 For the purposes of this Schedule:

“**Commodity Transaction**” means a hedging transaction for the purpose described in clause 1.2 of this Hedging Strategy and in the form of a commodity forward transaction, commodity swap transaction, commodity basis swap transaction, commodity cap transaction, commodity floor transaction, commodity collar transaction, commodity option transaction, commodity index transaction, commodity spot transaction or any combination of these transactions.

2. Approved Hedging Programme

2.1 The Parties agree that the Hedging Agreements are to be used solely as a risk management tool to protect the Borrower's Group from adverse movements in the gold price. Neither the Borrower nor SMCL shall enter into Hedging Agreements or derivative transactions as a means of speculating on movements in the underlying financial markets. For the avoidance of doubt, any transaction contemplated by this Schedule shall not be contemplated as a speculative hedging transaction.

2.2 Any Commodity Transactions shall be entered into only by the Borrower or SMCL and a Hedge Counterparty (for the avoidance of doubt, with no requirement to enter into Commodity Transactions with Hedge Counterparties on a pro rata basis) and in accordance with this Agreement.

2.3 Any Commodity Transactions entered into by the Borrower or SMCL with a Hedge Counterparty shall be documented under a Hedging Agreement. All amounts arising under the Commodity Transactions and due to any of the Hedge Counterparties shall be secured by the Transaction Security Documents on a *pari passu* basis with the Secured Liabilities to the other Secured Parties.

3. Obligation to Enter Commodity Transaction

3.1 The Borrower or SMCL shall enter into Commodity Transactions in accordance with Hedging Agreements that satisfy the requirements of this Hedging Strategy by (in respect of Commodity Transactions required pursuant to clause 3.2(a) below) no later than the date falling forty-five (45) days after the first Utilisation Date and (in respect of Commodity Transactions required pursuant to clauses 3.2(b) and (c) below) no later than a subsequent date to be agreed between the Borrower and the Agent (each acting reasonably).

3.2 The Borrower or SMCL shall, in relation to gold, enter into and maintain Commodity Transactions in respect of:

(a) the twelve month period beginning on the first Utilisation Date on the basis that such Commodity Transactions are in respect of at least fifty per cent. of the aggregate forecast production by SMCL of gold during that period;

(b) the twelve month period beginning on the first anniversary of the first Utilisation Date on the basis that such Commodity Transactions are in respect of at least twenty-five per cent. of the aggregate forecast production by SMCL of gold during that period; and

- (c) the twelve month period beginning on the second anniversary of the first Utilisation Date on the basis that such Commodity Transactions are in respect of at least twenty-five per cent. of the aggregate forecast production by SMCL of gold during that period,

(the **Minimum Commodity Hedged Volume**) provided that, where the Borrower or SMCL enters into a series of Commodity Transactions in respect of the aggregate forecast production during consecutive portions of a twelve month period (each a **Relevant Hedging Period**), any minimum hedging requirements in this paragraph 3.2 shall be satisfied if the aggregate amount of Commodity Transactions for all Relevant Hedging Periods during that twelve month period exceed the production by SMCL of gold in respect of that twelve month period.

3.3 Any Commodity Transactions:

- (a) shall be cash settled; and
- (b) shall, subject to the terms of this Agreement and the Intercreditor Agreement, be entered into with a Hedge Counterparty, in each case as at the date of the relevant Commodity Transaction.

4. **Execution of Hedging**

4.1 This paragraph shall apply in respect of all Commodity Transactions:

- (a) when considering entering into any Commodity Transaction, the Borrower shall (or shall procure that SMCL shall) first inform each of the Hedge Counterparties of the proposed hedging, including:
 - (i) the type of hedging transaction to be entered into;
 - (ii) the commodity to be hedged;
 - (iii) the proposed trade date and maturity; and
 - (iv) the volumes or amounts to be hedged;
- (b) each Hedge Counterparty, in each case which are also Arrangers, shall be given a right of first refusal; and
- (c) allocation amongst the Hedge Counterparties shall be made by the Borrower or SMCL (as applicable) on a reasonable commercial basis.

Schedule 14 Compliance Certificate

To: [●] as Agent

From: [Parent]

Dated:

Dear Sirs

[Parent] – [●] Senior Facility Agreement dated [●] (the "Facility Agreement")

- 1 We refer to the Facility Agreement. This is a Compliance Certificate. Terms defined in the Facility Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
- 2 We confirm that the Tangible Net Worth of the Parent is [●].
- 3 *[Parent to set out (in reasonable detail) computations as to calculation of Tangible Net Worth.]*

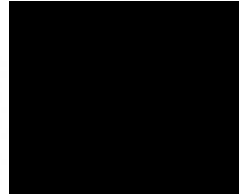
Signed	Signed
	Director		Director
	of		of
	[Parent]		[Parent]

SIGNATURES

THE BORROWER

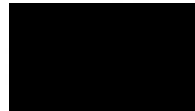
SIGNED by SATURN RESOURCES LTD

)



Name:

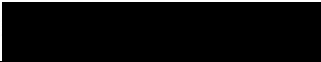
Title:



Address:



Email address:



Attention:



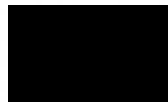
**THE ORIGINAL GUARANTOR AND THE
PARENT**

**SIGNED by ETC HOLDINGS (MAURITIUS))
LIMITED)**



.....
Name:

Title:



Address:



Email address:



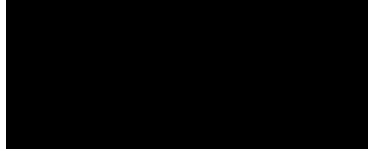
Attention:



THE ARRANGERS

SIGNED for and on behalf of **THE STANDARD**)
BANK OF SOUTH AFRICA LIMITED (ACTING)
THROUGH ITS ISLE OF MAN BRANCH)

By:



.....
Name:

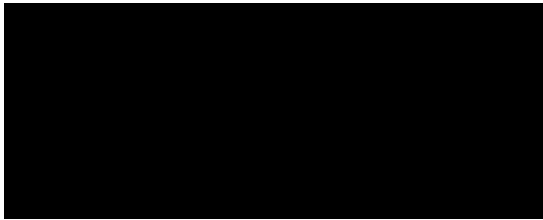
Title:



Address:



Email:

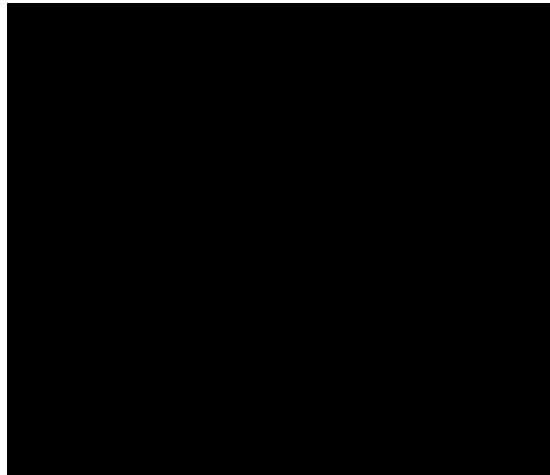


Attention:



**SIGNED for and on behalf of NEDBANK)
LIMITED (ACTING THROUGH ITS NEDBANK)
CORPORATE AND INVESTMENT BANKING)
DIVISION)**

By:



Address: [Redacted]
[Redacted]

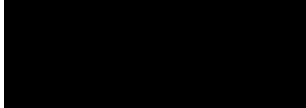
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Attention: [Redacted]

With a copy to: [Redacted]
[Redacted]

THE AGENT

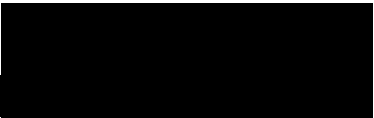
**SIGNED for and on behalf of THE STANDARD)
BANK OF SOUTH AFRICA LIMITED (ACTING)
THROUGH ITS CORPORATE AND)
INVESTMENT BANKING DIVISION))**



By:

Name:

Title:



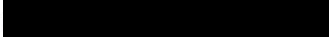
Address:



Email:



Attention:



THE SECURITY AGENT

**SIGNED for and on behalf of THE STANDARD)
BANK OF SOUTH AFRICA LIMITED (ACTING)
THROUGH ITS CORPORATE AND)
INVESTMENT BANKING DIVISION)**

By:

[Redacted Signature]

Name:

Title:

[Redacted Name and Title]

Address:

[Redacted Address]

Email:

[Redacted Email]

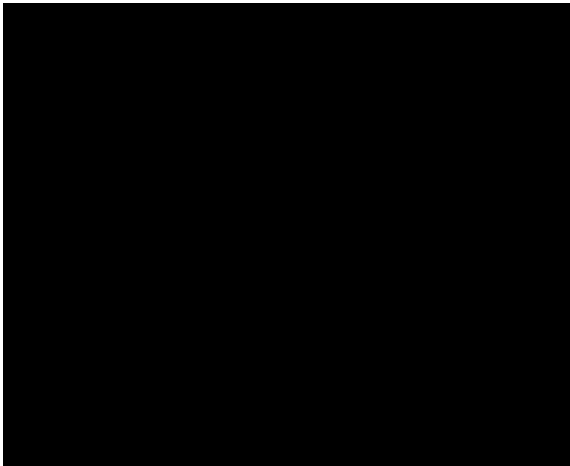
Attention:

[Redacted Attention]

THE ORIGINAL LENDERS

**SIGNED for and on behalf of THE STANDARD)
BANK OF SOUTH AFRICA LIMITED (ACTING)
THROUGH ITS ISLE OF MAN BRANCH))**

By:



Address: [Redacted]
[Redacted]

Email:
[Redacted]

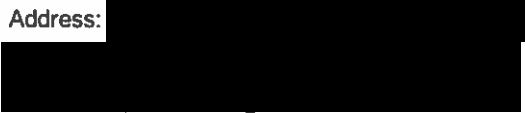
Attention: [Redacted]
[Redacted]

**SIGNED for and on behalf of NEDBANK
LIMITED, LONDON BRANCH**

By:



Address:



Email:



Attention:



With a copy to:

