

August 9, 2025

- (1) **ASANTE GOLD BIBIANI LTD and ASANTE GOLD CHIRANO LTD**  
as Borrowers
- (2) **ASANTE GOLD CORPORATION** as Sponsor
- (3) **THE ENTITIES SPECIFIED IN PART B, SCHEDULE 1** as Original  
Obligors
- (4) **THE FINANCIAL INSTITUTION SPECIFIED IN PART C,  
SCHEDULE 1** as Initial Mandated Lead Arranger, Underwriter and  
Bookrunner
- (5) **THE FINANCIAL INSTITUTION SPECIFIED IN PART D,  
SCHEDULE 1** as Mandated Lead Arranger
- (6) **THE FINANCIAL INSTITUTIONS SPECIFIED IN PART E,  
SCHEDULE 1** as Lead Arrangers
- (7) **THE FINANCIAL INSTITUTIONS SPECIFIED IN PART F,  
SCHEDULE 1** as Original Lenders
- (8) **THE FINANCIAL INSTITUTION SPECIFIED IN PART G,  
SCHEDULE 1** as Hedging Bank
- (9) **FIRSTRAND BANK LIMITED (acting through its Rand Merchant  
Bank Division)** as Facility Agent
- (10) **FIRSTRAND BANK LIMITED (acting through its Rand Merchant  
Bank Division)** as Technical Bank
- (11) **FIRSTRAND BANK LIMITED (acting through its Rand Merchant  
Bank Division)** as ES Agent  
and
- (12) **FIRSTRAND BANK LIMITED (acting through its Rand Merchant  
Bank Division)** as Security Agent

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**FACILITIES AGREEMENT**

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Herbert Smith Freehills Kramer LLP

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**THIS AGREEMENT** is made on the \_\_\_\_ day of \_\_\_\_\_ 2025

**BETWEEN:**

- (1) **ASANTE GOLD BIBIANI LTD**, a private company limited by shares duly incorporated in Ghana with registration number CS506392014 and whose registered address is at 17 Jungle Avenue, East Legon, Accra, Ghana, as borrower (**Bibiani**);
- (2) **ASANTE GOLD CHIRANO LTD**, a private company limited by shares duly incorporated in Ghana with registration number CS183792016 and whose registered address is at 17 Jungle Avenue, East Legon, Accra, Ghana as borrower (**Chirano**);
- (3) **ASANTE GOLD CORPORATION**, a company duly incorporated and existing under the laws of British Columbia with company registration number BC0909607 and registered office at Suite 2500 Park Place, 666 Burrard Street, Vancouver, British Columbia, Canada, as sponsor and obligor (the **Sponsor**);
- (4) **THE ENTITIES** listed in Schedule 1, Part B as obligors (the **Original Obligors**);
- (5) **FIRSTRAND BANK LIMITED (acting through its Rand Merchant Bank Division)** as initial mandated lead arranger, underwriter and bookrunner (the **Initial Mandated Lead Arranger, Underwriter and Bookrunner**);
- (6) **THE FINANCIAL INSTITUTION** listed in Schedule 1, Part D as mandated lead arrangers (the **Mandated Lead Arranger**);
- (7) **THE FINANCIAL INSTITUTIONS** listed in Schedule 1, Part E as lead arrangers (the **Lead Arrangers**);
- (8) **THE FINANCIAL INSTITUTIONS** listed in Schedule 1, Part F as senior lenders (the **Original Lenders**);
- (9) **THE FINANCIAL INSTITUTION** listed in Schedule 1, Part G (the **Original Hedging Bank**);
- (10) **FIRSTRAND BANK LIMITED (acting through its Rand Merchant Bank Division)** as facility agent for the Lenders (the **Facility Agent**);
- (11) **FIRSTRAND BANK LIMITED (acting through its Rand Merchant Bank Division)** as technical bank (the **Technical Bank**);
- (12) **FIRSTRAND BANK LIMITED (acting through its Rand Merchant Bank Division)** as sustainability coordinator (the **ES Agent**); and
- (13) **FIRSTRAND BANK LIMITED (acting through its Rand Merchant Bank Division)** as security agent (the **Security Agent**).

**IT IS AGREED** as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Agreement:

**Acceptable Bank** means:

- (a) a bank or financial institution which has a rating for its long-term unsecured and non-credit-enhanced debt obligations of BBB+ or higher by S&P or Fitch or Baa1 or higher by Moody's or a comparable rating from an internationally recognised credit rating agency; or
- (b) any other bank or financial institution approved by the Facility Agent.

**Accession Deed** means a document substantially in the form set out in Schedule 10 (*Form of Accession Deed*).

**Accordion Confirmation** means a confirmation substantially in the form set out in Schedule 16 (*Form of Accordion Confirmation*) or in any other form agreed between the Facility Agent and the Borrowers.

**Accordion Increase Date** has the meaning given to that term in Clause 2.3.7(E) (*Accordion*).

**Accordion Lender** has the meaning given to that term in Clause 2.3.7(A) (*Accordion*).

**Accordion Notice** has the meaning given to that term in Clause 2.3.1 (*Accordion*).

**Account Bank** means any of:

- (a) any Onshore Account Bank; and
- (b) any Offshore Account Bank.

**Account Bank Agreement** means any Onshore Account Bank Agreement or any Offshore Account Bank Agreement.

**Accounts Permits** means each of the following:

- (a) the foreign exchange retention account agreement dated 28 October 2005 between Chirano, Macquarie Bank Limited and The Bank of Ghana, as novated by Macquarie Bank Limited to Société Générale on 15 March 2012;
- (b) the deed of warranty, confirmation and conditions dated on or around October 2005 between The Government of the Republic of Ghana and Chirano; and
- (c) the deed of warranty, confirmation and conditions dated 8 September 1997 between The Government of the Republic of Ghana and Bibiani.

**Additional Equity Amount** means an aggregate gross amount of not less than USD 150,000,000 raised by way of issue of common shares in the Sponsor in exchange for cash pursuant to the private placement offering announced on 19 June 2025.

**Additional Obligor** means a company which becomes an Obligor in accordance with Clause 27.2 (*Additional Obligors*).

**Administrative Finance Parties** means each of the Initial Mandated Lead Arranger, Underwriter and Bookrunner, Mandated Lead Arrangers, Lead Arrangers, the Facility Agent, the Technical Bank, the ES Agent and the Security Agent.

**Advisers** means the Technical Adviser, the Insurance Adviser, the Independent E&S Consultant and each other adviser appointed by the Facility Agent with the prior written consent of the Borrowers (not to be unreasonably withheld or delayed) in accordance with this Agreement except that no consent of the Borrowers shall be required for an appointment made at a time when an Event of Default is continuing, and Adviser means any one of them.

**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.

**Anticipated Completion Date** means the date on which the Completion Date is forecast by the Borrowers to occur, being 31 January 2028 or any other date notified in the most recent Cost to Complete Certificate.

**Approved Hedging Policy** means the hedging policy described in schedule 1 (*Approved Hedging Policy*) to the Supplemental Creditor Agreement, as updated from time to time in accordance with the Supplemental Creditor Agreement.

**Assignment Agreement** means an agreement substantially in the form set out in Schedule 9 (*Form of Assignment Agreement*) or any other form agreed between the relevant assignor and assignee.

**Assumptions** means the Economic Assumptions and the Technical Assumptions.

**Auramet Call Option** means the call option granted by the Sponsor in favour of Auramet International, Inc. dated 10 July 2025.

**Auramet Facility** means the master sale and purchase agreement dated 15 November 2023 between Chirano as seller, the Sponsor as guarantor and Auramet International, Inc as buyer.

**Australian PPSA** means the *Personal Property Securities Act 2009* (Cth) and any regulations made thereunder.

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

**Availability Period** means:

- (a) in relation to Facility A, the period commencing on the date of this Agreement and ending on the earlier of:
  - (i) the date which is 18 months after Financial Close;
  - (ii) the Completion Date;
  - (iii) the Completion Long Stop Date; and
  - (iv) the date on which Facility A is fully drawn; and
- (b) in relation to the Facility B, the period commencing on the date of this Agreement and ending on the date which is one month earlier than the Facility B Final Repayment Date,

or, in each case, if earlier, the date on which the relevant Facility has been cancelled in full.

**Available Commitment** means, in relation to a Facility, a Lender's Commitment in relation to that Facility minus:

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

other than, in relation to any proposed Utilisation under Facility B only, that Lender's participation in any Facility B Loans that are due to be repaid or prepaid on or before the proposed Utilisation Date.

**Available Facility** means, in relation to a Facility, the aggregate for the time being of each Lender's Available Commitment in respect of that Facility.

**Available Project Funding Amount** means at any time, the funds available to the Borrowers for the development of the Projects and the achievement of the Completion Date, being the aggregate of:

- (a) the Total Available Commitments at that time;
- (b) amounts to be received under the Forward Purchase Agreement, the Stream Agreements and the Mezzanine Facility Agreement;
- (c) the amounts standing to the credit of each Project Account (other than the Debt Service Reserve Accounts, the Upstamping Reserve Account and the Distributions Accounts) at that time;
- (d) the Revenue projected to be received in accordance with the Base Case Model prior to the Anticipated Completion Date; and
- (e) the amount of any other funding (whether unsecured and subordinated debt or equity funding) available to the Borrowers at that time for the payment of Projected Costs from sources that are approved by the Facility Agent (acting on the instructions of the Majority Lenders, each acting reasonably).

**Base Case Model** means the Initial Base Case Model and each subsequent financial model for the Borrowers and the Projects as updated and maintained in accordance with Clause 17 (*Base Case Model*).

**Basel III** means:

- (a) the agreements on capital requirements, a leverage ratio and liquidity standards contained in "Basel III: A global regulatory framework for more resilient banks and banking systems", "Basel III: International framework for liquidity risk

measurement, standards and monitoring" and "Guidance for national authorities operating the countercyclical capital buffer" published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;

- (b) the rules for global systemically important banks contained in "Global systemically important banks: assessment methodology and the additional loss absorbency requirement – Rules text" published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and
- (c) any further guidance or standards published by the Basel Committee on Banking Supervision relating to "Basel III".

**Bibiani Finco** means Asante Gold Corporation (International) Limited, a company duly incorporated and existing under the laws of Barbados with company number 53307.

**Bibiani Finco Loan** means each loan made or to be made by Bibiani Finco to Bibiani under the Bibiani Finco Loan Agreement, or the principal amount outstanding for the time being of that loan.

**Bibiani Finco Loan Agreement** has the meaning given to it in the Intercreditor Agreement.

**Bibiani Mine** means the gold mine located in a mining lease area granted pursuant to the Bibiani Mining Lease in the Bibiani Anhwiaso-Bekwai District in the Western North Region of the Republic of Ghana.

**Bibiani Mining Lease** means the mining lease granted by the Government of the Republic of Ghana on 19 May 1997 to Bibiani to mine gold within the specific geographical area located in the Bibiani Anhwiaso-Bekwai District in the Western North Region of the Republic of Ghana for a term of 30 years.

**Bibiani Stream Agreement** means the Bibiani gold purchase and sale agreement entered into on or about the date of this Agreement between, amongst others, the Bibiani Stream Purchaser, the Sponsor and Bibiani Finco.

**Bibiani Stream Purchaser** has the meaning given to it in the Intercreditor Agreement.

**Bibiani Underground Expansion EPCM** means the underground development agreement in relation to the initial development of the Bibiani Underground Project to be entered into by Bibiani and the selected engineering procurement and construction management contractor.

**Bibiani Underground Feasibility Study** means the final definitive feasibility study for the Bibiani Underground Project provided by the Borrowers to the Facility Agent in accordance with Clause 4.1 (*Initial conditions precedent*).

**Bibiani Underground Project** means the development of an underground mine in connection with the Bibiani Mining Lease.

**Borrower** means each of Chirano and Bibiani.

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

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

exceeds:

- (b) the amount which that Lender would be able to obtain by placing an amount equal to the principal amount 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** means a day (other than a Saturday or Sunday) on which banks are open for general business in New York, London, Johannesburg, Vancouver, Accra, Bridgetown and Mauritius.

**Calculation Date** means:

- (a) the First Repayment Date; and
- (b) each Quarter Date occurring after the First Repayment Date.

**Calculation Quarter** means, in respect of a Quarter Date, the Quarter immediately preceding and ending on that Quarter Date.

**Canadian Obligor** means an Obligor organized or existing under the laws of Canada or any province or territory thereof.

**Canadian PPSA** means the *Personal Property Security Act* (British Columbia) (and other equivalent personal property security legislation in any other applicable Canadian province or territory) and the regulations thereunder, as from time to time in effect; provided, however, if attachment, perfection or priority of the Security Agent's security interest in any Collateral is governed by the personal property security laws of any jurisdiction in Canada other than British Columbia with respect to such Collateral, "Canadian PPSA" shall mean those personal property security laws in such other jurisdiction of Canada (including the Civil Code of Québec and the regulation respecting the register of personal and movable real rights thereunder) for the purposes of the provisions hereof relating to such attachment, perfection or priority and for the definitions related to such provisions.

**Capex Reserve Account** means each USD-denominated account named "Capex Reserve Account" and held by a Borrower at an Offshore Account Bank, together with any replacement and substitute accounts opened with the consent of the Facility Agent and any sub-accounts of the foregoing.

**Capex Reserve Amount** means \$50,000,000.

**Capital Expenditure** means any expenditure which would be treated as capital expenditure in accordance with IFRS.

**Cash** means, at any time, cash in hand or at bank and (in the latter case) credited to an account in the name of an Obligor and to which an Obligor is alone (or together with any other Obligor) beneficially entitled and for so long as:

- (a) that cash is repayable within 10 days after the relevant date of calculation;
- (b) repayment of that cash is not contingent on the prior discharge of any other indebtedness of any Obligor or of any other person whatsoever or on the satisfaction of any other condition;
- (c) there is no Security over that cash except for Transaction Security or any Permitted Security constituted by a netting or set-off arrangement entered into by an Obligor in the ordinary course of their banking arrangements; and
- (d) the cash is freely and (except as mentioned in paragraph (a) above) immediately available to be applied in repayment or prepayment of the Facilities.

**Cash Equivalent Investments** means at any time:

- (a) certificates of deposit maturing within one year after the relevant date of calculation and issued by an Acceptable Bank;
- (b) any investment in marketable debt obligations issued or guaranteed by any government of a country which has a rating for its short term unsecured and non-credit enhanced debt obligations of A-1 or higher by S&P or F1 or higher by Fitch or P-1 or higher by Moody's or by an instrumentality or agency of any such government having an equivalent credit rating, maturing within one year after the relevant date of calculation and not convertible or exchangeable to any other security;
- (c) commercial paper not convertible or exchangeable to any other security:

- (i) for which a recognised trading market exists;
  - (ii) issued by an issuer incorporated in a country, the government of which has a rating for its short term unsecured and non-credit enhanced debt obligations of A-1 or higher by S&P or P-1 or higher by Moody's or by an instrumentality or agency of any such government having an equivalent credit rating;
  - (iii) which matures within one year after the relevant date of calculation; and
  - (iv) which has a credit rating of either A-1 or higher by S&P or F1 or higher by Fitch or P-1 or higher by Moody's, or, if no rating is available in respect of the commercial paper, the issuer of which has, in respect of its short term unsecured and non-credit enhanced debt obligations, an equivalent rating;
- (d) bills of exchange issued in the United States of America, the United Kingdom, Switzerland, Japan, any member state of the European Union, Australia or any agency thereof and eligible for rediscount at the relevant central bank and accepted by an Acceptable Bank (or their dematerialised equivalent);
- (e) any investment in money market funds which (i) have a credit rating of either A-1 or higher by S&P or F1 or higher by Fitch or P-1 or higher by Moody's, (ii) invest substantially all their assets in securities of the types described in paragraphs (a) to (d) above and (iii) can be turned into cash on not more than 30 days' notice; or
- (f) any other debt security approved by the Majority Lenders,

in each case, to which any Obligor is alone (or together with any other Obligor) beneficially entitled at that time and which is not issued or guaranteed by any Obligor or subject to any Security (other than Permitted Security).

**Cash Flow Available for Debt Service or CFADS** means in respect of a period the Revenue in that period after:

- (a) deducting the aggregate of the following amounts (without double-counting) actually paid by an Obligor during that period (or, for any forecast calculation, projected or estimated to be actually paid by an Obligor during the relevant period as set out in the Base Case Model):
  - (i) Operating Costs; and
  - (ii) Project Capital Expenditure, other than Project Capital Expenditure to the extent it is funded with the proceeds of Loans, Mezzanine Loans, advances under the Stream Agreements, advances under the Forward Purchase Agreement or Equity Contributions (in the case of Equity Contributions, which were contributed for that purpose) made in the relevant period;
- (b) deducting, to the extent required under Clause 7.2 (*Disposal, Insurance and Equity Cure*) to be applied in prepayment of the Loans, the aggregate of any cash proceeds of the sale of assets, Insurance Proceeds and Compensation to the extent that these are included in the Revenue received by an Obligor during the relevant period (or, for any forecast calculation, projected or estimated to be actually received by an Obligor during the relevant period as set out in the Base Case Model); and
- (c) deducting any negative changes in working capital or adding any positive changes in working capital (as applicable) during the relevant period.

**Cashflow Waterfall** means the order of priority for payments set out in clause 20.1 (*Withdrawals from Proceeds Accounts*) of the Intercreditor Agreement.

**Central Bank Rate** means:

- (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** means, in relation to the Central Bank Rate prevailing at close of business on any US Government Securities Business Day, the 20 per cent. trimmed arithmetic mean (calculated by the Facility Agent, or by any other Finance Party which agrees to do so in place of the Facility Agent) of the Central Bank Rate Spreads for the five most immediately preceding US Government Securities Business Days for which Term SOFR has been published.

**Central Bank Rate Spread** means, in relation to any US Government Securities Business Day, the difference (expressed as a percentage rate per annum), calculated by the Facility Agent (or by any other Finance Party which agrees to do so in place of the Facility Agent), between:

- (a) Term SOFR for the Interest Period on that US Government Securities Business Day; and
- (b) the Central Bank Rate prevailing at close of business on that US Government Securities Business Day.

**Chirano Finco** means AGCL (International) Limited, a company duly incorporated and existing under the laws of Barbados with company number 54018.

**Chirano Finco Loan** means each loan made or to be made by Chirano Finco to Chirano under the Chirano Finco Loan Agreement, or the principal amount outstanding for the time being of that loan.

**Chirano Finco Loan Agreement** has the meaning given to it in the Intercreditor Agreement.

**Chirano Mine** means the gold mine located in a mining lease area granted pursuant to the Chirano Mining Lease in the Bibiani-Anhwiaso-Bekwai District of the Western North Region of the Republic of Ghana.

**Chirano Mining Lease** means the mining lease granted by the Government of the Republic of Ghana on 8 April 2004 to Chirano to mine gold within the specific geographical area located in the Bibiani-Anhwiaso-Bekwai District of the Western North Region of the Republic of Ghana for a term of 15 years, as extended on 23 December 2019.

**Chirano Stream Agreement** means the Chirano gold purchase and sale agreement entered into on or about the date of this Agreement between, amongst others, the Chirano Stream Purchaser, the Sponsor and Chirano Finco.

**Chirano Stream Purchaser** has the meaning given to it in the Intercreditor Agreement.

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

**Commitment** means a Facility A Commitment or Facility B Commitment.

**Compensation** means any compensation (other than Insurance Proceeds) payable to or received by an Obligor in connection with the Mines in respect of:

- (a) any seizure, compulsory acquisition, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other person in relation to it or any of its assets;
- (b) the release, inhibition, modification, suspension or extinguishment of any rights benefiting the Projects, or the imposition of any restrictions affecting the Projects, or the grant of any easement or rights over or affecting the Projects;

- (c) the refusal, revocation, suspension, modification or imposition of conditions in respect of any Authorisation, or any other official order or notice restricting the development, construction or operation of the Projects; and
- (d) any other sum payable to or received by any Obligor under any Project Document or other contract entered into by an Obligor in connection with the Project (other than any Finance Document, any Mezzanine Finance Document, any Kinross Document, the Forward Purchase Agreement, any Stream Document, any employment contract and any consultancy or services contract with an individual or an individual's service company) in the nature of damages or compensation (but excluding delay or performance liquidated damages or any revenue replacement damages or compensation).

**Completion Date** means the first date on which each of the Completion Tests have been satisfied.

**Completion Long Stop Date** means 31 July 2028.

**Completion Tests** means the completion tests set out in Schedule 6 (*Completion Tests*).

**Compliance Certificate** means a certificate:

- (a) substantially in the form set out in Schedule 5 (*Compliance Certificate*) signed by a director of each Borrower; and
- (b) setting out the information required to be provided under Schedule 5 and any other information agreed by the Borrowers and the Facility Agent from time to time.

**Confidential Information** means all information relating to the Borrowers, any other Obligor, the Group, the Transaction 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 the Facility from either:

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

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

- (i) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 38 (*Confidential Information*); or
- (ii) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
- (iii) is required (but only to the extent required) to be publicly disclosed by any of the Parties in order to comply with the Equator Principles; or
- (iv) 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 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.

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

**Corporations Act** means the Corporations Act 2001 of the Commonwealth of Australia.

**Corrective Action Plan** means a plan to correct and remedy any non-compliance, all material damage or adverse consequences caused by any failure by the Projects to comply with any applicable Environmental and Social Standards, and includes any plan delivered pursuant to Clause 21.6.3 (*Environmental and social matters*).

**Corrupt Act** means:

- (a) the direct or indirect offering, giving or promising of any payment, reward or other advantage to any public official or other person, including Finance Party employees, in order to improperly or dishonestly influence the person concerned in the exercise of his or her duties;
- (b) the direct or indirect offering, giving or promising of any improper, dishonest or criminal advantage to influence the action of any person holding a public office or function or a director or employee of a public authority or public enterprise or a director or official of a public international organisation;
- (c) any act which improperly or dishonestly influences or aims improperly or dishonestly to influence the procurement process or the implementation of the business of a Borrower, including collusion between tenderers;
- (d) any activity or conduct which would violate any Corrupt Practices Laws; and
- (e) soliciting or accepting, directly or indirectly through others such as third party intermediaries, any donation, gift, invitation, reward, or anything of value to any person (including any public official), for themselves or for a third party, that would or could be perceived either as an inducement to commit an act of corruption or as a deliberate act of corruption in each case with a view to inducing any person (including a public official) to perform their functions improperly or dishonestly and/or getting any undue benefit;

**Corrupt Practices Laws** means:

- (a) the OECD Convention of 17 December 1997 with respect to measures against corruption of foreign public officials and any OECD Guidelines or Action Statements with respect to that OECD Convention;
- (b) any other law, regulation or rule, and the principles set out in them, relating to anti-bribery, kick-backs, anti-corruption, anti-money laundering or similar business practices to which an Obligor or any Finance Party is bound to comply or ensure or procure compliance with, including:
  - (i) Criminal Code Act 1995 of the Commonwealth of Australia;
  - (ii) the UK Bribery Act 2010;
  - (iii) United States Foreign Corrupt Practices Act of 1977;
  - (iv) Part IV of the *Criminal Code* (Canada);
  - (v) *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada);
  - (vi) *Corruption of Foreign Public Officials Act* (Canada); and
  - (vii) any other similar law or regulation in force in Ghana, Canada, Australia or any other jurisdiction to the extent that the relevant Obligor is required to comply with that law or regulation.

**Cost Overrun** means, on the date of a Cost to Complete Certificate, the amount (if any) on that date by which Projected Costs exceeds the Available Project Funding Amount (but on the basis that the Available Project Funding Amount excludes the aggregate amount standing to the credit of the Capex Reserve Accounts at that time).

**Cost to Complete Certificate** means a certificate from the Sponsor in the form, or substantially in the form, set out in Schedule 4 (*Cost to Complete Certificate*):

- (a) signed by two directors or one director and a senior officer;

- (b) setting out the forecast Projected Costs, the Available Project Funding Amount and the other information set out in Schedule 4;
- (c) which certifies any Cost Overrun;
- (d) which certifies any Funding Shortfall Amount; and
- (e) which is certified by the Technical Adviser.

**CRD IV** means:

- (a) 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
- (b) 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.

**Creditor** has the meaning given to it in the Intercreditor Agreement.

**Creditor List** means the creditor list provided by the Sponsor to the Facility Agent in accordance with Clause 4.1 (*Initial conditions precedent*).

**CRR** means Capital Requirements Regulation (EU) 575/2013.

**Debt Service** means, in respect of any period, the net aggregate of all amounts paid or payable by the Obligors during such period in respect of:

- (a) Financing Costs;
- (b) Mezzanine Financing Costs; and
- (c) Financing Principal.

**Debt Service Reserve Account** means each USD-denominated account named "Debt Service Reserve Account" and held by a Borrower at an Offshore Account Bank, together with any replacement and substitute accounts opened with the consent of the Facility Agent and any sub-accounts of the foregoing.

**Debt Service Reserve Amount** means, at any time, the aggregate Debt Service (excluding all fees, commissions, or similar charges which are not in the nature of a principal or interest payment) payable by Obligors during the following six (6) Month period.

**Debtor Accession Deed** has the meaning given to it in the Intercreditor Agreement.

**Default** means an Event of Default or any event or circumstance specified in Clause 25 (*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, the expiry of any review or consultation period between the Parties, or any combination of any of the foregoing) be an Event of Default.

**Defaulting Lender** means any Lender:

- (a) which has failed to make its participation in a Loan available (or has notified the Facility Agent or a Borrower (which has notified the Facility 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*), unless:
  - (i) its failure to pay is caused by:
    - (A) administrative or technical error; or
    - (B) a Disruption Event; and
 payment is made within five (5) 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;
- (b) which has otherwise rescinded or repudiated a Finance Document; or

(c) with respect to which an Insolvency Event has occurred and is continuing.

**Deferred Deliverables** means the Authorisations, Title Documents and other perfection requirements referred to in the Deferred Deliverables List.

**Deferred Deliverables List** means the list of Deferred Deliverables provided by the Sponsor to, and accepted by, the Facility Agent in accordance with Clause 4.1 (*Initial conditions precedent*).

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

**Deposit** under a Stream Agreement has the meaning given to it in that Stream Agreement.

**Deposit Account Control Agreement** means the deposit account control agreement dated on or about the date of this Agreement between Chirano, the Security Agent and Société Générale.

**Development Activities** means feasibility studies, small-scale drilling, environment assessments or other related development activities.

**Development Plan** means, collectively:

- (a) the Bibiani Underground Feasibility Study;
- (b) the most-recent Technical Reports; and
- (c) the Base Case Model,

provided that, to the extent of any inconsistency between the Base Case Model and the other components of the Development Plan, the Base Case Model shall prevail.

**Disclosure Letter** means the disclosure letter provided by the Borrower to the Facility Agent on or prior to Financial Close.

**Disenfranchised Lender** means any Lender for so long as it:

- (a) is;
- (b) is an Affiliate of a person which is; or
- (c) is a Related Fund of a person which is,

a Creditor under the Intercreditor Agreement in any capacity other than as a Senior Creditor or as the Mezzanine Facility Agent, except where such Lender is the only Lender under this Agreement.

**Dispose** in relation to any asset, property or right, means to sell, transfer, assign, surrender, convey, lease, licence, discount, lend, farm out or otherwise dispose of any interest in the asset, property or right.

**Disposal** has the meaning given to that term in Clause 23.4 (*No Disposals*).

**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 Facilities (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) where that 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 case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.

**Distributable Amount** means, on any Calculation Date, the amount that is available in the USD Proceeds Accounts, the Sponsor Account and the Equity Proceeds Account after payment or transfer of all amounts set out in limbs (a)(i) to (a)(xviii) of the Cashflow Waterfall:

- (a) *less* any Sweep, Reserve and Mezzanine Amounts payable for the Calculation Quarter ending on that Calculation Date which have not yet been paid or transferred;
- (b) *adding* any Sweep, Reserve and Mezzanine Amounts paid or transferred during the Calculation Quarter ending on that Calculation Date which did not relate to that Calculation Quarter; and
- (c) *less* the amount required to ensure there is a Fully Funded Working Capital Balance,

and if that amount is less than zero, the Distributable Amount is zero.

**Distribution** means:

- (a) any payment of dividends or other distribution (whether in cash or in kind) and any bonus issue or any return of capital including any payment in respect, or on the redemption, of any share capital or shares whether at a premium or otherwise;
- (b) any payment of interest, principal or any other amount in respect of Financial Indebtedness owed by a Borrower to any Affiliate, including any purchase by a Borrower of any Financial Indebtedness;
- (c) any payment or discharge by way of set-off, counterclaim or otherwise in respect of financial accommodation made by a Borrower to an Affiliate or in respect of Financial Indebtedness owed by a Borrower to any Affiliate; or
- (d) any payment of any management, administration, advisory, consultancy or other similar type of fees or expenses or any other amount made by an Obligor to any of its Affiliates,

but in each case excluding:

- (i) any payment under the On-Swap Agreement;
- (ii) any advance or payment by way of equity contribution or under any Intercompany Loan Agreement to the extent required for the Obligors to make any Permitted Stream Payment, Permitted Gold Forward Payment or Permitted Hedge Payment or to pay Operating Costs up to the amount set out in the Base Case Model or in respect of paragraph (a) of the definition of Permitted Transaction, provided such payment is expressly permitted in accordance with the Cashflow Waterfall; and
- (iii) any payment made by a Borrower to the Sponsor under any Management Services Agreement in amounts not exceeding the amount set out in line 160 (*Corporate G&A Costs*) of the Consolidated CF\_with Financing Tab of the Base Case Model.

**Distributions Account** means each USD-denominated account named "Distributions Account" and held by a Borrower at an Offshore Account Bank or an Onshore Account Bank, together with any replacement and substitute accounts opened with the consent of the Facility Agent and any sub-accounts of the foregoing.

**E&S Non-Conformance** means any non-compliance with the Environmental and Social Standards that results in any Environmental or Social Incident.

**EBITDA** means, in respect of any period, the consolidated operating profit of the Obligors before taxation (excluding the results from discontinued operations):

- (a) before deducting any interest, commission, fees, discounts, prepayment fees, premiums or charges and other finance payments whether paid, payable or capitalised by any Obligor (calculated on a consolidated basis) in respect of that period;
- (b) not including any accrued interest owing to any Obligor;
- (c) after adding back any amount attributable to the amortisation, depreciation or impairment of assets of Obligors (and taking no account of the reversal of any previous impairment charge made in that period);
- (d) before taking into account any Exceptional Items;
- (e) after deducting the amount of any profit (or adding back the amount of any loss) of any Obligor which is attributable to minority interests;
- (f) plus or minus the Group's share of the profits or losses (after finance costs and tax) of Non-Group Entities after deducting the amount of any profit of any Non-Group Entity to the extent that the amount of the profit included in the financial statements of the Group exceeds the amount actually received in cash by members of the Group through distributions by the Non-Group Entity;
- (g) before taking into account any unrealised gains or losses on any financial instrument;
- (h) before taking into account any gain or loss arising from an upward or downward revaluation of any other asset;
- (i) before taking into account any Pension Items; and
- (j) excluding the charge to profit represented by the expensing of stock options,

in each case, to the extent added, deducted or taken into account, as the case may be, for the purposes of determining operating profits of the Obligors before taxation.

**Economic Assumptions** means the economic assumptions (including those relating to Product prices, interest rates, inflation, rates of taxation and VAT) incorporated in the Initial Base Case Model, as amended from time to time in accordance with and subject to this Agreement.

**Eligible Institution** means any Lender or other bank, financial institution, trust, fund or other entity selected by the Borrowers and which, in each case, is not a member of the Group or a Sanctioned Person.

**Emergency Expenditure** means expenditure not contemplated in the Base Case Model but in the opinion of the Borrowers (acting reasonably) required to be incurred, in accordance with Good Mining Practice, to avoid or mitigate the risk of injury from or material damage to the Projects or, to the extent arising from the Projects, the Environment.

**Enforcement Date** has the meaning given to it in clause 22 (*Equalisation*) of the Intercreditor Agreement.

**Enforcement Event** has the meaning given to it in the Intercreditor Agreement.

**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 air within natural or man-made structures, whether above or below ground);
- (b) water (including territorial, coastal and inland waters, water under or within land and water in drains and sewers); and
- (c) land (including land under water).

**Environmental and Social Action Plan** means the environmental and social action plan in respect of the Projects, prepared by the Independent E&S Consultant in consultation

with the Borrowers, to be provided in accordance with Clause 4.1 (*Initial conditions precedent*).

**Environmental and Social Monitoring Report** means a report prepared by the Independent E&S Consultant in accordance with Clause 21.6 (*Environmental and social matters*), and substantially in the form set out in Schedule 14 (*Form of Environmental and Social Monitoring Report*) or such other form agreed by the ES Agent.

**Environmental and Social Standards** means, together:

- (a) the Environmental Laws and Social Laws applicable to any Borrower;
- (b) the Environmental and Social Action Plan;
- (c) the Resettlement Action Plan;
- (d) the Equator Principles applicable to the Projects; and
- (e) the IFC Performance Standards applicable to the Projects.

**Environmental Bond** means the reclamation bond in the amount determined by the Environmental Protection Authority from time to time which comprises of the cash deposit held by Societe General Ghana PLC and the bond guarantee provided by Standard Chartered Bank as a security deposit against default on reclamation or rehabilitation of disturbed land arising out of the operations of the Borrowers.

**Environmental Bond Notice** has the meaning given to it in Clause 22.8.1.

**Environmental Contaminant** means any substance (including any waste) which, alone or in combination with any other, is capable of causing harm to the Environment.

**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 Environmental Contaminant.

**Environmental or Social Claim** means any claim arising under or any filed notice or formal investigation in respect of, any Environmental Law or Social Law made against a Borrower by any person for loss, clean up or remediation or conducted by the regulatory authority responsible for the administration or enforcement of any Environmental Law or Social Law.

**Environmental or Social Incidents** means:

- (a) the release of any hazardous substance on or within any Project Area, or any unanticipated incident, accident or circumstance in connection with the Projects, which has resulted in or is likely to result in significant, severe or irreversible damage to or impact on the Environment, or damage, impact or harm to the lives, livelihood, quality of life, health, safety, security or property of any person; or
- (b) an incident or accident relating to the Projects which has had the following direct or indirect impact in any of the categories specified:
  - (i) on health: death, major disability or serious health damage;
  - (ii) on society: destruction of a site or object of cultural or religious significance, permanent, serious damage or destruction of community assets or infrastructure, or any significant and sustained community or worker-related grievance, protest, action or challenge to the Projects; or
  - (iii) material damage to the Environment (including the release of an Environmental Contaminant).

**Environmental or Social Matters** means those environmental and/or social aspects identified in the Environmental and Social Action Plan as being relevant to the Projects.

**Environmental Permits** means any Authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the Projects or in order for the Borrowers and their contractors to comply with their respective obligations under the Transaction Documents.

**Equator Principles** means those principles entitled 'A financial industry benchmark for determining, assessing and managing social and environmental risk in Projects', dated June 2013 and which are available at [www.equator-principles.com](http://www.equator-principles.com), as amended on 1 October 2020 by the update entitled 'EP4', and as further amended, modified or supplemented from time to time.

**Equity Contribution** means:

- (a) the proceeds of any subscriptions or other payments to the Borrowers for shares in the capital of the Borrowers or as a contribution to the share capital of the Borrowers; and
- (b) any other financial accommodation provided by the Sponsor or any other member of the Group to the Borrowers which ranks subordinate to the Secured Liabilities and is subject to the terms of the Intercreditor Agreement.

**Equity Cure** has the meaning given to that term in Clause 25.5.2 (*Breach of financial covenants*).

**Equity Proceeds Account** means the USD-denominated account named "Equity Proceeds Account" and held by the Sponsor at an Offshore Account Bank, together with any replacement and substitute accounts opened with the consent of the Facility Agent and any sub-accounts of the foregoing.

**Equivalent** means, in relation to an amount specified in a particular currency (the first amount), the net amount of any other currency which the Facility Agent determines can be purchased with the first amount in the London foreign exchange market at or about 11.00 a.m. on the day on which the calculation falls to be made for spot delivery.

**ES Agent** means FirstRand Bank Limited (acting through its Rand Merchant Bank Division) in its capacity as sustainability coordinator or any other person that replaces it in that capacity in accordance with this Agreement.

**Event of Default** means any event or circumstance specified to be an Event of Default in Clause 25 (*Events of Default*).

**Exceptional Items** means any exceptional, one off, non-recurring or extraordinary items.

**Excess Cash Flow (Cash Sweep)** means, in respect of a Calculation Date, the amount of Revenues received by the Obligors during the Quarter ending on (and including) such Calculation Date:

- (a) less all amounts set out in limbs (a)(i) to (a)(x) (inclusive) of the Cashflow Waterfall paid during that Quarter;
- (b) less any Sweep, Reserve and Mezzanine Amounts payable or transferable in limbs (a)(i) to (a)(x) (inclusive) of the Cashflow Waterfall for the Calculation Quarter which have not yet been paid or transferred;
- (c) adding any Sweep, Reserve and Mezzanine Amounts in limbs (a)(i) to (a)(x) (inclusive) of the Cashflow Waterfall paid or transferred during the Calculation Quarter which did not relate to the Calculation Quarter; and
- (d) less the amount required to ensure that there is a Fully Funded Working Capital Balance,

and if that amount is less than zero, Excess Cash Flow (Cash Sweep) is zero.

**Excess Cash Flow (CRA)** means, in respect of a Quarter Date, the amount of Revenues received by the Obligors during the Quarter ending on (and including) such Quarter Date:

- (a) less all amounts set out in limbs (a)(i) to (a)(viii) (inclusive) of the Cashflow Waterfall paid during that Quarter;

- (b) *less* any Sweep, Reserve and Mezzanine Amounts payable or transferable in limbs (a)(i) to (a)(viii) (inclusive) of the Cashflow Waterfall for the Calculation Quarter which have not yet been paid or transferred;
- (c) *adding* any Sweep, Reserve and Mezzanine Amounts in limbs (a)(i) to (a)(viii) (inclusive) of the Cashflow Waterfall paid or transferred during the Calculation Quarter which did not relate to the Calculation Quarter; and
- (d) *less* the amount required to ensure that there is a Fully Funded Working Capital Balance,

and if that amount is less than zero, Excess Cash Flow (CRA) is zero.

**Excess Cash Flow (DSRA)** means, in respect of a Quarter Date, the amount of Revenues received by the Obligors during the Quarter ending on (and including) such Quarter Date:

- (a) *less* all amounts set out in limbs (a)(i) to (a)(ix) (inclusive) of the Cashflow Waterfall paid during that Quarter;
- (b) *less* any Sweep, Reserve and Mezzanine Amounts payable or transferable in limbs (a)(i) to (a)(ix) (inclusive) of the Cashflow Waterfall for the Calculation Quarter which have not yet been paid or transferred;
- (c) *adding* any Sweep, Reserve and Mezzanine Amounts in limbs (a)(i) to (a)(ix) (inclusive) of the Cashflow Waterfall paid or transferred during the Calculation Quarter which did not relate to the Calculation Quarter; and
- (d) *less* the amount required to ensure that there is a Fully Funded Working Capital Balance,

and if that amount is less than zero, Excess Cash Flow (DSRA) is zero.

**Existing Finance Documents** means:

- (a) the guarantee dated 10 August 2022 issued by Chirano Mines Limited in favour of KG Africa B.V.;
- (b) the guarantee dated 26 August 2022 issued by Asante Chirano Australia in favour of KG Africa B.V.;
- (c) the revolving credit facility dated 13 September 2024 between Ecobank Ghana Plc and Bibiani;
- (d) the promissory note dated 10 July 2025 issued by the Sponsor in favour of Auramet International, Inc.
- (e) the bridge loan facility dated 26 May 2025 between GCB Bank Plc as lender and Bibiani as borrower;
- (f) the revolving credit facility dated 28 December 2022, as amended from time to time, between Societe General Ghana PLC as lender and Chirano as borrower; and
- (g) the facility letter dated 4 November 2024 between Fidelity Bank Ghana LTD and Bibiani.

**Existing Fujairah Account** means the USD-denominated account held by Bibiani at National Bank of Fujairah.

**Existing Offshore Account** means the USD-denominated account held by Bibiani at Bank of Montreal.

**Existing Security Documents** means:

- (a) the Ghanaian law debenture dated 27 September 2024 between Ecobank Ghana Plc and Bibiani;
- (b) the Ghanaian law letter of pledge in relation to shares held in Bibiani dated 27 October 2024 between Ecobank Ghana Plc and Bibiani Holdco;

- (c) the Ghanaian law assignment and domiciliation dated 27 September 2024 between Ecobank Ghana Plc and Bibiani;
- (d) the Ontario law governed pledge and security agreement dated 26 October 2022 between KG Africa B.V., the Sponsor and Asante Chirano Australia Pty Ltd (formerly Red Bank Mining Pty Ltd);
- (e) the Ontario law governed pledge and security agreement dated 10 August 2022 between KG Africa B.V., the Sponsor and Chirano Mines Limited (formerly Red Back Mining (Ghana) Limited); and
- (f) the Ghanaian law debenture dated 21 February 2025 between Bibiani and Fujairah Holding LLC.

**Existing Sponsor Accounts** means the USD-denominated current account held by the Sponsor at Bank of Montreal with account number *[Redacted – Confidential Information]* and the CAD-denominated account held by the Sponsor at Bank of Montreal with account number *[Redacted – Confidential Information]*.

**Facility** means each of:

- (a) Facility A; and
- (b) Facility B,

(together, the **Facilities**).

**Facility A** means the term loan facility in an aggregate amount of \$130,000,000 made available by the Lenders to the Borrowers under Clause 2.1.1, and subject to any increase pursuant to Clause 2.2 (*Increase*).

**Facility A Commitment** means:

- (a) in relation to an Original Lender, the amount set opposite its name under the heading 'Facility A Commitment' in the second column in Part F of Schedule 1 (*The Parties*) and the amount of any other Facility A Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*) or Clause 2.3 (*Accordion*); and
- (b) in relation to any other Lender, the amount of any Facility A Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*) or Clause 2.3 (*Accordion*),

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

**Facility A Final Repayment Date** means the fifth anniversary of the date of this Agreement.

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

**Facility A Margin** means:

- (a) from the date of this Agreement until (and including) the Completion Date, 6.50% per annum;
- (b) from (but excluding) the Completion Date until (and including) the fourth anniversary of the date of this Agreement, 5.75% per annum;
- (c) from (but excluding) the later of (i) the fourth anniversary of the date of this Agreement and (ii) the Completion Date, until (and including) the date which is 54 months after the date of this Agreement, 6.00% per annum; and
- (d) from (but excluding) the later of (i) the date which is 54 months after the date of this Agreement and (ii) the Completion Date, 6.25% per annum.

**Facility Agent** means FirstRand Bank Limited (acting through its Rand Merchant Bank Division), or any other person appointed as Facility Agent in the manner contemplated by Clause 28 (*Role of the Administrative Finance Parties*) of this Agreement.

**Facility B** means the revolving credit facility in an aggregate amount of \$20,000,000 made available by the Lenders to the Borrowers under Clause 2.1.2, and subject to any increase pursuant to Clause 2.2 (*Increase*).

**Facility B Commitment** means:

- (a) in relation to an Original Lender, the amount set opposite its name under the heading 'Facility B Commitment' in the third column in Part F of Schedule 1 (*The Parties*) and the amount of any other Facility B Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*) or Clause 2.3 (*Accordion*); and
- (b) in relation to any other Lender, the amount of any Facility B Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*) or Clause 2.3 (*Accordion*),

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

**Facility B Final Repayment Date** means the third anniversary of the date of this Agreement.

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

**Facility B Margin** means 4.50% per annum.

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

**Fallback Interest Period** means one Month.

**FATCA** means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

**FATCA Application Date** means:

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

**FATCA Deduction** means a deduction or withholding from a payment under a 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 each of:

- (a) any letter between (i) all or any of the Obligors and (ii) all or any of the Administrative Finance Parties, relating to the payment of fees by the Obligors (or any of them) to an Administrative Finance Party in its capacity as an Administrative Finance Party under the Finance Documents;

- (b) the mandate letter dated 30 October 2024 between the Sponsor and the Initial Mandated Lead Arranger, Underwriter and Bookrunner (including as amended from time to time);
- (c) the mandate letter dated 9 June 2025 between the Sponsor and the Initial Mandated Lead Arranger, Underwriter and Bookrunner;
- (d) the fee letters dated on or about the date of this Agreement between, among others, the Borrowers and the Facility Agent relating to the payment of upfront fees for the benefit of the Lenders; and
- (e) any other letter designated to be a Fee Letter by the Facility Agent and the Borrowers.

**Final Maturity Date** means the fifth anniversary of the date of this Agreement.

**Finance Documents** means this Agreement, any Assignment Agreement, any Transfer Certificate, any Compliance Certificate, any Fee Letter, any Hedging Agreement, the Intercreditor Agreement, the Supplemental Creditor Agreement, any Security Document, any Account Bank Agreement, the Deposit Account Control Agreement, any Accordion Confirmation, any Increase Confirmation, any Utilisation Request and any other document designated as a Finance Document by the Facility Agent and the Borrowers 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";
- (a) paragraph (n) of the definition of "Permitted Disposal";
- (b) paragraph (b) of the definition of "Permitted Financial Indebtedness";
- (c) paragraph (f) of the definition of "Project Documents";
- (d) the definition of "Transaction Document";
- (e) Clause 1.2 (*Construction*);
- (f) Clause 2.4 (*Finance Parties' rights and obligations*);
- (g) Clause 19.14 (*General*);
- (h) Clause 20.6 (*Authorisations*);
- (i) Clause 20.7 (*Governing law and enforcement*);
- (j) Clause 20.24 (*Pari passu ranking*);
- (k) Clause 21 (*Information undertakings*);
- (l) Clause 22 (*Positive Undertakings*);
- (m) Clause 23 (*Negative Undertakings*);
- (n) Clause 24 (*Project Undertakings*); and
- (o) Clause 25 (*Events of Default*) (other than Clause 25.29 (*Acceleration*)),

in each case of this Agreement and the definition of "Senior Finance Documents" in the Intercreditor Agreement.

**Finance Lease** means any lease or hire purchase contract, a liability under which would, in accordance with IFRS, be treated as a balance sheet liability (other than a lease or hire purchase contract which would, in accordance with IFRS in force prior to 1 January 2019 have been treated as an operating lease).

**Finance Parties** means the Initial Mandated Lead Arranger, Underwriter and Bookrunner, Mandated Lead Arrangers, the Lead Arrangers, the Facility Agent, the Technical Bank, the ES Agent, the Security Agent, the Lenders and the Hedging Banks, and **Finance Party** means any one of them, provided that where the term "Finance Party" is used in, and

construed for the purposes of, this Agreement or the Intercreditor Agreement, a Hedging Bank shall be a Finance Party only for the purposes of:

- (a) paragraph (d) of the definition of "Material Adverse Effect";
- (b) Clause 1.2.1(A) (*Construction*);
- (c) Clause 2.4 (*Finance Parties' rights and obligations*);
- (d) Clause 14.3.3 (*Indemnities to the Administrative Finance Parties*);
- (e) Clause 19.14 (*General*);
- (f) Clause 20.1.1 (*Representations*);
- (g) Clause 20.12 (*Information*);
- (h) Clause 22.4 (*Undertakings regarding the Secured Property*);
- (i) Clause 25 (*Events of Default*) (other than Clause 25.29 (*Acceleration*)); and
- (j) Clause 29 (*Conduct of business by the Finance Parties*).

**Financial Close** means the date on which the Facility Agent gives notice to the Borrowers under Clause 4.1 (*Initial conditions precedent*).

**Financial Close Longstop Date** means 31 December 2025.

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

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with IFRS, be treated as a balance sheet liability (other than any liability in respect of a lease or hire purchase contract which would, in accordance with IFRS in force prior to 1 January 2019, have been treated as an operating lease);
- (e) receivables sold or discounted (other than any receivables to the extent they are sold or discounted on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
- (g) any derivative transaction (other than a derivative transaction under which there is no credit exposure on the part of an Obligor) entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) is to be taken into account);
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution in respect of an underlying liability of an entity other than the Borrowers which liability would fall within one of the other paragraphs of this definition; and
- (i) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above.

**Financing Costs** means, in respect of any period, the aggregate of:

- (a) amounts in the nature of interest paid or payable by any Obligor under this Agreement (including default interest and sums payable under Clause 8

(Interest), Clause 9 (Interest Periods) and Clause 10 (Changes to the calculation of interest));

- (b) all commitment, agency and other fees, commissions, costs and expenses and other payments not (i) in the nature of principal paid or payable by any Obligor under this Agreement (or, as the case may be, the Fee Letters or any other Finance Document) or (ii) the subject of paragraph (a) above or paragraph (c) below; and
- (c) Hedging Costs.

**Financing Principal** means, in respect of any period, the aggregate of amounts in the nature of principal paid or payable by any Borrower under this Agreement during that period.

**Finco Accounts** means the Offshore Finco Accounts and the Onshore Finco Accounts.

**Finco Loan** means a Bibiani Finco Loan or a Chirano Finco Loan and **Finco Loans** means all or some of them as the context requires.

**Finco Loan Agreements** means the Bibiani Finco Loan Agreement and the Chirano Finco Loan Agreement and **Finco Loan Agreement** means either of them as the context requires.

**Fincos** means Bibiani Finco and Chirano Finco and **Finco** means either of them as the context requires.

**First Repayment Date** means the Quarter Date immediately following the date which is eighteen (18) Months after Financial Close.

**Fitch** means Fitch Ratings Ltd, and includes any successor to its rating business.

**Forecast Debt Service Cover Ratio** means, in respect of any Calculation Date, the average forecasted Historic Debt Service Cover Ratio expected to be achieved for the twelve (12) month period ending on each of the next four Calculation Dates (or, if less than four such Calculation Dates remain prior to the Final Maturity Date, on each succeeding Calculation Date until the Final Maturity Date), using actual figures to the extent available and, otherwise, using figures from the latest Base Case Model.

**Forecast Net Debt to EBITDA Ratio** means, in respect of any Calculation Date, the average forecasted Historic Net Debt to EBITDA Ratio expected to be achieved for the twelve (12) month period ending on each of the next four Calculation Dates (or, if less than four such Calculation Dates remain prior to the Final Maturity Date, on each succeeding Calculation Date until the Final Maturity Date) using actual figures to the extent available and, otherwise, using figures from the latest Base Case Model.

**Forward Purchase Agreement** means the \$100,000,000 revolving forward gold purchase agreement dated 12 December 2024 between Fujairah and Bibiani.

**Fujairah** means Fujairah Holding LLC.

**Fully Funded Working Capital Balance** means that the following sources, without double counting, constitute, in aggregate, an amount no less than the Working Capital Balance:

- (a) cash amounts standing to the credit of the Project Accounts of the Borrowers, the Hedging Company and the Sponsor (other than the Distributions Accounts, the Debt Service Reserve Accounts (including any cash sweep amounts), the Capex Reserve Accounts and the Upstamping Reserve Account);
- (b) Cash Equivalent Investments of the Obligors invested from the balances of the accounts referred to in paragraph (a); and
- (c) the amount available to be drawn under Facility B.

**Funding Shortfall Amount** means, on the date of a Cost to Complete Certificate, the amount (if any) by which Projected Costs exceed the Available Project Funding Amount on that date.

**Funds Flow Statement** means the funds flow statement showing the flow of funds at Financial Close provided by the Borrowers to the Facility Agent in accordance with Clause 4.1 (*Initial conditions precedent*).

**Gold Credits** means gold credits deliverable under any Stream Agreement.

**Gold Delivery Payment** has the meaning given to it in the Intercreditor Agreement.

**Gold Offtake Agreement** means:

- (a) the refining and offtake agreement dated 16 January 2023 between Chirano and MKS PAMP SA;
- (b) the refining and offtake agreement dated 17 May 2022 between Bibiani and MKS PAMP SA; and
- (c) the gold sale agreement dated 5 February 2025 between Al Etihad Gold Refinery Gold DMCC and Chirano; and
- (d) the gold sale agreement dated 5 February 2025 between Al Etihad Gold Refinery Gold DMCC and Bibiani.

**Gold Offtaker** means each offtaker under a Gold Offtake Agreement.

**Good Mining Practice** means the exercise of that degree of skill, care, prudence, operational and financial foresight and operating practice which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking as the Borrowers under the same or similar circumstances, with the exercise of skill, care, prudence, operational and financial foresight and operating practice to be substantially in accordance with internationally recognised best practices in the mining industry.

**Group** means each Obligor and each of their Subsidiaries for the time being.

**Group Structure Diagram** means the diagram showing the ownership of the Obligors as set out in Schedule 7 (*Group Structure*).

**Hedging Account** means the USD-denominated account named "Hedging Account" and held by the Hedging Company at an Offshore Account Bank, together with any replacement and substitute accounts opened with the consent of the Facility Agent and any sub-accounts of the foregoing.

**Hedging Agreement** means any master agreement, confirmation, schedule or other agreement entered into or to be entered into by the Hedging Company and any Hedging Bank for the purpose of hedging the types of liabilities and risks which the Approved Hedging Policy requires or otherwise permits to be hedged, and includes any transaction under an agreement of that kind.

**Hedging Bank** means:

- (a) any Original Hedging Bank; and
- (b) any entity which has become a Party as a Hedging Bank in accordance with Clause 26.10 (*Accession of Hedging Banks*),

which, in each case, is or has become a party to the Intercreditor Agreement as a Hedge Counterparty in accordance with the provisions of the Intercreditor Agreement.

**Hedging Company** means a wholly owned Subsidiary of the Sponsor incorporated in the British Virgin Islands and who has acceded as the Hedging Company to this Agreement.

**Hedging Costs** means any amount falling due from the Hedging Company under a Hedging Agreement except for any Hedging Termination Payment.

**Hedging Termination Payment** means any amount falling due to a Hedging Bank under a Hedging Agreement as a result of the termination or close-out of that Hedging Agreement or any transactions under it.

**Historic Debt Service Cover Ratio** means for the twelve (12) month period ending on a Calculation Date (the **HDSCR Calculation Period**), the ratio determined in accordance with the formula:

$$HDSCR = \frac{CFADS}{DS}$$

where:

- (a) **HDSCR** is the Historic Debt Service Cover Ratio for the HDSCR Calculation Period;
- (b) **CFADS** is the sum of all CFADS for the HDSCR Calculation Period; and
- (c) **DS** is the Debt Service paid in relation to the HDSCR Calculation Period.

**Historic Net Debt to EBITDA Ratio** means for the twelve (12) month period ending on a Calculation Date (the **HNDTER Calculation Period**), the ratio determined in accordance with the formula:

$$HNDTER = \frac{ND}{EBITDA}$$

where:

- (a) **HNDTER** is the Historic Net Debt to EBITDA Ratio for the HNDTER Calculation Period;
- (b) **ND** is the Net Debt on the last day of the HNDTER Calculation Period; and
- (c) **EBITDA** is EBITDA for the HNDTER Calculation Period.

**Historic Term SOFR** means, in relation to any Loan, the most recent applicable Screen Rate for a period equal in length to the Interest Period of that Loan and which is as of a day which is no more than five (5) days before the Quotation Day.

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

**IFC Performance Standards** means the International Finance Corporation's Performance Standards on Social & Environmental Sustainability dated 1 January 2012 and which are available at [www.ifc.org](http://www.ifc.org), as amended, modified or supplemented from time to time.

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

**Impaired Administrative Finance Party** means:

- (a) the Facility Agent at any time when 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, unless
  - (i) its failure to pay is caused by:
    - (A) administrative or technical error; or
    - (B) a Disruption Event; andpayment is made within five (5) Business Days of its due date; or
  - (ii) the Facility Agent is disputing in good faith whether it is contractually obliged to make the payment in question or whether it is permitted by applicable law, regulations and/or Sanctions to make the payment in question.
- (b) any Administrative Finance Party at any time when it otherwise rescinds or repudiates a Finance Document;
- (c) (if that Administrative Finance Party is also a Lender) any Administrative Finance Party at any time when it is a Defaulting Lender under paragraph (a) or (b) of the definition of "Defaulting Lender"; or

- (d) any Administrative Finance Party at any time when an Insolvency Event has occurred and is continuing with respect to it.

**Increase Confirmation** means a confirmation substantially in the form set out in Schedule 12 (*Form of Increase Confirmation*).

**Independent E&S Consultant** means IBIS Environmental Social Governance Consulting South Africa Ltd or any replacement independent environmental and social consultant appointed by the ES Agent from time to time with the prior written consent of the Borrowers (not to be unreasonably withheld or delayed) except that no consent of the Borrowers shall be required for an appointment made at a time when an Event of Default is continuing.

**Indicative Confirmation** has the meaning given to it in Clause 2.3.2(A) (*Accordion*).

**Initial Base Case Model** means the Base Case Model to be provided in accordance with Clause 4.1 (*Initial conditions precedent*).

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

- (i) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (h) above; or
- (j) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

**Insolvency Officer** means any liquidator, provisional liquidator, insolvency receiver, trustee in bankruptcy, Controller (as defined in the Corporations Act), judicial custodian or manager, compulsory manager, receiver, receiver and manager, administrative receiver, administrator or other similar officer, in each case, appointed in any jurisdiction.

**Insurance Adviser** means Willis Tower Watson plc or any replacement insurance adviser appointed by the Facility Agent from time to time with the prior written consent of the Borrowers (not to be unreasonably withheld or delayed) except that no consent of the Borrowers shall be required for an appointment made at a time when an Event of Default is continuing.

**Insurance Proceeds** means any amount paid by insurers in respect of the Insurances, including proceeds of claims, return premiums and ex gratia payments.

**Insurances** means any and all of the contracts and policies of insurance and any and all of the contracts of reinsurance (if any) that the Borrowers are required to procure and maintain in accordance with Clause 24.8 (*Insurances*), and such other policy or contract of insurance as the Facility Agent and the Borrowers agree shall be an Insurance.

**Insurer** means at any relevant time, any insurer with whom any Insurance has been placed.

**Intellectual Property Rights** means all patents, trademarks, service marks, designs, copyright, business names, trade secrets, knowhow and other intellectual property rights and interests (in each case whether registered under any statute or not).

**Intercompany Loan** means any intercompany loan advanced under an Intercompany Loan Agreement.

**Intercompany Loan Agreement** means:

- (a) each Finco Loan Agreement; and
- (b) each Subordinated Intercompany Loan Agreement.

**Intercreditor Agent** means FirstRand Bank Limited (acting through its Rand Merchant Bank Division).

**Intercreditor Agreement** means the intercreditor agreement dated on or about the date of this Agreement and made between, among others, the Sponsor, the Borrowers, the Debtors (as defined in the Intercreditor Agreement), the Security Agent, the Facility Agent and the Intercreditor Agent.

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

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

- (a) either:
  - (i) the most recent applicable Screen Rate (as of a day which is not more than five US Government Securities Business Days before the Quotation Day) for the longest period (for which the Screen Rate is available) which is less than the Interest Period of that Loan; or
  - (ii) if no such Screen Rate is available for a period which is less than the Interest Period of that Loan, the most recent SOFR for a day which is no

more than five days (and no less than two US Government Securities Business Days) before the Quotation Day; and

- (b) the most recent applicable Screen Rate (as of a day which is not more than five US Government Securities Business Days before the Quotation Day) for the shortest period (for which the Screen Rate is available) which exceeds the Interest Period of that Loan.

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

- (a) either:
  - (i) the applicable Screen Rate (as of the Specified Time) for the longest period (for which the Screen Rate is available) which is less than the Interest Period of that Loan; or
  - (ii) if no such Screen Rate is available for a period which is less than the Interest Period of that Loan, SOFR for the day which is two US Government Securities Business Days before the Quotation Day; and
- (b) the applicable Screen Rate (as of the Specified Time) for the shortest period (for which the Screen Rate is available) which exceeds the Interest Period of that Loan.

**ISDA Master Agreement** means the 2002 ISDA Master Agreement (*Multicurrency–Cross Border*) published by the International Swaps and Derivatives Association.

**Kinross Convertible Debenture** means the convertible debenture to be issued by the Sponsor to the Third Party Shareholder under the terms of the eighth amendment to the Kinross SPA.

**Kinross Deferred Note** means any secured promissory note required to be issued by the Sponsor to the Third Party Shareholder under the terms of the eighth amendment to the Kinross SPA.

**Kinross Documents** means:

- (a) the Kinross SPA
- (b) any Kinross Deferred Note; and
- (c) the Kinross Convertible Debenture.

**Kinross SPA** means the share purchase and sale agreement dated April 24, 2022, as amended by amending agreements dated May 31, 2022, June 20, 2022, July 12, 2022, July 27, 2022, August 10, 2022, February 10, 2022, February 10, 2023, March 28, 2025 and on or about the date of this Agreement, between the Third Party Shareholder, KG Africa B.V. and the Sponsor.

**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 limiting a party's obligations specifically referred to in any legal opinion required to be delivered under any Finance Document.

**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*), Clause 2.3 (*Accordion*) or 26 (*Changes to the Lenders*),

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.

**Litigation Register** means the litigation register provided by the Sponsor to the Facility Agent in accordance with Clause 4.1 (*Initial conditions precedent*).

**LMA** means the Loan Market Association.

**Loan** means a Facility A Loan or a Facility B Loan.

**Loan Life Cover Ratio** means, on any date, the figure calculated in accordance with the formula:

$$LLCR = \frac{CFADS}{PO}$$

where:

- (a) **LLCR** is the Loan Life Cover Ratio on that date;
- (b) **CFADS** is the sum of (i) CFADS contemplated in the Base Case Model for the period from (but excluding) that date up to the Final Maturity Date, discounted to present value at the weighted average of the rates of interest then applying to the outstanding Loans; and (ii) any amounts standing to the credit of the Debt Service Reserve Accounts; and
- (c) **PO** is the sum of (i) the aggregate amount of all outstanding Loans, taking into account any repayments or prepayments made on that date; and (ii) the Available Commitments under Facility B.

**Major Project Party** means any counterparty other than an Obligor to a Mining Services Contract, Power Contract, Material Expansion Project Document or Gold Offtake Agreement, or any other party designated as such by the Borrowers and the Facility Agent, in each case, as may be replaced by the Borrowers in accordance with Clause 25.30 (*Replacement Rights*).

**Majority Lenders** means:

- (a) (for the purposes of Clause 37.2.1 (*Required consents*) in the context of a waiver in relation to a proposed Utilisation of Facility A), a Lender or Lenders whose Facility A Commitments aggregate at least 66⅔ per cent. of the Total Facility A Commitments;
- (b) (for the purposes of Clause 37.2.1 (*Required consents*) in the context of a waiver in relation to a proposed Utilisation of Facility B), a Lender or Lenders whose Facility B Commitments or Facility B aggregate at least 66⅔ per cent. of the Total Facility B Commitments; and
- (c) (in any other case), a Lender or Lenders whose Commitments aggregate more than 66⅔% of the Total Commitments or, if the Total Commitments have been reduced to zero, aggregated more than 66⅔% of the Total Commitments immediately before the reduction.

**Management Services Agreement** means any management services agreement entered into between a Borrower and the Sponsor or any other member of the Group in connection with provision of staffing and other management services to such Borrower.

**Margin** means:

- (a) in respect of Loans under Facility A, the Facility A Margin; or
- (b) in respect of Loans under Facility B, the Facility B Margin.

**Material Adverse Effect** means any event or circumstance which is individually, or when taken into consideration with any other facts, circumstances or events then in existence, materially adverse to:

- (a) the financial condition, assets, operations or business of the Projects or the Borrowers or the Obligors taken as a whole;
- (b) the ability of the Obligors (taken as a whole) or any Major Project Party to perform any of its payment or other material obligations under a Finance Document or Material Project Document to which it is a party;
- (c) the legality, validity, enforceability or effectiveness of any Finance Document or Material Project Document; or
- (d) the ranking of any Transaction Security or the rights and remedies of any Finance Party under the Finance Documents.

**Material Authorisation** means each of the following:

- (a) the Mineral Rights;
- (b) the Environmental Permits;
- (c) the Accounts Permits; and
- (d) any Authorisation which is material to an Obligor's conduct of its business or to the Projects,

together, the **Material Authorisations**.

**Material Expansion Project Document** means:

- (a) the Bibiani Underground Expansion EPCM; and
- (b) each other design, construction or services contract entered into or to be entered into by an Obligor for the development of the Bibiani Underground Project (other than any Finance Document, any Mezzanine Finance Document, any Kinross Document, the Forward Purchase Agreement or any Stream Document) under which the contracted gross expenditure to be paid, or the projected revenue to be received, by the Obligors exceeds \$[Redacted – Commercially Sensitive Information] or its Equivalent.

**Material Project Documents** means:

- (a) the Mining Services Contracts;
- (b) the Power Contracts;
- (c) each Material Expansion Project Document;
- (d) the Gold Offtake Agreements; and
- (e) any other document designated as such by the Borrowers and the Facility Agent.

**Mezzanine Creditor** has the meaning given to it in the Intercreditor Agreement.

**Mezzanine Facility** means the mezzanine facility made available by the Mezzanine Creditors to Bibiani under the Mezzanine Facility Agreement.

**Mezzanine Facility Agreement** means the up to \$125,000,000 mezzanine facility agreement dated on or about the date of this Agreement between, amongst others, the Mezzanine Creditors, the Borrowers and the Sponsor.

**Mezzanine Finance Documents** has the meaning given to the term "Finance Documents" in the Mezzanine Facility Agreement.

**Mezzanine Financing Costs** means, in respect of any period, the aggregate of amounts in the nature of interest paid or payable by any Obligor under the Mezzanine Facility Agreement.

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

**Mineral Rights** means:

- (a) the mineral rights described in the Mining Concessions;
- (b) any present or future renewal, extension, modification, substitution, amalgamation or variation of any of the mineral rights described above (whether extending over the same or a greater or lesser area); and
- (c) any present or future application for or interest in any of the above, which confers or which, when granted, will confer the same or similar rights.

**Mines** means the Bibiani Mine and the Chirano Mine.

**Mining Concessions** means the Bibiani Mining Lease and the Chirano Mining Lease.

**Mining Services Contract** means:

- (a) the Mining Services Contract (Bibiani);
- (b) the mining services contract between Chirano and Maxmass Limited dated 1 February 2021 (as amended); and
- (c) any agreement which replaces any other Mining Services Contract.

**Mining Services Contract (Bibiani)** means the mining services contract dated 26 December 2021, as amended from time to time including pursuant to addendum no.5 dated 9 May 2025, between Bibiani and PW Mining International (GH) Ltd.

**Mining Services Contractor** means any counterparty to a Mining Services Contract other than an Obligor.

**Monitoring Report** means a report prepared by the Technical Adviser in accordance with Clause 21.1 (*Monitoring Report*).

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

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

The above rules will only apply to the last Month of any period. **Monthly** is to be construed accordingly.

**Moody's** means Moody's Investors Service Limited and includes any successor to its rating business.

**Net Debt** means the principal amount of the Loans less the aggregate amount at that time of Cash and Cash Equivalent Investments held by the Obligors.

**New Lender** has the meaning given to that term in Clause 26 (*Changes to the Lenders*).

**New Third Party Lender** has the meaning given to that term in Clause 2.3.6 (*Accordion*).

**Non-Consenting Lender** means any Lender which does not and continues not to consent or agree to a waiver or amendment in the event that:

- (a) a Borrower or the Facility Agent (at the request of a 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;
- (b) the consent, waiver or amendment in question requires the approval of all the Lenders; and
- (c) the Majority Lenders have consented or agreed to such waiver or amendment.

**Non-Group Entity** means any investment or entity (which is not itself an Obligor) in which any Obligor has an ownership interest.

**Obligor** means:

- (a) any Original Obligor; and
- (b) any company which becomes a Party as an **Obligor** in accordance with Clause 27.2 (*Additional Obligors*),

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

**Obligors' Agent** means the Sponsor, appointed to act on behalf of each Obligor in relation to the Finance Documents pursuant to Clause 1.6 (*Obligors' Agent*).

**Offshore Account Bank** means:

- (a) Société Générale;
- (b) FirstRand Bank Limited (acting through its Rand Merchant Bank Division); and
- (c) any other Lender, Affiliate of a Lender or other financial institution approved by the Facility Agent with which a Project Account located outside of Ghana is held from time to time and which has entered into an Offshore Account Bank Agreement,

and which in each case has not ceased to be an Offshore Account Bank in accordance with the Finance Documents.

**Offshore Account Bank Agreement** means each account bank agreement entered into or to be entered into between, among others, the Borrowers, an Offshore Account Bank and the Security Agent, relating, among other things, to the operation of any of the Project Accounts held outside of Ghana.

**Offshore Finco Account** means:

- (a) in respect of Bibiani Finco, the Offshore Finco Account (Bibiani); and
- (b) in respect of Chirano Finco, the Offshore Finco Account (Chirano).

**Offshore Finco Account (Bibiani)** means the accounts named "Offshore Finco Account" and held by Bibiani Finco at an Offshore Account Bank outside of Barbados, together with any replacement and substitute accounts opened with the consent of the Facility Agent and any sub-accounts of the foregoing.

**Offshore Finco Account (Chirano)** means the accounts named "Offshore Finco Account" and held by Chirano Finco at an Offshore Account Bank outside of Barbados, together with any replacement and substitute accounts opened with the consent of the Facility Agent and any sub-accounts of the foregoing.

**Offshore USD Proceeds Account** means:

- (a) in respect of Bibiani, any of the Offshore USD Proceeds Accounts (Bibiani); and
- (b) in respect of Chirano, the Offshore USD Proceeds Accounts (Chirano).

**Offshore USD Proceeds Accounts (Bibiani)** means the USD-denominated accounts named "Offshore USD Proceeds Account" and held by Bibiani at an Offshore Account

Bank, together with any replacement and substitute accounts opened with the consent of the Facility Agent and any sub-accounts of the foregoing.

**Offshore USD Proceeds Account (Chirano)** means the USD-denominated account named "Chirano GoldMines Operating Account" and held by Chirano at Société Générale, together with any replacement and substitute accounts opened with the consent of the Facility Agent and any sub-accounts of the foregoing (including the USD-denominated sub-account named "Chirano Gold Mines Limited" and held by Chirano at Société Générale).

**Offshore USD Trust Account** means the USD-denominated account named "Chirano Gold Mines Trust Account" and held by Chirano at Société Générale, together with any replacement and substitute accounts opened with the consent of the Facility Agent and any sub-accounts of the foregoing.

**On-Swap Agreement** means any master agreement, confirmation, schedule or other agreement entered into or to be entered into by the Hedging Company and the Sponsor in accordance with the Approved Hedging Policy, and includes any transaction under an agreement of that kind.

**Onshore Account Bank** means:

- (a) Société Générale Ghana PLC;
- (b) First National Bank Ghana Ltd;
- (c) Fidelity Bank Ghana LTD;
- (d) GCB Bank Ltd;
- (e) Ecobank Ghana Plc;
- (f) Calbank plc; and
- (g) any other Lender, Affiliate of a Lender or other financial institution approved by the Facility Agent with which a Project Account located in Ghana is held from time to time and which has entered into an Onshore Account Bank Agreement.

and which in each case has not ceased to be an Onshore Account Bank in accordance with the Finance Documents.

**Onshore Account Bank Agreement** means each account bank agreement entered into or to be entered into between, among others, the Borrowers, an Onshore Account Bank and the Security Agent, relating, among other things, to the operation of any of the Project Accounts held outside of Ghana.

**Onshore Cedis Proceeds Account** means:

- (a) in respect of Bibiani, the Onshore Cedis Proceeds Account (Bibiani); and
- (b) in respect of Chirano, the Onshore Cedis Proceeds Account (Chirano).

**Onshore Cedis Proceeds Account (Bibiani)** means the cedis-denominated account named "Onshore Cedis Proceeds Account" and held by Bibiani at an Onshore Account Bank, together with any replacement and substitute accounts opened with the consent of the Facility Agent and any sub-accounts of the foregoing.

**Onshore Cedis Proceeds Account (Chirano)** means the cedis-denominated account named "Onshore Cedis Proceeds Account" and held by Chirano at an Onshore Account Bank, together with any replacement and substitute accounts opened with the consent of the Facility Agent and any sub-accounts of the foregoing.

**Onshore Finco Account** means:

- (a) in respect of Bibiani Finco, the Onshore Finco Account (Bibiani); and
- (b) in respect of Chirano Finco, the Onshore Finco Account (Chirano).

**Onshore Finco Account (Bibiani)** means the account named "Onshore Finco Account" and held by Bibiani Finco at an Offshore Account Bank in Barbados, together with any

replacement and substitute accounts opened with the consent of the Facility Agent and any sub-accounts of the foregoing.

**Onshore Finco Account (Chirano)** means the account named "Onshore Finco Account" and held by Chirano Finco at an Offshore Account Bank in Barbados, together with any replacement and substitute accounts opened with the consent of the Facility Agent and any sub-accounts of the foregoing.

**Onshore USD Proceeds Account** means:

- (a) in respect of Bibiani, the Onshore USD Proceeds Account (Bibiani); and
- (b) in respect of Chirano, the Onshore USD Proceeds Account (Chirano).

**Onshore USD Proceeds Account (Bibiani)** means the USD-denominated account named "Onshore USD Proceeds Account" and held by Bibiani at an Onshore Account Bank, together with any replacement and substitute accounts opened with the consent of the Facility Agent and any sub-accounts of the foregoing.

**Onshore USD Proceeds Account (Chirano)** means the USD-denominated account named "Onshore USD Proceeds Account" and held by Chirano at an Onshore Account Bank, together with any replacement and substitute accounts opened with the consent of the Facility Agent and any sub-accounts of the foregoing.

**Operating Costs** means all expenses paid or projected in the relevant Base Case Model to be paid by any Obligor in the ordinary course of trading or operations, including (without double counting):

- (a) recurrent capital expenditure of a routine nature paid by any Obligor in the ordinary course of trading or operations in connection with the day-to-day operation and maintenance of the Projects (including, without limitation, fuel and electricity costs, sales, marketing, logistics, maintenance, repair and other related operating costs and expenses);
- (b) corporate overhead costs and administrative costs of any Obligor;
- (c) any operating costs and expenses incurred by the Obligors under the Project Documents or other contract entered into by an Obligor in connection with the Project (other than any Finance Document, any Mezzanine Finance Document, any Kinross Document, the Forward Purchase Agreement, any Stream Document, any employment contract and any consultancy or services contract with an individual or an individual's service company);
- (d) premiums paid with respect to insurance;
- (e) payments of fees, Taxes, dividends or royalties payable to any government agency by any Obligor;
- (f) payment of fees and costs of the advisers to the Obligors or of any advisers to any Creditor which any Obligor is required to pay directly;
- (g) all costs incurred in obtaining and maintaining all Authorisations;
- (h) Stream Delivery Payments;
- (i) Gold Delivery Payments;
- (j) amounts payable in respect of any Permitted Financial Indebtedness referred to in paragraphs (a), (h), (j), (k), (l), and (m) (but only where the relevant guaranteed Permitted Financial Indebtedness is referred to in this paragraph (j)) of the definition of Permitted Financial Indebtedness;
- (k) amounts payable under any Management Services Agreement in amounts not exceeding the amount set out in line 160 (Corporate G&A Costs) of the Consolidated CF\_with Financing Tab of the Base Case Model; and
- (l) any other costs of an operating or similar nature provided for in the Base Case Model,

but excluding:

- (i) payments to third parties in respect of liabilities to them covered by third party insurance;
- (ii) the costs of Development Activities to the extent such costs are not set out in the Base Case Model; and
- (iii) Debt Service.

**Operating Report** means a report prepared by the Borrowers in accordance with Clause 21.2 (*Operating Report*), substantially in the form set out in Schedule 15 (*Form of Operating Report*) or such other form agreed by the Technical Bank (acting reasonably and on the advice of the Technical Adviser).

**Original Financial Statements** means:

- (a) in relation to the Sponsor, the audited consolidated financial statements of the Group for the financial year ended 31 January 2025; and
- (b) in relation to each Borrower, its audited financial statements for its financial year ended 31 January 2025.

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

**Parties** means the parties to this Agreement, and Party means any one of them.

**Pension Items** means any income or charge attributable to a post-employment benefit scheme other than the current service costs and any past service costs and curtailments and settlements attributable to the scheme.

**Permitted Disposal** means:

- (a) any Disposal of Product under a Sales Contract (and, in the case of any Disposal of Product or metal credits representing Product in accordance with the Stream Agreements or Forward Purchase Agreement, subject to the terms of the Cashflow Waterfall and the Intercreditor Agreement);
- (b) any Disposal on arm's length commercial terms of assets that are surplus to requirements, or no longer required, for the proper and efficient operation of the Projects because of replacement, obsolescence or otherwise, and where the Disposal relates to the replacement of assets, the asset is replaced with one or more assets having a similar function, and comparable or superior type, value and quality taken as a whole;
- (c) any Disposal of any Permitted Investments for cash;
- (d) any Disposal which constitutes, or arises as a result of, a Permitted Security or a Permitted Transaction;
- (e) without prejudice to Clauses 25.9 (*Creditors' process*) and 25.17 (*Compulsory acquisition*), any Disposal of assets as a result of expropriation, nationalisation or other compulsory acquisition by any governmental authority;
- (f) any Disposal by way of licensing of its Intellectual Property Rights;
- (g) any Disposal in compliance with applicable court or governmental orders;
- (h) any Disposal of assets in connection with a settlement under an insurance claim relating to such assets permitted under this Agreement;
- (i) any Disposal of Cash Equivalent Investments permitted under this Agreement;
- (j) any Disposal at the request of the Security Agent in accordance with the Intercreditor Agreement and/or the Security Documents;

- (k) a sale and leaseback (or equivalent arrangements) to the extent that the same constitutes Permitted Financial Indebtedness or Permitted Financial Accommodation;
- (l) any Disposal of any shares which are not subject to Transaction Security provided that such sale is permitted and does not cause a breach of this Agreement;
- (m) any Disposal in the ordinary course of trading or operations where the higher of the market value or consideration receivable does not exceed \$[Redacted – Commercially Sensitive Information] or its Equivalent for any itemizable asset;
- (n) any payment of cash where the Disposal has not arisen as a result of a breach of the Finance Documents and does not cause a breach of the Finance Documents; and
- (o) any other Disposal made with the prior written consent of the Facility Agent.

**Permitted Financial Accommodation** means any loan, credit, guarantee or other form of financial accommodation:

- (a) in the form of any trade credit extended by any Obligor to its customers or contractors on normal commercial terms and in the ordinary course of its trading activities for a period of not more than 120 days;
- (b) arising under the Finance Documents;
- (c) in the form of a guarantee to the extent that the same constitutes Permitted Financial Indebtedness;
- (d) by an Obligor to another Obligor under an Intercompany Loan Agreement so long as:
  - (i) the creditor of such Financial Indebtedness shall grant security over its rights in respect of such Financial Indebtedness in favour of the Secured Parties on terms acceptable to the Facility Agent (acting on the instructions of the Majority Lenders, each acting reasonably); and
  - (ii) it is subject to the terms of the Intercreditor Agreement;
- (e) under the On-Swap Agreement so long as:
  - (i) each of the Sponsor and the Hedging Company shall grant security over its rights in respect of such Financial Indebtedness in favour of the Secured Parties on terms acceptable to the Facility Agent (acting on the instructions of the Majority Lenders, each acting reasonably); and
  - (ii) it is subject to the terms of the Intercreditor Agreement;
- (f) by the Sponsor which arises under or in connection with a Permitted Transaction; or
- (g) with the Facility Agent's prior written consent.

**Permitted Financial Indebtedness** means:

- (a) until first Utilisation, any Financial Indebtedness incurred under the Existing Finance Documents;
- (b) any Financial Indebtedness incurred under the Finance Documents;
- (c) any Financial Indebtedness incurred under (i) the Auramet Call Option and (ii) prior to the date which is 30 days after Financial Close, the Auramet Facility;
- (d) for so long as it is subject to the Intercreditor Agreement, any Financial Indebtedness incurred under the:
  - (i) Mezzanine Facility Agreement;
  - (ii) Forward Purchase Agreement;

- (iii) Stream Agreements;
  - (iv) Finco Loan Agreements; and
  - (v) Kinross Documents;
- (e) any Financial Indebtedness under an Intercompany Loan Agreement incurred by an Obligor to another Obligor so long as:
- (i) the creditor of such Financial Indebtedness shall grant security over its rights in respect of such Financial Indebtedness in favour of the Secured Parties on terms acceptable to the Facility Agent; and
  - (ii) it is subject to the terms of the Intercreditor Agreement;
- (f) any Financial Indebtedness incurred under an Unsecured Hedging Agreement entered into in accordance with the Approved Hedging Policy;
- (g) any Financial Indebtedness under the On-Swap Agreement so long as:
- (i) each of the Sponsor and the Hedging Company grant security over its rights in respect of such Financial Indebtedness in favour of the Secured Parties on terms acceptable to the Facility Agent; and
  - (ii) it is subject to the terms of the Intercreditor Agreement;
- (h) any Financial Indebtedness of an Obligor necessary as a matter of regulation arising under or in connection with the Environmental Bond or any other bond, guarantee, letter of credit or other financial assurance required by any governmental authority or under applicable Environmental Laws to secure the performance of environmental obligations, in an amount not exceeding the amount required by applicable regulation;
- (i) any refinancing or replacement of any Permitted Financial Indebtedness which is subject to the Intercreditor Agreement, provided such Financial Indebtedness remains subject to the Intercreditor Agreement;
- (j) any liability to trade creditors in the ordinary course of ordinary business for the acquisition of any asset or service where such acquisition is otherwise permitted under this Agreement and payment for the asset or service is deferred for a period of (i) not more than 90 days or (ii) in excess of 90 days but less than 365 days and which does not, in aggregate, exceed, \$[Redacted – Commercially Sensitive Information] or its Equivalent;
- (k) any Financial Indebtedness of the Sponsor in favour of a counterparty incurred in accordance with Good Mining Practice under contractual guarantees (excluding any bond, letter of credit or other financial assurance) required to be provided under any Project Document or other contract entered into by an Obligor in connection with the Project (other than any Finance Document, any Mezzanine Finance Document, any Kinross Document, the Forward Purchase Agreement, any Stream Document, any employment contract and any consultancy or services contract with an individual or an individual's service company);
- (l) any Financial Indebtedness incurred under Finance Leases or capital leases in the ordinary course of business and not exceeding in aggregate at any time \$[Redacted – Commercially Sensitive Information] or its Equivalent;
- (m) any guarantee by an Obligor of Permitted Financial Indebtedness of another Obligor provided the relevant guarantor would have been permitted to directly incur the relevant Permitted Financial Indebtedness and subject to the Financial Indebtedness incurred under such guarantee not exceeding the monetary cap (if any) applicable to the relevant Permitted Financial Indebtedness;
- (n) any other unsecured Financial Indebtedness which does not exceed, in aggregate with all other Financial Indebtedness incurred under this paragraph, \$[Redacted – Commercially Sensitive Information] or its Equivalent and which is not permitted under the preceding paragraphs;

- (o) any Financial Indebtedness incurred by the Sponsor arising under or in connection with a Permitted Transaction described in paragraph (b) of the definition of Permitted Transaction; and
- (p) any other Financial Indebtedness incurred with the prior written consent of the Facility Agent.

**Permitted Gold Forward Payment** has the meaning given to it in the Intercreditor Agreement.

**Permitted Investment** means Dollar-denominated Cash Equivalent Investments maturing or capable of maturing (without penalty) no later than 91 days provided that the Borrowers shall manage such investments to ensure that they have the ability to access cash needed on any day to meet their payment obligations.

**Permitted Security** means:

- (a) until first Utilisation, any Security or Quasi-Security constituted by or arising under the Existing Security Documents;
- (b) until second Utilisation, any Security or Quasi-Security constituted by or arising under the Unsecured Collateral Registrations;
- (c) any Security or Quasi-Security constituted by or arising under the Finance Documents;
- (d) any right of set-off or lien arising by operation of law and in the ordinary course of trading or operations securing an obligation that is not yet due or which is being contested in good faith;
- (e) 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 in the ordinary course of trading or operations and on the supplier's standard or usual terms and not arising as a result of any default or omission by any Obligor;
- (f) every lien for the unpaid balance of moneys owing for repairs where the unpaid balance is not yet due;
- (g) the interest of the lessor in respect of assets subject to a finance or capital lease to an Obligor, where the obligations of that Obligor under that lease constitute Permitted Financial Indebtedness;
- (h) any netting or set-off arrangement entered into by an Obligor with any bank with which it holds an account in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances of the Obligor, but, in relation to the Borrowers, only so long as that arrangement does not (i) apply in respect of the Project Accounts (except to the extent, if any, permitted under the Account Bank Agreements) (ii) permit credit balances of any Borrower to be netted or set off against debit balances of any other member of the Group and (iii) does not give rise to any Security over the assets of any Borrower in support of liabilities of any other member of the Group;
- (i) any payment or close out netting or set-off arrangement pursuant to any derivative transaction entered into by a member of the Group which constitutes Permitted Financial Indebtedness, excluding any Security or Quasi-Security under a credit support arrangement;
- (j) any Security or Quasi-Security created by a decision, order or judgment of a court of competent jurisdiction, as long as that decision, order or judgment is being contested diligently and in good faith by appropriate proceedings by the relevant Obligor, securing an amount which (when aggregated with the amount of any other liability which has the benefit of Security or Quasi-Security given by the Obligors as permitted under this paragraph (j)) does not exceed \$[Redacted – Commercially Sensitive Information];

- (k) any Security or Quasi-Security for Taxes or assessments or other governmental charges or levies, either not yet payable or which are being contested in good faith by appropriate proceedings, securing an amount which (when aggregated with the amount of any other liability which has the benefit of Security or Quasi-Security given by the Obligors as permitted under this paragraph (k)) does not exceed \$[Redacted – Commercially Sensitive Information];
- (l) any Security or Quasi-Security arising as a result of a disposal which is a Permitted Disposal;
- (m) prior to the date which is 30 days after Financial Close, any Security or Quasi-Security in respect of any Permitted Financial Indebtedness referred to in paragraph (c)(ii) of the definition of Permitted Financial Indebtedness; and
- (n) any other Security or Quasi-Security approved in writing by the Facility Agent.

**Permitted Stream Payment** has the meaning given to it in the Intercreditor Agreement.

**Permitted Transaction** means:

- (a) Development Activities, provided that such activities do not exceed:
  - (i) an aggregate value of \$[Redacted – Commercially Sensitive Information] per annum; and
  - (ii) prior to the Completion Date, an aggregate value of \$[Redacted – Commercially Sensitive Information]; and
- (b) on and from the Completion Date, any Development Activities or other activities undertaken by the Sponsor or a member of the Group (other than an Obligor), provided such activities are funded through equity, proceeds of Financial Indebtedness or Distributions, in each case which are permitted by this Agreement.

**Power Contract** means:

- (a) the power purchase agreement dated 13 March 2023 between Chirano and Genser Energy Ghana Limited; and
- (b) the power sale and purchase agreement dated 27 March 2023 between Bibiani and Electricity Company of Ghana Limited.

**Pre-Approved New Lender List** means the list of entities set out in Schedule 17 (*Pre-Approved New Lender List*).

**Product** means gold and other metals and minerals mined, extracted and derived from each Mine.

**Project Accounts** means each of the following:

- (a) the Debt Service Reserve Accounts;
- (b) the Capex Reserve Accounts;
- (c) the Upstamping Reserve Account;
- (d) the Offshore USD Trust Account;
- (e) the Offshore USD Proceeds Accounts;
- (f) the Onshore USD Proceeds Accounts;
- (g) the Onshore Cedis Proceeds Accounts;
- (h) the Offshore Finco Accounts;
- (i) the Onshore Finco Accounts;
- (j) the Sponsor Account;
- (k) the Equity Proceeds Account;
- (l) the Hedging Account;

- (m) the Distributions Accounts; and
- (n) any other accounts so designated by the Borrowers and the Facility Agent.

**Project Area** means each area which is the subject of the Mining Concessions.

**Project Assets** means all assets of whatever nature required for the purposes of, or in connection with, the Projects (including Authorisations, Mining Concessions, land, plant, machinery, buildings and intellectual property rights) wherever they are situated and whether or not they are owned by any Obligor.

**Project Capital Expenditure** means the aggregate of all Capital Expenditure scheduled to be, or, as the case may be, actually paid by or on behalf of a Borrower during the period before the Completion Date in relation to the Projects and enabling the Projects to satisfy each of the Completion Tests.

**Project Documents** means:

- (a) each Material Project Document;
- (b) the service contract dated 17 June 2025 between Bibiani and Yiko Resources Limited;
- (c) the explosive supply agreement dated 1 January 2015 between Chirano and Maxam Ghana Limited;
- (d) the installation, supply and delivery agreement in respect of low sulphur diesel fuel dated 26 May 2022 between Bibiani and Gaso Petroleum Limited;
- (e) the vendor held stock agreement dated 1 August 2023 between Chirano and Sandvik Mining & Construction Ghana Ltd;
- (f) each other contract entered into by an Obligor (other than any Finance Document, any Mezzanine Finance Document, any Kinross Document, the Forward Purchase Agreement or any Stream Document) under which the aggregate liability of, or the projected revenue to be received by, the Obligors exceeds \$[Redacted – Commercially Sensitive Information] or its Equivalent; and
- (g) any other document designated as such by the Borrowers and the Facility Agent.

**Project Life Cover Ratio** means, on any date, the figure calculated in accordance with the formula:

$$PLCR = \frac{CFADS}{PO}$$

where:

- (a) **PLCR** is the Project Life Cover Ratio on that date;
- (b) **CFADS** is the sum of CFADS contemplated in the Base Case Model for the period from (but excluding) that date up to the Project Life End Date, discounted to present value at the weighted average of the rates of interest then applying to the outstanding Loans; and
- (c) **PO** is the sum of (i) the aggregate amount of all outstanding Loans, taking into account any repayments or prepayments made on that date; and (ii) the Available Commitments under Facility B.

**Project Life End Date** means the date set out in the most recent Base Case Model as being the forecast end of mine life for both Mines.

**Projected Costs** means, on any date, without double-counting:

- (a) the amount of Project Capital Expenditure remaining to achieve the Completion Date by the earlier of the Anticipated Completion Date (as set out in the most recent Cost to Complete Certificate delivered under Clause 4.2 (*Further conditions precedent*)) and the Completion Long Stop Date;

- (b) the amount of:
- (i) Operating Costs;
  - (ii) Financing Costs;
  - (iii) Mezzanine Financing Costs; and
  - (iv) any other amounts not expressly referred to in paragraphs (i), (ii) and (iii) above,

falling due and payable by the earlier of the Anticipated Completion Date (as set out in the most recent Cost to Complete Certificate delivered under Clause 4.2 (*Further conditions precedent*)) and the Completion Long Stop Date,

in each case, as set out in the most recent Base Case Model.

**Projects** means the expansion, development, operation, maintenance and financing of the Mines in accordance with the Development Plan.

**Qualified Person** means:

- (a) where a matter is to be referred to a Qualified Person under Clause 25.20.2(A) (*Completion*), a reputable technical adviser acceptable to the Sponsor and the Facility Agent; and
- (b) where a matter is to be referred to a Qualified Person under Clause 17.5.2(C) (*Approval of updated Base Case Model*), a reputable adviser with technical and/or model auditing expertise (as applicable for the relevant matter) which is acceptable to the Sponsor and the Facility Agent.

**Quarter** means the period of three (3) Months preceding a Quarter Date (including that Quarter Date but not the immediately preceding Quarter Date) and **Quarterly** is to be construed accordingly.

**Quarter Date** means each of 31 January, 30 April, 31 July and 31 October each year.

**Quasi-Security** has the meaning given to that term in Clause 23.5 (*Negative pledge*).

**Quotation Day** means, in relation to any period for which an interest rate is to be determined, two US Government Securities Business Days before the first day of that period (unless market practice differs in the relevant syndicated loan market, in which case the Quotation Day will be determined by the Facility 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)).

**Ratio** means each of the Historic Debt Service Cover Ratio, Historic Net Debt to EBITDA Ratio, the Forecast Debt Service Cover Ratio, the Forecast Net Debt to EBITDA Ratio, the Loan Life Cover Ratio, the Project Life Cover Ratio and the Reserve Tail Ratio.

**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 Account Proportion** means, in respect of an Account Bank, the proportion of dollar- or cedi-denominated funds specified in the most recent Relevant Account Proportion Notice.

**Relevant Account Proportion Notice** means:

- (a) the notice delivered under Clause 4.1 (*Initial conditions precedent*) and accepted by the Facility Agent; and
- (b) thereafter, the most recent notice delivered by the Facility Agent in consultation with the Borrowers specifying the Relevant Account Proportion of each Account Bank.

**Relevant Market** means the market for overnight cash borrowing collateralised by US Government securities.

**Remaining Commitments** has the meaning given to that term in Clause 2.3.6 (*Accordion*).

**Repayment Date** means each Quarter Date occurring on and from the First Repayment Date.

**Repayment Instalment** means each instalment for the repayment of the principal amount of Facility A, as determined in accordance with Clause 6.1 (*Scheduled repayments of Facility A Loans*).

**Repeating Representations** means each of the representations set out in Clauses 20.2 (*Status*) to 20.5 (*Non-conflict*) (inclusive), Clauses 20.6.2 and 20.6.3 (*Authorisations*), Clause 20.7 (*Governing law and enforcement*), Clause 20.10.1 (*No Default*), Clause 20.12 (*Information*), Clause 20.13 (*Base Case Model*), Clause 20.14.3 (*Financial statements*), Clause 20.14.4 (*Financial statements*), Clause 20.17 (*Good title to assets*), Clause 20.18.1 (*Project Assets*), Clause 20.23.1 (*Ownership and group structure*), Clause 20.25 (*Security and Financial Indebtedness*), Clause 20.26 (*Ranking of Transaction Security*), Clause 20.30 (*Corrupt Acts*) and Clause 20.32 (*Sanctions*).

**Reports** means each of the due diligence reports delivered under Clause 4.1 (*Initial conditions precedent*).

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

**Reserve Tail Ratio** means, as at any Calculation Date, the ratio (expressed as a percentage) of:

- (a) the total Reserves in respect of the Mines which, according to the most recent Base Case Model, as adjusted to account for actual depletion due to mining since the date on which Base Case Model was most recently updated, are forecast to be mined and economically processed to the Project Life End Date; to
- (b) the total Reserves in respect of the Mines which, according to the Initial Base Case Model, are forecast to be mined and economically processed up to the Project Life End Date (as such date is forecasted in the Initial Base Case Model).

**Reserves** means proved and probable reserves of gold, as determined in accordance with the Canadian National Instrument 43-101 Standards of Disclosure for Mineral Projects.

**Resettlement Action Plan** means the resettlement action plan in respect of the Bibiani Mine to be provided in accordance with Clause 4.1 (*Initial conditions precedent*).

**Revenue** means, for any period, the aggregate of the following amounts (without double counting) received (or, where not received at any date of calculation, projected to be received as contemplated in the Base Case Model and in accordance with the Assumptions) during that period:

- (a) Sales Proceeds;
- (b) Insurance Proceeds;
- (c) any other amounts received under any Project Document or other contract entered into by an Obligor in connection with the Project (other than any Finance Document, any Mezzanine Finance Document, any Kinross Document, the Forward Purchase Agreement, any Stream Document, any employment contract and any consultancy or services contract with an individual or an individual's service company);
- (d) refunds of any fees, Taxes, dividends or royalties payable to any government agency in respect of the Projects;
- (e) interest on the Project Accounts;
- (f) investment earnings in respect of Permitted Investments;

- (g) net amounts received under or in relation to any Hedging Agreement;
- (h) proceeds of Permitted Disposals; and
- (i) any other amount projected in the Base Case Model to be received by the Obligors in connection with the Projects and agreed between the Facility Agent and the Borrowers to be treated as Revenue,

but excluding:

- (i) any amounts required under Clause 7.2 (*Disposal, Insurance and Equity Cure*) to be applied as a mandatory prepayment of the Loans;
- (ii) transfers from any Capex Reserve Account to any Offshore USD Proceeds Account in accordance with Clause 19.6.4;
- (iii) transfers from any Debt Service Reserve Account to any Offshore USD Proceeds Account in accordance with Clause 19.7.4;
- (iv) Insurance Proceeds in respect of liabilities to third parties;
- (v) any amounts received under or in relation to hedging arrangements (other than Hedging Agreements);
- (vi) transfers from one Obligor to another Obligor, including under an Intercompany Loan Agreement or the On-Swap Agreement;
- (vii) the proceeds of any Equity Contributions; and
- (viii) the proceeds of a Loan and any other financial accommodation (other than net amounts received under or in relation to any Hedging Agreement) made available by a Finance Party under the Finance Documents.

**Revocation Notice** has the meaning given to that term in the Offshore Account Bank Agreements or the Onshore Account Bank Agreements (as applicable).

**Rollover Loan** means one or more Facility B Loans:

- (a) made or to be made on the same day that a maturing Loan under Facility B is due to be repaid;
- (b) the aggregate amount of which is equal to or less than the amount of the maturing Facility B Loan; and
- (c) made or to be made to the same Borrower for the purpose of refinancing that maturing Facility B Loan.

**S&P** means Standard and Poor's Rating Services, a division of McGraw Hill, and includes any successor to its rating business.

**Sales Contract** means:

- (a) each Stream Agreement;
- (b) the Forward Purchase Agreement;
- (c) each Gold Offtake Agreement; and
- (d) each contract, agreement or arrangement for the sale, transfer or other Disposal of Product, in each case:
  - (i) on arm's length commercial terms and excluding any forward sale or purchase agreement; or
  - (ii) entered into with the prior written consent of the Facility Agent.

**Sales Proceeds** means moneys received or projected to be received (as applicable) from the sale of Product, including moneys received or projected to be received (as applicable) under any Sales Contract.

**Sanctioned Country** means any country, province or territory that is subject to Sanctions or otherwise with which dealings are restricted or prohibited by any Sanctions.

**Sanctioned Lender** means any Lender that is or has become a Sanctioned Person, provided that if it is a Sanctioned Person solely by virtue of paragraph (d) of the definition of "Sanctioned Person", a Lender will not be a Sanctioned Lender for as long as it will only become subject to Sanctions with the expiry of the relevant period of time.

**Sanctioned Person** means any person, whether or not having a legal personality:

- (a) listed on any list of designated persons pursuant to the application of Sanctions;
- (b) located or resident in, or organised under the laws of, any Sanctioned Country;
- (c) directly or indirectly owned or controlled, as defined by the relevant Sanctions, by a person referred to in (a) or (b) above or by the government of a Sanctioned Country; or
- (d) which otherwise is, or will become with the expiry of any period of time, subject to Sanctions.

**Sanctioned Transaction** means the use of the proceeds of any Facility, or lending, contributing or otherwise making available such proceeds to any person directly or indirectly:

- (a) to fund, participate or contribute to, any activities or business of, with or related to (or otherwise to make funds available to or for the benefit of) any person who is a Sanctioned Person;
- (b) in connection with any trade, business or other activities in any Sanctioned Country; or
- (c) in any other manner that could result in any Obligor or other member of the Group, a Finance Party or an Adviser being in breach of any Sanctions, being subject to any penalties or restrictive measures being imposed pursuant to Sanctions, or being designated as a Sanctioned Person.

**Sanctions** means any economic or financial sanctions, trade embargoes or similar measures enacted, administered or enforced by any of the following (or by any agency of any of the following):

- (a) the United Nations;
- (b) the United States of America;
- (c) the European Union or any present or future member state thereof;
- (d) Canada; or
- (e) the United Kingdom.

**Sanctions Event** means:

- (a) any Obligor or member of the Group being:
  - (i) a Sanctioned Person; or
  - (ii) a party to a Sanctioned Transaction; or
- (b) any Lender being a Sanctioned Person.

**Screen Rate** means 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).

**Secured Liabilities** has the meaning given to it in the Intercreditor Agreement.

**Secured Party** has the meaning given to it in the Intercreditor Agreement.

**Secured Property** means all of the assets which from time to time are, or are expressed to be, the subject of the Transaction Security.

**Security** means a mortgage, charge, hypothec, assignment, encumbrance, deemed trust (statutory or other), pledge, lien or other security interest securing any obligation of any person or any agreement or arrangement having a similar effect including, for the avoidance of doubt, any "security interest" as defined in sections 12(1) or 12(2) of the Australian PPSA or as defined in the Canadian PPSA, as applicable, and excluding any "security interest" as defined in section 12(3) of the Australian PPSA which does not secure payment or the performance of an obligation.

**Security Documents** means:

- (a) the Ghanaian law debenture agreement dated on or about the date of this Agreement between Bibiani, Chirano and the Security Agent;
- (b) the Ghanaian law debenture agreement dated on or about the date of this Agreement between Bibiani, Chirano and the Security Agent;
- (c) the Ghanaian law share charge agreement dated on or about the date of this Agreement between Mensin Bibiani Pty Ltd, Bibiani, Chirano Mines Limited, Chirano, Chirano Explorer Ltd, Chirano Exploration Ltd and the Security Agent;
- (d) the Australian law general security deed dated on or about the date of this Agreement between Asante Chirano Australia Pty Ltd ACN 072 977 710, Mensin Bibiani Pty Ltd ACN 616 380 173 and the Security Agent;
- (e) the Australian law specific security agreement dated on or about the date of this Agreement between the Sponsor and the Security Agent over the shares held by the Sponsor in Mensin Bibiani Pty Ltd ACN 616 380 173 and Asante Chirano Australia Pty Ltd ACN 072 977 710;
- (f) the BVI law equitable mortgage over shares dated on or about the date of this Agreement between Asante Chirano Australia Pty Ltd ACN 072 977 710, the Security Agent and Chirano Mines Limited;
- (g) the BVI law equitable mortgage over shares dated on or about the date of this Agreement between Asante Chirano Australia Pty Ltd ACN 072 977 710, the Security Agent and Chirano Explorer Ltd;
- (h) the Barbados law share security agreement dated on or about the date of this Agreement between the Sponsor and the Security Agent over the shares held by the Sponsor in Bibiani Finco;
- (i) the Barbados law share security agreement dated on or about the date of this Agreement between the Sponsor and the Security Agent over the shares held by the Sponsor in Chirano Finco;
- (j) the English law security agreement dated on or about the date of this Agreement between Bibiani and the Security Agent;
- (k) the English law security agreement dated on or about the date of this Agreement between Chirano and the Security Agent;
- (l) the English law security agreement dated on or about the date of this Agreement between Bibiani Finco and the Security Agent;
- (m) the English law security agreement dated on or about the date of this Agreement between Chirano Finco and the Security Agent;
- (n) the English law security agreement dated on or about the date of this Agreement between the Sponsor and the Security Agent;
- (o) the Swiss Law Security Documents;
- (p) the British Columbian law assignment of insurance dated on or about the date of this Agreement granted by Bibiani, Chirano and the Sponsor in favour of the Security Agent;

- (q) the South African security cession dated on or about the date of this Agreement between Bibiani and the Security Agent;
- (r) the South African security cession dated on or about the date of this Agreement between Chirano and the Security Agent;
- (s) the South African security cession dated on or about the date of this Agreement between Bibiani Finco and the Security Agent;
- (t) the South African security cession dated on or about the date of this Agreement between Chirano Finco and the Security Agent;
- (u) the South African security cession dated on or about the date of this Agreement between the Sponsor and the Security Agent;
- (v) the New York law accounts pledge agreement dated on or about the date of this Agreement between Chirano and the Security Agent;
- (w) each other document entered into by an Obligor evidencing or creating any Security in favour of the Secured Parties or the Security Agent (in its capacity as Security Agent) for or in respect of the Secured Liabilities; and
- (x) any other document designated as a Security Document by the Facility Agent and the Borrower.

**Social Law** means any law or regulation which relates to an Obligor or the Projects and relates to:

- (a) labour;
- (b) social security;
- (c) the regulation of industrial relations (between government, employers and employees);
- (d) the protection of occupational and public health and safety;
- (e) the regulation of public participation;
- (f) the protection and regulation of ownership of land rights (both formal and traditional), immovable goods and intellectual and cultural property rights;
- (g) the protection and empowerment of indigenous peoples or ethnic groups;
- (h) the projection, restoration and promotion of cultural heritage; and
- (i) all other laws and regulations providing for the protection of employees and citizens.

**SOFR** means 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).

**Specified Time** means a day or time determined in accordance with Schedule 11 (*Timetables*).

**Sponsor Account** means the USD-denominated account named "Sponsor Account" and held by the Sponsor at an Offshore Account Bank, together with any replacement and substitute accounts opened with the consent of the Facility Agent and any sub-accounts of the foregoing.

**Stock Exchange** means the Toronto Stock Exchange, or any successor exchange from time to time.

**Stop Notice** has the meaning given to that term in the Offshore Account Bank Agreements or the Onshore Account Bank Agreements (as applicable).

**Stream Agreements** means the Bibiani Stream Agreement and the Chirano Stream Agreement.

**Stream Delivery Payment** has the meaning given to it in the Intercreditor Agreement.

**Stream Document** means any Bibiani Stream Document (as defined in the Bibiani Stream Agreement) or any Chirano Stream Document (as defined in the Chirano Stream Agreement).

**Stream Purchaser** means the Bibiani Stream Purchaser or the Chirano Stream Purchaser.

**Subordinated Intercompany Loan** means any intercompany loan between Obligor provided it is subordinated pursuant to the terms of the Intercreditor Agreement as Subordinated Liabilities and each Obligor's rights thereunder are subject to Transaction Security and excludes, for the avoidance of doubt, any Finco Loan.

**Subordinated Intercompany Loan Agreement** means any loan agreement entered into by the Obligor in respect of a Subordinated Intercompany Loan.

**Subsidiary** means, in relation to any person (a **parent entity**), any other person (the **relevant entity**) (a) in respect of which that parent entity holds or owns (directly or indirectly) more than 50% of the issued share capital or issued shares of the relevant entity, excluding any part of that issued share capital or issued shares that carries no right to participate beyond a specified amount in a distribution of either profits or capital or (b) over which that parent entity has direct or indirect control (where, for the purposes of this definition, **control** means the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:

- (a) cast, or control the casting of, more than 50% of the maximum number of votes that are capable of being cast at a general meeting of the relevant entity; or
- (b) appoint or remove all, or the majority, of the directors or other equivalent officers of the relevant entity; or
- (c) give directions with respect to the operating and financial policies of the relevant entity with which the directors or other equivalent officers of the relevant entity are obliged to comply).

**Supplemental Creditor Agreement** means the agreement to be entered into or about the date of this Agreement between, among others, the Obligor, the Mezzanine Creditors, the Stream Purchasers, the Facility Agent and the Security Agent.

**Sweep Date** means, in respect of a Quarter Date, the date which is ten (10) Business Days after the date on which the Borrowers have supplied to the Facility Agent a Compliance Certificate for the relevant Quarter Date.

**Sweep, Reserve and Mezzanine Amounts** means all amounts set out in limbs (a)(viii), (a)(ix), (a)(x), (a)(xi) and (a)(xii) of the Cashflow Waterfall which are payable on a Sweep Date.

**Swiss Law Security Documents** means:

- (a) the Swiss law security agreement to be entered into between Bibiani and the Security Agent; and
- (b) the Swiss law security agreement to be entered into between Chirano and the Security Agent.

**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 by an Obligor to pay or any delay by an Obligor in paying any of them).

**Technical Adviser** means SLR Consulting (Canada) Limited and any replacement technical adviser appointed by the Facility Agent from time to time with the prior written consent of the Borrowers (not to be unreasonably withheld or delayed) except that no consent of the Borrowers shall be required for an appointment made at a time when an Event of Default is continuing.

**Technical Assumptions** means the technical assumptions incorporated in the Initial Base Case Model, as amended from time to time in accordance with this Agreement.

**Technical Bank** means FirstRand Bank Limited (acting through its Rand Merchant Bank Division) in its capacity as technical bank or any other person that replaces it in that capacity in accordance with this Agreement.

**Technical Reports** means the technical reports for each Mine prepared in accordance with the Canadian National Instrument 43-101 Standards of Disclosure for Mineral Projects.

**Term SOFR** means, in relation to any Loan:

- (a) the applicable Screen Rate as of the Specified Time and for a period equal in length to the Interest Period of that Loan; or
  - (b) as otherwise determined under Clause 10.1 (*Unavailability of Screen Rate*),
- and if, in either case, that rate is less than zero, Term SOFR will be deemed to be zero.

**Third Party Shareholder** means Kinross Gold Corporation.

**Title Document** means any original, duplicate or counterpart certificate or document of title including any certificate of title with respect to any real property or Mineral Right, document evidencing ownership of any real property or Mineral Right, and any share certificate.

**Total Available Commitment** means at any time:

- (a) where used in respect of a Facility, the aggregate of the Available Commitments of the Lenders under that Facility at that time; and
- (b) where used in respect of all Facilities, the aggregate of the Available Commitments of the Lenders under all Facilities at that time.

**Total Commitments** means the aggregate of the Total Facility A Commitments and Total Facility B Commitments being \$150,000,000 at the date of this Agreement, as may be increased pursuant to Clause 2.3 (*Accordion*).

**Total Facility A Commitments** means the aggregate of the Facility A Commitments, being \$130,000,000 at the date of this Agreement, as may be increased pursuant to Clause 2.3 (*Accordion*).

**Total Facility B Commitments** means the aggregate of the Facility B Commitments, being \$20,000,000 at the date of this Agreement, as may be increased pursuant to Clause 2.3 (*Accordion*).

**Transaction Documents** means:

- (a) the Finance Documents; and
- (b) the Project Documents.

**Transaction Security** means the Security created or expressed to be created in favour of the Security Agent or the Secured Parties under the Security Documents.

**Transfer Certificate** means a certificate substantially in the form set out in Schedule 8 (*Form of Transfer Certificate*) or any other form agreed between the Facility Agent and the Borrowers.

**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 Facility Agent executes the relevant Assignment Agreement or Transfer Certificate.

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

**Unsecured Collateral Registrations** means:

- (a) the registration made by GCB Bank with the Collateral Registry against Bibiani; and

- (b) the registration made by Fidelity Bank (Ghana) Limited with the Collateral Registry against Bibiani.

**Unsecured Financial Indebtedness Costs** means amounts payable in respect of any Permitted Financial Indebtedness referred to in paragraphs (c), (f) and (n) of the definition of Permitted Financial Indebtedness.

**Unsecured Hedging Agreement** means any master agreement, confirmation, schedule or other agreement entered into or to be entered into by an Obligor and any counterparty for the purpose of hedging commodity and FX risks, and includes any transaction under an agreement of that kind.

**Upstamping Reserve Account** means the account named "Upstamping Reserve Account" and held by Bibiani at an Onshore Account Bank, together with any replacement and substitute accounts opened with the consent of the Facility Agent and any sub-accounts of the foregoing.

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

**US Government Securities Business Day** means any day other than:

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

**US Tax Obligor** means:

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

**USD Proceeds Accounts** means the Offshore USD Proceeds Accounts or the Onshore USD Proceeds Accounts.

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

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

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

**VAT** means:

- (a) any value added tax imposed by the Value Added Tax Act, 2013 (Act 870) of Ghana, as amended;
- (b) any value added tax imposed by the Value Added Tax Act 1994 of the United Kingdom;
- (c) 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
- (d) 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) to (c) above, or imposed elsewhere.

**Withdrawal Notice** has the meaning given to that term in the Offshore Account Bank Agreements or the Onshore Account Bank Agreements (as applicable).

**Working Capital Balance** means \$30,000,000.

## 1.2 Construction

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

- (A) the **Facility Agent**, the **Technical Bank**, the **ES Agent**, the **Security Agent**, the **Mandated Lead Arrangers**, any **Finance Party**, any **Lender**, any **Hedging Bank**, any **Obligor** or any **Party** is to be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of (as the case may be), its rights and/or obligations under the Finance Documents;
- (B) a document or its form is to be construed as being **approved** if it is identified as such by the relevant approving persons or their respective legal advisers;
- (C) **assets** includes present and future properties, assets, revenues and rights of every description;
- (D) a **Finance Document**, **Project Document**, **Transaction Document** or any other agreement or instrument is a reference to that Finance Document, Project Document, Transaction Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
- (E) **guarantee** means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, the relevant obligation is assumed in order to maintain or assist the ability of that person to meet its indebtedness;
- (F) **indebtedness** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (G) 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);
- (H) a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law, but if not having the force of law, being one with which banks in the relevant jurisdiction are accustomed to comply) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
- (I) a **provision of law** is a reference to that provision as amended or re-enacted from time to time;
- (J) a **time of day** is a reference to Johannesburg time;
- (K) **Clauses** and **Schedules** are to be construed as references to clauses of and schedules to this Agreement;
- (L) an **obligation** means any duty, obligation or liability of any kind;
- (M) an amount, calculation or ratio to be **projected** or **forecast** is a reference to that amount, calculation or ratio as derived from the most recently determined Base Case Model;
- (N) a **right** means any right, privilege, power, immunity or other interest or remedy of any kind; and
- (O) the winding up, dissolution, administration or bankruptcy of a person is to be construed as to include any equivalent or analogous procedures under the laws of any jurisdiction in which the person is incorporated,

amalgamated or resident in any jurisdiction in which the person carries on business or in which any of its assets are located (including the seeking of a liquidation, winding up, appointment of bankruptcy trustee, reorganisation, dissolution, administration, arrangement, adjustment, protection or relief of debtors, insolvency and suspension of payments).

- 1.2.2 Section, Clause and Schedule headings are for ease of reference only.
- 1.2.3 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.
- 1.2.4 A Default (other than an Event of Default) is **continuing** if it has not been waived in writing or remedied and an Event of Default is **continuing** if it has not been waived in writing.
- 1.2.5 A reference in this Agreement to a page or screen of an information service displaying a rate shall include:
- (A) any replacement page of that information service which displays that rate; and
  - (B) 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 Facility Agent after consultation with the Borrowers.
- 1.2.6 Unless a contrary indication appears, any reference in this Agreement to the balance or aggregate balance of the Debt Service Reserve Accounts shall exclude any amounts standing to the credit of the Debt Service Reserve Accounts which were transferred to the Debt Service Reserve Accounts in accordance with Clause 7.1.1 (*Mandatory prepayments – cash sweep*).
- 1.3 **Currency symbols and definitions**
- 1.3.1 "\$", "USD" and "dollars" denote the lawful currency of the United States of America.
- 1.3.2 "GHS" and "cedis" denote the lawful currency of the Republic of Ghana.
- 1.4 **Inclusive expressions**
- Specifying anything in this Agreement after the words 'include' or 'for example' or a similar expression does not limit what else is included unless there is express wording to the contrary.
- 1.5 **Third party rights**
- 1.5.1 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 of the United Kingdom (the **Third Parties Act**) to enforce or to enjoy the benefit of any term of this Agreement.
- 1.5.2 Despite 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.
- 1.6 **Obligors' Agent**
- 1.6.1 Each Obligor (other than the Sponsor) by its execution of this Agreement irrevocably appoints the Sponsor (acting through one or more authorised signatories) to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:

- (A) the Sponsor 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
- (B) Each Finance Party to give any notice, demand or other communication to that Obligor pursuant to the Finance Documents to the Sponsor, 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.

1.6.2 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.

## 1.7 Canadian PPSA

(i) Any term defined in this Agreement by reference to the Australian PPSA shall also have any extended, alternative or analogous meaning given to such term in the Canadian PPSA and under other Canadian laws (including, without limitation, the *Securities Transfer Act (British Columbia)*, the *Bills of Exchange Act (Canada)* and the *Depository Bills and Notes Act (Canada)*) in all cases for the extension, preservation or betterment of the security and rights of the Facility Agent, the Security Agent and the Lenders, (ii) all references in this Agreement to a financing statement, continuation statement, amendment or termination statement shall be deemed to refer also to the analogous documents used under the Canadian PPSA, including, without limitation, where applicable, financing change statements and (iii) all references to federal or state securities law of Australia shall be deemed to refer also to analogous federal, provincial and territorial securities laws in Canada.

## 2. THE FACILITIES

### 2.1 The Facilities

Subject to the terms of this Agreement:

2.1.1 the Lenders will make Facility A available to the Borrowers; and

2.1.2 the Lenders will make Facility B available to the Borrowers.

### 2.2 Increase

2.2.1 A Borrower may by giving prior notice to the Facility Agent by no later than the date falling five (5) Business Days after the effective date of a cancellation of:

- (A) the Available Commitments of a Defaulting Lender in accordance with Clause 6.6 (*Right of cancellation in relation to a Defaulting Lender*); or
- (B) the Commitments of a Lender in accordance with:
  - (1) Clause 6.5 (*Right of repayment and cancellation in relation to a single Lender*); or

(2) Clause 7.3 (Illegality and Sanctions),

request that the Commitments relating to any Facility be increased (and the Commitments relating to that Facility shall be so increased) in an aggregate amount in dollars of up to the amount of the Commitments relating to that Facility so cancelled as follows:

- (C) 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;
- (D) 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;
- (E) 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;
- (F) the Commitments of the other Lenders shall continue in full force and effect; and
- (G) any increase in the Commitments relating to a Facility shall take effect on the date specified by the relevant Borrower in the notice referred to above or any later date on which the Facility Agent executes an otherwise duly completed Increase Confirmation delivered to it by the relevant Increase Lender.

- 2.2.2 The Facility Agent shall, 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.
- 2.2.3 The Facility 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.
- 2.2.4 An increase in the Commitments relating to a 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 not already a party thereto).
- 2.2.5 Each Increase Lender, by executing the Increase Confirmation, confirms (for the avoidance of doubt) that the Facility Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the increase becomes effective 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.
- 2.2.6 The Borrowers shall promptly on demand pay the Facility Agent the amount of all costs and expenses (including legal fees and any notarisational costs) reasonably incurred by it in connection with any increase in Commitments under this Clause 2.2.

- 2.2.7 The Increase Lender shall, on the date upon which the increase takes effect, pay to the Facility Agent (for its own account) a fee in an amount equal to the fee which would be payable under Clause 26.5 (*Assignment or transfer fee*) if the increase was a transfer pursuant to Clause 26.8 (*Procedure for assignment*) and if the Increase Lender was a New Lender.
- 2.2.8 Neither the Facility 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.
- 2.2.9 Clause 26.6.3 (*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:
- (A) an "Existing Lender" were references to all the Lenders immediately prior to the relevant increase;
  - (B) the "New Lender" were references to that "Increase Lender"; and
  - (C) a "re-transfer" and "re-assignment" were references to respectively a "transfer" and "assignment".

## 2.3 **Accordion**

- 2.3.1 At any time during the Availability Period for any Facility the Borrowers may, by giving notice to the Facility Agent (an "**Accordion Notice**"), request that the Commitments under such Facility be increased, provided that:
- (A) the increase to the Total Commitments may not be greater than USD 30,000,000; and
  - (B) all Lenders (other than any Disenfranchised Lender) have consented in writing to such notice being provided and the purposes for which such increased Commitments will be used.
- 2.3.2 No later than ten Business Days after the date on which an Accordion Notice is delivered under Clause 2.3.1, the Facility Agent shall notify the Borrowers either:
- (A) the indicative amount (if any) of the increased Commitment that each Lender is willing to assume (an "**Indicative Confirmation**"); or
  - (B) that the Lenders do not wish to assume any increased Commitment.
- 2.3.3 No later than ten Business Days after receipt by the Borrowers of an Indicative Confirmation, the Borrowers shall, by notice to the Facility Agent, either:
- (A) request that the amount of the Commitments of the relevant Lenders be increased by an amount up to the amount stated in the Indicative Confirmation; or
  - (B) notify the Facility Agent that it does not wish to increase the amount of the Commitments.
- 2.3.4 Once notified under Clause 2.3.3(A), each relevant Lender shall seek to obtain, within twenty Business Days of the Borrowers' notice under Clause 2.3.3(A), the necessary internal approvals required for such Lender to assume the increased Commitments and shall confirm to the Borrowers whether or not its necessary internal approvals have been obtained. To the extent that the relevant Lender does not obtain the necessary internal approvals, the Accordion Notice shall be deemed to be declined by that Lender.
- 2.3.5 Within five Business Days of the date on which the Borrowers have received confirmation under Clause 2.3.4, the Borrowers shall notify the Facility Agent of the increased Commitments to be assumed by the relevant Lender(s).

- 2.3.6 In the event that any Lender declines or is deemed to decline the Accordion Notice (or if the amount of Commitments confirmed in the Indicative Confirmation is less than that requested in the Accordion Notice), the Borrowers will be permitted to borrow such amount from any Eligible Institution (a **New Third Party Lender**) which is to provide the remaining part of the requested Commitments (the **Remaining Commitments**). The Borrowers shall notify the Facility Agent whether the New Third Party Lender(s) have received all necessary approvals for the New Third Party Lender(s) to assume the Remaining Commitments within 30 Business Days of the confirmation under Clause 2.3.4.
- 2.3.7 Following notifications by the Borrowers in accordance with Clauses 2.3.5 and 2.3.6, the Total Facility A Commitments or Total Facility B Commitments as the case may be shall be increased as follows:
- (A) the increased Commitments for the relevant Facility will be assumed by one or more Lenders or New Third Party Lenders (each an Accordion Lender) and each of which confirms its willingness to assume and does assume all the obligations of a Lender corresponding to that part of the increased Commitments of such Facility which it is to assume, as if it had been an Original Lender;
  - (B) the Borrowers and any Accordion Lender shall assume obligations towards one another and/or acquire rights against one another as the Borrowers and the Accordion Lender would have assumed and/or acquired had the Accordion Lender been an Original Lender in respect of that part of the increased Commitments of the relevant Facility which it is to assume;
  - (C) each Accordion Lender shall become a Party as a "Lender" and any Accordion Lender and each of the other Finance Parties shall assume obligations towards one another and acquire rights against one another as that Accordion Lender and those Finance Parties would have assumed and/or acquired had the Accordion Lender been an Original Lender in respect of that part of the increased Commitments of the relevant Facility which it is to assume;
  - (D) the Commitments of the other Lenders shall continue in full force and effect; and
  - (E) any increase in the Commitments of the relevant Facility shall take effect on the date specified by the Borrowers in the Accordion Notice or any later date on which the conditions set out in Clause 2.3.8 below are satisfied (the "**Accordion Increase Date**").
- 2.3.8 An increase in the Commitments of a Facility under this Clause 2.3 will only be effective:
- (A) on the execution by the Facility Agent of an Accordion Confirmation from the relevant Accordion Lender; and
  - (B) in relation to an Accordion Lender which is not a Lender immediately prior to the relevant increase:
    - (1) on the Accordion Lender entering into the documentation required for it to accede as a party to this Agreement and the Intercreditor Agreement; and
    - (2) on the performance by the Facility Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assumption of the increased Commitments by that Accordion Lender, the completion of which the Facility Agent shall promptly notify to the Borrowers and the Accordion Lender.

- 2.3.9 Each Accordion Lender, by executing the Accordion Confirmation, confirms (for the avoidance of doubt) that the Facility Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the increase becomes effective 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.
- 2.3.10 The Borrowers shall promptly on demand pay the Facility Agent the amount of all costs and expenses (including legal fees and any notarisation costs) reasonably incurred by the Facility Agent in connection with any increase in Commitments under this Clause 2.3.
- 2.3.11 Clause 26.6.3 (*Limitation of responsibility of Existing Lenders*) shall apply *mutatis mutandis* in this Clause 2.3 in relation to an Accordion Lender as if references in that Clause to:
- (A) an "**Existing Lender**" were references to all the Lenders immediately prior to the relevant increase;
  - (B) the "**New Lender**" were references to that "**Accordion Lender**"; and
  - (C) a "**re-transfer**" and "**re-assignment**" were references to respectively a "**transfer**" and "**assignment**".
- 2.3.12 Each Party irrevocably instructs the Facility Agent to, and the Facility Agent promptly on receipt by it shall, execute any Accordion Confirmation appearing on its face duly completed and signed and the Facility Agent shall promptly thereafter such execution confirm to the Borrowers and each other Lender that the increase has occurred and confirm to each other Lender the size of the increase.
- 2.3.13 If the Borrowers have made a request for an increase in Commitments under Clause 2.3.1 the Borrowers must supply to the Facility Agent such information as any Finance Party (through the Facility Agent) may reasonably require in connection with such increase in Commitments.

## 2.4 Finance Parties' rights and obligations

- 2.4.1 The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- 2.4.2 The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor is a separate and independent debt in respect of which a Finance Party is entitled to enforce its rights in accordance with Clause 2.4.3. The rights of each Finance Party include any debt owing to that Finance Party under the Finance Documents and, for the avoidance of doubt, any part of a Loan or any other amount owed by an Obligor which relates to a Finance Party's participation in a Facility or its role under a Finance Document (including any amount of that kind payable to the Facility Agent on its behalf) is a debt owing to that Finance Party by that Obligor.
- 2.4.3 A Finance Party may, except as specifically provided in the Finance Documents, separately enforce its rights under or in connection with the Finance Documents.

## 3. PURPOSE

### 3.1 Purpose

Each Borrower must use all amounts borrowed by it under this Agreement towards:

- 3.1.1 payment of Project Capital Expenditure in accordance with the Base Case Model;
- 3.1.2 refinancing existing Financial Indebtedness of the Borrowers in accordance with the Funds Flow Statement;
- 3.1.3 payment of Financing Costs in accordance with the Base Case Model;
- 3.1.4 general working capital requirements of the Borrowers in connection with the Projects in accordance with the Base Case Model;
- 3.1.5 funding the Upstamping Reserve Account in accordance with the Supplemental Creditor Agreement;
- 3.1.6 all fees, costs and expenses associated with the establishment of the Facilities (including legal fees and expenses, stamp duty and similar Taxes, registration fees and all fees and costs payable to the Finance Parties) in accordance with the Base Case Model; and
- 3.1.7 any other purpose that the Facility Agent (acting on the instructions of all Lenders) approves in writing,

provided that any additional Commitments provided in accordance with Clause 2.3 (*Accordion*) must be used for the purposes agreed by Lenders under Clause 2.3.1 (*Accordion*).

### 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**

- 4.1.1 The Borrowers may not deliver a Utilisation Request unless the Facility Agent has received all of the documents and other evidence listed in Part A of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Facility Agent (acting on the instructions of all Lenders). The Facility Agent must notify the Borrowers and the Lenders promptly upon being so satisfied.
- 4.1.2 Other than to the extent that any Lender notifies the Facility Agent in writing to the contrary before the Facility Agent gives the notification described in Clause 4.1.1 above, each Lender authorises (but does not require) the Facility Agent to give that notification. The Facility Agent will not be liable for any damages, costs or losses whatsoever as a result of giving any notification of that kind.
- 4.1.3 The Commitment of each Lender will be automatically cancelled at 5.00pm on the Financial Close Longstop Date if Financial Close does not occur on or before the Financial Close Longstop Date.

### 4.2 **Further conditions precedent**

The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to any proposed Utilisation under any Facility if:

- 4.2.1 on the date of the Utilisation Request and on the proposed Utilisation Date:
  - (A) no Default has occurred and is continuing and no Default would result from the proposed Loan;
  - (B) the Repeating Representations to be made by each Obligor are true in all material respects and, in the case of the Repeating Representations in Clause 20.30 (*Corrupt Acts*) and in Clause 20.32 (*Sanctions*), in all respects;
  - (C) the relevant Borrower has delivered a Cost to Complete Certificate with the Utilisation Request which:

- (1) confirms that there is no Funding Shortfall Amount or Cost Overrun and, if the Cost to Complete Certificate confirms that there is a Cost Overrun, such Cost Overrun has been funded by an Equity Contribution provided to the Borrowers, amounts standing to the credit of the Capex Reserve Account or any other funding (whether unsecured and subordinated debt or equity funding) available to the Borrowers from sources that are approved by the Facility Agent; and
- (2) confirms that the Completion Date is expected to occur by the Completion Long Stop Date,

except, in the case of the first Utilisation or the second Utilisation, if the proposed Utilisation Date is less than twenty-one (21) days after the date of the Cost to Complete Certificate provided in accordance with Clause 4.1 (*Initial conditions precedent*);

4.2.2 the relevant Borrower has certified that:

- (A) where the proceeds of the Loan shall be applied to pay Project Capital Expenditure, the proceeds of the Loan are required to pay Project Capital Expenditure in accordance with the Base Case Model within ninety (90) days of the relevant Utilisation Date and providing reasonable details as to the applicable Project Capital Expenditure;
- (B) the proceeds of the Loan will not be used to pay any overdue amount to any creditor of any Obligor or in settlement of any outstanding dispute, litigation, arbitration or administrative proceedings; and
- (C) other than in respect of the first or second Utilisation, any amounts previously disbursed have been applied in accordance with the certification provided by the relevant Borrower in the relevant Utilisation Request or will be so applied on or before the proposed Utilisation Date;

4.2.3 in the case of the first Utilisation only, prior to 10.00 am on the proposed Utilisation Date the Facility Agent has received evidence in form and substance satisfactory to the Facility Agent (acting on the instructions of all Lenders) that:

- (A) the net proceeds of the Additional Equity Amount (as set out in the Funds Flow Statement) have been paid to the Existing Sponsor Account;
- (B) the Deposit under each Stream Agreement has been paid to the relevant Finco Offshore Account; and
- (C) the Mezzanine Facility has been fully drawn by Bibiani and the net proceeds (as set out in the Funds Flow Statement) have been paid to a Project Account;

4.2.4 in the case of the second Utilisation only, on the date of the Utilisation Request and on the proposed Utilisation Date, the Facility Agent has received all of the following documents and other evidence in form and substance satisfactory to the Facility Agent (acting on the instructions of all Lenders):

- (A) evidence that:
  - (1) the Additional Equity Amount has been applied in accordance with the Funds Flow Statement and any portion of the Additional

Equity Amount which has not been spent has been transferred to the Equity Proceeds Account;

- (2) the Deposit under each Stream Agreement and the proceeds of the Mezzanine Facility have been spent in full, in accordance with the Funds Flow Statement;
- (3) each Obligor has paid in full any overdue amount payable to any creditor identified in the Creditor List in accordance with the Funds Flow Statement;
- (4) the Financial Indebtedness under each of the Existing Finance Documents described in paragraphs (a) to (d) of the definition of Existing Finance Documents has been repaid in full and discharged,

which evidence may comprise a certificate signed by a director of the Sponsor confirming such payments have been made in full, together with a copy of a pro forma balance sheet showing such amounts having been applied;

- (B) evidence that the "Existing Security Termination Event" has occurred under the deeds of release entered into with KG Africa B.V., Ecobank Ghana Plc and Fujairah;
- (C) evidence that the Hedging Company has become an Additional Obligor pursuant to Clause 27 (*Changes to the Obligors*);
- (D) an original (or, if executed in counterpart, originals) of the Hedging Agreement between the Hedging Company and FirstRand Bank Limited (acting through its Rand Merchant Bank Division);
- (E) a certified copy of the On-Swap Agreement executed by each of the parties to it;
- (F) evidence that the Obligors are in compliance with the Approved Hedging Policy; and
- (G) confirmation from the Facility Agent that it has completed all necessary 'know your customer' or other similar checks under all applicable laws and regulations in relation to each Lender.

## 5. UTILISATION

### 5.1 Delivery of a Utilisation Request

The Borrowers may utilise a Facility by delivery to the Facility Agent of a duly completed Utilisation Request not later than the Specified Time. No more than two Utilisation Requests may be delivered in any Month.

### 5.2 Completion of a Utilisation Request

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

- (A) it identifies the relevant Borrower to which the proposed Loan will be made;
- (B) it identifies the Facility to be utilised;
- (C) the proposed Utilisation Date is a Business Day within the Availability Period applicable to that Facility;
- (D) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*); and

- (E) the proposed Interest Period complies with Clause 9 (*Interest Periods*).
- 5.2.2 Only one Loan per Facility may be requested in each Utilisation Request.

**5.3 Currency and amount**

- 5.3.1 The currency specified in a Utilisation Request must be:
- (A) in relation to Facility A, dollars; and
  - (B) in relation to Facility B, dollars.
- 5.3.2 The amount of a proposed Loan must be an amount which is:
- (A) not more than the Available Facility for the relevant Facility and which is a minimum of \$5,000,000 or, if less, the Available Facility with respect to the relevant Facility; and
  - (B) in the case of the first Utilisation, not more than \$5,000,000.

**5.4 Lenders' participation**

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

**5.5 Cancellation of Commitment**

- 5.5.1 The Facility A Commitments which, at that time, are unutilised will be immediately cancelled at the end of the Availability Period for Facility A.
- 5.5.2 The Facility B Commitments which, at that time, are unutilised will be immediately cancelled at the end of the Availability Period for Facility B.

**5.6 First Utilisation**

Notwithstanding Clause 5.4 (*Lenders' participation*), the Parties acknowledge and agree that:

- 5.6.1 in respect of the first Loan to be provided under Facility A, such Loan will be provided in full by RMB International (Mauritius) Ltd (the "**First Loan Lender**") and no other Lender will be required to make any participation in such Loan available in accordance with Clause 5.4.1; and
- 5.6.2 in respect of the second Loan to be provided under Facility A, the amount of each Lender's participation in such Loan will be equal to the amount such that, the aggregate participation of all Lenders in all Loans immediately after making the second Loan, would be in accordance with Clause 5.4 (*Lenders' participation*).

**6. REPAYMENT**

**6.1 Scheduled repayments of Facility A Loans**

Without prejudice to Clause 6.3 (*Repayment on final maturity*), the Borrowers must repay the aggregate Loans under Facility A in instalments by repaying on each Repayment Date an amount equal to the relevant percentage of the aggregate Loans under Facility A borrowed as at the First Repayment Date as set out in the table below:

| Repayment Date | Repayment Instalment (%) |
|----------------|--------------------------|
|----------------|--------------------------|

|   |      |
|---|------|
| First Repayment Date  | 3.75 |
| First Quarter Date to occur after the First Repayment Date      | 3.75 |
| Second Quarter Date to occur after the First Repayment Date     | 3.75 |
| Third Quarter Date to occur after the First Repayment Date      | 3.75 |
| Fourth Quarter Date to occur after the First Repayment Date     | 6.25 |
| Fifth Quarter Date to occur after the First Repayment Date      | 6.25 |
| Sixth Quarter Date to occur after the First Repayment Date      | 6.25 |
| Seventh Quarter Date to occur after the First Repayment Date    | 9    |
| Eighth Quarter Date to occur after the First Repayment Date     | 10   |
| Ninth Quarter Date to occur after the First Repayment Date      | 10   |
| Tenth Quarter Date to occur after the First Repayment Date      | 10   |
| Eleventh Quarter Date to occur after the First Repayment Date   | 10   |
| Twelfth Quarter Date to occur after the First Repayment Date    | 9    |
| Thirteenth Quarter Date to occur after the First Repayment Date | 6    |
| Fourteenth Quarter Date to occur after the First Repayment Date | 2.25 |

## 6.2 Repayment of Facility B Loans

6.2.1 Each Borrower which has drawn a Facility B Loan shall repay that Loan on the last day of its Interest Period.

6.2.2 Without prejudice to each Borrower's obligation under Clause 6.2.1 above, if:

(A) one or more Facility B Loans are to be made available to a Borrower:

- (1) on the same day that a maturing Facility B Loan is due to be repaid by that Borrower; and
- (2) in whole or in part for the purpose of refinancing the maturing Facility B Loan; and

(B) the proportion borne by each Lender's participation in the maturing Facility B Loan to the amount of that maturing Facility B Loan is the same

as the proportion borne by that Lender's participation in the new Facility B Loans to the aggregate amount of those new Facility B Loans, the aggregate amount of the new Facility B Loans shall, unless the relevant Borrower notifies the Facility Agent to the contrary in the relevant Utilisation Request, be treated as if applied in or towards repayment of the maturing Facility B Loan so that:

- (1) if the amount of the maturing Facility B Loan exceeds the aggregate amount of the new Facility B Loans:
  - (a) the relevant Borrower will only be required to make a payment under Clause 31.1 (*Payments to the Facility Agent*) in an amount in the relevant currency equal to that excess; and
  - (b) each Lender's participation in the new Facility B Loans shall be treated as having been made available and applied by the relevant Borrower in or towards repayment of that Lender's participation in the maturing Facility B Loan and that Lender will not be required to make a payment under Clause 31.1 (*Payments to the Facility Agent*) in respect of its participation in the new Facility B Loans; and
- (2) if the amount of the maturing Facility B Loan is equal to or less than the aggregate amount of the new Facility B Loans:
  - (a) the relevant Borrower will not be required to make a payment under Clause 31.1 (*Payments to the Facility Agent*); and
  - (b) each Lender will be required to make a payment under Clause 31.1 (*Payments to the Facility Agent*) in respect of its participation in the new Facility B Loans only to the extent that its participation in the new Facility B Loans exceeds that Lender's participation in the maturing Facility B Loan and the remainder of that Lender's participation in the new Facility B Loans shall be treated as having been made available and applied by the relevant Borrower in or towards repayment of that Lender's participation in the maturing Facility B Loan.

6.2.3 At any time when a Lender becomes a Defaulting Lender, the maturity date of each of the participations of that Lender in the Facility B Loans then outstanding will be automatically extended to the last day of the Availability Period applicable to Facility B and will be treated as separate Facility B Loans (the "**Separate Loans**") denominated in the currency in which the relevant participations are outstanding.

6.2.4 If a Borrower makes a prepayment of a Facility B Loan pursuant to Clause 6.4 (*Voluntary prepayment of Loans*), a Borrower to whom a Separate Loan is outstanding may prepay that Loan by giving not less than five (5) Business Days' (or such shorter period as the Facility Agent (acting on the instructions of the Majority Lenders) may agree) prior notice to the Facility Agent.

6.2.5 The proportion borne by the amount of the prepayment of the Separate Loan to the amount of the Separate Loans shall not exceed the proportion borne by the amount of the prepayment of the Facility B Loan to the Facility B Loans. The Facility Agent will forward a copy of a prepayment notice received in accordance with Clause 6.2.4 to the Defaulting Lender concerned as soon as practicable on receipt.

6.2.6 Interest in respect of a Separate Loan will accrue for successive Interest Periods agreed by the relevant Borrower and the Facility Agent by the time and date specified by the Facility Agent (acting reasonably) and will be payable by that Borrower to the Facility Agent (for the account of that Defaulting Lender) on the last day of each Interest Period of that Loan.

6.2.7 The terms of this Agreement relating to the Facility B Loans generally shall continue to apply to Separate Loans other than to the extent inconsistent with Clauses 6.2.3 to 6.2.6 above, in which case those clauses shall prevail in respect of any Separate Loan.

### 6.3 Repayment on final maturity

The Borrowers must repay the aggregate Loans then outstanding:

6.3.1 under Facility A in full on the Facility A Final Repayment Date; and

6.3.2 under Facility B in full on the Facility B Final Repayment Date.

### 6.4 Voluntary prepayment of Loans

6.4.1 Subject to Clause 6.4.3, a Borrower may, at any time, if it gives the Facility Agent not less than ten (10) Business Days' prior notice, prepay the whole or any part of any Loan.

6.4.2 Any prepayment of part of any Loan must be a minimum amount of \$[Redacted – Commercially Sensitive Information] and is a multiple of \$[Redacted – Commercially Sensitive Information].

6.4.3 Prior to the Completion Date, a Borrower shall only be entitled to give a notice under Clause 6.4.1 if:

- (A) no Event of Default is continuing or would arise as a result of making such prepayment;
- (B) it delivers a Cost to Complete Certificate which shows that there will be no Funding Shortfall Amount following such prepayment;
- (C) the Cost to Complete Certificate delivered under paragraph (B) above certifies that the Anticipated Completion Date will occur prior to the Completion Long Stop Date; and
- (D) there will be a Fully Funded Working Capital Balance after the proposed prepayment has been made.

### 6.5 Right of repayment and cancellation in relation to a single Lender

6.5.1 Subject to Clause 6.5.4, if:

- (A) any sum payable to any Lender by an Obligor is required to be increased under Clause 12.2.3 (*Tax gross-up*); or
- (B) any Lender claims indemnification from a Borrower under Clause 12.3 (*Tax indemnity*) or Clause 13 (*Increased costs*),

any Borrower may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Facility 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 Loans.

6.5.2 On receipt of a notice of cancellation referred to in Clause 6.5.1, the Available Commitment(s) of that Lender will be immediately reduced to zero.

6.5.3 On the last day of each Interest Period which ends after a Borrower has given notice of cancellation under Clause 6.5.1 (or, if earlier, the date specified by the Borrower in that notice), the Borrowers must repay that Lender's participation in that Loan and that Lender's corresponding Commitment(s) will be immediately cancelled in the amount of the participations repaid.

6.5.4 Prior to the Completion Date, no Borrower shall be entitled to give a notice under Clause 6.5.1 without the prior written consent of the Facility Agent.

#### 6.6 **Right of cancellation in relation to a Defaulting Lender**

6.6.1 If any Lender becomes a Defaulting Lender, a Borrower may, at any time whilst the Lender continues to be a Defaulting Lender, give the Facility Agent five (5) Business Days' notice of cancellation of each Available Commitment of that Lender.

6.6.2 On the notice referred to in Clause 6.6.1 above becoming effective, each Available Commitment of the Defaulting Lender shall be immediately reduced to zero.

6.6.3 The Facility Agent shall as soon as practicable after receipt of a notice referred to in Clause 6.6.1 above, notify all the Lenders.

#### 6.7 **Voluntary prepayment of a Non-Consenting Lender**

Without prejudice to Clause 37.9 (*Replacement of a Lender*), a Borrower may, at any time a Lender has become and continues to be a Non-Consenting Lender, if it gives the Facility Agent not less than ten (10) Business Days' prior notice, prepay the whole or any part of the Loan and cancel all Commitments of that Lender.

#### 6.8 **Restrictions**

6.8.1 Any notice of cancellation or prepayment given by any Party under this Clause 6 is irrevocable and, unless a contrary indication appears in this Agreement, must specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.

6.8.2 Any prepayment under this Agreement must be made together with accrued interest on the amount prepaid, any related Break Costs and any fee under Clause 11.2 (*Prepayment fee*), but may otherwise be prepaid without premium or penalty.

6.8.3 No Borrower may repay or prepay all or any part of the Loans or cancel all or any part of the Commitment except at the times and in the manner expressly provided for in this Agreement.

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

6.8.5 If the Facility Agent receives a notice under this Clause 6 it must promptly forward a copy of that notice to either the Borrowers or the affected Lender, as appropriate.

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

#### 6.9 **Application of prepayments**

6.9.1 Any prepayment under Clause 7.1 (*Mandatory prepayments – cash sweep*) will be taken to satisfy the obligations under Clause 6.1 (*Scheduled repayments of Facility A Loans*) in repayment of Repayment Instalments under Facility A in inverse order of maturity.

6.9.2 Any prepayment under Clauses 6.4 (*Voluntary prepayment of Loans*) or 7.2 (*Disposal, Insurance and Equity Cure*) will be taken to satisfy:

(A) *first*, the obligations under Clause 6.1 (*Scheduled repayments of Facility A Loans*) in repayment of Repayment Instalments under Facility A in inverse order of maturity; and

- (B) *second*, the obligations under Clause **6.2** (*Repayment of Facility B Loans*) in repayment of Loans under Facility B on a *pro rata* basis.
- 6.9.3 Any prepayment of a Loan under Clauses 6.4 (*Voluntary prepayment of Loans*), 7.1 (*Mandatory prepayments – cash sweep*) or 7.2 (*Disposal, Insurance and Equity Cure*) must be applied *pro rata* to each Lender's participation in that Loan.
- 6.10 **Re-borrowing**
  - 6.10.1 No Borrower may re-borrow any part of Facility A which is repaid or prepaid.
  - 6.10.2 Unless a contrary indication appears in this Agreement, any part of Facility B which is repaid or prepaid may be reborrowed in accordance with the terms of this Agreement.
  - 6.10.3 No Borrower may re-borrow any part of Facility B which is prepaid under Clause 7.2 (*Disposal, Insurance and Equity Cure*).

## 7. **MANDATORY PREPAYMENT**

### 7.1 **Mandatory prepayments – cash sweep**

The Borrowers must:

- 7.1.1 on each Sweep Date occurring after the First Repayment Date when there are Loans under Facility A outstanding, deposit in the Debt Service Reserve Accounts an amount equal to:
  - (A) in respect of a Quarter Date occurring on a date when the aggregate amount of all outstanding Facility A Loans is greater than 50% of the aggregate amount of all outstanding Facility A Loans at the First Repayment Date, 60%; or
  - (B) thereafter, 50%,  
of the Excess Cash Flow (Cash Sweep) for the relevant Quarter Date (the "**Cash Sweep Amount**"); and
- 7.1.2 on each Repayment Date occurring after the First Repayment Date when there are Loans under Facility A outstanding, make a mandatory prepayment of the Loans in an amount equal to the Cash Sweep Amount for the immediately preceding Sweep Date using the funds transferred to the Debt Service Reserve Accounts on the relevant Sweep Date under Clause 7.1.1.

### 7.2 **Disposal, Insurance and Equity Cure**

Each Borrower must apply each of the following amounts received by it in prepayment of the Loans on or before the next Repayment Date:

- 7.2.1 all Insurance Proceeds representing claims under physical loss or damage insurance policies:
  - (A) to the extent that the proceeds of the claim when aggregated with all other claims in respect of the same incident are greater than \$5,000,000 or its Equivalent, except to the extent that the relevant proceeds have been or are to be applied in reinstating the asset lost or damaged in accordance with a reinstatement plan acceptable to the Majority Lenders (acting reasonably); or
  - (B) which are in excess of the amount applied or to be applied by the Borrowers in reinstating the asset lost or damaged.
- 7.2.2 the net proceeds of the cash or non-cash consideration (or an amount equivalent to that non-cash consideration) received for any Disposal, being the amount remaining after deducting all costs, expenses, taxes, liabilities, and any amounts applied towards the acquisition of a replacement asset or otherwise reasonably

incurred in connection with such sale or exchange, to the extent that the gross consideration for such sale or exchange exceeds \$5,000,000 in aggregate in any financial year;

- 7.2.3 all Compensation (or an amount equivalent to that Compensation) in an amount exceeding \$5,000,000 or its Equivalent in any financial year; and
- 7.2.4 the proceeds of an Equity Contribution provided under Clause 25.5.2 (*Breach of financial covenants*).

### 7.3 Illegality and Sanctions

If (A) in any applicable jurisdiction, it becomes unlawful for any Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in any Loan or it becomes unlawful for any Affiliate of a Lender for that Lender to do so, or (B) any Obligor or member of its Group is or becomes a Sanctioned Person or is party to a Sanctioned Transaction:

- 7.3.1 that Lender must (or, in the case if (B) above, any Lender may) promptly notify the Facility Agent upon becoming aware of that event;
- 7.3.2 upon the Facility Agent notifying the Borrowers (or, in the case of (B) above, if the relevant Lender so specifies in its notice or any subsequent notice), the Available Commitment of that Lender will be immediately cancelled; and
- 7.3.3 to the extent that the Lender's participation has not been transferred pursuant to the terms of the Finance Documents, the Borrowers must (in the case of (B) above, if the relevant Lender so specifies in its notice or any subsequent notice) repay that Lender's participation in the Loans on the last day of the Interest Period for each Loan occurring after the Facility Agent has notified the Borrowers or, if earlier, the date specified by the Lender in the notice delivered to the Facility Agent (being no earlier than the last day of any applicable grace period permitted by law) and that Lender's corresponding Commitment will be immediately cancelled in the amount of the participations repaid.

### 7.4 Change of control

- 7.4.1 If any person or group of persons acting in concert gains control of the Sponsor (a **Change of Control**) then the following provisions will apply:
  - (A) the Borrowers must promptly notify the Facility Agent upon becoming aware of that event;
  - (B) a Lender will not be obliged to fund a Utilisation; and
  - (C) if a Lender so requires and notifies the Facility Agent within thirty (30) days of any Borrower notifying the Facility Agent of the event, the Facility Agent shall, by not less than twenty (20) days' notice to the Borrowers, cancel each Available Commitment of that Lender and declare the participation of that Lender in all Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents immediately due and payable, whereupon each such Available Commitment will be immediately cancelled, any Commitment of that Lender shall immediately cease to be available for further utilisation and all such Loans, accrued interest and other amounts shall become immediately due and payable.
- 7.4.2 For the purposes of Clause 7.4.1, **control** means:
  - (A) the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
    - (1) cast, or control the casting of, more than fifty per cent (50%) of the maximum number of votes that are capable of being cast at a general meeting of the Sponsor; or

- (2) appoint or remove all, or the majority, of the directors or other equivalent officers of the Sponsor; or
- (3) give directions with respect to the operating and financial policies of the Sponsor with which the directors or other equivalent officers of the Sponsor are obliged to comply; or
- (B) the holding beneficially of more than fifty per cent (50%) of the issued share capital of the Sponsor (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital).

7.4.3 For the purposes of Clause 7.4.1, **acting in concert** means, a group of persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate, through the acquisition directly or indirectly of shares in the Sponsor by any of them, either directly or indirectly, to obtain or consolidate control of the Sponsor.

## 7.5 **Delisting or suspension of trading**

7.5.1 If the Sponsor ceases to have its common shares listed for trading on the Stock Exchange, or its common shares are suspended from trading on the Stock Exchange for more than ten (10) trading days in any twelve (12) Month period (for the avoidance of doubt, a voluntary trading halt is not to be taken to be a suspension for the purposes of this Clause), then the following provisions will apply:

- (A) the Borrowers must promptly notify the Facility Agent upon becoming aware of that event;
- (B) a Lender will not be obliged to fund a Utilisation; and
- (C) if a Lender so requires and notifies the Facility Agent within thirty (30) days of any Borrower notifying the Facility Agent of the event, the Facility Agent shall, by not less than twenty (20) days' notice to the Borrowers, cancel each Available Commitment of that Lender and declare the participation of that Lender in all Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents immediately due and payable, whereupon each such Available Commitment will be immediately cancelled, any Commitment of that Lender shall immediately cease to be available for further utilisation and all such Loans, accrued interest and other amounts shall become immediately due and payable.

## 8. **INTEREST**

### 8.1 **Calculation of interest**

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

- 8.1.1 Margin; and
- 8.1.2 Term SOFR.

### 8.2 **Payment of interest**

The Borrower to which a Loan has been made must pay accrued interest on that Loan on the last day of each Interest Period.

### 8.3 **Default interest**

8.3.1 If an Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest will accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which,

subject to Clause 8.3.2, is two per cent (2%) 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 Facility Agent (acting reasonably). Any interest accruing under this Clause 8.3 is immediately payable by the Obligor on demand by the Facility Agent.

- 8.3.2 If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:
- (A) the first Interest Period for that overdue amount will have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
  - (B) the rate of interest applying to the overdue amount during that first Interest Period will be two per cent. (2%) per annum higher than the rate which would have applied if the overdue amount had not become due.
- 8.3.3 Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

#### 8.4 **Notification of rates of interest**

The Facility Agent must promptly notify the Lenders and the Borrowers of the determination of a rate of interest under this Agreement.

#### 8.5 **Criminal rate of interest**

- 8.5.1 If any provision of this Agreement would oblige a Canadian Obligor to make any payment of interest or other amount payable to any Lender in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by such Lender of "interest" at a "criminal rate" (as such terms are construed under the *Criminal Code* (Canada)), then, notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by applicable law or so result in a receipt by such Lender of "interest" at a "criminal rate", such adjustment to be effected, to the extent necessary (but only to the extent necessary), as follows:
- (A) first, by reducing the amount or rate of interest required to be paid to such Lender under this Agreement; and
  - (B) thereafter, by reducing any fees, commissions, costs, expenses, premiums and other amounts required to be paid which would constitute interest for purposes of section 347 of the *Criminal Code* (Canada).

### 9. **INTEREST PERIODS**

#### 9.1 **Duration of Interest Periods**

- 9.1.1 Subject to Clauses 9.1.2, 9.1.3 and 9.2 (*Changes to Interest Periods*), each Interest Period will be three (3) Months.
- 9.1.2 The first Interest Period for a Loan will start on its Utilisation Date and end (without double counting) on the next Quarter Date. Each subsequent Interest Period will start on the last day of its preceding Interest Period.
- 9.1.3 An Interest Period for a Loan must not extend beyond the Final Maturity Date.

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

- 9.2.1 Prior to determining the interest rate for a Loan, the Facility Agent may shorten an Interest Period for any Loan to ensure that there are sufficient Loans (with an

aggregate amount equal to or greater than the Repayment Instalment) which have an Interest Period ending on a Repayment Date for the Borrowers to make payment of the Repayment Instalment due on that date.

9.2.2 If the Facility Agent makes any of the changes to an Interest Period referred to in this Clause 9.2, it must promptly notify the Borrowers and the Lenders.

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

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

### 9.4 **Consolidation of Loans**

If two or more Interest Periods:

9.4.1 relate to Loans under the same Facility made to the same Borrower; and

9.4.2 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.

## 10. **CHANGES TO THE CALCULATION OF INTEREST**

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

10.1.1 *Interpolated Term SOFR*: If no Screen Rate is available for the Interest Period of a Loan, the applicable Term SOFR will be the Interpolated Term SOFR for a period equal in length to the Interest Period of that Loan.

10.1.2 *Shortened Interest Period*: If no Screen Rate is available for the Interest Period of a Loan and it is not possible to calculate the Interpolated Term SOFR, the Interest Period of that Loan shall (if it is longer than the Fallback Interest Period) be shortened to the applicable Fallback Interest Period and the applicable Screen Rate for that shortened Interest Period shall be determined pursuant to the definition of "Term SOFR".

10.1.3 *Shortened Interest Period and Historic Term SOFR*: If the Interest Period of a Loan is, after giving effect to Clause 10.1.2 above, either the applicable Fallback Interest Period or shorter than the applicable Fallback Interest Period and, in either case, no Screen Rate is available for the Interest Period of that Loan and it is not possible to calculate the Interpolated Term SOFR, the applicable Term SOFR shall be the Historic Term SOFR for that Loan.

10.1.4 *Shortened Interest Period and Interpolated Historic Term SOFR*: If Clause 10.1.3 above applies but no Historic Term SOFR is available for the Interest Period of the Loan, the applicable Term SOFR shall be the Interpolated Historic Term SOFR for a period equal in length to the Interest Period of that Loan.

10.1.5 *Central Bank Rate*: If Clause 10.1.4 applies but no Interpolated Historic Term SOFR is available for the Interest Period of the Loan, the applicable Term SOFR shall be:

(A) the percentage rate per annum which is the aggregate of:

(1) the Central Bank Rate for the Quotation Day; and

(2) the applicable Central Bank Rate Adjustment; or

(B) if the Central Bank Rate for the Quotation Day is not available, the percentage rate per annum which is the aggregate of:

(1) the most recent Central Bank Rate for a day which is no more than five US Government Securities Business Days before the Quotation Day; and

(2) the applicable Central Bank Rate Adjustment.

## 10.2 Break Costs

- 10.2.1 Each Borrower must, within five (5) 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 a 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.
- 10.2.2 Each Lender must, as soon as reasonably practicable after a demand by the Facility Agent, provide to the Facility Agent and the Borrowers a certificate confirming in reasonable detail the amount of its Break Costs for any Interest Period in respect of which they become or may become payable.

## 11. FEES

### 11.1 Commitment fee

- 11.1.1 The Borrowers must pay to the Facility Agent (for the account of each Lender) in respect of each Facility a fee (in dollars) computed at the rate of forty per cent. (40%) of the Margin applicable to that Facility, calculated on that Lender's Available Commitment for the relevant Facility from the date of this Agreement to the end of the Availability Period.
- 11.1.2 The accrued commitment fee is payable on each Quarter Date, on the last day of the Availability Period and, if cancelled in full, on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.
- 11.1.3 No commitment fee is payable to the Facility 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.

### 11.2 Prepayment fee

If a Borrower prepays all or part of any Loan in accordance with:

- 11.2.1 Clause 6.4 (Voluntary prepayment of Loans) using the proceeds of additional Financial Indebtedness or an Equity Contribution raised in whole or in part for the purpose of refinancing the Financial Indebtedness under the Facilities; or
- 11.2.2 Clause 7.4 (*Change of control*),

the Borrowers must pay to the Facility Agent (for the account of each Lender to which the relevant Loan was repaid) a non-refundable prepayment fee equal to:

- (A) from the date of this Agreement until the first anniversary of the date of this Agreement, *[Redacted – Commercially Sensitive Information]*%;
- (B) from the day immediately following the first anniversary of the date of this Agreement until the second anniversary of the date of this Agreement, *[Redacted – Commercially Sensitive Information]*%; and
- (C) from the day immediately following the second anniversary of the date of this Agreement until the third anniversary of the date of this Agreement, *[Redacted – Commercially Sensitive Information]*%,

of the principal amount prepaid or repaid on the applicable prepayment or repayment date.

### 11.3 Other fees and costs

The Borrowers must pay to the relevant Finance Parties the relevant fees and other costs and expenses in the amounts and at the times set out in the Fee Letters.

## 12. TAX GROSS UP AND INDEMNITIES

### 12.1 Definitions

12.1.1 In this Agreement:

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

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

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

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

12.1.2 Unless a contrary indication appears, in this Clause 12.1 a reference to **determines** or **determined** means a determination made in the absolute discretion of the person making the determination.

### 12.2 Tax gross-up

12.2.1 Each Obligor must make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.

12.2.2 Each Borrower must 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 Facility Agent accordingly. Similarly, a Lender must notify the Facility Agent on becoming so aware in respect of a payment payable to that Lender. If the Facility Agent receives that notification from a Lender it must promptly notify the Borrowers and that Obligor.

12.2.3 If a Tax Deduction is required by law to be made by an Obligor, then an additional amount is payable by that Obligor as necessary, which leaves (after making any Tax Deduction) an amount equal to the payment which would have been due if no Tax Deduction had been required.

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

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

### 12.3 Tax indemnity

12.3.1 The Borrowers must, or must procure that another Obligor will, (within five (5) Business Days of demand by the Facility 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.

12.3.2 Clause 12.3.1 does not apply:

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

(1) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in

which that Finance Party is treated as resident for tax purposes;  
or

- (2) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,

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

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

(1) is compensated for by an increased payment under Clause 12.2 (*Tax gross-up*); or

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

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

12.3.4 A Protected Party must, on receiving a payment from an Obligor under this Clause 12.3, notify the Facility Agent.

#### 12.4 Tax Credit

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

12.4.1 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

12.4.2 that Finance Party has obtained and utilised that Tax Credit,

the Finance Party must 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.

#### 12.5 Stamp taxes

The Borrowers must (or must procure that another Obligor will) pay and, within five (5) Business Days of demand, indemnify each Finance Party against any cost, loss or liability that Finance Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document except Transfer Certificates (but including any Transfer Certificate arising as a result of an assignment or transfer made pursuant to Clause 15 (*Mitigation by the Lenders*), while an Event of Default is continuing or otherwise at the request of an Obligor).

#### 12.6 VAT

12.6.1 All amounts expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to Clause 12.6.2, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document and that Finance Party is required to account to the relevant tax authority for the VAT, such Finance Party shall promptly provide an appropriate VAT invoice to such Party and, where such an invoice has been provided, that Party must pay to the Finance Party (in addition to and at the same time as paying any other consideration for that supply) an amount equal to the amount of the VAT (and the Finance Party must promptly provide an appropriate VAT invoice to that Party).

- 12.6.2 If VAT is or becomes chargeable on any supply made by any Finance Party (the **Supplier**) to any other Finance Party (the **Recipient**) under a Finance Document, and any Party other than the Recipient (the **Relevant Party**) is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):
- (A) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this paragraph (A) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
  - (B) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- 12.6.3 Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party or (at the election of a Borrower where such Party is a member of the Group) the Borrowers must reimburse or indemnify (as the case may be) that Finance Party for the full amount of that cost or expense, including that part of it as represents VAT, except to the extent that the Finance Party reasonably determines that it is entitled to credit or repayment in respect of that VAT from the relevant tax authority.
- 12.6.4 Any reference in this Clause 12.6 to any Party, at any time when that Party is treated as a member of a group for VAT purposes, includes (where appropriate and unless the context otherwise requires) a reference to the representative member of that group at that time.
- 12.6.5 In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by that Finance Party, that Party must promptly provide the Finance Party with details of that Party's VAT registration and all other information as is reasonably requested in connection with the Finance Party's VAT reporting requirements in relation to that supply.

## 12.7 **FATCA Information**

- 12.7.1 Subject to Clause 12.7.3, each Party must, within ten (10) Business Days of a reasonable request by another Party:
- (A) confirm to that other Party whether it is:
    - (1) a FATCA Exempt Party; or
    - (2) not a FATCA Exempt Party;
  - (B) supply to that other Party all forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
  - (C) supply to that other Party all forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.
- 12.7.2 If a Party confirms to another Party pursuant to Clause 12.7.1(A) 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 must notify that other Party reasonably promptly.

12.7.3 Clause 12.7.1 does not oblige any Finance Party to do anything, and Clause 12.7.1(C) does not oblige any other Party to do anything, which would, or could reasonably be anticipated to, constitute a breach of:

- (A) any law or regulation;
- (B) any fiduciary duty; or
- (C) any duty of confidentiality.

12.7.4 If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with Clauses 12.7.1(A) or (B) above (including, for the avoidance of doubt, where paragraph (C) above applies), then that Party will be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until the Party in question provides the requested confirmation, forms, documentation or other information.

## 12.8 **FATCA Deduction**

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

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

## 13. **INCREASED COSTS**

### 13.1 **Increased Costs**

13.1.1 Subject to Clause 13.3 (*Exceptions*) each Borrower shall, within three (3) Business Days of a demand by the Facility Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of:

- (A) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation;
- (B) compliance with any law or regulation made after the date of this Agreement; or
- (C) the implementation or application of or compliance with Basel III, CRD IV or CRR or any law or regulation that implements or applies Basel III, CRD IV or CRR.

13.1.2 In this Agreement **Increased Costs** means:

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

which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its

Commitment or funding or performing its obligations under any Finance Document.

## 13.2 Increased Cost claims

- 13.2.1 A Finance Party intending to make a claim pursuant to Clause 13.1 (*Increased Costs*) shall notify the Facility Agent of the event giving rise to the claim, following which the Facility Agent shall promptly notify the Borrowers, except that it shall not be required to disclose any information that is confidential or proprietary (as determined by such Finance Party in its sole discretion acting in good faith).
- 13.2.2 Each Finance Party shall, as soon as practicable after a demand by the Facility Agent, provide a certificate confirming the amount of its Increased Costs.
- 13.2.3 Any event giving rise to a claim pursuant to Clause 13.1 (*Increased Costs*) must have been notified by a Finance Party to the Facility Agent within 365 days of the later of the relevant Finance Party becoming aware of such event and that such event results or is reasonably likely to result in Increased Costs, in order for the Borrowers to be liable for such claim under Clause 13.1 (*Increased Costs*).

## 13.3 Exceptions

- 13.3.1 Clause 13.1 (*Increased Costs*) does not apply to the extent any Increased Cost is:
- (A) attributable to a Tax Deduction required by law to be made by an Obligor;
  - (B) attributable to a FATCA Deduction required to be made by a Party;
  - (C) compensated for by Clause 12.3 (*Tax indemnity*) (or would have been compensated for under Clause 12.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in Clause 12.3.2 (*Tax indemnity*) applied); or
  - (D) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.
- 13.3.2 In this Clause 13.3 reference to a Tax Deduction has the same meaning given to the term in Clause 12.1 (*Definitions*).

## 14. OTHER INDEMNITIES

### 14.1 Currency indemnity

- 14.1.1 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:
- (A) making or filing a claim or proof against that Obligor;
  - (B) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,
- that Obligor must as an independent obligation, within five (5) Business Days of demand, indemnify each Finance Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.
- 14.1.2 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.

## 14.2 Other indemnities

Each Borrower must (or must procure that an Obligor will), within five (5) Business Days of demand, indemnify each Finance Party against any cost, loss or liability incurred by that Finance Party as a result of:

- 14.2.1 the occurrence of any Event of Default;
- 14.2.2 a failure by an Obligor to pay any amount due under a Finance Document on its due date (subject to any applicable grace period), including without limitation any cost, loss or liability arising as a result of Clause 30 (*Sharing among the Finance Parties*);
- 14.2.3 funding, or making arrangements to fund, its participation in a Loan requested by a Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone);
- 14.2.4 a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by a Borrower;
- 14.2.5 the exercise by a Finance Party of any of its rights and remedies under any of the Finance Documents; or
- 14.2.6 non-compliance with any law or regulation relating to the Projects, including any Environmental Law or Environmental Permit.

## 14.3 Indemnities to the Administrative Finance Parties

- 14.3.1 Each Borrower must within five (5) Business Days of demand indemnify each Administrative Finance Party and every Insolvency Officer and Delegate against:
  - (A) any failure by a Borrower to comply with its obligations under Clause 16 (*Costs and expenses*);
  - (B) any cost, loss or liability incurred by that Administrative Finance Party, Insolvency Officer or Delegate (acting reasonably) as a result of:
    - (1) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
    - (2) instructing the Advisers and any other lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under the Finance Documents; and
  - (C) any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by that Administrative Finance Party, Insolvency Officer or Delegate (otherwise than by reason of that Administrative Finance Party, Insolvency Officer or Delegate's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability of the Facility Agent pursuant to Clause 31.12 (*Disruption to payment systems etc.*) notwithstanding the Facility Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent) in acting as Administrative Finance Party, Insolvency Officer or Delegate under and in accordance with the Finance Documents.
- 14.3.2 Each Borrower must within five (5) Business Days of demand indemnify the Facility Agent against any cost, loss or liability incurred by the Facility Agent (acting reasonably) as a result of investigating any event which it reasonably believes is a Default.
- 14.3.3 Each Borrower must within five (5) Business Days of demand indemnify the Security Agent and every Insolvency Officer and Delegate against any cost, loss or liability reasonably incurred by any of them as a result of:

- (A) the taking, holding, protection or enforcement of the Security Documents;
- (B) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent and each Insolvency Officer and Delegate by the Finance Documents or by law;
- (C) any default by a Borrower in the performance of any of the obligations expressed to be assumed by it in the Finance Documents; or
- (D) otherwise acting as Security Agent, Insolvency Officer or Delegate under the Finance Documents or which otherwise relates to any of the Secured Property,

provided that the Security Agent and every Insolvency Officer and Delegate may, in priority to any payment to the other Finance Parties, indemnify itself out of the Secured Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in Clause 14.3.3 and has a lien on the Security Documents and the proceeds of the enforcement of the Security Documents for all moneys payable to it.

## 15. MITIGATION BY THE LENDERS

### 15.1 Mitigation

15.1.1 Each Finance Party must, in consultation with the Borrowers, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount (or increased amount) becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.3(A) (*Illegality and Sanctions*), Clause 12 (*Tax gross up and indemnities*) or Clause 13 (*Increased costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.

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

### 15.2 Limitation of liability

15.2.1 Each Borrower must within five (5) Business Days of demand indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 15.1 (*Mitigation*).

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

## 16. COSTS AND EXPENSES

### 16.1 Transaction expenses

Each Obligor must, within five (5) Business Days of demand, pay the Administrative Finance Parties (in the case of the Facility Agent, for itself and each Lender) the amount of all out-of-pocket costs and expenses (including the fees, costs and expenses of the Advisers and any other legal, technical and other consultants and advisers, and notary costs, Taxes, registration costs and translation costs) reasonably incurred (subject to any pre-agreed caps) by any of them in connection with the negotiation, preparation, printing, execution, syndication and perfection of:

16.1.1 the Transaction Documents and any other documents referred to in this Agreement; and

16.1.2 any other Transaction Documents executed after the date of this Agreement.

### 16.2 Amendment costs

If:

- 16.2.1 an Obligor requests an amendment, waiver or consent;
- 16.2.2 an amendment is required pursuant to Clauses 31.11.1 or 31.11.2 (*Change of currency*); or
- 16.2.3 an amendment is made which relates to the matters in paragraphs (A) and (B) of Clause 37.6.1 (*Replacement of Screen Rate*),

each Obligor must, within five (5) Business Days of demand, reimburse each of the Administrative Finance Parties (in the case of the Facility Agent, for itself and each Lender) for the amount of all costs and expenses (including the fees, costs and expenses of legal, technical and other consultants and advisers) reasonably incurred (subject to any pre-agreed caps) by each of them without duplication (and, in the case of the Security Agent, by any Insolvency Officer or Delegate) in responding to, evaluating, negotiating or complying with that request or requirement.

### 16.3 **Enforcement and preservation costs**

- 16.3.1 Each Obligor must, within five (5) Business Days of demand, pay to each Finance Party the amount of all costs and expenses (including legal fees) incurred by that Finance Party or any Insolvency Officer in connection with the enforcement of, or the realisation or preservation of any rights under, any Finance Document (whether before or after the Enforcement Date) and any proceedings instituted by or against the Security Agent as a consequence of taking or holding the benefit of the Security Documents or enforcing those rights.
- 16.3.2 Each Obligor must pay promptly, and in any event before any penalty becomes payable, any stamp, documentary, registration or similar Tax payable in connection with the entry into, registration, performance, enforcement or admissibility in evidence of the Security Documents and any amendment, supplement, waiver, consent or release and must indemnify the Security Agent against any liability with respect to or resulting from any delay in paying or omission to pay that Tax.

### 16.4 **Advisers' costs and expenses**

Each Obligor must, within five (5) Business Days of demand, pay to each of the applicable Administrative Finance Parties all fees, costs and expenses reasonably incurred in connection with work carried out by the Advisers in relation to the Projects including ongoing costs for technical and environmental reports contemplated by the Finance Documents (including disbursements), together with the costs of all site visits made by any Finance Party or any Adviser in accordance with this Agreement, including reasonable and evidenced travel and accommodation expenses, on terms approved by the Borrowers.

## 17. **BASE CASE MODEL**

### 17.1 **Calculations**

Any amount or figure to be calculated or estimated under or for the purposes of the definitions of 'CFADS', 'EBITDA', 'Historic Debt Service Cover Ratio', 'Historic Net Debt to EBITDA Ratio', 'Forecast Debt Service Cover Ratio', 'Forecast Net Debt to EBITDA Ratio', 'Loan Life Cover Ratio', 'Net Debt', 'Project Life Cover Ratio', 'Operating Costs', 'Project Capital Expenditure', 'Projected Costs', 'Reserve Tail Ratio', and 'Revenue' is to be calculated in each case on the basis of the most recent Base Case Model approved (or taken to be approved) in accordance with this Clause 17, accounts and other financial information provided under Clause 21 (*Information undertakings*).

### 17.2 **Update of Base Case Model**

The Borrowers must provide an updated Base Case Model:

- 17.2.1 annually, within the 12 month period prior to 31 May in each year;

- 17.2.2 promptly upon becoming aware of any of the events described below, or if requested by the Technical Bank (acting in consultation with the Technical Adviser) after any of the events described below has occurred:
- (A) any material change to the Development Plan is made in accordance with this Agreement;
  - (B) the Anticipated Completion Date is forecast in any Cost to Complete Certificate to occur after the Completion Long Stop Date;
  - (C) the projected occurrence of any material variation to the Project Capital Expenditure to be incurred prior to the Completion Long Stop Date from that set out in the current Base Case Model;
  - (D) the Borrowers have delivered a Cost to Complete Certificate to the Facility Agent which shows that there is a Cost Overrun;
  - (E) any material negative change to projected cash flows after incorporating any change in assumptions regarding revenues, costs and Taxes or any interruption to the operation of the Project; and
  - (F) a change to the Base Case Model under Clause 17.5.2(C) is required following the determination of a Qualified Person,
- provided that the Borrowers may make non-material changes to the Base Case Model on not less than 10 Business Days' notice to the Technical Bank; and
- 17.2.3 upon request by the Technical Bank if any Default has occurred and is continuing and the Technical Bank reasonably considers that such update shall show that there has been a material change to any of the items referred to in Clause 17.2.2 above.

### 17.3 Delivery of updated Base Case Model

- 17.3.1 When required under Clause 17.2 (*Update of Base Case Model*), the Borrowers must provide to the Technical Bank a copy of the updated Base Case Model promptly and in any event in relation to Clause 17.2.2, as soon as reasonably practicable after a Borrower becomes aware of the relevant matter or the Technical Bank gives notice that it requires an update of the Base Case Model, as the case may be.
- 17.3.2 The Borrowers must:
- (A) make any proposals in relation to the Base Case Model (including Assumptions) in good faith after careful consideration and enquiry and such proposals will genuinely reflect views which it believes in good faith to be reasonable in the circumstances; and
  - (B) provide with each updated Base Case Model delivered to the Technical Bank particulars of any difference between the updated Base Case Model and the Base Case Model most recently provided by a Borrower to the Technical Bank.
- 17.3.3 The Base Case Model will be maintained in materially the same form as the Initial Base Case Model (unless the Borrowers and the Technical Bank otherwise agree), however:
- (A) the Technical Bank or any Borrower may propose changes to the Base Case Model which it believes are required in order to correct any historical data known to be inaccurate or correct any manifest error in the Base Case Model; and
  - (B) any Borrower may make immaterial changes to the Base Case Model upon written notice to the Facility Agent and the Technical Bank.

#### 17.4 Considerations in updating the Base Case Model

For the purposes of updating the Base Case Model under this Clause 17 the Borrowers must:

- 17.4.1 use Technical Assumptions that are consistent with the Bibiani Underground Feasibility Study and the Technical Reports (except to the extent that there have been departures from the Bibiani Underground Feasibility Study and the Technical Reports and those changes have been reflected in the Initial Base Case Model or a Base Case Model reviewed by the Technical Adviser and approved by the Technical Bank), as adjusted to reflect any recommendations made by the Technical Adviser and agreed with the Borrowers;
- 17.4.2 adjust the price assumption for gold using the same discounting methodology as the initial Economic Assumptions as follows:
  - (A) *first year*: linear monthly reversion from the median consensus spot price for gold for the current year published by Bloomberg ("**Consensus Price**") from the date on which the Base Case Model is updated to 31 December of the relevant year;
  - (B) *second year*: 5% discount to the Consensus Price;
  - (C) *third year*: 10% discount to the Consensus Price;
  - (D) *fourth year*: 15% discount to the Consensus Price; and
  - (E) thereafter: 20% discount to the Consensus Price;
- 17.4.3 where possible, take into account actual Revenue, Operating Costs and Capital Expenditure and actual performance of the Mines more generally; and
- 17.4.4 only include mineral reserves for the Mines in the Base Case Model to the extent they constitute Reserves.

#### 17.5 Approval of updated Base Case Model

- 17.5.1 The Technical Bank will review each updated Base Case Model delivered to it by a Borrower. If after conducting that review, the Technical Bank approves the updated Base Case Model, the Technical Bank will promptly give written notice to the Borrowers of its approval and from the time that notice is given, the updated Base Case Model will be the Base Case Model for all purposes under this Agreement. In determining whether it agrees with the Technical Assumptions included by the Borrowers in the updated Base Case Model, the Technical Bank may submit those Technical Assumptions to the Technical Adviser and obtain the Technical Adviser's recommendations in respect of those assumptions.
- 17.5.2 If the Technical Bank does not approve an updated Base Case Model provided under Clause 17.3 (*Delivery of updated Base Case Model*):
  - (A) the Technical Bank will notify the Borrowers that the updated Base Case Model has not been approved within twenty (20) Business Days of receipt of the updated Base Case Model, provided that:
    - (1) if the Technical Bank fails to provide such notice within twenty (20) Business Days of receipt of the updated Base Case Model; and
    - (2) the Borrowers have followed up with the Technical Bank in accordance with the following process:
      - (a) by email to the Technical Bank and the Facility Agent no earlier than ten (10) Business Days and no later than fifteen (15) Business Days following receipt of the updated Base Case Model; and

- (b) by telephone to senior team members of the Technical Bank and the Facility Agent no earlier than fifteen (15) Business Days and no later than seventeen (17) Business Days following receipt of the updated Base Case Model,

the updated Base Case Model (including the Assumptions contained therein) shall be deemed approved and shall become the Base Case Model for all purposes under this Agreement;

- (B) if the Technical Bank notifies the Borrowers in accordance with 17.5.2(A), the Borrowers and the Technical Bank must negotiate in good faith to agree the Base Case Model and the Assumptions on which it is based. If the Parties are unable to reach agreement by the date falling twenty (20) Business Days after the date the Technical Bank gave the notice under Clause 17.5.2(A), then the dispute (including any disputed Assumptions) shall be referred to, and determined by, a Qualified Person in accordance with Clause 18 (*Submissions to a Qualified Person*);
- (C) upon the determination of the Qualified Person, the Borrowers shall promptly deliver an updated Base Case Model reflecting the determination of the Qualified Person (as required) to the Technical Bank in accordance with Clause 17.2.2(F) and that updated Base Case Model will be the Base Case Model for all purposes under this Agreement.

#### 17.6 Existing Base Case Model

Subject to the provisions of Clause 17.5, until the Technical Bank confirms that it has approved an updated Base Case Model under this Clause 17, the previous Base Case Model delivered to the Technical Bank under this Agreement will be the Base Case Model for all purposes under this Agreement.

#### 18. SUBMISSIONS TO A QUALIFIED PERSON

- 18.1 Where a matter is to be referred to a Qualified Person under Clause 17.5.2(C) (*Approval of updated Base Case Model*) or Clause 25.20.2(A) (*Completion*), the Facility Agent shall promptly nominate a relevant Qualified Person to determine the matter so referred.
- 18.2 The Qualified Person shall be instructed by both the Facility Agent and the Borrowers (or, if the Qualified Person is unable to be jointly appointed, instructed by the Facility Agent but with reliance on its decision to be given to the Borrowers by the Qualified Person).
- 18.3 The Facility Agent and the Borrowers must instruct the Qualified Person to supply his/her decision no later than 20 Business Days after the date of referral.
- 18.4 The Borrowers and the Facility Agent must provide the Qualified Person with their proposal in relation to the dispute together with appropriate supporting evidence.
- 18.5 Neither the Borrowers nor any Finance Party shall engage in ex parte (unilateral) communications with the Qualified Person.
- 18.6 Any appointment of a Qualified Person under this Agreement must be notified by the Borrowers to each Finance Party (or, if appointed solely by the Facility Agent, by the Facility Agent) promptly following such appointment.
- 18.7 Subject to Clause 18.8 below, a Qualified Person need not choose either party's proposal and is free to make his/her own determination.
- 18.8 The determination of a Qualified Person must be within the range of values proposed by the Borrowers and the Facility Agent and, if not, will be adjusted to the nearest of those values.
- 18.9 A Qualified Person's determination is (except in the case of manifest error) final and binding on each Party.
- 18.10 The Qualified Person will act as an expert and not an arbitrator.

- 18.11 The costs of any Qualified Person will be paid as follows:
- 18.11.1 where a matter is to be referred to a Qualified Person under Clause 17.5.2(C) (*Approval of updated Base Case Model*), the Qualified Person shall determine how and by whom the fees and expenses of the Qualified Person, are to be paid. Pending the Qualified Person's decision as to the allocation of the fees and expenses of the Qualified Person, the fees and expenses of the Qualified Person shall be borne equally by the Borrowers and the Facility Agent and paid promptly on request; or
- 18.11.2 where a matter is to be referred to a Qualified Person under Clause 25.20.2(A) (*Completion*), the costs of any Qualified Person will be paid by the Borrowers.

## 19. PROJECT ACCOUNTS

### 19.1 Establishment of Project Accounts

- 19.1.1 The Obligors must, on or before Financial Close, open, maintain and operate each Project Account (other than the Hedging Account), in accordance with the Onshore Account Bank Agreements and the Offshore Account Bank Agreements.
- 19.1.2 The Hedging Company must, on or before the second Utilisation Date, open, maintain and operate the Hedging Account, in accordance with an Offshore Account Bank Agreement.
- 19.1.3 The Project Accounts must be operated and administered strictly in accordance with the terms and conditions of this Clause 19 and any other relevant Finance Document.
- 19.1.4 No Obligor may hold any bank accounts other than:
- (A) the Project Accounts;
  - (B) the Existing Sponsor Accounts;
  - (C) subject to Clause 19.12 (*Existing Bibiani accounts*), the Existing Fujairah Account and Existing Offshore Account; and
  - (D) other accounts opened by an Obligor with the prior consent of the Facility Agent, provided that any such other accounts shall be subject to Security in favour of the Security Agent or the Secured Parties (as applicable).

### 19.2 Offshore USD Trust Account

- 19.2.1 On receipt, unless the Facility Agent otherwise agrees, Chirano must deposit or cause to be deposited into the Offshore USD Trust Account all Revenue derived from the sale of Product in any currency other than cedis.
- 19.2.2 Chirano shall procure that all monies deposited into the Offshore USD Trust Account are promptly:
- (A) transferred to its Onshore USD Proceeds Account in the minimum amount required pursuant to the Material Authorisations and applicable law; and
  - (B) the balance is transferred to its Offshore USD Proceeds Account.
- 19.2.3 If, by the date falling six (6) months after the date of this Agreement, Société Générale or one of its Affiliates has not acceded to this Agreement as a Lender, Chirano shall use reasonable endeavours to novate or transfer all of its Project Accounts held with Société Générale and its Affiliates to a Lender within nine (9) months after the date of this Agreement.

### 19.3 Offshore USD Proceeds Accounts

- 19.3.1 On receipt, unless the Facility Agent otherwise agrees, the Borrowers must deposit or cause to be deposited into the Offshore USD Proceeds Accounts:
- (A) all moneys transferred from the Offshore USD Trust Account in accordance with Clause 19.2.2(A) (*Offshore USD Trust Account*);
  - (B) all Revenue received by it, other than Revenue required to be deposited into the Offshore USD Trust Account;
  - (C) the proceeds of all Loans;
  - (D) all Equity Contributions received by the Borrowers;
  - (E) all moneys transferred from the Capex Reserve Accounts in accordance with Clause 19.6 (*Capex Reserve Account*);
  - (F) all moneys transferred from the Debt Service Reserve Accounts in accordance with Clause 19.7 (*Accounts*); and
  - (G) all other amounts received by a Borrower and not required to be deposited in another Project Account.
- 19.3.2 A Borrower shall only withdraw monies from the Offshore USD Proceeds Accounts, on any date:
- (A) to make transfers to the Onshore USD Proceeds Accounts of:
    - (1) the amount required to comply with applicable Law and the Accounts Permits; and
    - (2) to the extent there are insufficient funds in the Onshore USD Proceeds Account or the Onshore Cedis Proceeds Account (as applicable), the amount required to pay:
      - (a) Project Capital Expenditure and Operating Costs in accordance with the Base Case Model; and
      - (b) other costs permitted to be paid in accordance with Clause 24.5.2 (*Permitted Transactions*),in either case, due and payable within the following 30 days in the Republic of Ghana;
  - (B) to make payments in accordance with the Cashflow Waterfall; and
  - (C) to make payments in accordance with the Funds Flow Statement.

### 19.4 Onshore USD Proceeds Account

- 19.4.1 On receipt, unless the Facility Agent otherwise agrees, the Borrowers must deposit or cause to be deposited into the Onshore USD Proceeds Accounts:
- (A) all Revenue derived from the sale of Product to the Bank of Ghana; and
  - (B) all moneys transferred from the Offshore USD Proceeds Accounts in accordance with Clause 19.3.2(A).
- 19.4.2 A Borrower shall only withdraw monies from its Onshore USD Proceeds Account, on any date:
- (A) to make transfers to the Onshore Cedis Proceeds Accounts of:
    - (1) the amount required to comply with applicable Law; and
    - (2) to the extent there are insufficient funds in the Onshore Cedis Proceeds Account (as applicable), the amount required to pay:

- (a) Project Capital Expenditure and Operating Costs in accordance with the Base Case Model; and
- (b) other costs permitted to be paid in accordance with Clause 24.5.2 (*Permitted Transactions*),

in either case, due and payable within the following 30 days in the Republic of Ghana and which are denominated in cedis;

- (B) to make payments in accordance with the Cashflow Waterfall; and
- (C) to make payments in accordance with the Funds Flow Statement.

#### 19.5 Onshore Cedis Proceeds Account

19.5.1 On receipt, unless the Facility Agent otherwise agrees, the Borrowers must deposit or cause to be deposited into the Onshore Cedis Proceeds Accounts all moneys transferred from the Onshore USD Proceeds Accounts in accordance with Clause 19.4.2(A).

19.5.2 A Borrower shall only withdraw monies from its Onshore Cedis Proceeds Account, on any date, to make payments in accordance with the Cashflow Waterfall and to make payments in accordance with the Funds Flow Statement.

#### 19.6 Capex Reserve Accounts

19.6.1 Until the Completion Date, on each Sweep Date the Borrowers must deposit or cause to be deposited in the Capex Reserve Accounts an amount equal to the lower of:

- (A) an amount equal to the Excess Cash Flow (CRA) for the relevant Quarter Date; and
- (B) the amount required to ensure that the aggregate balance of the Capex Reserve Accounts is equal to or greater than the Capex Reserve Amount.

19.6.2 Unless the Completion Date has occurred, the Borrowers must ensure that the aggregate balance of the Capex Reserve Accounts is equal to or greater than the Capex Reserve Amount on the date which is 24 months after Financial Close.

19.6.3 If:

- (A) the Borrowers have delivered a Cost to Complete Certificate to the Facility Agent which shows that there is a Cost Overrun;
- (B) the Borrowers have delivered an updated Base Case Model in accordance with Clause 17.3 (*Delivery of updated Base Case Model*); and
- (C) there are amounts which are due and payable within thirty (30) days that cannot otherwise be funded using other sources of the Available Project Funding Amount,

the Borrowers may transfer funds from the Capex Reserve Accounts to the Offshore USD Proceeds Accounts or the Onshore USD Proceeds Accounts in an amount not exceeding the relevant Cost Overrun.

19.6.4 If at any time the aggregate balance of the Capex Reserve Accounts exceeds the Capex Reserve Amount at that time, the Borrowers may transfer an amount in aggregate equal to that excess to the Offshore USD Proceeds Accounts.

19.6.5 On or after the Completion Date, the Borrowers may withdraw the balance standing to the credit of the Capex Reserve Accounts and apply it in the following order of priority:

- (A) *first*, to make transfers to the Debt Service Reserve Accounts to the extent necessary to ensure that the aggregate balance of the Debt Service Reserve Accounts is at least equal to the Debt Service Reserve Amount; and
- (B) *second*, to make a payment to the Distributions Accounts of the balance standing to the credit of the Capex Reserve Account, provided all the requirements specified in Clause 23.10 (*Distributions*) have been satisfied.

## 19.7 Debt Service Reserve Accounts

19.7.1 From Financial Close, on each Sweep Date, the Borrowers must deposit or cause to be deposited in the Debt Service Reserve Accounts:

- (A) an amount equal to the lower of:
  - (1) the Excess Cash Flow (DSRA) for the relevant Quarter Date; and
  - (2) the amount required to ensure that the aggregate balance of the Debt Service Reserve Accounts is equal to or greater than the prevailing Debt Service Reserve Amount; and
- (B) any amount required pursuant to Clause 7.1.1 (*Mandatory prepayments – cash sweep*).

19.7.2 Subject to Clause 19.7.3, on and from the date immediately following the date which is 24 months after Financial Close the Borrowers must ensure that the aggregate balance of the Debt Service Reserve Accounts is equal to or greater than the prevailing Debt Service Reserve Amount.

19.7.3 If the balance in the Offshore USD Proceeds Accounts, Onshore USD Proceeds Accounts and Onshore Cedis Proceeds Accounts is insufficient to pay all Debt Service under the Finance Documents when due (disregarding for these purposes payment due under Clause 7.1 (*Mandatory prepayments – cash sweep*)), the Borrowers may transfer funds from the Debt Service Reserve Accounts (other than funds which were transferred to the Debt Service Reserve Accounts in accordance with Clause 7.1.1 (*Mandatory prepayments – cash sweep*)) to the Offshore USD Proceeds Accounts in order to pay those amounts (and for the avoidance of doubt, no funds may be transferred in order to enable the Borrowers to make payments under Clause 7.1 (*Mandatory prepayments – cash sweep*)) and such transfer will not contravene Clause 19.7.1 even if the withdrawal would reduce the aggregate balance below the prevailing Debt Service Reserve Amount, provided that by the immediately following Calculation Date each Borrower must make or cause to be made deposits into the Debt Service Reserve Accounts as may be required to ensure that the aggregate balance of the Debt Service Reserve Accounts is reinstated to the prevailing Debt Service Reserve Amount.

19.7.4 If at any time the aggregate balance of the Debt Service Reserve Accounts exceeds the Debt Service Reserve Amount at that time, the Borrowers may transfer an amount in aggregate equal to that excess to the Offshore USD Proceeds Accounts.

## 19.8 Sponsor Account

19.8.1 On receipt, unless the Facility Agent otherwise agrees, the Sponsor must deposit or cause to be deposited into the Sponsor Account:

- (A) any amounts received by the Sponsor under or in relation to the On-Swap Agreement;

- (B) any Insurance Proceeds received by the Sponsor which are attributable to losses incurred by the Mines or the Borrowers; and
- (C) any amounts received by the Sponsor from another Obligor for the purpose of the Sponsor making a payment in accordance with the Cashflow Waterfall.

19.8.2 The Sponsor shall only withdraw monies from the Sponsor Account, on any date:

- (A) to pay or transfer any amounts in accordance with the Cashflow Waterfall, including under the On-Swap Agreement or through making Equity Contributions to the Borrowers and subject to satisfying the conditions in Clause 23.10.3 (*Distributions*) to transfer any amounts to the Existing Sponsor Accounts which, in aggregate with any sums transferred by any Obligor to the Distributions Accounts or by the Sponsor from the Sponsor Account and the Equity Proceeds Account, do not exceed the relevant Distributable Amount; and
- (B) to pay any Taxes due from the Sponsor resulting from any hedging gains under the On-Swap Agreement.

### 19.9 **Equity Proceeds Accounts**

19.9.1 Within five (5) Business Days of first Utilisation, the Sponsor must deposit or cause to be deposited into the Equity Proceeds Account any amounts of the Additional Equity Amount still standing to the credit of the Existing Sponsor Account.

19.9.2 The Sponsor shall only withdraw monies from the Equity Proceeds Account, on any date:

- (A) to pay or transfer any amounts in accordance with the Cashflow Waterfall, including through making Equity Contributions to the Borrowers and subject to satisfying the conditions in Clause 23.10.3 (*Distributions*) to transfer any amounts to the Existing Sponsor Accounts which, in aggregate with any sums transferred by any Obligor to the Distributions Accounts or by the Sponsor from the Sponsor Account and the Equity Proceeds Account, do not exceed the relevant Distributable Amount; and
- (B) on and from the Completion Date, to pay any amounts in respect of any Permitted Transaction.

### 19.10 **Finco Accounts**

19.10.1 On receipt, unless the Facility Agent otherwise agrees, and subject to Clause 19.10.2, the Fincos must deposit or cause to be deposited into the Finco Accounts all amounts received by the Fincos.

19.10.2 The Fincos must only deposit or cause to be deposited into the Onshore Finco Accounts such amount as is reasonably required for the Fincos to pay Taxes and administrative fees, charges or similar amounts that are required to be paid from a bank account held in Barbados, provided that the balance of the Onshore Finco Accounts shall not, at any time, exceed \$100,000.

19.10.3 The Fincos may withdraw monies from the Finco Accounts provided that such payments are permitted in accordance with the Finance Documents.

#### 19.11 Hedging Account

- 19.11.1 On receipt, unless the Facility Agent otherwise agrees, the Hedging Company must deposit or cause to be deposited into the Hedging Account all amounts received by it.
- 19.11.2 The Hedging Company shall only withdraw monies from the Hedging Account, on any date, to make payments under the On-Swap Agreement or in accordance with the Cashflow Waterfall.

#### 19.12 Existing Bibiani accounts

Bibiani must:

- 19.12.1 by no later than 14 days after Financial Close, close the Existing Offshore Account;
- 19.12.2 not deposit or cause to be deposited into the Existing Fujairah Account any amounts other than amounts received from Fujairah under the Forward Purchase Agreement;
- 19.12.3 immediately upon receipt, transfer any amounts standing to the credit of the Existing Fujairah Account to the Offshore USD Proceeds Account; and
- 19.12.4 by no later than 14 days after the date on which the Gold Forward Agreement is discharged, close the Existing Fujairah Account.

#### 19.13 Distributions Accounts

- 19.13.1 Provided that the conditions set out in Clause 23.10 (*Distributions*) are satisfied, the Borrowers may pay into the Distributions Accounts an amount not exceeding in aggregate with any amounts transferred by the Sponsor to the Existing Sponsor Accounts the relevant Distributable Amount, to the extent that they are permitted to do so in accordance with the operation of the Cashflow Waterfall, by making transfers from the Offshore USD Proceeds Accounts to the Distributions Accounts. No Borrower may otherwise make transfers to or receive amounts into the Distributions Accounts.
- 19.13.2 Each Borrower may withdraw amounts standing to the credit of its Distributions Account at any time.

#### 19.14 General

- 19.14.1 Each Obligor which operates a Project Account must give all notices as the Facility Agent or the Security Agent may require in connection with the perfection or protection of the Transaction Security over the Project Accounts or for the purpose of giving effect to the provisions of this Clause 19.
- 19.14.2 Each Project Account must be denominated in dollars (other than the Onshore Cedis Proceeds Accounts which must be denominated in cedis) or other currencies as may be agreed between the Borrowers and the Facility Agent (each, a **permitted currency**). If an Obligor receives any moneys for crediting to a Project Account in a currency other than a permitted currency, the relevant Obligor must convert those moneys into a permitted currency on the date on which they are received, or if this is not practicable, on the first practicable date. The amount must be paid into the relevant Project Account promptly after it is converted into a permitted currency.
- 19.14.3 The restrictions on the withdrawal of funds from Project Accounts contained in this Agreement will not affect the obligations of the Obligors to make all payments required to be made to the Finance Parties on the respective due dates for payment in accordance with the Finance Documents.

- 19.14.4 Neither the ability of an Obligor to make any withdrawal from a Project Account in accordance with this Agreement nor any withdrawal made will be construed as a waiver by any Finance Party of any Security over the Project Accounts.
- 19.14.5 The detailed operating procedures for the Project Accounts will be agreed from time to time between the relevant Obligors and the Account Banks. In the event of any inconsistency between this Agreement and those procedures, this Agreement will prevail.
- 19.14.6 In respect of:
- (A) the Offshore USD Proceeds Account (Bibiani);
  - (B) subject to Accounts Permits, the Offshore USD Proceeds Account (Chirano);
  - (C) the Onshore USD Proceeds Accounts; and
  - (D) the Onshore Cedi Proceeds Accounts,
- the Borrowers shall use reasonable endeavours to ensure that, within each month, the funds deposited into such Project Accounts are divided between the Onshore Account Banks and Offshore Account Banks in their Relevant Account Proportions, provided that, where an Account Bank has a Relevant Account Proportion of 0%, no funds shall be deposited with such Account Bank.

#### 19.15 Permitted Investments

- 19.15.1 All or any part of the balance of:
- (A) any Debt Service Reserve Account;
  - (B) any Capex Reserve Account;
  - (C) the Sponsor Account; or
  - (D) the Equity Proceeds Account,
- may be invested in Permitted Investments.
- 19.15.2 In determining the amount of the current balance of any Debt Service Reserve Account, any Capex Reserve Account, the Sponsor Account or the Equity Proceeds Account for any purposes, the Facility Agent may determine the current value of any Permitted Investment. In doing so, the Facility Agent may seek market quotes and take account of movements in market rates since the time the Permitted Investment was made. The Facility Agent's determination of such current value will (in the absence of manifest error) be used in determining the current balance of the relevant Debt Service Reserve Account, the relevant Capex Reserve Account, the Sponsor Account or the Equity Proceeds Account (as applicable).
- 19.15.3 At any time while a Default subsists, the Obligors must not invest in new Permitted Investments.
- 19.15.4 In respect of any Permitted Investment:
- (A) it must be made in the name of the relevant Obligor which holds that Project Account and subject to the Transaction Security;
  - (B) it must be kept separate from, and not co-mingled with, Permitted Investments in respect of any other Project Account;
  - (C) income in respect thereof and accretions thereto must be credited directly to that Project Account;
  - (D) if, after the time a Permitted Investment is made, it ceases to be a Permitted Investment, it must as soon as reasonably practicable be redeemed or terminated or changed so as to become a Permitted Investment;

- (E) the maturity must be selected so that the Obligors at all times hold sufficient liquid funds to meet their obligations under the Finance Documents and to meet the required payments to be made from that Project Account;
  - (F) upon the maturity or expiration of the term thereof, the proceeds must be re-invested or credited to that Project Account promptly after those proceeds are realised or received; and
  - (G) the Obligors bear the entire risk of any loss or depletion in value.
- 19.15.5 All evidence of ownership of any Permitted Investment must be:
- (A) delivered to the Security Agent; and
  - (B) held by the Security Agent subject to the security under the Security Documents.

#### 19.16 **Withdrawals**

- 19.16.1 No payments to, or withdrawals from, any Project Account may be made except as expressly permitted by this Agreement.
- 19.16.2 A Borrower may not make any withdrawal from any Project Account:
- (A) if that Project Account would become overdrawn as a result;
  - (B) if, before the date of the relevant proposed withdrawal, a Stop Notice (that has not been the subject of a Revocation Notice) has been delivered to the Borrower and the relevant Account Bank in accordance with the Accounts Agreement and the Intercreditor Agreement except, at any time prior to the occurrence of an Enforcement Event to make any Permitted Stream Payment or Permitted Gold Forward Payment (each a **Permitted Payment**),
- For the purposes of the Borrowers making any Permitted Payment while a Stop Notice is continuing, the Facility Agent agrees to countersign any Withdrawal Notice under an Account Bank Agreement provided that the Borrowers have provided reasonable evidence acceptable to the Facility Agent that the withdrawal which is the subject of the relevant Withdrawal Notice is for the purposes of making a Permitted Payment.
- 19.16.3 All amounts withdrawn from any Project Account for application in or towards making a specific payment or meeting a specific liability as provided for in this Agreement must be so applied and made, and for no other purpose.
- 19.16.4 Despite any other provision of this Agreement, if an Enforcement Event has occurred:
- (A) no amount will be payable to any Borrower, or may be withdrawn by any Borrower, with respect to the Project Accounts; and
  - (B) the Security Agent will be entitled (but not obliged) without prior notice to, or the consent of, any Borrower to be the sole signatory on the Project Accounts.
- 19.16.5 Any payment or withdrawal from a Project Account required to be applied in accordance with clause 20.1(a)(viii) to 20.1(a)(xix) of the Cashflow Waterfall may

not be made if there would not be a Fully Funded Working Capital Balance as a result of that payment.

## 20. REPRESENTATIONS

### 20.1 Representations

- 20.1.1 Each Obligor, in respect of itself only, makes the representations and warranties given by it in this Clause 20 to each Finance Party on the date of this Agreement and on Financial Close.
- 20.1.2 The Repeating Representations are deemed to be made by each Obligor on the date of each Utilisation Request, on each Utilisation Date, on the first day of each Interest Period and on the Completion Date.
- 20.1.3 The representations and warranties are made subject to the matters disclosed in the Disclosure Letter.
- 20.1.4 The representation and warranty in Clause 20.17 (*Good title to assets*) is deemed to be repeated by each Obligor on the date that it enters into a Security Document.
- 20.1.5 Each representation and warranty deemed to be made after the date of this Agreement is deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made.

### 20.2 Status

- 20.2.1 It is a corporation or company, duly incorporated or amalgamated, as applicable, validly existing and (where relevant) in good standing under the laws of the country of its incorporation, amalgamation or continuation.
- 20.2.2 It has the power to own its assets and carry on its business as it is currently being conducted and as contemplated by the Transaction Documents applicable to it.
- 20.2.3 It is not a US Tax Obligor.

### 20.3 Binding obligations

Subject in each case to the Legal Reservations:

- 20.3.1 the obligations expressed to be assumed by it in each Transaction Document to which it is a party are legal, valid, binding and enforceable obligations; and
- 20.3.2 (without limiting the generality of Clause 20.3.1) each Security Document to which it is a party creates the security interests which that Security Document purports to create and those security interests are valid and effective.

### 20.4 Powers and Authority

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

### 20.5 Non-conflict

The entry into and performance by it of, and the transactions contemplated by, the Transaction Documents to which it is a party do not conflict with:

- 20.5.1 any law or regulation applicable to it;
- 20.5.2 its constitutional documents; or

20.5.3 any agreement or instrument binding on it or any of its assets, breach of which would have a Material Adverse Effect.

## 20.6 Authorisations

20.6.1 All Authorisations required:

- (A) to enable it to lawfully enter into, exercise its rights and comply with its obligations under the Transaction Documents to which it is a party;
- (B) to make the Finance Documents to which it is a party admissible in evidence in the jurisdiction of its incorporation; and
- (C) to ensure that the Transaction Security has the priority and ranking contemplated by the relevant Security Document,

have been obtained or effected or will have been obtained and effected prior to Financial Close and are or will be in full force and effect.

20.6.2 All Authorisations (including the Mining Concessions) which are necessary on the date this representation is made or repeated from time to time for the Borrowers to:

- (A) construct, develop, commission and operate the Projects in accordance with Good Mining Practice; and
  - (B) own, lease, use, operate or license the material Project Assets in which it holds any interest,
- have been obtained and are in full force and effect.

20.6.3 No Obligor is aware (having made reasonable enquiries) of:

- (A) any formal steps taken to cancel, revoke, challenge or annul any Environmental Permit or other Material Authorisation;
- (B) any circumstances by which an Environmental Permit or other Material Authorisation will not be obtained, effected or in full force and effect by the time it is required to implement the Projects; or
- (C) any circumstances which may lead to a condition or requirement being imposed on an Environmental Permit or other Material Authorisation that a Borrower does not reasonably expect to be able to satisfy.

## 20.7 Governing law and enforcement

20.7.1 Subject to the Legal Reservations, the choice of the relevant chosen governing law as the governing law of the Transaction Documents to which it is a party will be recognised and enforced in its jurisdiction of incorporation.

20.7.2 Subject to the Legal Reservations, any judgment obtained in the relevant courts or from arbitral bodies given jurisdiction over disputes in relation to each Finance Document to which it is a party will be recognised and enforced in its jurisdiction of incorporation.

## 20.8 Deduction of Tax

As at the date of this Agreement, no Borrower is required under any applicable law or regulation to make any deduction on account of Tax from any payment it may make under any Finance Document to which it is a party, except for the requirement (under the Income Tax Act of Ghana, 2015, Act 896 (as amended)) to withhold 8% tax on interest paid by it under the Finance Documents.

## 20.9 No filing or stamp taxes

It is not necessary that any Transaction Documents to which it is a party be filed, recorded or enrolled with any court or other authority or that any stamp, registration, notarial or

similar Taxes or fees be paid on or in relation to the Transaction Documents or the transactions contemplated by the Transaction Documents, except for:

- 20.9.1 the stamping of the Finance Documents in Ghana and the registration of the particulars of the security interests under the Security Documents with each of the Collateral Registry and the Office of the Registrar of Companies;
- 20.9.2 the stamping of the Finance Documents in Barbados and the filing of the statements of charges in respect of each Security Document entered into by any Finco with the Registrar of Companies in Barbados; and
- 20.9.3 the registration of the particulars of the security interests under the Security Documents with the Australian Personal Property Securities Register or the Personal Property Registry under the Canadian PPSA.

#### 20.10 **No Default**

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

#### 20.11 **No proceedings**

To the best of its information and belief (having made reasonable enquiries):

- 20.11.1 no litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency has been commenced, threatened in writing or is pending against it which, if adversely determined, would have or be reasonably likely to have a Material Adverse Effect; and
- 20.11.2 no judgment or order of a court, arbitral body or agency which is reasonably likely to have a Material Adverse Effect has been made against it or any of its Subsidiaries.

#### 20.12 **Information**

20.12.1 To the best of its knowledge and belief (having made reasonable enquiries):

- (A) all Information provided by it or on its behalf to the Finance Parties and the Advisers in connection with the Reports, the Transaction Documents or the Projects is true, complete and accurate in all material respects at the time it was given or made;
- (B) the Information provided by it or on its behalf to the Finance Parties and the Advisers does not omit anything which would result in the Information being untrue, inaccurate or misleading in any material respect; and
- (C) other than as disclosed in writing to the Facility Agent, no event or circumstance has occurred or arisen and no information has been given or withheld that results in the Information provided by it or on its behalf to the Finance Parties or the Advisers (including any statements made by an Obligor which are referenced in any Report) being inaccurate or misleading in any material respect.

- 20.12.2 All opinions, projections, or expressions of intention contained in the Information provided by it or on its behalf and the assumptions on which they are based have been arrived at after due and careful enquiry and consideration and are

reasonably believed by its directors to be reasonable as at the date they were given or made.

20.12.3 For the purposes of Clauses 20.12.1 to 20.12.2, **Information** means any written information provided by an Obligor or any of their Affiliates to the Finance Parties and their Advisers in connection with the Projects or its financing.

#### 20.13 **Base Case Model**

The Base Case Model most recently delivered under this Agreement:

20.13.1 is based on assumptions it considers to be reasonable and is consistent with the provisions of the Transaction Documents in all material respects as at the date that Base Case Model was prepared and delivered;

20.13.2 has been prepared in good faith and with due care and is based on reasonable assumptions as to all financial, technical, legal and factual matters material to the estimates set out in it; and

20.13.3 fairly presents its expectations in relation to the subject matter of the Base Case Model as at the date the Base Case Model is produced and adopted, including its expectations as to the costs and expenses anticipated to be incurred to develop, construct, finance, maintain and operate the Projects.

#### 20.14 **Financial statements**

20.14.1 The Original Financial Statements:

(A) were prepared in accordance with IFRS consistently applied; and

(B) fairly present the Group's consolidated financial condition as at the date they were prepared and the results of the Group's operations for the period to which they relate.

20.14.2 There has been no material adverse change in the assets, business or financial condition of the Borrowers or the Group (taken as a whole) since the date of the Original Financial Statements.

20.14.3 Its most recent financial statements delivered under Clause 21.3 (*Financial statements*):

(A) were prepared in accordance with IFRS consistently applied;

(B) fairly present the Group's consolidated financial condition as at the date they were prepared and the results of the Group's operations for the period to which they relate.

20.14.4 Since the date of the most recent financial statements delivered under Clause 21.3 (*Financial statements*) there has been no material adverse change in the business, assets or financial condition of the Borrowers or of the Group taken as a whole.

#### 20.15 **Mineral Rights**

20.15.1 The Mineral Rights held by the Borrowers are legal, valid and continuing, and together with all applicable Authorisations confer on each Borrower all material rights required to enable it to develop, construct and operate the Projects in accordance with the Development Plan and the Transaction Documents.

20.15.2 Subject to the Security Documents and, until first Utilisation, the Existing Security Documents, the Borrowers are the legal and beneficial holder of the Mineral Rights, and no person other than the Borrowers has any legal or beneficial interest in any of the Mineral Rights.

20.15.3 Each Borrower has in all material respects complied with its obligations in connection with the Mineral Rights to the extent required up to and as at the date this representation is made or repeated.

## 20.16 **Environmental and social matters**

- 20.16.1 Each Borrower is in compliance in all material respects with all applicable Environmental Laws, Environmental Permits and Environmental and Social Standards other than as identified or addressed in the Environmental and Social Action Plan and any Corrective Action Plan then in effect and which the Borrowers are diligently complying with.
- 20.16.2 To the best of its knowledge and belief (having made reasonable enquiries), and except as disclosed in writing prior to Financial Close, no Environmental or Social Claim has been commenced, made or threatened in writing against it which, if adversely determined, would have or be reasonably likely to have a Material Adverse Effect, and it is not subject to any judicial or administrative proceeding or order in respect of any breach or alleged breach of any Environmental Law or Social Law which has or would be reasonably likely to have a Material Adverse Effect.
- 20.16.3 To the best of its knowledge and belief (having made reasonable enquiries), there has not been any leakage, spillage, release or emission of Environmental Contaminants at or from the Project Area or the Project Assets which either:
- (A) contravenes any Environmental Law or any Environmental Permit; or
  - (B) has a Material Adverse Effect,
- other than as identified or addressed in and any Corrective Action Plan then in effect and which the Borrowers are diligently complying with.

## 20.17 **Good title to assets**

Subject to the Security Documents, the free carry interest of the Government of Ghana and, until first Utilisation, the Existing Security Documents, it is (or will be at the relevant date in respect of Security granted over future property) the sole legal and beneficial owner of the respective assets over which it purports to grant Security.

## 20.18 **Project Assets**

- 20.18.1 Each Borrower has good, valid and marketable title to, or valid leases and licenses of, and all Material Authorisations to use, all assets necessary as at the date this warranty is made or repeated to carry on its business as it is presently being conducted and implement the Projects in accordance with Good Mining Practice, the Development Plan and the Transaction Documents.
- 20.18.2 Each Borrower has:
- (A) access to the respective Project Area; and
  - (B) all material easements, wayleaves and other rights,
- necessary to implement the Projects in accordance with Good Mining Practice, the Development Plan and the Transaction Documents.
- 20.18.3 All property, easements, wayleaves and other rights referred to in Clause 20.18.2 are free from any Security (other than a Permitted Security).

## 20.19 **Project compliance**

- 20.19.1 There is no existing event or circumstance which will or is reasonably likely to in any material respect prevent, hinder or delay the carrying out of the Projects as contemplated by the Development Plan and the Transaction Documents, and each Borrower is in compliance in all material respects with all Environmental Permits and other Material Authorisations.
- 20.19.2 There has been no material change in the conduct or operation of the Projects from that contemplated in the Development Plan and the Transaction Documents, other than a change which has first been approved by the Technical Bank.

## 20.20 **Project Documents**

- 20.20.1 The Borrowers have delivered (or caused to be delivered) to the Facility Agent complete copies of all of the current Project Documents and those documents are in full force and effect.
- 20.20.2 No Borrower is in breach of any Project Documents to which it is a party in any material respect.
- 20.20.3 No counterparty to a Project Document is (so far as any Borrower is aware having made reasonable enquiries) in breach of any material terms of any Project Document to which it is a party.
- 20.20.4 No event has occurred or condition exists which would permit the cancellation, termination or forfeiture of a Project Document.
- 20.20.5 To the best of its knowledge, there are no disputes outstanding under any Project Document that would have a Material Adverse Effect.

## 20.21 **Royalties**

There are no royalties, streaming agreements, production taxes, net smelter return obligations, net profit payments or any similar arrangements payable to any person in respect of any Borrower, the Projects or the Project Assets, other than to the Stream Purchaser under the Stream Agreements and royalties imposed under applicable law.

## 20.22 **No other business**

Except as expressly contemplated by the Transaction Documents, no Obligor has undertaken any trading activity or business since the date of its incorporation other than its existing core businesses and operations of mineral exploration, mining or processing and activities incidental to those businesses and operations, including the Projects and community and social activities and investments.

## 20.23 **Ownership and group structure**

- 20.23.1 The shares of each Obligor which are subject to the Transaction Security are fully paid and no person has any right to call for the issue or transfer of any share capital or issued shares or loan stock in an Obligor, the shares in which are subject to the Transaction Security, other than in accordance with the Finance Documents.
- 20.23.2 The Group Structure Diagram is complete and accurate in all respects and shows each member of the Group, including its shareholdings in other members of the Group, current name, company registration number and the jurisdiction of incorporation.
- 20.23.3 The constitutional documents of each Obligor do not restrict or inhibit the transfer of the shares in any Obligor which are subject to the Transaction Security on enforcement of that Transaction Security.

## 20.24 **Pari passu ranking**

Each Obligor's payment obligations under the Finance Documents rank at least *pari passu* with all its other present and future unsecured and unsubordinated payment obligations, except for obligations mandatorily preferred by law applying to companies generally.

## 20.25 **Security and Financial Indebtedness**

- 20.25.1 No Security or Quasi-Security exists over all or any of the present or future assets of the Obligors other than Permitted Security.
- 20.25.2 No Obligor has any Financial Indebtedness outstanding other than Permitted Financial Indebtedness.

## 20.26 Ranking of Transaction Security

From Financial Close, the Transaction Security has or will have the priority contemplated by it and is not subject to any prior ranking or *pari passu* ranking Security (other than any Permitted Security which has higher-ranking priority by operation of law).

## 20.27 Taxes

It has filed all tax returns and supporting information required to be filed by it and has paid or discharged all Taxes due and payable by it on or before the due date, except (i) those which are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with IFRS, (ii) to the extent that any Taxes are not due and payable, it has provided adequate reserves for the payment of those Taxes in accordance with IFRS, (iii) where such payment can be lawfully withheld, it has provided adequate reserves for the payment of those Taxes in accordance with IFRS and failure to pay those Taxes does not have or is not reasonably likely to have a Material Adverse Effect, or (iv) as disclosed in the Disclosure Letter.

## 20.28 Subsidiaries

No Obligor has any Subsidiaries other than as expressly set out in the Group Structure Diagram or otherwise approved in writing by the Facility Agent.

## 20.29 Insurance

20.29.1 The insurance contracts required to be obtained in accordance with Clause 24.8 (*Insurances*) at the time this representation and warranty is given or deemed repeated have been obtained and those Insurances have not been amended, modified or cancelled (otherwise than with the prior written consent of the Facility Agent), and such Insurances are in full force and effect.

20.29.2 No Obligor has done, or omitted to do anything, and no event or circumstance has occurred, which has made, or is reasonably likely to make, any Insurances void, voidable or subject to any restriction or limitation.

20.29.3 No Obligor has received any notification from its insurers that their liability under the Insurances has been reduced or avoided.

## 20.30 Corrupt Acts

20.30.1 Neither:

- (A) the Obligors; nor
- (B) any of its or their respective directors or officers; nor
- (C) (to the best of their knowledge and belief) any of their employees or agents or any Affiliate or its respective directors, officers, agents, or employees,

has committed or engaged in any Corrupt Act and each of the Obligors has instituted and maintain policies and procedures designed to prevent violation of Corrupt Practices Laws by itself and its directors, officers, employees and agents.

20.30.2 Neither:

- (A) the Obligors; nor
- (B) any of their respective directors or officers; nor
- (C) (to the best of their knowledge and belief) any of their employees or agents or any Affiliate or its respective directors, officers, agents, or employees

is subject to any action, proceedings, investigation or inquiry relating to a breach or alleged breach of the Corrupt Practices Laws applicable to it.

### 20.31 **No Insolvency**

No corporate action, legal proceedings or other formal procedures or steps have been taken against any Obligor for its liquidation, winding-up, dissolution, administration or re-organisation or for the appointment of an Insolvency Officer of it or of any or all of its assets or revenues.

### 20.32 **Sanctions**

20.32.1 Neither it nor to its knowledge any of its directors, officers, agents, employees or Affiliates or any persons acting on its or their behalf in connection with this Agreement is a Sanctioned Person or acts directly or indirectly on behalf of a Sanctioned Person.

20.32.2 Save as disclosed in writing to the Facility Agent before the date of this Agreement, no Obligor is incorporated, located, resident or carrying on a trade or business in a Sanctioned Country, or whose government is, the subject of Sanctions broadly prohibiting dealings with such government, country, province or territory.

20.32.3 Each Obligor is in compliance with all applicable Sanctions and is not engaged in, and in the past five years has not engaged in, any activities that would reasonably be expected to result in an Obligor being designated as a Sanctioned Person.

## 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 **Monitoring Report**

21.1.1 From Financial Close, the Borrowers must procure that the Technical Adviser prepares a Monitoring Report for each Quarter up to and including the Completion Date.

21.1.2 Each Monitoring Report must be delivered by the Borrowers to the Facility Agent as soon as practicable and, in any event, within fifteen (15) Business Days of receipt by the Technical Adviser of the third monthly Operating Report and all supporting data for the relevant Quarter.

21.1.3 The Borrowers must ensure that each Monitoring Report contains or encloses the following details:

- (A) the actual performance of the Mines and a comparison to the annual budget and Base Case Model;
- (B) a description of the status of development and construction of the Projects, including construction milestones achieved in the relevant period and those scheduled to be achieved in that period but not met;
- (C) actual expenditure and Revenue for the relevant Quarter and a comparison of that expenditure against the corresponding figures in the Base Case Model;
- (D) a Cost to Complete Certificate which:
  - (1) confirms that there is no Funding Shortfall Amount or Cost Overrun and, if the Cost to Complete Certificate confirms that there is a Cost Overrun, such Cost Overrun has been funded by an Equity Contribution provided to the Borrowers, amounts standing to the credit of the Capex Reserve Account or any other funding (whether unsecured and subordinated debt or equity

funding) available to the Borrowers from sources that are approved by the Facility Agent; and

- (2) confirms that the Completion Date is expected to occur by the Completion Long Stop Date;
- (E) for the next three (3) Months, forecast expenditure and Revenue for each of those Months together with a comparison against the corresponding figures in the Base Case Model;
- (F) cash balances of each of the Project Accounts as at the first day and the last day of the relevant Month;
- (G) the Technical Adviser's opinion as to whether the Completion Date is likely to be achieved on or before the Completion Long Stop Date and, if the Technical Adviser thinks that date is not achievable, the Technical Adviser's best estimate of when the Completion Date will be achieved (together with reasons for that estimate);
- (H) any material change, damage to or destruction of any material Project Asset;
- (I) any delay to the Projects or any extensions of time granted by a Borrower to any party carrying out construction-related activities under any Material Project Document;
- (J) statistics on occupational health and safety at the Projects and a description of any occupational health and safety incidents at the Projects resulting in lost time or injury;
- (K) if any part of the Projects has started its operation, details on the matters listed in Clauses 21.2.2(A) to 21.2.2(F) in relation to such operation;
- (L) a copy of any Project Document and any document which amends, novates or replaces any Project Document entered into by the Borrowers after the date of this Agreement;
- (M) details of any material breach by any party of, amendment, waiver, frustration, rescission, repudiation, termination or cancellation of, or material disputes under, any Project Document together with details of any proposed action it proposes to take in relation to the relevant matter;
- (N) details of any claims for compensation made by any owner or occupier of land in respect of the Mines; and
- (O) any other or additional information that the Facility Agent or the Technical Adviser reasonably requests the Borrowers to provide in relation to the construction of the Projects and the operational performance of the Mines.

21.1.4 The Technical Adviser will undertake, and the Borrowers must permit the Technical Adviser to undertake, a quarterly site visit to the Mines to allow the Technical Adviser to confirm the reported production from the Mines and the physical progress on the Projects. Each Monitoring Report will include a section summarising the Technical Adviser's observations gained from such site visit.

## 21.2 Operating Report

21.2.1 The Borrowers must prepare for the Technical Bank, the ES Agent and the Facility Agent an Operating Report for each Month from Financial Close until the Final Maturity Date. Each Operating Report must be delivered by the Borrowers to the Facility Agent as soon as practicable and, in any event, within twenty (20) Business Days of the last day of each Month.

21.2.2 The Borrowers will ensure that each Operating Report contains or encloses the following details:

- (A) the actual mining and processing performance for open pits and underground mines at each Mine, including details of:
  - (1) tonnes of ore mined;
  - (2) tonnes of waste mined;
  - (3) gold grade mined;
  - (4) gold contained;
  - (5) tonnes of ore stockpiled;
  - (6) gold grade stockpiled;
  - (7) tonnes of ore milled;
  - (8) grade milled;
  - (9) contained gold milled;
  - (10) gold recovery percentage; and
  - (11) payable gold;
- (B) actual expenditure, Revenue, cash cost and all-in sustaining cost for the relevant Month and a comparison against the corresponding figures in the Base Case Model;
- (C) forecast expenditure, Revenue, cast cost and all-in sustaining cost for the next Quarter with a comparison against the corresponding figures in the Base Case Model;
- (D) any material change, damage to or destruction of any material Project Asset;
- (E) cash balances of each of the Project Accounts as at the first day and the last day of the relevant Month; and
- (F) any other or additional information that the Facility Agent or the Technical Adviser reasonably requests the Borrowers to provide in relation to the construction of the Projects and the operational performance of the Mines.

### 21.3 Financial statements

21.3.1 Each Borrower and the Sponsor must provide the Facility Agent:

- (A) its audited financial statements for each of its financial years; and
- (B) its unaudited Quarterly management accounts.

21.3.2 Each Borrower and the Sponsor must supply all the information set out in Clause 21.3.1 as soon as it becomes available and:

- (A) in the case of its audited annual financial statements, within one hundred and twenty (120) days; and
- (B) in the case of its unaudited Quarterly management accounts, within forty-five (45) days;

of the end of the financial period to which they relate.

### 21.4 Requirements as to financial statements

21.4.1 Each Borrower and the Sponsor must ensure that the financial statements delivered under Clause 21.3 (*Financial statements*) are:

- (A) prepared in accordance with IFRS;

- (B) fairly present its financial condition as at the date to which they were prepared; and
  - (C) in the case of the annual audited financial statements, are not the subject of any qualifications in the corresponding auditor's opinion.
- 21.4.2 Each Obligor must maintain as its auditors an internationally recognised firm of accountants, or a firm of accountants acceptable to the Facility Agent (acting reasonably).
- 21.4.3 Each Borrower and the Sponsor must procure that each set of financial statements delivered under Clause 21.3 (*Financial statements*) is prepared using IFRS, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements delivered by the Borrowers to the Facility Agent in accordance with Clause 4.1 (*Initial conditions precedent*) unless, in relation to any set of financial statements, it notifies the Facility Agent that there has been a change in IFRS, the accounting practices or reference periods and it delivers to the Facility Agent:
- (A) a description of any change necessary for those financial statements to reflect IFRS, accounting practices and reference periods upon which its Original Financial Statements were prepared; and
  - (B) sufficient information, in form and substance as may be reasonably required by the Facility Agent, to enable the Lenders to make an accurate comparison between the financial position indicated in those financial statements and each Borrower's Original Financial Statements.

Any reference in this Agreement to those financial statements it to be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.

## 21.5 Compliance Certificate

- 21.5.1 No later than forty-five (45) days after:
- (A) each Quarter Date on or before the First Repayment Date, the Borrowers must supply to the Facility Agent a Compliance Certificate calculated as of the relevant Quarter Date, indicating the Excess Cash Flow (CRA) and Excess Cash Flow (DSRA); and
  - (B) each Calculation Date after the First Repayment Date, the Borrowers must supply to the Facility Agent a Compliance Certificate calculated as of the relevant Calculation Date, indicating, among other things, the current values for each of the Ratios, the Excess Cash Flow (Cash Sweep) and the Excess Cash Flow (DSRA) and whether it has satisfied the Distributions conditions set out in Clause 23.10.3 (*Distributions*).
- 21.5.2 With each Compliance Certificate delivered in accordance with Clause 21.5.1(B), the Borrowers will deliver information concerning the calculations and assumptions used by the Borrowers in preparing the Compliance Certificate as the Majority Lenders may require (acting reasonably).

## 21.6 Environmental and social matters

- 21.6.1 The Borrowers must promptly provide the information set out in Clause 21.6.2 and such other information as is reasonably requested by the Independent E&S Consultant, in each case to enable the Independent E&S Consultant to produce an Environmental and Social Monitoring Report:
- (A) within sixty (60) days of the end of each of the Borrowers' financial half-years:

- (1) for the first 12 months after Financial Close, reporting on, among other things, environmental and social progress and monitoring and the implementation of the Environmental and Social Action Plan and Resettlement Action Plan; and
- (2) thereafter, until the actions under the Resettlement Action Plan are completed, reporting on the implementation of the Resettlement Action Plan; and
- (B) within sixty (60) days of the end of each of the Borrowers' financial years, reporting on, among other things, environmental and social progress and monitoring and the implementation of the Environmental and Social Action Plan and Resettlement Action Plan.

21.6.2 The Borrowers must supply to the ES Agent and the Independent E&S Consultant:

- (A) details of any material non-compliance with any Environmental and Social Standard, any Environmental Permit, the Environmental and Social Action Plan and the Resettlement Action Plan, together in each case with details of the actions which a Borrower has taken, is taking or intends to take in order to rectify such non-compliance alongside timeframes for such rectification;
- (B) details of any suspension, revocation, cancellation, annulment or amendment of any Environmental Permit;
- (C) details of the Borrowers' compliance with water and waste management guidelines and environmental rehabilitation obligations;
- (D) details of any major incidents, accidents, fatalities or lost time injuries at the Project Area and details of any event resulting in the release or discovery of any Environmental or Social Incident or material Environmental Contaminant on the Project Area and details of measures taken to mitigate and remedy the effects or causes of such events;
- (E) details of any material community or worker-related protest adversely affecting the Project which could reasonably be expected to have a Material Adverse Effect or which could reasonably be expected to result in material adverse and negative national or international media attention, and as soon as practicable (and in any event within ten (10) Business Days) following any such notification the Borrowers shall submit to the Facility Agent a report satisfactory to the Majority Lenders (each acting reasonably) specifying the outcome of the Borrowers' investigation into such protest, and any steps taken, or proposed to be taken, by the Borrowers to resolve the issues raised in the protest; and
- (F) details of any Environmental or Social Claim, and any notice or other communication received by it in respect of any alleged breach or liability under Environmental Law or Social Law, or any circumstances likely to result in any Environmental or Social Claim which may have a material effect on achieving the Completion Date; and
- (G) any other details or information reasonably requested by the Independent E&S Consultant which are required in order to produce the Environmental and Social Monitoring Report.

Each Borrower must deliver the information contemplated by this Clause 21.6.2 promptly upon becoming aware of the relevant matter or, as the case may be, promptly upon receipt of the relevant notice, claim or communication.

21.6.3 If requested by the ES Agent, the Borrowers shall produce a Corrective Action Plan within fifteen (15) Business Days of request (or such longer time period in

relation to any request which the Borrowers and the ES Agent may agree), in response to any of the events or circumstances described in Clause 21.6.2.

- 21.6.4 Each Borrower shall promptly provide such other information on any measures or monitoring undertaken by the Borrower or on behalf of the Borrower in compliance with Environmental and Social Standards as the ES Agent may reasonably request.

**21.7 Information for the Technical Bank and Technical Adviser**

21.7.1 Each Borrower must provide the Technical Bank with all information as the Technical Bank may reasonably request for the purposes of reviewing each Base Case Model delivered under Clause 17.3 (*Delivery of updated Base Case Model*) and to perform its other functions under this Agreement, in each case in a form and substance satisfactory to the Technical Bank (acting reasonably).

21.7.2 Each Borrower must provide the Technical Adviser with all information as the Technical Adviser may reasonably request for the purposes of giving advice to the Technical Bank and preparing each report and certification to be provided by the Technical Adviser in accordance with this Agreement, in each case in a form and substance satisfactory to the Technical Adviser (acting reasonably).

**21.8 Other Project specific information**

Each Borrower must supply to the Facility Agent:

21.8.1 an annual mineral resource and reserves statement prepared in accordance with the Canadian National Instrument 43-101 Standards of Disclosure for Mineral Projects and the guidelines set out in the Canadian Institute of Mining, Metallurgy and Petroleum Standards on Mineral Resource and Mineral Reserves; and

21.8.2 an annual report of carbon dioxide (CO<sub>2</sub>) emissions (including scope 1, scope 2 and scope 3 CO<sub>2</sub> emissions) during the relevant year as quantified by the Borrowers in accordance with internationally recognised methodologies.

**21.9 Notification of Default**

21.9.1 Each Obligor must notify the Facility Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.

21.9.2 Promptly upon a request by the Facility Agent, each Obligor must supply to the Facility Agent a certificate signed by a director or its Chief Financial Officer 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).

**21.10 Notification of Sanctions Event**

21.10.1 Each Obligor must notify the Facility Agent of any Sanctions Event promptly upon becoming aware of its occurrence.

21.10.2 Promptly upon a request by the Facility Agent, each Obligor must supply to the Facility Agent a certificate signed by a director certifying that no Sanctions Event is continuing in relation to any Obligor (or, if a Sanctions Event is continuing, specifying the Sanctions Event).

**21.11 Shareholder documents**

Each Obligor (other than the Sponsor) must supply to the Facility Agent all material documents dispatched to its shareholders (or any class of them) or creditors generally or (subject to any conflicting duty of confidentiality imposed by any regulations) to any regulatory body at the same time that they are dispatched.

**21.12 Miscellaneous information**

Each Borrower must supply to the Facility Agent:

- 21.12.1 details of any litigation, arbitration, regulatory or administrative proceedings which are taking place or pending against an Obligor, which, if adversely determined, are likely to result in:
  - (A) a liability to an Obligor exceeding \$5,000,000; or
  - (B) a Material Adverse Effect;
- 21.12.2 details of any judgment or order of a court, arbitral body or agency which is made against an Obligor, and which has or is reasonably likely to have a Material Adverse Effect;
- 21.12.3 a copy of any notice or communication from any regulatory body, court, organisation or other person prohibiting, suspending, varying or requiring the halting of all or any part of any activity or process carried out in respect of the Projects;
- 21.12.4 a copy of any Material Project Document and any document which amends, novates or replaces any Material Project Document entered into by it after the date of this Agreement;
- 21.12.5 details of any material breach by any party of, amendment, waiver, frustration, rescission, repudiation, termination or cancellation of, or material disputes under, any Material Project Document together with details of any proposed action it proposes to take in relation to the relevant matter;
- 21.12.6 a copy of any notice received or given by a Borrower constituting any step towards, or purporting or threatening default under, or the rescission, repudiation, termination or cancellation of any of, the Material Project Documents together with details of any proposed action it proposes to take in relation to the relevant matter;
- 21.12.7 details of any event which constitutes an event of force majeure under any of the Material Project Documents (howsoever an event of force majeure is defined in the relevant Material Project Document), including the date on which the event occurred or commenced;
- 21.12.8 details of any occurrence or circumstance (including any third party claim or liability) which a Borrower becomes aware which is likely to have a Material Adverse Effect;
- 21.12.9 details of any claims or circumstances which are likely to give rise to a claim in relation to the Insurances in excess of \$2,000,000 (or its equivalent in any currency) and of anything which has been done or omitted to be done where the renewal of any Insurances is likely to be affected or the premiums due in respect of any Insurances are likely to be increased as a result of an event or change in circumstances (other than as a result of inflation factors);
- 21.12.10 details of any suspension, revocation, cancellation, annulment or amendment of any Material Authorisation;
- 21.12.11 details of any damage or destruction of any Project Asset where the cost of repair or reinstatement is likely (in the opinion of the Borrower, acting reasonably) to exceed \$5,000,000;
- 21.12.12 within two (2) Business Days of its occurrence, details of any unscheduled stoppage or disruption to mining or surface operations or production which lasts for more than five (5) days;
- 21.12.13 details of any circumstances likely to give rise to a Cost Overrun;
- 21.12.14 copies of any material technical reports and studies received in relation to the Projects;
- 21.12.15 details of any material change in any Mine's mining or processing methodology;

- 21.12.16 details of any material reduction (other than any reduction caused by mining activities) to Reserves;
- 21.12.17 such information as the Security Agent through the Facility Agent may reasonably require about the Secured Property and compliance of the Obligors with the terms of any Security Documents; and
- 21.12.18 such further information regarding the financial condition, assets, business and operations of the Obligors or the Projects as any Finance Party through the Facility Agent may reasonably request.

Each Borrower must deliver the information contemplated by this Clause 21.12 promptly upon becoming aware of the relevant matter or, as the case may be, promptly upon receipt of the relevant notice, claim or communication.

**21.13 Sufficient copies**

Each Borrower, if so required by the Facility Agent or Technical Bank, must supply sufficient copies of each document to be supplied under the Finance Documents to the Facility Agent or Technical Bank (as applicable) to distribute to each of the Lenders.

**21.14 Direct electronic delivery by Borrowers**

Each 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 33.5 (*Electronic communication*) to the extent that Lender and the Facility Agent agree to this method of delivery.

**21.15 'Know your customer' checks**

21.15.1 If:

- (A) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
- (B) 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;
- (C) a proposed accession of a new Technical Bank or ES Agent; or
- (D) 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 Facility Agent or any Lender (or, in the case of paragraphs (C) and (D) above, any prospective new Technical Bank, ES Agent or 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 Facility Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Facility Agent (for itself, on behalf of any Lender or, in the case of the event described in paragraph (C), on behalf of any prospective new Technical Bank or ES Agent) or any Lender (for itself or, in the case of the event described in paragraph (D) above, on behalf of any prospective new Lender) in order for the Facility Agent, such Lender or, in the case of the events described in paragraphs (C) and (D) above, any prospective new Technical Bank, ES Agent or 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.

21.15.2 Each Finance Party must promptly upon the request of the Facility Agent supply, or procure the supply of, all documentation and other evidence as is reasonably requested by the Facility Agent (for itself) in order for it 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.

- 21.15.3 The Sponsor shall, by not less than 10 Business Days' prior written notice to the Facility Agent, notify the Facility Agent (which shall promptly notify the Lenders), of its intention to request that one of its Subsidiaries becomes an Additional Obligor pursuant to Clause 27 (*Changes to the Obligors*).
- 21.15.4 Following the giving of any notice pursuant to Clause 21.15.3 above, if the accession of such Additional Obligor obliges such Facility Agent or any Lender to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Sponsors shall promptly upon the request of the Facility Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Facility Agent (for itself or on behalf of any Lender) or any Lender (for itself or on behalf of any prospective new Lender) in order for the Facility Agent to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the accession of such Subsidiary to this Agreement as an Additional Obligor.

## 22. **POSITIVE UNDERTAKINGS**

The undertakings in this Clause 22 are given by each Obligor (except where otherwise stated) and 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.

### 22.1 **Laws**

Each Obligor must comply in all material respects with all material laws to which it may be subject.

### 22.2 **Taxes**

22.2.1 Each Obligor must file all tax returns required to be filed by it in any jurisdiction and must pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:

- (A) the payment is being contested in good faith by appropriate proceedings;
- (B) adequate reserves for the payment of those Taxes are being maintained for those Taxes and the costs required to contest them which have been disclosed in its latest financial statements delivered to the Facility Agent under Clause 21.3.1 (*Financial statements*); and
- (C) the payment can be lawfully withheld.

22.2.2 Each Borrower must apply all Tax credits, losses, reliefs or allowances contemplated in the Base Case Model in the manner they were taken into account in the Base Case Model.

22.2.3 Each Obligor must maintain its tax residence as at the date it became an Obligor, and each must ensure that it is not resident or liable to pay tax in any other jurisdiction, except where the relevant Obligor has obtained the prior written consent of the Facility Agent to do otherwise.

### 22.3 **Hedging**

22.3.1 Each Borrower and the Sponsor must comply with the terms of the Approved Hedging Policy.

22.3.2 No Obligor other than the Sponsor shall enter into a Hedging Agreement.

22.3.3 No Obligor shall amend, supplement, novate, terminate or waive any provision of a Hedging Agreement without the prior consent of the Facility Agent, such

consent not to be unreasonably withheld or delayed, provided that no such consent shall be required where such amendment, supplement, novation, termination, or waiver is made in accordance with the Approved Hedging Policy and is not inconsistent with the terms of this Agreement, the other Finance Documents, or the Intercreditor Agreement.

22.3.4 The Sponsor must promptly, upon entering into any Hedging Agreement, deliver to the Facility Agent an original or certified copy of that Hedging Agreement.

## 22.4 Undertakings regarding the Secured Property

22.4.1 Each Obligor must:

- (A) maintain and protect its Secured Property;
- (B) keep its Secured Property in a good state of repair and in good working order allowing for fair wear and tear (and, in the case of the Borrowers) in accordance with Good Mining Practice;
- (C) remedy every material defect in its title to any part of its Secured Property;
- (D) take or defend legal proceedings in accordance with Good Mining Practice to protect or recover any of its Secured Property; and
- (E) keep its material Secured Property valid and subsisting and free from liability to forfeiture, cancellation, avoidance or loss.

22.4.2 Each Borrower must:

- (A) execute a legal or statutory mortgage in favour of the Security Agent over any Mining Concession or real property acquired by it after Financial Close in form and substance required by the Facility Agent (but the Facility Agent cannot require an obligation which is more onerous than any obligation contained in any Finance Document); and
- (B) use all reasonable endeavours to register any mortgage executed under Clause 22.4.2(A) as so required by the Security Agent in accordance with Clause 22.5.1.

22.4.3 Each Obligor must do anything which the Security Agent reasonably requests to:

- (A) ensure or enable the Security Agent to ensure that the Security Documents and each Transaction Security are fully effective, enforceable and perfected with the contemplated priority; or
- (B) confer on the Security Agent or the Secured Parties (as applicable) Security over any property and assets of that Obligor located in any jurisdiction equivalent or similar to the Transaction Security intended to be conferred by that Obligor by or pursuant to the Security Documents,

including, executing any document, delivering Title Documents or executing and delivering blank transfers.

22.4.4 Without limiting Clause 22.4.2 or Clause 22.4.3, each Obligor must use reasonable endeavours to cause a third party to provide any Authorisation or take any other action (including executing any document) reasonably required to give effect to Clause 22.4.2 or Clause 22.4.3;

22.4.5 Each Borrower must:

- (A) maintain (and to the extent that no effective Security exists over a Material Project Document, grant) Security in favour of the Security Agent over each Material Project Document in form and substance reasonably required by the Facility Agent;
- (B) use reasonable endeavours to ensure that each Project Document entered into by it after the date of this Agreement does not prevent it from

- granting Security over all of its rights, title and interest in, to and under that Project Document in accordance with the Transaction Security;
- (C) procure the delivery of a notice of assignment or notice of charge (as applicable) to the counterparty to each Material Project Document;
  - (D) upon request from the Facility Agent while an Event of Default is continuing:
    - (1) use all reasonable endeavours to procure the consent of each counterparty to each Project Document to the granting of Security over all of its rights, title and interest in, to and under that Project Document, where it is not otherwise permitted to do so; and
    - (2) procure the delivery of a notice of security or a notice of assignment (as applicable) to each counterparty to each Project Document, except where it is not permitted under the terms of Project Document to grant Security over all of its rights, title and interest in, to and under that Project Document; and
  - (E) use reasonable endeavours to procure, the delivery of an acknowledgment of such notices from those counterparties (including, where applicable, acknowledgment of the right of the Security Agent to approve any assignment of rights by the counterparty).
- 22.4.6 No Obligor may enter into any profit sharing arrangement in relation to its Secured Property or any partnership or joint venture with any other person in respect of its Secured Property.
- 22.4.7 Each Obligor must use reasonable endeavours to cause any caveat or adverse registration which is lodged in respect of its Secured Property, other than a caveat or adverse registration lodged by the Finance Parties or a caveat or adverse registration in respect of a Permitted Security (provided such caveat or adverse registration does not affect the enforceability, validity, perfection and priority of the Transaction Security), to be removed as soon as reasonably practicable after the date that it becomes aware of its existence, and the relevant caveat or adverse registration must be removed as soon as reasonably possible, having regard to the nature of the caveat or adverse registration and any legal or procedural requirements applicable to its removal.
- 22.4.8 Each Obligor must deposit with the Security Agent all the Title Documents in respect of any of its Secured Property together with executed blank transfers in respect of the Secured Property to which the Title Documents relate, promptly on:
- (A) its execution of its Security Documents; and
  - (B) acquisition of any material asset which forms part of its Secured Property.
- 22.5 Perfection, registration and protection of security**
- 22.5.1 Each Obligor must take all steps required by the Security Agent (acting reasonably) to ensure that:
- (A) the Transaction Security is perfected in relation to all the Secured Property in all jurisdictions; and
  - (B) each Security Document and the Transaction Security is registered and filed in all registers in all jurisdictions,
- in which it must be perfected, registered and filed to ensure the enforceability, validity, perfection and priority of the Transaction Security against all persons and to be effective as a Security.
- 22.5.2 Whenever the Security Agent (acting reasonably) requires that the Security be perfected in a particular way in relation to any part of the Secured Property, each

Obligor must take all steps required by the Security Agent (acting reasonably) to ensure that the Security is perfected in that way.

- 22.5.3 Whenever any part of its Secured Property is transferred to or retained in a place where this Agreement or the Security, because of an increase in the Secured Liabilities or otherwise, bears insufficient stamp duty or is not registered or recorded, or for any other reason is of limited or of no force or effect, unenforceable, inadmissible in evidence or of reduced priority, the relevant Obligor must, within fifteen (15) Business Days after that transfer or retention, take all steps reasonably required by the Security Agent to ensure that each Security is:
- (A) stamped to the satisfaction of the Security Agent;
  - (B) in full force and effect, enforceable, perfected, admissible in evidence and not of reduced priority; and
  - (C) registered in that place, or that part of the Secured Property is removed from that place,

provided that, the requirement to stamp the Security Documents governed by the laws of Ghana shall be subject to the terms of those Security Documents and the Supplemental Creditor Agreement.

## 22.6 **Pari passu**

Each Obligor must ensure at all times that its payment obligations under this Agreement and each other Finance Document to which that Obligor is a party rank at least *pari passu* in right of payment with all of its present and future other unsecured indebtedness, other than any indebtedness which is preferred by mandatory provisions of applicable law.

## 22.7 **Corporate existence**

Each Obligor must do, or cause to be done, all things necessary to preserve and keep in full force and effect its corporate existence and authority to conduct its business.

## 22.8 **Right of first refusal for Environmental Bond**

- 22.8.1 Where the Obligors propose to replace or renew the Environmental Bond, the Obligors must provide a written notice to each Lender of their intention to do so, specifying the principal terms and conditions upon which the replacement or renewal is sought (the "**Environmental Bond Notice**").
- 22.8.2 Within thirty (30) days from the date of receipt of the Environmental Bond Notice, each Lender shall have the right, but not the obligation, to submit to the Obligors a written offer to provide a replacement Environmental Bond on terms no less favourable to the Obligors than those set out in the Environmental Bond Notice.
- 22.8.3 If more than one Lender submits an offer within the thirty (30) day period referred to in Clause 22.8.2 above, the Obligors may, at their sole discretion, select which (if any) of the offers to accept, and shall not be obliged to accept any offer.
- 22.8.4 If the Obligors decline to accept any offer submitted by the Lenders, the Obligors shall not enter into any agreement with any third party financier for the provision of the replacement Environmental Bond or renewal (as applicable) on terms less favourable to the Obligors, or at a price to the Obligors that is higher, than those offered by any Lender in response to the Environmental Bond Notice.
- 22.8.5 If no Lender submits an offer within the thirty (30) day period referred to in Clause 22.8.2 above, or if all Lenders decline or fail to submit an offer, the Obligors shall be entitled to enter into an agreement with any third party financier for the provision of the replacement Environmental Bond or renewal (as applicable) on such terms as the Obligors may determine in their sole discretion.

## 22.9 **Obligor coverage**

Each Obligor shall ensure that, unless otherwise agreed with the Facility Agent, EBITDA of all Obligors (calculated on a consolidated basis) is not less than 95% of the EBITDA of the Group (calculated with such amendments to the definition of "EBITDA" as required to refer to the Group).

## 22.10 **Conditions subsequent**

22.10.1 In respect of this Agreement and each other Finance Document executed by an Obligor on or around the date of this Agreement, each Obligor shall within five (5) Business Days of Financial Close provide to the Facility Agent an original (or, if executed by the Obligors in counterpart, originals) of such Finance Document duly executed by it.

22.10.2 The Borrowers shall provide to the Facility Agent each of the Deferred Deliverables in form and substance satisfactory to the Facility Agent no later than the later of:

- (A) 20 Business Days after the date of Financial Close; and
- (B) the longstop date specified for the relevant Deferred Deliverable in the Deferred Deliverables List.

22.10.3 Within thirty (30) days of Financial Close, the Borrowers shall deliver or procure the delivery of the following documents to the Facility Agent in form and substance satisfactory to the Facility Agent:

- (A) the Swiss Law Security Documents duly executed by each Borrower;
- (B) a legal opinion of Schellenberg Wittmer Ltd, legal advisers to the Facility Agent in Switzerland on the enforceability and validity of each Swiss Law Security Document and, if so requested by the Facility Agent or the Security Agent, a legal opinion of the legal advisers to the Borrowers on the capacity and authority of the Borrowers to enter into each Swiss Law Security Document; and
- (C) evidence that the Borrowers have signed all documents, given all notices and taken all actions (including corporate approvals) necessary, or requested by the Facility Agent or the Security Agent, and in the required order to enable the Security granted or to be granted by the Swiss Law Security Documents to be perfected.

## 23. **NEGATIVE UNDERTAKINGS**

The undertakings in this Clause 23 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.

### 23.1 **Corporate structure**

23.1.1 Except as provided in Clause 23.1.2 below:

- (A) no Obligor may form, incorporate, acquire or have any Subsidiaries, other than as contemplated by the Group Structure Diagram; and
- (B) no Obligor may enter into any reorganisation, amalgamation, demerger, merger, consolidation or corporate reconstruction.

23.1.2 Clause 23.1.1 does not apply to the acquisition, formation or incorporation of new Subsidiaries by the Sponsor which constitutes a Permitted Transaction.

### 23.2 **Acquisitions, investments and joint ventures**

No Obligor may:

- 23.2.1 acquire a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them);
  - 23.2.2 enter into, invest in or acquire (or agree to acquire) any shares, units, stocks, securities or other interest in any joint venture or analogous arrangement; or
  - 23.2.3 incorporate a company,
- provided that this Clause 23.2 does not apply in respect of a Permitted Transaction involving the Sponsor.

**23.3 No other business**

- 23.3.1 No Obligor may engage in any business or activities other than the implementation and conduct of the Projects, and the transactions contemplated by the Transaction Documents, including Permitted Transactions.
- 23.3.2 The Hedging Company may not engage in any business or activities other than the entry into the Hedging Agreements and the On-Swap Agreement and the transactions contemplated by those agreements.
- 23.3.3 The Fincos may not engage in any business or activities other than the entry into the Stream Agreements and the Finco Loan Agreements and the transactions contemplated by those agreements.

**23.4 No Disposals**

- 23.4.1 Except as provided in Clause 23.4.2, no Obligor may enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to Dispose of all or any part of (in each case, a **Disposal**, and **Dispose** and **Disposing** shall be construed accordingly):
  - (A) the Project Assets;
  - (B) its rights under the Transaction Documents; or
  - (C) the Secured Property.
- 23.4.2 Clause 23.4.1 does not apply to a Permitted Disposal.

**23.5 Negative pledge**

- 23.5.1 In Clauses 23.5.1 to 23.5.3 Quasi-Security means an arrangement or transaction described in Clause 23.5.2(B).
  - 23.5.2 Except as permitted under Clause 23.5.3:
    - (A) no Obligor may create or permit to subsist any Security over any of its assets;
    - (B) each Obligor must not:
      - (1) sell, transfer or otherwise Dispose of any of its assets on terms by which they are or may be leased to or re-acquired by any Obligor;
      - (2) sell, transfer or otherwise Dispose of any of its receivables on recourse terms;
      - (3) 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
      - (4) 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.

23.5.3 Paragraphs (A) and (B) of Clause 23.5.2 do not apply to any Security or, as the case may be, Quasi-Security which is a Permitted Security.

**23.6 Guarantees**

Except as expressly permitted by the Finance Documents, no Obligor may give, incur or allow to be outstanding any guarantee for the benefit of or in respect of any person other than any guarantee which constitutes Permitted Financial Indebtedness.

**23.7 Loans**

No Obligor may make any loans or otherwise provide any financial accommodation to any person other than Permitted Financial Accommodation.

**23.8 Financial Indebtedness**

No Obligor may have any Financial Indebtedness outstanding other than Permitted Financial Indebtedness.

**23.9 Arm's length basis**

Each Obligor must not enter into an agreement or transaction with any person, unless it does so on arm's length terms and provided that the following transactions shall not be a breach of this Clause 23.9:

- 23.9.1 intra-group loans, credit or guarantees referred to in paragraph (d) of the definition of Permitted Financial Indebtedness or the definition of Permitted Financial Accommodation (other than each Finco Loan Agreement which is considered to be on arm's length terms);
- 23.9.2 amounts payable under the Management Services Agreements not exceeding the amount set out in line 160 (Corporate G&A Costs) of the Consolidated CF\_with Financing Tab of the Base Case Model;
- 23.9.3 any disposal required, Financial Indebtedness incurred, guarantee, indemnity or Security or Quasi-Security given, or other transaction arising, in each case, under the Transaction Documents; and
- 23.9.4 any Liabilities Acquisition (as defined in the Intercreditor Agreement) which is permitted by the Intercreditor Agreement.

**23.10 Distributions**

- 23.10.1 Subject to Clause 23.10.4, no Obligor may transfer any monies to the Distributions Account or otherwise make, pay or permit a Distribution before the Completion Date.
- 23.10.2 Subject to Clause 23.10.4, no Obligor may make, pay or permit a Distribution unless the Distribution is paid using funds held in the Distributions Account.
- 23.10.3 After the Completion Date, an Obligor must not transfer any amounts into the Distributions Account, and the Sponsor must not transfer any Distributable Amounts from the Sponsor Account or the Equity Proceeds Account, unless all of the following requirements have been satisfied:
  - (A) the First Repayment Date has occurred;
  - (B) the relevant transfer of funds was made from funds that were available for that purpose in accordance with the Cashflow Waterfall;
  - (C) no Default has occurred and is continuing on the proposed date of the Distribution, or would result from the making of the Distribution;
  - (D) the payment is made no earlier than the Sweep Date and no later than fifteen (15) Business Days of delivery to the Facility Agent of the Compliance Certificate referred to in paragraph (E) below;

- (E) the Borrowers have delivered to the Facility Agent a Compliance Certificate which demonstrates that after making the proposed Distribution (in each case, calculated with respect to the Calculation Date most recently occurred before the date of preparation of the Compliance Certificate):
  - (1) the Historic Debt Service Cover Ratio is equal to or greater than 1.50:1;
  - (2) the Forecast Debt Service Cover Ratio is equal to or greater than 1.50:1;
  - (3) the Historic Net Debt to EBITDA Ratio is equal to or less than 2.00:1; and
  - (4) the Forecast Net Debt to EBITDA Ratio is equal to or less than 2.00:1;
- (F) the Borrowers have not exercised their rights to Equity Cure under 25.5.2 (*Breach of financial covenants*) in respect of the relevant Calculation Date or the preceding Calculation Date;
- (G) the balance of the Debt Service Reserve Account is equal to or greater than the Debt Service Reserve Amount; and
- (H) after the transfer has been made, there will be a Fully Funded Working Capital Balance.

23.10.4 Clause 23.10.1 and Clause 23.10.2 do not apply to any payment under an Intercompany Loan Agreement or the On-Swap Agreement which is permitted under clause 10.2 (*Permitted Payments: Subordinated Liabilities*) of the Intercreditor Agreement.

#### 23.11 Share capital

Each Obligor (other than the Sponsor) must not, and must not attempt to:

- 23.11.1 purchase, reduce, cancel, repay or redeem any of its share capital or (where relevant) issue shares, units or interests or any option over its share capital or (where relevant) shares, units or interests, or buy back or pass a resolution to buy back any of its shares, units or interests;
- 23.11.2 redeem, reduce, cancel, repay, purchase or transfer any Financial Indebtedness to another member of the Group (other than by making a Distribution in accordance with Clause 23.10.3 or as otherwise expressly permitted by this Agreement and the Intercreditor Agreement);
- 23.11.3 issue any shares, units or interests or grant any right to acquire or be issued any shares, units or interests;
- 23.11.4 alter the nature of, or any rights attaching to, any of its shares; or
- 23.11.5 issue any voting capital,

except that Clauses 23.11.3 and 23.11.5 do not apply to the issue of shares where the shares upon issue become subject to the Security created by the Security Documents.

#### 23.12 Constitutional documents

No Obligor may amend or vary any of its constitutional documents in any material respect in a manner that would:

- 23.12.1 be adverse to the rights and powers of any other Obligor or the interests of the Finance Parties (unless required by law or regulation); or
- 23.12.2 restrict or inhibit the transfer of the shares in an Obligor which are subject to the Transaction Security on enforcement of that Transaction Security,

without the prior written consent of the Facility Agent (not to be unreasonably withheld).

**23.13 Tax losses**

Each Borrower must not Dispose of any Tax losses, credit, relief or allowance available to it.

**23.14 Financial year**

Each Obligor must not, without the prior written consent of the Facility Agent, change its financial year end. For this purpose, the Facility Agent consents to the Obligors changing its financial year end to be 31 December.

**23.15 Sanctions**

23.15.1 No Obligor shall, directly or indirectly, use the proceeds of any Facility or allow these proceeds to be used in any Sanctioned Transaction.

23.15.2 Each Obligor shall ensure that it shall not use any revenue or benefit derived from any activity or dealing with a Sanctioned Person for the purpose of discharging amounts owing to any Finance Party in respect of any Facility.

23.15.3 The Obligors shall implement and maintain appropriate safeguards designed to prevent any action that would be contrary to Clauses 23.15.1 or 23.15.2.

23.15.4 The Obligors shall maintain in effect policies and procedures reasonably designed to ensure compliance by it with applicable Sanctions.

23.15.5 To the extent permitted by applicable law, each Obligor shall, and shall procure that each other member of its Group will, promptly upon becoming aware of the same, supply to the Facility Agent details of any claim, action, suit, proceedings or investigation against it with respect to Sanctions.

23.15.6 To the extent permitted by applicable law, each Obligor must promptly notify the Facility Agent of any breach or potential breach of this Clause 23.15 of which it becomes aware, and must co-operate with the Facility Agent and provide the Facility Agent with all information that is reasonably requested by the Facility Agent for the purpose of assessing the Finance Parties' potential liability under Sanctions arising in connection with any breach or potential breach of that kind.

**23.16 Corrupt Practices Laws**

23.16.1 Each Borrower must not (and shall ensure that the other members of the Group do not) directly or indirectly use the proceeds of the Facilities for any purpose which would breach any Corrupt Practices Law.

23.16.2 Without limiting the generality of Clause 22.1 (*Laws*), each Obligor must:

- (A) comply with all Corrupt Practices Laws;
- (B) not (nor may any person acting on their behalf) commit any Corrupt Act, and no Obligor may authorise or permit any Affiliate or any other person acting on their behalf to commit any Corrupt Act;
- (C) maintain in place its own policies and procedures designed to ensure compliance with this Clause 23.16 (*Corrupt Practices Laws*) by itself and its Affiliates and its and their directors, officers, employees and agents; and
- (D) from time to time, at the reasonable request of the Facility Agent, confirm in writing that it has complied with its undertakings under this Clause 23.16 (*Corrupt Practices Laws*) and (to the extent permitted by applicable law) provide any information reasonably requested by the Facility Agent in support of that confirmation.

23.16.3 To the extent permitted by applicable law, each Obligor must promptly notify the Facility Agent of any breach or potential breach of this Clause 23.16 of which it becomes aware, and must co-operate with the Facility Agent and provide the Facility Agent with all information that is reasonably requested by the Facility

Agent for the purpose of assessing the Finance Parties' potential liability under Corrupt Practices Laws arising in connection with any breach or potential breach of that kind.

**23.17 Proceedings**

No Obligor shall, without the prior written consent of the Facility Agent, settle, waive or compromise any dispute or litigation, arbitration, administrative proceedings or insurance claim, the amount or effect of which is in excess of \$5,000,000 per event.

**24. PROJECT UNDERTAKINGS**

The undertakings in this Clause 24 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.

**24.1 Conduct of the Projects**

Each Borrower must ensure that the Projects are diligently constructed, developed, operated and maintained in all material respects in accordance with the Development Plan, the Transaction Documents, Good Mining Practice, all Material Authorisations and all material applicable laws and regulations.

**24.2 Project Assets**

Each Borrower must ensure that it has and will maintain at the times required:

- 24.2.1 good title to, or the right to use, the Project Areas;
- 24.2.2 access to the Project Areas necessary to implement the Projects in all material respects in the manner contemplated by the Development Plan and the Transaction Documents;
- 24.2.3 the benefit of all easements, wayleaves and other rights necessary to implement the Projects in all material respects in accordance with the Development Plan and the Transaction Documents; and
- 24.2.4 good title to or entitlement to use any other assets (including Intellectual Property Rights) necessary to implement the Projects in all material respects in accordance with the Development Plan and the Transaction Documents.

**24.3 Mineral Rights**

Each Borrower must ensure that:

- 24.3.1 it has, and continues to have at all times, good title to the Mining Concessions and other Mineral Rights necessary to implement the Projects materially in the manner contemplated by the Development Plan;
- 24.3.2 it takes, or procures to be taken, all action necessary to ensure that all conditions and requirements relating to the Mining Concessions and other Mineral Rights, in each case necessary to implement the Projects materially in the manner contemplated by the Development Plan, are observed and performed in all material respects and that the Mineral Rights remain valid and are in full force and effect;
- 24.3.3 except to the extent such Mining Concessions and Mineral Rights are no longer necessary to implement the Projects materially in the manner contemplated by the Development Plan, the Mining Concessions and other Mineral Rights are not cancelled, suspended, reduced, surrendered, defaulted against, allowed to lapse or be transferred with the prior written consent of the Facility Agent; and
- 24.3.4 it does not without the prior written consent of the Facility Agent allow to exist or agree to any royalty, stream, net smelter return obligation, net profit payment or similar arrangement over any of the Mining Concessions or other Mineral Rights,

other than under the Stream Agreement and royalties imposed under applicable law.

#### 24.4 **Material Project Documents and Material Authorisations**

- 24.4.1 Each Borrower must duly and punctually perform, comply with and observe its material obligations under:
- (A) each Material Project Document to which it is party; and
  - (B) each Material Authorisation.
- 24.4.2 Each Borrower must take the action that a prudent, diligent and reasonable person would take to endeavour to cause each party to a Material Project Document to observe its obligations in connection with that Material Project Document, and if that party fails to perform those obligations in any material respect, must take the action that a prudent, diligent and reasonable person would take to enforce its rights arising from that failure, unless the Facility Agent otherwise agrees in writing.
- 24.4.3 No Borrower may, without the prior consent of the Facility Agent, permit or agree to:
- (A) the suspension, waiver, repudiation, revocation, annulment or cancellation of the whole of, or any material provision of, a Material Project Document or non-compliance in any material respect with Environmental and Social Standards;
  - (B) except as expressly required under the Finance Documents, the assignment or transfer of a Material Project Document or a Material Authorisation;
  - (C) any other party to a Material Project Document assigning or transferring that party's rights or obligations under that Material Project Document; or
  - (D) the termination of a Material Project Document for any reason.
- 24.4.4 Each Borrower must not permit or allow any material variation or amendment to any Material Project Document, any Material Authorisation or any material changes to the Projects unless:
- (A) in respect of any Material Expansion Project Document, such variation, amendment, supplement or waiver:
    - (1) is on arm's length terms and in accordance with Good Mining Practice; and
    - (2) is not prejudicial (or reasonably likely to be prejudicial) to the interests of the Lenders under the Finance Documents;
  - (B) such variation, amendment, supplement or waiver is required by applicable law; or
  - (C) the prior written consent of the Facility Agent has been obtained.
- 24.4.5 Each Borrower must not settle or compromise, without the prior written consent of the Facility Agent, any claim for damages, warranty or written consent where the value of the claim exceeds \$5,000,000.
- 24.4.6 Each Borrower must ensure that each Material Project Document entered into by it after the date of this Agreement permits it to grant Security over all of its rights, title and interest in, to and under that Material Project Document in accordance with the Transaction Security.
- 24.4.7 Each Borrower must comply with Clauses 24.4.1 to 24.4.6 in respect of each Project Document which is not a Material Project Document where failure to do so has or is reasonably likely to have a Material Adverse Effect.

## 24.5 Permitted Transactions

- 24.5.1 No Obligor shall enter into any contract or arrangement with any other person (including any disposal to that person) without the prior consent of the Facility Agent other than:
- (A) in accordance with the Development Plan, provided that:
    - (1) any contract or arrangement that would be a Project Document under paragraph (f) of the definition of Project Document is provided to the Facility Agent 10 Business Days before entry into that contract or arrangement; and
    - (2) no Material Expansion Project Document may be entered into without the prior written consent of the Facility Agent;
  - (B) under or in connection with a Permitted Transaction; or
  - (C) without prejudice to Clause 24.5.1(A), the Transaction Documents.
- 24.5.2 No Obligors shall, without the prior written consent of the Facility Agent, incur or agree to incur any expenditure except:
- (A) in accordance with the Base Case Model and in the case of Operating Costs or Project Capital Expenditure items, in each case in an amount in any year of up to 10% in excess of such line item in the Base Case Model;
  - (B) Emergency Expenditure;
  - (C) if such expenditure would constitute a Permitted Transaction;
  - (D) for the purposes of reinstatement of any asset following receipt of Insurance Proceeds; or
  - (E) in the case of the Sponsor, which constitutes a payment to a Finco for the purposes of buying-down all or part of any Stream, provided that:
    - (1) such buy-down is in accordance with Clause 24.13 (*Stream buyback*); and
    - (2) either:
      - (a) on that day, there are sufficient funds available for this purpose in accordance with the Cashflow Waterfall; or
      - (b) such buy-down is funded using equity proceeds which the Sponsor has raised for the purposes of making such payment.

## 24.6 Authorisations

Each Borrower must obtain and maintain in full force and effect, each Authorisation necessary (at the relevant time, including to ensure that the Completion Date occurs before the Completion Long Stop Date):

- 24.6.1 to lawfully develop, construct, operate and finance the Projects in the manner contemplated by the Development Plan and the Transaction Documents, or otherwise required in relation to its business and operations;
- 24.6.2 required to enable it to perform its obligations under each Finance Document and to make the Finance Documents to which it is a party admissible in evidence in the jurisdiction of its incorporation and in the relevant jurisdiction in respect of that Finance Document; and
- 24.6.3 to ensure that the Transaction Security has the priority and ranking contemplated by the relevant Security Document.

## 24.7 Environmental and social matters

- 24.7.1 Each Borrower must comply in all material respects with each Environmental Permit necessary (at the relevant time) to lawfully develop, construct, commission, operate and finance the Projects in the manner contemplated by the Development Plan and the Transaction Documents, or otherwise required in relation to its business and operations and must comply in all material respects with the terms of Environmental and Social Standards.
- 24.7.2 Each Borrower must implement and comply in all material respects with the Environmental and Social Action Plan and Resettlement Action Plan and must at all times carry out the Projects in all material respects in accordance with all recommendations and requirements that arise out of or under the Environmental and Social Action Plan and the Resettlement Action Plan, including to ensure compliance with the Equator Principles and the IFC Performance Standards.
- 24.7.3 Each Borrower must in all material respects carry out the Projects in accordance with all applicable Environmental and Social Standards.
- 24.7.4 Each Borrower must take all reasonable actions to prevent the Project Area from being materially affected by Environmental Contaminants, other than Environmental Contaminants which arise in accordance with, and do not breach, an Environmental Law or Environmental Permit.
- 24.7.5 Each Borrower must in relation to Environmental or Social Incidents:
- (A) respond to any Environmental or Social Incident and other non-compliances with Environmental Laws and Social Laws as required by Environmental and Social Standards through a Corrective Action Plan (as applicable);
  - (B) respond to releases of Environmental Contaminants and other non-compliances with Environmental Laws and Social Laws as required by Environmental and Social Standards through a Corrective Action Plan (as applicable);
  - (C) respond to any protests or challenges to the Projects or its construction, permitting or operation in accordance with the Environmental and Social Action Plan, Resettlement Action Plan, Environmental and Social Management System and Environmental and Social Standards; and
  - (D) provide complete access to the ES Agent and the Independent E&S Consultant of all details in relation to any Environmental or Social Incident.
- 24.7.6 The Borrowers must not amend the Environmental and Social Action Plan or the Resettlement Action Plan without the prior written consent of the ES Agent (such consent not to be unreasonably withheld).
- 24.7.7 At the same time as it delivers its Environmental and Social Monitoring Report, the Independent E&S Consultant may submit proposed amendments to the Environmental and Social Action Plan.
- 24.7.8 Within ten (10) Business Days following receipt of the Independent E&S Consultant's proposals under Clause 24.7.7, the Borrowers shall notify the ES Agent whether it agrees with the Independent E&S Consultant's proposals.
- 24.7.9 If the Borrowers disagree with the Independent E&S Consultant's proposals under Clause 24.7.7, the Borrower, the ES Agent and the Independent E&S Consultant shall meet within ten (10) Business Days of the Borrowers' notice under Clause 24.7.8 to agree any changes to the Environmental and Social Action Plan. If the parties are unable to reach agreement by the date falling twenty (20) Business Days after the date the Borrowers gave the notice under Clause 24.7.8, then the disputed amendments will be referred by the ES Agent and the Borrowers to a qualified independent environmental practitioner (the

**Environmental Expert**) jointly selected and appointed by the ES Agent and the Borrowers.

24.7.10 The Environmental Expert's determination is (except in the case of manifest error) final and binding on each party.

24.7.11 The Environmental Expert will act as an expert and not an arbitrator.

24.7.12 The costs of any Qualified Person will be paid by the Borrowers.

#### 24.8 Insurances

Each Borrower must:

24.8.1 comply with its obligations in Schedule 13 (*Insurances*);

24.8.2 ensure that the Insurances are in full force and effect and that all premia are paid when due;

24.8.3 ensure that the conditions of the Insurances are complied with in all material respects; and

24.8.4 ensure that nothing will be done or omitted which would reduce or avoid liability under any of the Insurances.

#### 24.9 Construction and Completion Tests

24.9.1 The Borrowers must ensure that commissioning and testing of the Projects are carried out in accordance with the Development Plan, the relevant Project Documents, Good Mining Practice and the Completion Tests.

24.9.2 The Borrowers must not make any change to the Technical Reports or the Bibiani Underground Feasibility Study, other than a change which has first been approved by the Technical Bank (that approval not to be unreasonably withheld or delayed).

24.9.3 The Borrowers must give the Technical Bank and the Technical Adviser reasonable notice of all Completion Tests carried out in respect of the Projects. The Borrowers must also permit representatives of the Technical Bank and the Technical Adviser to attend whilst Completion Tests are carried out and inspect the results of the Completion Tests.

#### 24.10 Advisers

Each Borrower must co-operate with, and must use its reasonable endeavours to ensure that each other party to the Project Documents co-operates with, each Adviser.

#### 24.11 Access

24.11.1 Each Borrower must ensure that representatives of the Technical Adviser, the Technical Bank, the ES Agent, the Independent E&S Consultant and, if paragraph (C) applies, each Lender, at the Borrowers' expense:

(A) upon reasonable prior notice, are given access to the Projects, Project Area and the Project Assets including any directors, employees and contractors in relation to the Projects, on a Quarterly basis before the Completion Date and annually after that date;

(B) upon reasonable prior notice, are allowed to inspect and take copies of each Borrower's records (including all drawings and specifications relating to the Projects); and

(C) if a Default is continuing, immediately on request give access to the Projects, Project Areas and the Project Assets including any directors, employees and contractors.

24.11.2 When exercising its rights under Clause 24.11.1, each of the relevant Finance Parties and the Technical Adviser and any of its representatives, agents or

contractors must comply with all safety requirements and site rules relating to the Projects.

#### 24.12 **Intellectual Property**

Each Borrower must ensure that it owns or has licensed to it on arm's length terms or has available to use all Intellectual Property Rights necessary for the conduct of its business and take all steps necessary, including instituting legal proceedings, to protect those Intellectual Property Rights.

#### 24.13 **Stream buyback**

The Obligors shall only be permitted to buy-down all or part of any Stream if:

24.13.1 no Event of Default has occurred and is then continuing or would arise as a result of making such payment; and

24.13.2 following such payment, there would be a Fully Funded Working Capital Balance.

### 25. **EVENTS OF DEFAULT**

Each of the events and circumstances set out in this Clause 25 is an Event of Default (other than Clause 25.29 (*Acceleration*)).

#### 25.1 **Non-payment**

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

25.1.1 its failure to pay is caused by:

(A) administrative or technical error; or

(B) a Disruption Event; and

25.1.2 payment is made within five (5) Business Days of its due date.

#### 25.2 **Breach of key obligations**

An Obligor fails to comply with its obligations under Clause 21.5.1 (*Compliance Certificate*), Clause 22.10 (*Conditions subsequent*), Clause 23.15 (*Sanctions*) or Clause 23.16 (*Corrupt Practices Laws*) of this Agreement.

#### 25.3 **Breach of other obligations**

25.3.1 An Obligor does not comply with any provision of a Finance Document (other than those referred to in Clauses 25.1 (*Non-payment*) and 25.2 (*Breach of key obligations*)).

25.3.2 No Event of Default under Clause 25.3.1 will occur if the failure to comply is capable of remedy and is remedied within twenty (20) Business Days of the earlier of:

(A) the Facility Agent giving notice to the Borrowers; and

(B) the date on which that Obligor becomes aware, or any Obligor becomes aware or ought reasonably to have become aware, of the failure to comply.

#### 25.4 **Misrepresentation**

25.4.1 Any written representation or written statement made or deemed to be made by an Obligor in any Finance Document or any other document delivered by or on behalf of an Obligor under or in connection with any Finance Document is, or proves to have been, incorrect or misleading in any material respect when made or deemed to be made, but if the circumstances giving rise to the

misrepresentation are dealt with in another Event of Default in this Clause 25, then the treatment in that other Event of Default will prevail.

25.4.2 Other than with respect to Clause 20.30 (*Corrupt Acts*) and Clause 20.32 (*Sanctions*), no Event of Default will occur under Clause 25.4.1 if the circumstances giving rise to the misrepresentation are capable of remedy and are remedied within twenty (20) Business Days of the earlier of:

- (A) the Facility Agent giving notice of the misrepresentation to the Borrowers; and
- (B) the date on which that Obligor becomes aware, or any Obligor becomes aware or ought reasonably to have become aware, of the misrepresentation.

## 25.5 Breach of financial covenants

25.5.1 Subject to Clause 25.5.2:

- (A) the Historic Debt Service Cover Ratio is less than 1.30:1;
- (B) the Historic Net Debt to EBITDA Ratio is more than 2.50:1;
- (C) the Loan Life Cover Ratio is less than 1.50:1;
- (D) the Project Life Cover Ratio is less than 1.70:1; and
- (E) the Reserve Tail Ratio is less than 30%,

in each case, on any Calculation Date or any other date on which the relevant Ratio is determined under this Agreement.

25.5.2 No Event of Default under Clause 25.5.1 in respect of the Historic Debt Service Cover Ratio, the Loan Life Cover Ratio, the Project Life Cover Ratio or the Historic Net Debt to EBITDA Ratio will occur if:

- (A) within ten (10) Business Days of the relevant Calculation Date (or, if later, of the date on which the relevant Ratio is determined under this Agreement), the Borrowers notify the Facility Agent of their intention to cure the relevant non-compliance; and
- (B) within twenty (20) Business Days of the relevant Calculation Date (or if later, of the date on which the relevant Ratio is determined under this Agreement), the Borrowers receive Equity Contributions (each an **Equity Cure**) in an amount which is at least sufficient to ensure that the relevant requirement of Clause 25.5.1 would be complied with if tested again on the basis that each relevant Ratio is recalculated assuming that:
  - (1) the amount of the Equity Contributions so received by the Borrowers is applied in mandatory prepayment of outstanding Loans in accordance with Clause 7.2.4 (*Disposal, Insurance and Equity Cure*) on the first day of the relevant calculation period for that Ratio (where applicable) or otherwise prior to calculating the relevant Ratio; and
  - (2) in the case of the Historic Debt Service Cover Ratio, such Equity Contributions will be taken into account in all subsequent calculations of that Ratio until the Calculation Date in respect of which the Equity Cure was made falls outside the relevant calculation period for that Ratio,

provided that no more than three (3) Equity Cures shall be permitted until the Final Maturity Date and no Equity Cure shall be permitted in respect of any two (2) consecutive Calculation Dates.

## 25.6 Cross-default

- 25.6.1 Any Financial Indebtedness of an Obligor is not paid when due nor within any originally applicable grace period and the obligation to pay is not being disputed in good faith by appropriate proceedings approved by the Facility Agent.
- 25.6.2 Any Financial Indebtedness of any Obligor is validly declared to be or otherwise becomes due and payable before its specified maturity as a result of an event of default (however described).
- 25.6.3 Any commitment for any Financial Indebtedness of any Obligor is cancelled or suspended by a creditor of that Obligor as a result of an event of default (however described).
- 25.6.4 Any creditor of any Obligor becomes entitled to declare any Financial Indebtedness of that Obligor due and payable before its specified maturity as a result of an event of default (however described).
- 25.6.5 Any of the following occurs:
- (A) a Stream Purchaser gives a Stream Enforcement Notice (as defined in the Intercreditor Agreement) under clause 8.6(a)(ii)(B) (*Permitted Enforcement: Stream Purchaser*) of the Intercreditor Agreement;
  - (B) a Stream Purchaser takes any action permitted under clause 8.6(b) (*Permitted Enforcement: Stream Purchaser*) of the Intercreditor Agreement;
  - (C) a Mezzanine Creditor gives a Mezzanine Enforcement Notice (as defined in the Intercreditor Agreement) under clause 5.6(a)(ii)(B) (*Permitted Enforcement: Mezzanine Creditors*) of the Intercreditor Agreement;
  - (D) a Mezzanine Creditor takes any action permitted under clause 5.6(b) (*Permitted Enforcement: Mezzanine Creditors*) of the Intercreditor Agreement;
  - (E) Fujairah gives a GFA Enforcement Notice (as defined in the Intercreditor Agreement) under clause 6.6(a)(i)(B) (*Permitted Enforcement: Gold Forward Creditor*) of the Intercreditor Agreement;
  - (F) Fujairah takes any action permitted under clause 6.6(b) (*Permitted Enforcement: Gold Forward Creditor*) of the Intercreditor Agreement; or
  - (G) the Third Party Shareholder takes any action permitted under clause 9.6 (*Permitted Enforcement: Third Party Shareholder*) of the Intercreditor Agreement.
- 25.6.6 No Event of Default will occur under Clauses 25.6.1, 25.6.2, 25.6.3 or 25.6.4:
- (A) if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within Clauses 25.6.1, 25.6.2, 25.6.3 or 25.6.4 is less than \$5,000,000 (or its Equivalent); or
  - (B) in respect of any Subordinated Liabilities (as defined in the Intercreditor Agreement).

## 25.7 Insolvency

Any of the following occurs in respect of an Obligor or, subject to Clause 25.30 (*Replacement Rights*), a Major Project Party:

- 25.7.1 it is unable or admits inability to pay its debts as they fall due;
- 25.7.2 it is deemed to, or is declared to, be unable to pay its debts under applicable law;
- 25.7.3 it suspends or threatens in writing to suspend making payments on any of its debts;

- 25.7.4 by reason of actual or anticipated financial difficulties, it commences negotiations with one or more of its creditors (excluding any Primary Creditor (as defined in the Intercreditor Agreement)) with a view to rescheduling any of its indebtedness;
- 25.7.5 the value of its assets is less than its liabilities (taking into account contingent and prospective liabilities), but excluding for all purposes any Subordinated Liabilities, TPS Liabilities and Mezzanine Liabilities (each as defined in the Intercreditor Agreement);
- 25.7.6 a moratorium is declared in respect of any of its indebtedness (and if a moratorium occurs, the ending of that moratorium will not remedy any Event of Default caused by that moratorium); or
- 25.7.7 it institutes any actions or steps described in Clause 25.8 (*Insolvency proceedings*).

## 25.8 **Insolvency proceedings**

- 25.8.1 Any corporate action, legal proceedings or other formal procedure or step is taken in relation to:
  - (A) 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, subject to Clause 25.30 (*Replacement Rights*), Major Project Party;
  - (B) a composition, compromise, assignment or arrangement with, or a stay of proceedings with respect to, any creditor or class of creditors of any Obligor;
  - (C) the appointment of an Insolvency Officer in respect of any Obligor or, subject to Clause 25.30 (*Replacement Rights*), Major Project Party or any of its assets; or
  - (D) the enforcement of any Security over any assets of any Obligor, or any analogous procedure or step is taken in any jurisdiction.
- 25.8.2 Clause 25.8.1 does not apply to any winding-up petition which is (i) frivolous or vexatious or (ii) being contested in good faith and with due diligence, and in each case is discharged, stayed or dismissed within thirty (30) days of commencement.

## 25.9 **Creditors' process**

Any expropriation, attachment, sequestration, distress, execution or any analogous process in any jurisdiction affects any material asset or assets of an Obligor and those assets have an aggregate value exceeding \$1,000,000 or its Equivalent, and is not discharged within thirty (30) days.

## 25.10 **Environmental and Social Non-Compliance**

- 25.10.1 Any:
  - (A) governmental or administrative authority makes a sanctioning administrative or judicial resolution against a Borrower or the Projects as a consequence of a material breach of the Resettlement Action Plan or any applicable Environmental Law; or
  - (B) E&S Non-Conformance occurs, (each an "**E&S Event of Default**").
- 25.10.2 No E&S Event of Default shall occur under Clause 25.10.1 above if the relevant E&S Non-Conformance or relevant breach of the Resettlement Action Plan or applicable Environmental Law:
  - (A) is capable of remedy; and

- (B) is remedied within ten (10) Business Days after the earlier of the Facility Agent giving notice to the Borrowers and any Borrower becoming aware of the relevant E&S Non-Conformance or relevant breach of the Resettlement Action Plan or applicable Environmental Law.
- 25.10.3 No E&S Event of Default shall occur under Clause 25.10.1 above if the relevant E&S Non-Conformance or relevant breach of the Resettlement Action Plan or applicable Environmental Law:
- (A) is capable of remedy, but not reasonably capable of remedy within the time period specified in Clause 25.10.1(B) above; and
  - (B) within thirty (30) Business Days after the earlier of the Facility Agent giving notice to the Borrowers and any Borrower becoming aware of the relevant E&S Non-Conformance or relevant breach of the Resettlement Action Plan or applicable Environmental Law, the Borrowers deliver to the ES Agent for approval a Corrective Action Plan;
  - (C) within twenty (20) Business Days after the delivery of the relevant Corrective Action Plan, the ES Agent (acting reasonably) approves that Corrective Action Plan; and
  - (D) the Borrowers diligently implement and comply with such Corrective Action Plan.
- 25.11 Unlawfulness and invalidity**
- 25.11.1 It is or becomes unlawful for any person (other than a Finance Party) to perform any of its material obligations under the Finance Documents, or any Transaction Security ceases to be effective.
- 25.11.2 A provision of a Finance Document or an obligation of any person (other than a Finance Party) under a Finance Document is not (subject to the Legal Reservations) or ceases 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.
- 25.11.3 A Finance Document ceases to be in full force and effect, or any Transaction Security or any subordination created under the Intercreditor Agreement ceases to be legal, valid, binding, enforceable or effective, or in all the preceding events is alleged by a party to it (other than a Finance Party) to be ineffective.
- 25.12 Cessation of business**
- An Obligor permanently suspends or ceases to carry on (or threatens in writing to suspend or cease to carry on) all or a material part of its business.
- 25.13 Immunity**
- An Obligor or any of its assets is or becomes immune from any legal process in respect of its obligations under the Transaction Documents.
- 25.14 Ownership of the Obligors**
- There is a change in any direct or indirect ownership interest of an Obligor (other than the Sponsor).
- 25.15 Effectiveness of Finance Documents**
- 25.15.1 Any party to a Finance Document (other than a Finance Party (for this purpose, only in their capacity as a Finance Party and not in any other capacity)) rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document or any of the Transaction Security or evidences in writing an intention to rescind or repudiate a Finance Document or any Transaction Security.

- 25.15.2 A Finance Document is terminated or rescinded or any party to a Finance Document (other than a Finance Party (for this purpose, only in their capacity as a Finance Party and not in any other capacity)) evidences in writing an intention to terminate or rescind a Finance Document.
- 25.15.3 A Security Document does not create legal, valid, binding and enforceable security over the assets charged under that Security Document or the ranking or priority of that security is adversely affected (other than by a Permitted Security which has first-ranking priority by operation of law).

#### 25.16 **Material Project Documents**

Subject to Clause 25.30 (Replacement Rights):

- 25.16.1 any provision of a Material Project Document is invalid, illegal, ineffective, unenforceable or is amended (without the prior written consent of the Intercreditor Agent) for any reason whatsoever and this individually or cumulatively has a Material Adverse Effect;
- 25.16.2 a party to a Material Project Document does not comply with any of its obligations under a Material Project Document, and such non-compliance (i) gives another party (other than an Obligor) a right to terminate that Material Project Document; or (ii) otherwise has a Material Adverse Effect;
- 25.16.3 it is or becomes unlawful for any person to perform any of its obligations under a Material Project Document and this individually or cumulatively materially has a Material Adverse Effect;
- 25.16.4 notice is given by any party to a Material Project Document to terminate or rescind that Material Project Document, or any Material Project Document is terminated or rescinded; or
- 25.16.5 any of the circumstances described in Clause 25.16.1 to 25.16.4 occurs in respect of a Project Document which is not a Material Project Document, which has or is reasonably likely to have a Material Adverse Effect.

#### 25.17 **Compulsory acquisition**

- 25.17.1 Any material Project Asset is seized, expropriated, nationalised, acquired, confiscated, requisitioned or administered (whether compulsorily or not).
- 25.17.2 All or any material part of an Obligor's rights under the Transaction Documents are forfeited, suspended or otherwise abrogated by any government entity.

#### 25.18 **Litigation**

Any litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency are started or threatened in writing, or any judgment or order of a court, arbitral body or agency is made, in relation to the Transaction Documents or the transactions contemplated in the Transaction Documents or against any Obligor or its assets which have, or has, or are, or is, reasonably likely to have a Material Adverse Effect.

#### 25.19 **Abandonment and suspension**

- 25.19.1 The whole or a substantial part of the Project Assets are (or a Mining Concession itself is) lost, transferred or forfeited, or any Material Authorisation regarding the Projects is otherwise lost.
- 25.19.2 The whole or a substantial part of the Project Assets is damaged in circumstances not covered by Insurance.
- 25.19.3 A Borrower abandons all or a material part of the Projects.
- 25.19.4 The operation of all or a material part of the Projects is suspended for a period exceeding sixty (60) consecutive days.

## 25.20 Completion

25.20.1 The Completion Date does not occur on or before the Completion Long Stop Date.

25.20.2 The Facility Agent notifies the Borrowers that the Technical Adviser (acting reasonably and after consultation with the Borrowers) has notified the Facility Agent in a quarterly Monitoring Report delivered under Clause 21.1 (*Monitoring Report*) that it forecasts that there is no reasonable prospect that the Completion Date will occur by the Completion Long Stop Date ("**Delay Event**"), provided that no Event of Default will occur under this Clause 25.20.2 if:

- (A) the Borrowers disagree with the Technical Adviser's determination that a Delay Event has occurred and refer the matter for determination by a Qualified Person in accordance with Clause 18 (*Submissions to a Qualified Person*) within five (5) Business Days of notification of the relevant Delay Event; and
- (B) either:
  - (1) the Borrowers and the Facility Agent have agreed a resolution to the Delay Event acceptable to the Facility Agent within 90 days of the later of (i) notification of the Delay Event by the Facility Agent and (ii) if disputed pursuant to paragraph (A), determination by a Qualified Person in accordance with Clause 18 (*Submissions to a Qualified Person*) that a Delay Event has occurred (such period, the "**Resolution Period**"); or
  - (2) a Qualified Person determines in accordance with Clause 18 (*Submissions to a Qualified Person*) that no Delay Event has occurred,

and, during the Resolution Period, the Borrowers are diligently participating in good faith in the resolution process.

## 25.21 Funding Shortfall Amount

25.21.1 Any Cost to Complete Certificate demonstrates that there is a Funding Shortfall Amount.

25.21.2 Unless the Completion Date has already occurred, the amount standing to the credit of the Capex Reserve Account is less than the Capex Reserve Amount on the Completion Long Stop Date.

## 25.22 Debt Service Reserve Amount

Following a withdrawal from the Debt Service Reserve Accounts in accordance with Clause 19.7.3 (*Accounts*), the aggregate balance of the Debt Service Reserve Accounts is not reinstated to the prevailing Debt Service Reserve Amount on or prior to the following Calculation Date.

## 25.23 Mines

25.23.1 Bibiani ceases to be the operator of the Bibiani Mine.

25.23.2 Chirano ceases to be the operator of the Chirano Mine.

## 25.24 Insurance

Any material Insurance:

25.24.1 is not, or ceases to be, in full force and effect;

25.24.2 is unavailable at the time it is required to be effected; or

25.24.3 is avoided.

**25.25 Audit qualification**

The auditors of the Obligors qualify the audited financial statements of any Obligor.

**25.26 Convertibility/Transferability**

Any foreign exchange law is amended, enacted or introduced or is reasonably likely to be amended, enacted or introduced in the Republic of Ghana that:

25.26.1 has or is reasonably likely to have the effect of prohibiting, or restricting or delaying in any material respect any payment that any Obligor is required to make pursuant to the terms of any of the Finance Documents; or

25.26.2 is materially prejudicial to the interests of the Finance Parties under or in connection with any of the Finance Documents.

**25.27 Political and economic risk**

An act of war or hostilities, invasion, armed conflict or act of foreign enemy, revolution, insurrection or insurgency occurs in the Republic of Ghana.

**25.28 Material adverse change**

Any event or circumstance occurs which has or is reasonably likely to have a Material Adverse Effect.

**25.29 Acceleration**

On and at any time after the occurrence of an Event of Default which is continuing the Facility Agent may, and must if so directed by the Majority Lenders, by notice to the Borrowers, do all or any of the following:

25.29.1 cancel each Available Commitment of each Lender at which time each such Available Commitment will immediately be cancelled and each Facility will immediately cease to be available for further utilisation;

25.29.2 declare that all or part of any Loan, together with accrued interest and all other amounts accrued or outstanding under the Finance Documents, is immediately due and payable, at which time they will become immediately due and payable;

25.29.3 declare that all or any part of any Loan be payable on demand, at which time they will immediately become payable on demand by the Facility Agent on the instructions of the Majority Lenders;

25.29.4 exercise, or direct the Security Agent to exercise, any or all of its rights, remedies, powers or discretions under the Finance Documents; and

25.29.5 declare that no withdrawals may be made from any Project Account and issue a Stop Notice.

**25.30 Replacement Rights**

No Event of Default shall occur under Clauses 25.7 (*Insolvency*) or 25.8 (*Insolvency proceedings*) in respect of a Major Project Party or Clauses 25.3 (*Breach of other obligations*) in respect of a failure to comply with an obligation relating to the Project Documents or 25.16 (*Material Project Documents*), provided that:

25.30.1 the relevant event or circumstance or any consequence of the same is, in the reasonable opinion of the Facility Agent, capable of remedy by the replacement of the relevant counterparty to the Project Document, and/or entry into a replacement Project Document. For this purpose, it is acknowledged and agreed that the termination of the Mining Services Contract (Bibiani) by Bibiani for convenience cannot be remedied by replacement of the counterparty or entry into a replacement Project Document unless the counterparty has agreed to waive its right to receive the relevant termination payment or the Facility Agent has provided its consent;

- 25.30.2 the Borrowers notify the Facility Agent of the occurrence of such event or circumstance within five Business Days of any Obligor becoming aware of such event or circumstance;
- 25.30.3 within ten (10) Business Days after the occurrence of the relevant event or circumstance, the Borrowers provide to the Facility Agent and the Technical Adviser an indicative remedy plan setting out summary details of how it intends to replace the relevant counterparty and/or Material Project Document;
- 25.30.4 within forty (40) Business Days after the occurrence of the relevant event or circumstance, the Borrowers provide to the Facility Agent and the Technical Adviser a full form remedy plan setting out the details of how it intends to replace the relevant counterparty and/or Material Project Document and which gives the Borrowers a grace period of at least 60 Business Days from the relevant event or circumstance (a "**Remedy Plan**");
- 25.30.5 within twenty (20) Business Days after the delivery of the relevant Remedy Plan, the Facility Agent (acting reasonably) approves that Remedy Plan; and
- 25.30.6 each Borrower complies in all material respects with the Remedy Plan.

## 26. **CHANGES TO THE LENDERS**

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

Subject to this Clause 26, a Lender (the **Existing Lender**) may:

- 26.1.1 assign any of its rights; or
- 26.1.2 transfer by novation any of its rights and obligations (including in respect of that Lender's participation in each Loan),

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**).

26.2 The consent of the Borrowers is required for an assignment or transfer by an Existing Lender, unless the assignment or transfer is:

- 26.2.1 effected by the Initial Mandated Lead Arranger, Underwriter and Bookrunner in the course of the primary syndication of the Facilities;
- 26.2.2 to another Lender or an Affiliate of any Lender;
- 26.2.3 to a fund which is a Related Fund of an Existing Lender;
- 26.2.4 to an entity included on the Pre-Approved New Lender List; or
- 26.2.5 effected at a time when an Event of Default has occurred and is continuing.

26.3 The consent of the Borrowers to an assignment or transfer must not be unreasonably withheld or delayed. The Borrowers will be deemed to have given its consent ten (10) Business Days after the Existing Lender has requested it in writing unless consent is expressly refused by the Borrowers within that time.

### 26.4 **Conditions of assignment or transfer**

26.4.1 An assignment will only be effective on:

- (A) receipt by the Facility Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Facility 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;
- (B) the New Lender entering into the documentation required for it to accede as a party to the Intercreditor Agreement; and

- (C) the performance by the Facility Agent of all necessary 'know your customer' or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Facility Agent must promptly notify to the Existing Lender and the New Lender.
- 26.4.2 A transfer will only be effective if the New Lender enters into the documentation required for it to accede as a party to the Intercreditor Agreement and if the procedure set out in Clause 26.7 (*Procedure for transfer*) is complied with.
- 26.4.3 If:
- (A) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
- (B) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 12 (*Tax gross up and indemnities*) or Clause 13 (*Increased costs*),
- then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred. This Clause 26.4.3 will not apply in respect of an assignment or transfer made in the ordinary course of the primary syndication of any Facility.
- 26.4.4 Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the Facility Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the 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.
- 26.5 Assignment or transfer fee**
- The New Lender must, on the date upon which an assignment or transfer takes effect, pay to the Facility Agent (for its own account) a fee of \$2,500.
- 26.6 Limitation of responsibility of Existing Lenders**
- 26.6.1 Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
- (A) the legality, validity, effectiveness, adequacy or enforceability of the Transaction Documents, the Transaction Security or any other documents;
- (B) the financial condition of any Obligor;
- (C) the performance and observance by any Obligor of its obligations under the Transaction Documents or any other documents; or
- (D) 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.
- 26.6.2 Each New Lender confirms to the Existing Lender, the other Finance Parties and the other Secured Parties that it:
- (A) has made (and will 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

- (B) 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.

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

- (A) accept a re-transfer and/or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 26; or
- (B) 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.

## 26.7 Procedure for transfer

26.7.1 Subject to the conditions set out in Clause 26.4 (*Conditions of assignment or transfer*) a transfer is effected in accordance with Clause 26.7.3 when the Facility Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Facility Agent must, subject to Clause 26.7.2, 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.

26.7.2 The Facility Agent will only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary 'know your customer' or other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.

26.7.3 Subject to Clause 26.12 (*Pro rata interest settlement*), on the Transfer Date:

- (A) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents each of the Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and their respective rights against one another under the Finance Documents shall be cancelled (being the **Discharged Rights and Obligations**);
- (B) 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 and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;
- (C) the New Lender and the other Finance Parties shall acquire the same rights and assume the same obligations between themselves as they would have acquired and assumed had the New Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the other Finance Parties shall each be released from further obligations to each other under the Finance Documents; and
- (D) the New Lender will become a Party as a '**Lender**'.

## 26.8 Procedure for assignment

26.8.1 Subject to the conditions set out in Clause 26.4 (*Conditions of assignment or transfer*) an assignment may be effected in accordance with Clause 26.8.3 when the Facility Agent executes an otherwise duly completed Assignment Agreement

delivered to it by the Existing Lender and the New Lender. The Facility Agent must, subject to Clause 26.8.2, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.

- 26.8.2 The Facility Agent will 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 that New Lender.
- 26.8.3 Subject to Clause 26.12 (*Pro rata interest settlement*), on the Transfer Date:
- (A) the Existing Lender will assign absolutely to the New Lender the rights under the Finance Documents expressed to be the subject of the assignment in the Assignment Agreement;
  - (B) the Existing Lender will be released by each Obligor and the other Finance Parties from the obligations owed by it (the **Relevant Obligations**) and expressed to be the subject of the release in the Assignment Agreement (and any corresponding obligations by which it is bound in respect of the Transaction Security); and
  - (C) the New Lender will become a Party as a '**Lender**' and will be bound by obligations equivalent to the Relevant Obligations.
- 26.8.4 Lenders may utilise procedures other than those set out in this Clause 26.8 to assign their rights under the Finance Documents (but not, without the consent of the relevant Obligor or unless in accordance with Clause 26.8 (*Procedure for assignment*), 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 26.4 (*Conditions of assignment or transfer*).

#### 26.9 **Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Borrowers**

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

#### 26.10 **Accession of Hedging Banks**

Any person which becomes a party to the Intercreditor Agreement as a Hedge Counterparty shall, at the same time, become a Party to this Agreement as a "Hedging Bank" in accordance with clause 25.3 (*New Hedge Counterparty*) of the Intercreditor Agreement.

#### 26.11 **Security over Lenders' rights**

- 26.11.1 In addition to the other rights provided to Lenders under this Clause 26, each Lender may, without consulting with or obtaining consent from any Obligor, at any time charge, assign, pledge 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, pledge or other Security to secure obligations to a federal reserve or central bank; and
  - (B) any charge, assignment, pledge 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,

provided that (1) notice of such charge, assignment, pledge or Security is provided to the Sponsor, and (2) no such charge, assignment, pledge or Security will:

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

## 26.12 Pro rata interest settlement

If the Facility 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 assignment pursuant to Clause 26.8 (*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):

26.12.1 any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time will continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date (**Accrued Amounts**) and will become due and payable to the Existing Lender (without further interest accruing on them) on the last day of the current Interest Period (or, if the Facility Agent and all the Lenders have agreed to an Interest Period longer than six (6) Months, on the dates falling at six (6) Monthly intervals after the first day of that Interest Period); and

26.12.2 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 26.12 (*Pro rata interest settlement*), have been payable to it on that date, but after deduction of the Accrued Amounts.

26.12.3 In this Clause 26.12 references to **Interest Period** are to be construed to include a reference to any other period for accrual of fees.

26.12.4 An Existing Lender which retains the right to the Accrued Amounts pursuant to this Clause 26.12 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.

## 27. CHANGES TO THE OBLIGORS

### 27.1 Assignments and transfer by Obligors

No Obligor may assign any of its rights or transfer any of its rights or obligations in whole or in part under the Finance Documents without the prior written consent of the Facility Agent (acting on the instructions all Lenders).

## 27.2 **Additional Obligors**

- 27.2.1 Subject to compliance with the provisions of Clause 21.15.3 and 21.15.4 (*'Know your customer' checks*), the Sponsor may request that any of its wholly owned Subsidiaries become an Obligor.
- 27.2.2 A member of the Group shall become an Additional Obligor if:
- (A) the Sponsor and the proposed Additional Obligor deliver to the Facility Agent a duly completed and executed Accession Deed; and
  - (B) the Facility Agent has received all of the documents and other evidence referred to in Part B of Schedule 2 (*Conditions Precedent*) in relation to that Additional Obligor, each in form and substance satisfactory to the Facility Agent.
- 27.2.3 The Facility Agent shall notify the Sponsor 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 B of Schedule 2 (*Conditions Precedent*).
- 27.2.4 Other than to the extent that the Majority Lenders notify the Facility Agent in writing to the contrary before the Facility Agent gives the notification described in Clause 27.2.3 above, the Lenders authorise (but do not require) the Facility Agent to give that notification. The Facility Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

## 27.3 **Repetition of Representations**

Delivery of an Accession Deed constitutes confirmation by the relevant Subsidiary that the Repeating Representations 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.

## 28. **ROLE OF THE ADMINISTRATIVE FINANCE PARTIES**

### 28.1 **General**

In this Clause 28:

- 28.1.1 **Agent** means each of the Facility Agent, the Technical Bank and the ES Agent; and
- 28.1.2 references to the Administrative Finance Parties are to be construed as excluding the Security Agent.

### 28.2 **Appointment of the Agents**

- 28.2.1 Each other Finance Party appoints each Agent to act as its agent under and in connection with the Finance Documents.
- 28.2.2 Each other Finance Party authorises each Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to that Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

### 28.3 **Instructions**

- 28.3.1 For the purposes of this Clause 28.3, **'relevant instructing quorum'** means, in relation to any Agent:
- (A) the Majority Lenders;
  - (B) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision; or

- (C) any other Finance Party or quorum of Finance Parties that is expressly entitled to instruct that Agent or on whose instructions that Agent is expressly obliged under this Agreement to act.
- 28.3.2 Unless a contrary indication appears in a Finance Document, each Agent must:
- (A) exercise or refrain from exercising any right, power, authority or discretion vested in it in its capacity as Agent in accordance with any instructions given to it by the relevant instructing quorum; and
  - (B) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with an instruction of the relevant instructing quorum.
- 28.3.3 An Agent is entitled to request instructions, or clarification of any instruction, from the relevant instructing quorum as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and an Agent may refrain from acting unless and until it receives those instructions or that clarification.
- 28.3.4 Unless a contrary indication appears in a Finance Document, any instructions given by the relevant instructing quorum will be binding on all the Finance Parties and will override any conflicting instructions given to that Agent by any other Parties.
- 28.3.5 An Agent may refrain from acting in accordance with the instructions of the relevant instructing quorum until it has received indemnification and security as it may 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 (together with any associated VAT) which it may incur in complying with the instructions.
- 28.3.6 In the absence of instructions from the relevant instructing quorum each Agent may act (or refrain from acting) as it considers to be in the best interests of the Finance Parties.
- 28.3.7 No 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 Clause 28.3.7 shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Security Documents or enforcement of the Transaction Security or Security Documents.
- 28.4 Duties of the Agents**
- 28.4.1 Each Agent's duties under the Finance Documents are wholly mechanical and administrative in nature.
- 28.4.2 Subject to Clause 28.4.3, each Agent must promptly forward to a Party the original or a copy of any document which is delivered to that Agent for that Party by any other Party.
- 28.4.3 Without prejudice to Clause 26.9 (*Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Borrower*), Clause 28.4.2 above shall not apply to any Transfer Certificate, any Assignment Agreement or any Increase Confirmation.
- 28.4.4 Except where a Finance Document specifically provides otherwise, no Agent is obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- 28.4.5 If the Facility Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it must promptly notify the other Finance Parties.
- 28.4.6 If the Facility Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than an

Administrative Finance Party or the Security Agent) under this Agreement it must promptly notify the other Finance Parties.

28.4.7 Each Agent has only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others are to be implied).

**28.5 Role of the Initial Mandated Lead Arranger, Underwriter and Bookrunner, Mandated Lead Arrangers and Lead Arrangers**

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

**28.6 No fiduciary duties**

28.6.1 Nothing in any Finance Document constitutes any Administrative Finance Party as a trustee or fiduciary of any other person.

28.6.2 No Administrative Finance Party is bound to account to any Finance Party for any sum or the profit element of any sum received by it for its own account.

**28.7 Business with the Group**

Each Administrative Finance Party may accept deposits from, lend money to and generally engage in any kind of banking or other business with any Obligor or other member of the Group.

**28.8 Rights and discretions of the Administrative Finance Parties**

28.8.1 Each Administrative Finance Party may:

- (A) rely on any representation, communication, notice or document reasonably believed by it to be genuine, correct and appropriately authorised;
- (B) assume that:
  - (1) any instructions received by it from the Majority Lenders, any Lenders or any group of Lenders are duly given in accordance with the terms of the Finance Documents; and
  - (2) unless it has received notice of revocation, that those instructions have not been revoked; and
- (C) rely on a certificate from any person:
  - (1) as to any matter of fact or circumstance which can reasonably be expected to be within the knowledge of that person; or
  - (2) to the effect that the 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 (1) above, may assume the truth and accuracy of that certificate.

28.8.2 Each Administrative Finance Party may assume (unless it has received notice to the contrary in its capacity as an Administrative Finance Party) that:

- (A) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 25.1(*Non-payment*));
- (B) any right, power, authority or discretion vested in any Party or any group of Parties (such as the Majority Lenders) has not been exercised; and

- (C) any notice or request made by a Borrower (other than a Utilisation Request) is made on behalf of and with the consent and knowledge of all the Obligors.
- 28.8.3 Each Administrative Finance Party may engage, and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisors or experts.
- 28.8.4 Without prejudice to the generality of Clause 28.8.3, each Administrative Finance Party may at any time engage and pay for the services of any lawyers to act as independent counsel to that Administrative Finance Party (separate from any lawyers instructed by the Lenders or other Finance Parties) if that Administrative Finance Party in its reasonable opinion considers this to be necessary.
- 28.8.5 Each Administrative Finance Party may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisors or experts (whether obtained by that Administrative Finance Party or any other Party) and will 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 it so relying.
- 28.8.6 Each Administrative Finance Party may act in relation to the Finance Documents through its officers, employees and agents and will not:
- (A) be liable for any error of judgment made by any of those persons; or
  - (B) 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 of those persons,
- unless the error or loss was directly caused by the relevant Administrative Finance Party's gross negligence or wilful misconduct.
- 28.8.7 Unless a Finance Document expressly provides otherwise, each Administrative Finance Party may disclose to any other Party any information it reasonably believes it has received in its capacity as an Administrative Finance Party under this Agreement.
- 28.8.8 Without prejudice to the generality of Clause 28.8.7 above, an Administrative Finance Party:
- (A) may disclose; and
  - (B) on the written request of an Obligor or the Majority Lenders shall, as soon as reasonably practicable, disclose,
- the identity of a Defaulting Lender or a Sanctioned Lender to the Obligors and to the other Finance Parties.
- 28.8.9 Despite any other provision of any Finance Document to the contrary, no Administrative Finance Party is obliged to do or omit to do anything if it would in its reasonable opinion constitute a breach of any law or regulation, a breach of any Sanctions or a breach of a fiduciary duty or duty of confidentiality.
- 28.8.10 Despite any provision of any Finance Document to the contrary, no Administrative Finance Party 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 those funds or adequate indemnity against, or security for, the relevant risk or liability is not reasonably assured to it.

## 28.9 Responsibility for documentation

No Administrative Finance Party is responsible or liable for:

- 28.9.1 the adequacy, accuracy or completeness of any information (whether oral or written) supplied by it, an Obligor or any other person in or in connection with any Transaction Document or the transactions contemplated in the Transaction

Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document;

28.9.2 the legality, validity, effectiveness, adequacy or enforceability of any Transaction 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 Transaction Document or the Transaction Security; or

28.9.3 any determination as to whether any information provided or to be provided to any Finance Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

#### 28.10 **No duty to monitor**

No Administrative Finance Party is bound to enquire:

28.10.1 whether or not any Default has occurred;

28.10.2 as to the performance, default or any breach by any Party of its obligations under any Finance Document; or

28.10.3 whether any other event specified in any Finance Document has occurred.

#### 28.11 **Exclusion of liability**

28.11.1 Without limiting Clause 28.11.2 and without prejudice to any other provision of any Finance Document excluding or limiting the liability of any Administrative Finance Party, no Administrative Finance Party will be liable for:

(A) 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;

(B) 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 other than by reason of its gross negligence or wilful misconduct; or

(C) without prejudice to the generality of paragraphs (A) and (B) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:

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

(2) 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 government actions; any Sanctions; 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.

28.11.2 No Party (other than an Administrative Finance Party) may take any proceedings against any officer, employee or agent of that Administrative Finance Party in respect of any claim it might have against that Administrative Finance Party or in respect of any act or omission of any kind by that officer, employee or agent in

relation to any Transaction Document, and any officer, employee or agent of that Administrative Finance Party may rely on this Clause subject to Clause 1.5.2 and the provisions of the Third Parties Act.

28.11.3 No Administrative Finance Party 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 that Administrative Finance Party if it 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 it for that purpose.

28.11.4 Nothing in this Agreement obliges any Administrative Finance Party to carry out:

- (A) any 'know your customer' or other checks in relation to any person; or
- (B) 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 Administrative Finance Parties that it is solely responsible for any checks of that kind it is required to carry out and that it may not rely on any statement in relation to those checks made by any Administrative Finance Party.

28.11.5 Without prejudice to any provision of any Finance Document excluding or limiting an Administrative Finance Party's liability, any liability of an Administrative Finance Party arising under or in connection with any Finance Document or the Transaction Security is 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 relevant Administrative Finance Party or, if later, the date on which the loss arises as a result of the relevant default) but without reference to any special conditions or circumstances known to the relevant Administrative Finance Party at any time which increase the amount of that loss. In no event will an Administrative Finance Party 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 relevant Administrative Finance Party has been advised of the possibility of the loss or damages.

## 28.12 **Lenders' indemnity to the Administrative Finance Parties**

28.12.1 Each Lender must (in proportion to its share of the Total Available Commitment or, if the Total Available Commitment is then zero, to its share of the Total Available Commitment immediately before their reduction to zero) within three (3) Business Days of demand, indemnify:

- (A) each Administrative Finance Party against any cost, loss or liability incurred by that Administrative Finance Party (otherwise than by reason of that Administrative Finance Party's gross negligence or wilful misconduct) in acting in its capacity as an Administrative Finance Party; and
- (B) the Facility Agent against any cost, loss or liability incurred by the Facility Agent pursuant to Clause 31.12 (*Disruption to payment systems etc.*) notwithstanding the Facility Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent,

unless, in each case, that Administrative Finance Party has been reimbursed for the relevant amount by an Obligor pursuant to a Finance Document.

28.12.2 The Obligors must, within five (5) Business Days of demand, reimburse each Finance Party for any payments made by it under this Clause 28.12 (except to the extent that the indemnity payment in respect of which the Finance Party

claims reimbursement relates to a liability of an Administrative Finance Party to an Obligor).

### 28.13 Resignation of Administrative Finance Parties

- 28.13.1 Each Administrative Finance Party may resign at any time and appoint one of its Affiliates as successor by giving notice to the other Finance Parties and the Borrowers.
- 28.13.2 Alternatively an Administrative Finance Party may resign by giving thirty (30) days' notice to the other Finance Parties and the Borrowers, in which case the Majority Lenders (after consultation with the Borrowers) may appoint a successor Administrative Finance Party.
- 28.13.3 If the Majority Lenders have not appointed a successor Administrative Finance Party in accordance with Clause 28.13.2 within twenty (20) days after notice of resignation was given, the incumbent Administrative Finance Party (after consultation with the Borrowers and the Majority Lenders) may appoint a successor Administrative Finance Party.
- 28.13.4 If an Administrative Finance Party wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as that Administrative Finance Party and that Administrative Finance Party is entitled to appoint a successor Administrative Finance Party under Clause 28.13.3, that Administrative Finance Party may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Administrative Finance Party to become a party to this Agreement as Administrative Finance Party) agree with the proposed successor Administrative Finance Party amendments to this Clause 28 and any other term of this Agreement dealing with the rights or obligations of the relevant Administrative Finance Party consistent with then current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to any agency or other similar fee payable under this Agreement which are consistent with the successor Administrative Finance Party normal fee rates and those amendments will bind the Parties.
- 28.13.5 The retiring Administrative Finance Party must, at its own cost or that of the Lenders, make available to the successor Administrative Finance Party all documents and records and provide all assistance as the successor Administrative Finance Party may reasonably request for the purposes of performing its functions as an Administrative Finance Party under the Finance Documents.
- 28.13.6 The resignation of the retiring Administrative Finance Party and the appointment of any successor Administrative Finance Party will only take effect upon:
- (A) the successor Administrative Finance Party notifying all the Parties that it accepts its appointment; and
  - (B) the successor Administrative Finance Party, the retiring Administrative Finance Party and the Obligors completing all steps as may reasonably be required by the Majority Lenders in order to (1) ensure that the successor Administrative Finance Party accedes, and becomes a party, to all relevant Finance Documents in its relevant capacity as that Administrative Finance Party and (2) facilitate the change in identity of the relevant Administrative Finance Party.
- 28.13.7 Upon the appointment of a successor, the retiring Administrative Finance Party is discharged from any further obligation in respect of the Finance Documents (other than its obligations under Clause 28.13.6 and, in accordance with its terms, Clause 38 (*Confidential Information*)) but will remain entitled to the benefit of Clause 14.3 (*Indemnities to the Administrative Finance Parties*) and this Clause 28 (and any fees for the account of the retiring Administrative Finance Party will

cease to accrue from (and will be payable on) that date). Its successor and each of the other Parties will have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.

28.13.8 The Facility Agent must resign in accordance with Clause 28.13.2 (and, to the extent applicable, must use reasonable endeavours to appoint a successor Facility Agent under Clause 28.13.3) if on or after the date which is three (3) months before the earliest FATCA Application Date relating to any payment to the Facility Agent under the Finance Documents, either:

- (A) the Facility Agent fails to respond to a request under Clause 12.7 (*FATCA Information*) and a Finance Party reasonably believes that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
- (B) the information supplied by the Facility Agent under Clause 12.7 (*FATCA Information*) indicates that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
- (C) the Facility Agent notifies the Borrowers and the Lenders that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date,

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

#### 28.14 Confidentiality

28.14.1 In acting under the Finance Documents the relevant division or department through which each Administrative Finance Party acts is to be treated as a separate entity from any other of its divisions or departments.

28.14.2 If information is received by another division or department of an Administrative Finance Party, it may be treated as confidential to that division or department and that Administrative Finance Party is not to be taken to have notice of it.

#### 28.15 Replacement of Administrative Finance Parties

28.15.1 After consultation with the Borrowers, the Majority Lenders may, by giving thirty (30) days' notice to an Administrative Finance Party (or, at any time that Administrative Finance Party is an Impaired Administrative Finance Party, by giving any shorter notice determined by the Majority Lenders) replace that Administrative Finance Party by appointing a successor Administrative Finance Party.

28.15.2 The retiring Administrative Finance Party shall (at its own cost if it is an Impaired Administrative Finance Party and otherwise at the expense of the Lenders) make available to the successor Administrative Finance Party such documents and records and provide such assistance as the successor Administrative Finance Party may reasonably request for the purposes of performing its functions as that Administrative Finance Party under the Finance Documents.

28.15.3 The appointment of the successor Administrative Finance Party shall take effect on the date specified in the notice from the Majority Lenders to the retiring Administrative Finance Party. As from this date, the retiring Administrative Finance Party shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under Clause 28.15.2 above but shall remain entitled to the benefit of Clause 14.3 (*Indemnities to the Administrative Finance Parties*) and this Clause 28 (and any agency fees for the account of the retiring Administrative Finance Party shall cease to accrue from (and shall be payable on) that date).

28.15.4 Any successor Administrative Finance Party 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.

#### 28.16 Relationship with the Finance Parties

28.16.1 Subject to Clause 26.12 (*Pro rata interest settlement*), each Administrative Finance Party may treat the person shown in its records as Finance Party at the opening of business (in the place of that Administrative Finance Party's principal office as notified to the Finance Parties from time to time) as the Finance Party acting through its Facility Office:

- (A) entitled to or liable for any payment due under any Finance Document on that day; and
- (B) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,

unless it has received not less than five (5) Business Days' prior notice from that Finance Party to the contrary in accordance with the terms of this Agreement.

28.16.2 Any Finance Party may by notice to the Facility Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Finance Party under the Finance Documents. That notice must contain the address and (where communication by electronic mail or other electronic means is permitted under Clause 33.5 (*Electronic communication*)) electronic mail address and 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 (if provided), department and officer by that Lender for the purposes of Clause 33.2 (*Addresses*) and Clause 33.5 (*Electronic communication*) and the Facility Agent will be entitled to treat the relevant person as the person entitled to receive all notices, communications, information and documents as though that person were that Finance Party.

#### 28.17 Credit appraisal by the Finance Parties

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Finance Party confirms to each Administrative Finance Party 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:

- 28.17.1 the financial condition, status and nature of each Obligor and each other member of the Group;
- 28.17.2 the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document and the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Transaction Security;
- 28.17.3 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 Transaction Document, the Transaction Security, the transactions contemplated by the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Transaction Security;
- 28.17.4 the adequacy, accuracy or completeness of any information provided by that Administrative Finance Party, any other Party or by any other person under or in connection with any Transaction Document, the transactions contemplated by

any Transaction Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Transaction Security; and

28.17.5 the right or title of any person in or to, or the value or sufficiency of any part of, the Secured Property, the priority of any of the Transaction Security or the existence of any Security affecting the Secured Property.

**28.18 Facility Agent's management time**

Any amount payable to the Facility Agent under Clause 14.3 (*Indemnities to the Administrative Finance Parties*), Clause 16 (*Costs and expenses*) and Clause 28.12 (*Lenders' indemnity*) shall include the cost of utilising the Facility Agent's management time or other resources in each case outside of the ordinary course of the Facility Agent's scope of work and will be calculated on the basis of such reasonable daily or hourly rates as the Facility Agent may notify to the Borrowers and the Lenders, and is in addition to any fee paid or payable to the Facility Agent under Clause 11 (*Fees*).

**28.19 Deduction from amounts payable by the Facility Agent**

If any Party owes an amount to the Facility Agent under the Finance Documents the Facility Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Facility 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 is to be regarded as having received any amount so deducted.

**28.20 Amounts paid in error**

28.20.1 If the Facility Agent pays an amount to another Party and the Facility Agent notifies that Party that such payment was an Erroneous Payment then the Party to whom that amount was paid by the Facility Agent shall promptly on demand refund the same to the Facility Agent.

28.20.2 Neither:

(A) the obligations of any Party to the Facility Agent; nor

(B) the remedies of the Facility Agent,

(whether arising under this Clause 28.20 or otherwise) which relate to an Erroneous Payment will be affected by any act, omission, matter or thing which, but for this Clause 28.20.2, would reduce, release or prejudice any such obligation or remedy (whether or not known by the Facility Agent or any other Party).

28.20.3 All payments to be made by a Party to the Facility Agent (whether made pursuant to this Clause 28.20 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.

28.20.4 In this Agreement, **Erroneous Payment** means a payment of an amount by the Facility Agent to another Party which the Facility Agent determines (in its sole discretion, but in all circumstances acting promptly and reasonably) was made in error.

**28.21 Reliance and engagement letters**

Each Finance Party confirms that each of the Mandated Lead Arrangers and the Facility Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by the Mandated Lead Arrangers or Facility Agent) the terms of any reliance letter or engagement letters relating to any reports or letters provided by accountants or any Advisers in connection with the Finance Documents or the transactions contemplated in the Finance Documents and to bind it in respect of those

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 letters.

## 29. CONDUCT OF BUSINESS BY THE FINANCE PARTIES

29.1 No provision of this Agreement will:

- 29.1.1 interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- 29.1.2 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
- 29.1.3 oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise), the sources or cost of funding its participation in a Loan or any computations in respect of Tax.

## 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:

- 30.1.1 the Recovering Finance Party must, within three (3) Business Days, notify details of the receipt or recovery to the Facility Agent;
- 30.1.2 the Facility Agent will 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 (i) the Facility Agent and distributed in accordance with Clause 31 (*Payment Mechanics*), without taking account of any Tax which would be imposed on the Facility Agent in relation to the receipt, recovery or distribution; and
- 30.1.3 the Recovering Finance Party must, within three (3) Business Days of demand by the Facility Agent, pay to the Facility Agent an amount (the **Sharing Payment**) equal to that receipt or recovery less any amount which the Facility Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made to it in accordance with Clause 31.7 (*Partial payments*).

### 30.2 Redistribution of payments

The Facility Agent must 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 31.7 (*Partial payments*) and towards the obligations of that Obligor to the Sharing Finance Parties.

### 30.3 Recovering Finance Party's rights

On a distribution by the Facility 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:

- 30.4.1 each Sharing Finance Party which has received a share of the relevant Sharing Payment under Clause 30.2 (*Redistribution of payments*) must, upon request of the Facility Agent, pay to the Facility 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

30.4.2 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**

- 30.5.1 This Clause 30 does 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.
- 30.5.2 A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
- (A) it notified that other Finance Party of the legal or arbitration proceedings; and
  - (B) that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

## 31. **PAYMENT MECHANICS**

### 31.1 **Payments to the Facility Agent**

- 31.1.1 On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, that Obligor or Lender must make the payment to the Facility Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in the funds specified by the Facility Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- 31.1.2 Payment must be made to that account in the principal financial centre of the country of that currency (or, in relation to euro, in a principal financial centre in a Participating Member State or London, as specified by the Facility Agent) and with a bank as the Facility Agent, in each case, specifies.
- 31.1.3 At all times before the Enforcement Date, all payments by the Obligors or a Hedging Bank under or in respect of any Hedging Agreement must be made directly between the relevant Obligor and the relevant Hedging Bank (and not through the Facility Agent pursuant to Clause 31.1.1) and, accordingly, at all those times, all references in Clause 31.7 (*Partial payments*) to:
- (A) Hedging Agreements, Hedging Costs and Hedging Termination Payments are to be disregarded; and
  - (B) the expression Finance Documents will be taken to exclude the Hedging Agreements.
- 31.1.4 On and from the Enforcement Date, all payments by the Obligors or a Hedging Bank under or in respect of any Hedging Agreement must be made to the Facility Agent in accordance with Clause 31.1.1.

### 31.2 **Distributions by the Facility Agent or Security Agent**

Each payment received by the Facility Agent or the Security Agent under the Finance Documents for another Party must, subject to Clause 31.3 (*Distributions to an Obligor*), Clause 31.4 (*Clawback and pre-funding*) and Clause 31.5 (*Payments to Sanctioned Lenders*) be made available by the Facility Agent or the Security Agent (as the case may be) 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 an account as that Party may notify to the Facility Agent or the Security Agent (as the case may be) by not less than five (5) 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 Facility Agent and the Security 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

31.4.1 Where a sum is to be paid to the Facility Agent or the Security Agent under the Finance Documents for another Party, the Facility Agent or the Security Agent (as the case may be) 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.

31.4.2 Unless Clause 31.4.3 applies, if the Facility Agent or the Security Agent pays an amount to another Party and it proves to be the case that the Facility Agent or the Security Agent (as the case may be) 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 Facility Agent or the Security Agent (as the case may be) must on demand refund the amount to the Facility Agent or the Security Agent (as the case may be) together with interest on that amount from the date of payment to the date of receipt by the Facility Agent or the Security Agent (as the case may be), calculated by the Facility Agent or the Security Agent (as the case may be) to reflect its cost of funds.

31.4.3 If the Facility Agent or the Security Agent is willing to make available amounts for the account of a Borrower before receiving funds from the Lenders then if and to the extent that the Facility Agent or the Security Agent, as the case may be, 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 relevant Borrower:

- (A) the Borrower to whom that sum was made available must on demand refund it to the Facility Agent or the Security Agent, as the case may be; and
- (B) 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, must on demand pay to the Facility Agent or the Security Agent, as the case may be, the amount (as certified by the Facility Agent or the Security Agent, as the case may be) which will indemnify the Facility Agent or the Security Agent, as the case may be, against any funding cost incurred by it as a result of paying out that sum before receiving those funds from that Lender.

### 31.5 Payments to Sanctioned Lenders

31.5.1 If, at any time, a sum is to be paid to the Facility Agent or the Security Agent under the Finance Documents for a Lender that has become a Sanctioned Lender and in the opinion of the Facility Agent or the Security Agent (as the case may be) the Facility Agent or the Security Agent would be prevented by the relevant Sanctions from making the relevant payment, the Facility Agent or the Security Agent (as the case may be) is not obliged to pay that sum to that Sanctioned Lender, provided that if it decides not to make the payment it must instead pay that amount to an interest-bearing account held with a bank or

financial institution which has a rating for its long-term unsecured and non-credit enhanced debt obligations of A- or higher by S&P or Fitch or A3 or higher by Moody's (or a comparable rating from an internationally recognised credit rating agency) and in relation to which no Insolvency Event has occurred and is continuing, in the name of the Facility Agent or Security Agent (as the case may be) and designated as a separate blocked account opened at the Facility Agent or Security Agent (as applicable) for the benefit of the relevant Lender.

- 31.5.2 All interest accrued on the amount standing to the credit of the separate blocked account shall be for the benefit of the relevant Lender.
- 31.5.3 Provided the Facility Agent or Security Agent have made a payment in accordance with this Clause 31.5 they 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 separate blocked account.
- 31.5.4 Promptly upon the relevant Lender ceasing to be a Sanctioned Lender, the Facility Agent or the Security Agent (as the case may be) shall give all requisite instructions to the bank with whom the separate blocked account is held to transfer the amount (together with any accrued interest) to the relevant Lender in accordance with Clause 31.2 (*Distributions by the Facility Agent or Security Agent*).
- 31.5.5 No Obligor shall incur any liability or obligation as a result of, and no event or circumstance shall be a Default to the extent resulting solely from, the operation of this Clause 31.5.

#### 31.6 **Facility Agent as Impaired Administrative Finance Party**

- 31.6.1 If, at any time, the Facility Agent becomes an Impaired Administrative Finance Party, an Obligor or a Lender which is required to make a payment under the Finance Documents to the Facility Agent in accordance with Clause 31.1 (*Payments to the Facility Agent*) may instead either:
  - (A) pay that amount directly to the required recipient(s); or
  - (B) if in its absolute discretion it considers that it is not reasonably practicable to pay that amount directly to the required recipient(s), pay that amount or the relevant part of that amount to an interest-bearing account held with a bank or financial institution which has a rating for its long-term unsecured and non-credit enhanced debt obligations of A- or higher by S&P or Fitch or A3 or higher by Moody's (or a comparable rating from an internationally recognised credit rating agency) 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 separate blocked 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.

- 31.6.2 All interest accrued on the amount standing to the credit of the separate blocked account shall be for the benefit of the Recipient Party or the Recipient Parties *pro rata* to their respective entitlements.
- 31.6.3 A Party which has made a payment in accordance with this Clause 31.6 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 separate blocked account.
- 31.6.4 Promptly upon the appointment of a successor Facility Agent in accordance with Clause 28.15 (*Replacement of Administrative Finance Parties*), each Paying

Party shall (other than to the extent that that Party has given an instruction pursuant to Clause 31.6.5) give all requisite instructions to the bank with whom the separate blocked account is held to transfer the amount (together with any accrued interest) to the successor Facility Agent for distribution to the relevant Recipient Party or Recipient Parties in accordance with Clause 31.2 (*Distributions by the Facility Agent or Security Agent*).

31.6.5 A Paying Party shall, promptly upon request by a Recipient Party and to the extent:

- (A) that it has not given an instruction pursuant to Clause 31.6.4 above; and
- (B) that it has been provided with the necessary information by that Recipient Party,

give all requisite instructions to the bank with whom the separate blocked account is held to transfer the relevant amount (together with any accrued interest) to that Recipient Party.

### 31.7 **Partial payments**

31.7.1 If the Facility 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 Facility Agent must apply that payment towards the obligations of that Obligor under the Finance Documents in the order of priority contemplated by the Cashflow Waterfall.

31.7.2 Clauses 31.7.1 will override any appropriation made by an Obligor.

### 31.8 **No set-off by Obligors**

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

### 31.9 **Business Days**

31.9.1 Any payment under the Finance Documents which is due to be made on a day that is not a Business Day must 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).

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

### 31.10 **Currency of account**

31.10.1 Subject to Clauses 31.10.2 and 31.10.3, dollars is the currency of account and payment for any sum due from an Obligor under any Finance Document.

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

31.10.3 Any amount expressed to be payable in a currency other than dollars must be paid in that other currency.

### 31.11 **Change of currency**

31.11.1 Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:

- (A) Any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country must be translated into, or paid in, the currency or currency unit of that country

designated by the Facility Agent (acting reasonably and after consultation with the Borrowers); and

- (B) any translation from one currency or currency unit to another will 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 Facility Agent (acting reasonably and after consultation with the Borrowers).

31.11.2 If a change in any currency of a country occurs, this Agreement will, to the extent the Facility Agent (acting reasonably and after consultation with the Borrowers) 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.

### 31.12 Disruption to payment systems etc.

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

31.12.1 the Facility Agent may, and must if requested to do so by a Borrower, consult with the Borrowers with a view to agreeing with the Borrowers changes to the operation or administration of the Facilities as the Facility Agent may consider necessary in the circumstances;

31.12.2 the Facility Agent will not be obliged to consult with the Borrowers in relation to any changes mentioned in Clause 31.12.1 if, in its reasonable opinion, it is not practicable to do so in the circumstances and, in any event, will have no obligation to agree to any changes;

31.12.3 the Facility Agent may consult with the Finance Parties in relation to any changes mentioned in Clause 31.12.1 but will not be obliged to do so if, in its reasonable opinion, it is not practicable to do so in the circumstances;

31.12.4 any changes agreed upon by the Facility Agent and the Borrowers will (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*);

31.12.5 the Facility Agent will 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 Facility Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 31.12; and

31.12.6 the Facility Agent must notify the Finance Parties of all changes agreed under Clause 31.12.4.

### 32. SET-OFF

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. If a Finance Party makes any set-off or conversion pursuant to this Clause 32 (*Set-off*), it must promptly notify the relevant Obligor.

### 33. NOTICES

#### 33.1 Communications in writing

Any communication to be made under or in connection with the Finance Documents must be made in writing 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:

33.2.1 in the case of a Borrower, that identified with its name below;

33.2.2 in the case of each Lender or any other Obligor, that notified in writing to the Facility Agent on or before the date on which it becomes a Party; and

33.2.3 in the case of the Facility Agent, that identified with its name below,

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

#### 33.3 Delivery

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

(A) if by electronic mail, when received in legible form; or

(B) if by way of letter, when it has been left at the relevant address or five (5) Business Days after being:

(1) deposited in the post postage prepaid in an envelope addressed to it at that address; or

(2) (in the case of an Obligor incorporated in the British Virgin Islands) dispatched by international courier delivery service 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.

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

33.3.3 All notices from or to an Obligor must be sent through the Facility Agent (other than in respect of a Hedging Agreement).

33.3.4 Any communication or document made or delivered to a Borrower in accordance with this Clause will be deemed to have been made or delivered to each of the Obligors.

33.3.5 Any communication or document which becomes effective, in accordance with Clauses 33.3.1 to 33.3.4 above, after 5:00 p.m. in the place of receipt will be deemed only to become effective on the following day.

#### 33.4 Communication when Facility Agent is Impaired Administrative Finance Party

If the Facility Agent is an Impaired Administrative Finance Party the Parties may, instead of communicating with each other through the Facility Agent, communicate with each other directly and (while the Facility Agent is an Impaired Administrative Finance Party) all the provisions of the Finance Documents which require communications to be made or notices

to be given to or by the Facility Agent shall be varied so that communications may be made and notices given to or by the relevant Parties directly. This provision shall not operate after a replacement Facility Agent has been appointed.

### **33.5 Electronic communication**

33.5.1 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 means other than electronic mail (including by way of posting to a secure website) if those two Parties:

- (A) notify each other in writing of any information required to enable the transmission of information by that means; and
- (B) notify each other of any change to their address or any other information supplied by them by not less than five (5) Business Days' notice.

33.5.2 Any electronic communication or delivery as specified in Clause 33.5.1 to be made between an Obligor and a Finance Party may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication or delivery.

33.5.3 Any electronic communication or delivery as specified in Clause 33.5.1 made between any two Parties 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 Facility Agent only if it is addressed in a manner as the Facility Agent specifies for this purpose.

33.5.4 Any electronic communication or document which becomes effective, in accordance with Clause 33.5.3 above, after 5:00 p.m. 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 will be deemed only to become effective on the following Business Day.

33.5.5 Any reference in a Finance Document to a communication being sent or received or a document being delivered will be construed to include that communication or document being made available in accordance with this Clause 33.5.

### **33.6 English language**

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

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

- (A) in English; or
- (B) if not in English, and if so required by the Facility Agent (acting reasonably), 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 and subject to any contrary provision in any Finance Document, conclusive evidence of the matters to which it relates.

#### 34.3 **Day count convention**

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

#### 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 that 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, any right or remedy under a Finance Document will operate as a waiver of that right or remedy or constitute an election to affirm any of the Finance Documents. No election to affirm any Finance Document on the part of any Finance Party 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. 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 **Intercreditor Agreement**

This Clause 37 is subject to the terms of the Intercreditor Agreement.

##### 37.2 **Required consents**

37.2.1 Subject to Clause 37.3 (*All Lender matters*) and Clause 37.4 (*Other exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Obligors and any amendment or waiver will be binding on all Parties.

37.2.2 The Facility Agent may effect, on behalf of any Finance Party, any amendment or waiver which has been consented to permitted by this Clause 37.2.

37.2.3 Clause 26.12.4 (*Pro rata interest settlement*) shall apply to this Clause 37.

##### 37.3 **All Lender matters**

An amendment, waiver or (in the case of a 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:

37.3.1 the definitions of 'Change of Control', 'Corrupt Act', 'Corrupt Practices Laws', 'Majority Lenders', 'Completion Date', 'Completion Long Stop Date', 'Sanctioned Country', 'Sanctioned Lender', 'Sanctioned Person', 'Sanctioned Transaction', 'Sanctions' and 'Sanctions Event' in Clause 1.1 (*Definitions*);

37.3.2 an extension to the date of payment of any amount under the Finance Documents or any change in currency of payment of any amount under the Finance Documents;

37.3.3 a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;

- 37.3.4 a change in currency of payment of any amount under the Finance Documents;
- 37.3.5 an increase in any Commitment or the Total Commitments, an extension of any Availability Period or any requirement that a cancellation of Commitments reduces the Commitments of the Lenders rateably under the relevant Facility;
- 37.3.6 a change to the Borrowers or the Obligors;
- 37.3.7 any provision which expressly requires the consent of all the Lenders;
- 37.3.8 Clause 2.4 (*Finance Parties' rights and obligations*), Clause 5.1 (*Delivery of a Utilisation Request*), Clause 7 (*Mandatory Prepayment*), Clause 6.8 (*Restrictions*), Clause 20.30 (*Corrupt Acts*), Clause 20.32 (*Sanctions*), Clause 23.15 (*Sanctions*), Clause 23.16 (*Corrupt Practices Laws*), Clause 25.2 (*Breach of key obligations*) (as it relates to Clause 23.15 and Clause 23.16), Clause 26 (*Changes to the Lenders*), Clause 30 (*Sharing among the Finance Parties*) this Clause 37 (*Amendments and waivers*), Clause 42 (*Governing Law*) or Clause 43 (*Dispute Resolution*);
- 37.3.9 (other than as expressly permitted by the provisions of any Finance Document) the nature or scope of:
  - (A) the guarantee and indemnity granted under Clause 19 (*Guarantee and Indemnity*) of the Intercreditor Agreement;
  - (B) the Secured Property; or
  - (C) the manner in which the proceeds of enforcement of the Transaction Security are distributed,
 (except in the case of paragraphs (B) and (C) above, insofar as it relates to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document);
- 37.3.10 the release of any guarantee and indemnity granted under Clause 19 (*Guarantee and Indemnity*) of the Intercreditor Agreement or of any Transaction Security unless permitted under this Agreement or any other Finance Document or relating to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is permitted under this Agreement or any other Finance Document; or
- 37.3.11 any amendment to the order of priority or subordination under the Intercreditor Agreement,

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

#### 37.4 **Other exceptions**

An amendment or waiver which relates to the rights or obligations any Administrative Finance Party or Hedging Bank (in that capacity) may not be effected without the consent of that Party.

#### 37.5 **Excluded Commitments**

If any Lender fails to respond to a request for an amendment or waiver described in Clause 37.2.1 within twenty (20) Business Days (or such longer time period in relation to any request which the Borrowers and the Facility Agent may agree) of that request being made:

- 37.5.1 its Commitment(s) shall not be included for the purpose of calculating the Total Commitments under the relevant Facilities when ascertaining whether any relevant percentage of Total Commitments has been obtained to approve that request; and
- 37.5.2 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 Screen Rate

- 37.6.1 Subject to Clause 37.4 (*Other exceptions*), if a Screen Rate Replacement Event has occurred in relation to the Screen Rate, any amendment or waiver which relates to:
- (A) providing for the use of a Replacement Benchmark; and
  - (B)
    - (1) aligning any provision of any Finance Document to the use of that Replacement Benchmark;
    - (2) enabling that Replacement Benchmark to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Benchmark to be used for the purposes of this Agreement);
    - (3) implementing market conventions applicable to that Replacement Benchmark;
    - (4) providing for appropriate fallback (and market disruption) provisions for that Replacement Benchmark; or
    - (5) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Benchmark (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

may be made with the consent of the Facility Agent and the Obligors.

- 37.6.2 If any Lender fails to respond to a request for an amendment or waiver described in Clause 37.6.1 within ten (10) Business Days (or such longer time period in relation to any request which the Borrowers and the Facility Agent may agree) of that request being made:
- (A) its Commitment(s) shall not be included for the purpose of calculating the Total Commitments under the relevant Facilities when ascertaining whether any relevant percentage of Total Commitments has been obtained to approve that request; and
  - (B) its status as a Lender shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve that request.

- 37.6.3 In this Clause 37.6:

**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.

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

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

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

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

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

- (a) the methodology, formula or other means of determining that Screen Rate has, in the opinion of the Majority Lenders and the Obligors, materially changed;
- (b)
  - (i)
    - (A) the administrator of that Screen Rate or its supervisor publicly announces that such administrator is insolvent; or
    - (B) information is published in any order, decree, notice, petition or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of that Screen Rate is insolvent,
 

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

### 37.7 Disenfranchisement of Defaulting Lenders and Sanctioned Lenders

37.7.1 For so long as a Defaulting Lender or a Sanctioned Lender has any Commitment, in ascertaining:

- (A) the Majority Lenders; or
- (B) whether:
  - (1) any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments under the relevant Facility/ies; 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 of Lenders under the Finance Documents, that

Defaulting Lender or Sanctioned Lender shall be deemed not to be a Lender for the purposes of paragraphs (A) and (B) above.

37.7.2 For the purposes of this Clause 37.7, the Facility Agent may assume that the following Lenders are Defaulting Lenders:

- (A) any Lender which has notified the Facility Agent that it has become a Defaulting Lender;
- (B) any Lender in relation to which it is aware that any of the events or circumstances referred to in paragraphs (a) to (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 Facility Agent) or the Facility Agent is otherwise aware that the Lender has ceased to be a Defaulting Lender.

37.7.3 For the purposes of this Clause 37.7, the Facility Agent may assume that the following Lenders are Sanctioned Lenders:

- (A) any Lender which has notified the Facility Agent that it has become a Sanctioned Lender;
- (B) any Lender in relation to which it is aware that any of the events or circumstances referred to in paragraphs (a) to (d) of the definition of "Sanctioned Person" has occurred,

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

### 37.8 **Disenfranchisement of Disenfranchised Lenders**

For so long as a Disenfranchised Lender has any Commitment, in ascertaining the Majority Lenders has been obtained to approve any request for a consent, waiver, amendment or other vote of Lenders under the Finance Documents, that Disenfranchised Lender shall be deemed not to be a Lender, other than for the following purposes:

- 37.8.1 any decision to approve a source of funding under paragraph (e) of the definition of "Available Project Funding Amount";
- 37.8.2 any decision to approve a source of funding under Clause 4.2.1(C)(1) (*Further conditions precedent*);
- 37.8.3 any decision to approve a reinstatement plan under Clause 7.2.1 (*Disposal, Insurance and Equity Cure*); and
- 37.8.4 any decision to amend any of the following provisions:
  - (A) Clause 2.2 (*Increase*); and
  - (B) Clause 22.3 (*Hedging*).

### 37.9 **Replacement of a Lender**

37.9.1 The Borrowers may, at any time a Lender has become and continues to be:

- (A) a Defaulting Lender;
- (B) a Sanctioned Lender; or
- (C) a Non-Consenting Lender,

37.9.2 (the **Replaced Lender**) by giving ten (10) Business Days' prior written notice to the Facility 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 26 (*Changes to the Lenders*) all (and not part only) of its

rights and obligations under the Finance Documents 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 26 (*Changes to the Lenders*) for a purchase price in cash payable at the time of transfer which is either:

- (A) 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 Facility Agent has not given a notification under Clause 26.12 (*Pro rata interest settlement*)), Break Costs and other amounts payable in relation thereto under the Finance Documents; or
- (B) in an amount agreed between that Replaced Lender, the Replacement Lender and the Borrowers and which does not exceed the amount described in paragraph (A) above.

37.9.3 Any transfer of rights and obligations of a Replaced Lender pursuant to this Clause 37.9.3 shall be subject to the following conditions:

- (A) the Borrowers shall have no right to replace the Facility Agent, the Security Agent, the ES Agent or the Technical Bank;
- (B) neither the Facility Agent nor the Replaced Lender shall have any obligation to the Borrowers to find a Replacement Lender;
- (C) the transfer must take place no later than fifteen (15) Business Days after the notice referred to in Clause 37.9.1;
- (D) in no event shall the Replaced Lender be required to pay or surrender to the Replacement Lender any of the fees received by the Replaced Lender pursuant to the Finance Documents; and
- (E) the Replaced Lender shall only be obliged to transfer its rights and obligations pursuant to Clause 37.9.1 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.

37.9.4 The Replaced Lender shall perform the checks described in 37.9.3(E) as soon as reasonably practicable following delivery of a notice referred to in Clause 37.9.1 and shall notify the Facility Agent and the Borrowers 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, except 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:

- 38.2.1 to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners, insurers, reinsurers (and related insurance brokers) 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 Clause 38.2.1 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 will 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;

38.2.2 to any person:

- (A) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Administrative Finance Party and, in each case, to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
- (B) 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 or one or more Obligors and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
- (C) appointed by any Finance Party or by a person to whom Clauses 38.2.2(A) or (B) 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 28.14.2);
- (D) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in Clauses 38.2.2(A) or 38.2.2(B);
- (E) 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;
- (F) 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;
- (G) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 26.11 (*Security over Lenders' rights*);
- (H) who is a Party; or
- (I) with the consent of each Borrower;

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

- (1) in relation to Clauses 38.2.2(A), 38.2.2(B) and 38.2.2(C), the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there will 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;
- (2) in relation to Clause 38.2.2(D), 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 the Confidential Information may be price-sensitive information;
- (3) in relation to Clauses 38.2.2(F) and 38.2.2(G), the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of that Confidential

Information may be price-sensitive information except that there will be no requirement to so inform if, in the reasonable opinion of that Finance Party, it is not practicable so to do in the circumstances; and

- 38.2.3 to any person appointed by that Finance Party or by a person to whom Clauses 38.2.2(A) or 38.2.2(B) 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, that Confidential Information as may be required to be disclosed to enable that service provider to provide any of the services referred to in this Clause 38.2.3 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 another form of confidentiality undertaking agreed between the Borrowers and the relevant Finance Party; and
- 38.2.4 to any rating agency (including its professional advisers) the Confidential Information as may be required to be disclosed to enable the rating agency to carry out its normal rating activities in relation to the Finance Documents 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 the Confidential Information may be price-sensitive information.
- 38.2.5 For the avoidance of doubt, each Obligor authorises the Finance Parties to publicly report the following basic data related to the Projects:
  - (A) Project name;
  - (B) Project description;
  - (C) Project Category according to the Equator Principles;
  - (D) Host country;
  - (E) Industrial sector; and
  - (F) Year of financial close.

### 38.3 Disclosure to numbering service providers

- 38.3.1 Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facility and/or one or more Obligors the following information:
  - (A) names of Obligors;
  - (B) country of domicile of Obligors;
  - (C) place of incorporation of Obligors;
  - (D) date of this Agreement;
  - (E) Clause 42 (*Governing Law*);
  - (F) the names of the Administrative Finance Parties;
  - (G) date of each amendment and restatement of this Agreement;
  - (H) amounts of, and names of, the Facilities;
  - (I) amount of Total Commitments;
  - (J) currency of the Facility;
  - (K) type of Facility;
  - (L) ranking of Facility;
  - (M) Final Maturity Date;

- (N) changes to any of the information previously supplied pursuant to paragraphs (A) to (M) above; and
  - (O) other information agreed between that Finance Party and the Borrowers, to enable the numbering service provider to provide its usual syndicated loan numbering identification services.
- 38.3.2 The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facility and one or more Obligors by a numbering service provider and the information associated with each number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.
- 38.3.3 Each Borrower represents that none of the information set out in paragraphs (A) to (O) of Clause 38.3.1 is, nor will at any time be, unpublished price-sensitive information.
- 38.3.4 The Facility Agent must notify the Borrowers and the other Finance Parties of:
- (A) the name of any numbering service provider appointed by the Facility Agent in respect of this Agreement, the Facility or one or more Obligors; and
  - (B) the number or, as the case may be, numbers assigned to this Agreement, the Facility or one or more Obligors by the 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 that 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 Borrowers:
- 38.6.1 of the circumstances of any disclosure of Confidential Information made pursuant to Clause 38.2.2(E) except where the disclosure is made to any of the persons referred to in that Clause during the ordinary course of its supervisory or regulatory function; and
  - 38.6.2 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, will survive and remain binding on each Finance Party for a period of twelve (12) months from the later of:
- 38.7.1 the date on which all amounts payable by the Obligors under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
  - 38.7.2 the date on which that Finance Party otherwise ceases to be a Finance Party.

## 39. BAIL-IN

### 39.1 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:

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

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

39.1.2 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.

### 39.2 Bail-in definitions

In this Clause 39:

**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.

#### 40. AUSTRALIAN PPSA PROVISIONS

##### 40.1 Exclusion of certain provisions

Where any Finance Party has a security interest (as defined in the PPSA) under any Finance Document, to the extent the law permits:

- 40.1.1 for the purposes of sections 115(1) and 115(7) of the Australian PPSA:
- (A) each Finance Party with the benefit of the security interest need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4) of the Australian PPSA; and
  - (B) sections 142 and 143 of the Australian PPSA are excluded;
- 40.1.2 for the purposes of section 115(7) of the Australian PPSA, each Finance Party with the benefit of the security interest need not comply with sections 132 and 137(3);
- 40.1.3 each Party waives its right to receive from any Finance Party any notice required under the Australian PPSA (including a notice of a verification statement);
- 40.1.4 if a Finance Party with the benefit of a security interest exercises a right, power or remedy in connection with it, that exercise is taken not to be an exercise of a right, power or remedy under the Australian PPSA unless the Finance Party states otherwise at the time of exercise. However, this Clause 40 does not apply to a right, power or remedy which can only be exercised under the Australian PPSA;
- 40.1.5 if the Australian PPSA is amended to permit the Parties to agree not to comply with or to exclude other provisions of the Australian PPSA, the Facility Agent may notify the Borrowers and the Finance Parties that any of these provisions is excluded, or that the Finance Parties need not comply with any of these provisions; and
- 40.1.6 each Borrower agrees not to exercise its rights to make any request of a Finance Party under section 275 of the Australian PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.

This does not affect any rights a person has or would have other than by reason of the Australian PPSA and applies despite any other Clause in any Finance Document.

41. **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. Subject to applicable law, a counterpart may be signed electronically and may be in hard copy or electronic form.

42. **GOVERNING LAW**

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

43. **DISPUTE RESOLUTION**

This Clause 43 shall be governed by English law.

43.1 **Arbitration**

43.1.1 Other than as provided for in Clauses 18 (*Submissions to a Qualified Person*) and 24.7.9 (*Environmental and social matters*), any dispute or claim arising out of or in connection with this Agreement or its subject matter, existence, negotiation, validity, termination or enforceability (including any non-contractual dispute or claim) between one or several of the Finance Parties on the one hand and the Sponsor and/or one or several Obligors on the other hand ("**Dispute**") shall be referred to and finally determined by arbitration in accordance with the Arbitration Rules of the London Court of International Arbitration ("**LCIA**") ("**LCIA Rules**"), which LCIA Rules, including any defined terms, are incorporated into this Clause.

- (A) This arbitration agreement shall be governed by English law;
- (B) the seat of the arbitration shall be London, England;
- (C) the language of the arbitration shall be English; and
- (D) the number of arbitrators shall be three. The claimant(s) shall nominate one arbitrator in the Request for Arbitration and the respondent(s) in the Response. Where the Dispute is between any Obligor on the one hand and any Secured Party on the other hand, the Security Agent shall make the nomination on behalf of the relevant Secured Parties. If either the claimant(s), respondent(s) or the Security Agent (if applicable) fails to make a nomination, the LCIA Court shall appoint the relevant arbitrator without affecting any nomination or confirmation of an arbitrator by the other side. The two arbitrators nominated or appointed under this Clause (D) shall, within 15 days of the date of the confirmation of the second arbitrator, jointly nominate a third arbitrator to act as presiding arbitrator. If the party-nominated arbitrators fail to agree, the LCIA Court shall appoint the presiding arbitrator. If this Clause operates to exclude a party's right to choose its own arbitrator, each party irrevocably and unconditionally waives any right to do so.

43.1.2 Each party agrees (i) to be joined to any arbitration commenced under this Agreement or any Linked Agreement; (ii) to the consolidation of any two or more arbitrations commenced under this Agreement or any Linked Agreement into a single arbitration; and (iii) that Disputes may be determined in a single arbitration together with disputes arising out of or in connection with any Linked Agreement.

43.1.3 In this Clause 43 (*Dispute Resolution*), **Linked Agreement** means each Finance Document other than this Agreement which, in each case:

- (A) has dispute resolution mechanics that provide for the final and binding determination of Dispute by arbitration under terms consistent with or substantially similar to those set out in this Clause 43; or
- (B) both:
  - (1) has dispute resolution mechanics that provide for the option to refer Disputes to arbitration under terms consistent with or substantially similar to those set out in this Clause 43; and
  - (2) such option is exercised.

#### 43.2 **Service of process**

Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in England & Wales):

- 43.2.1 irrevocably appoints Law Debenture Corporate Services Limited, a private limited company incorporated under the laws of England and Wales with company registration number 03388362 at its registered address in England & Wales as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
- 43.2.2 agrees that failure by a process agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned.

#### 43.3 **Waiver of Immunity**

Each Obligor irrevocably and unconditionally:

- 43.3.1 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 that present or future immunity, whether claimed or not; and
- 43.3.2 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.

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

**SCHEDULE 1**

**THE PARTIES**

**PART A**

**BORROWERS**

| <b>Name of Borrower</b> | <b>Registration number (or equivalent, if any)</b> | <b>Jurisdiction of incorporation</b> |
|-------------------------|--|--------------------------------------|
| Asante Gold Bibiani Ltd | CS506392014  | Ghana                                |
| Asante Gold Chirano Ltd | CS183792016  | Ghana                                |

**PART B**

**ORIGINAL OBLIGORS**

| <b>Name of Obligors</b>                         | <b>Registration number (or equivalent, if any)</b> | <b>Jurisdiction of incorporation</b> |
|---|--|--------------------------------------|
| Asante Gold Bibiani Ltd                         | CS506392014  | Ghana                                |
| Asante Gold Chirano Ltd                         | CS183792016  | Ghana                                |
| Asante Gold Corporation                         | BC0909607  | British Columbia                     |
| Asante Chirano Australia Pty Ltd                | ACN072977710                                       | Australia                            |
| Mensin Bibiani Pty Ltd                          | ACN616380173                                       | Australia                            |
| Chirano Mines Limited                           | 320508   | British Virgin Islands               |
| Asante Gold Corporation (International) Limited | 53307  | Barbados                             |
| AGCL (International) Limited                    | 54018  | Barbados                             |
| Chirano Explorer Limited                        | 518139   | British Virgin Islands               |
| Chirano Exploration Limited                     | CS185432016  | Ghana                                |

**PART C**

**THE INITIAL MANDATED LEAD ARRANGER, UNDERWRITER AND BOOKRUNNER**

|   |
|---|
| <b>Name of Initial Mandated Lead Arranger, Underwriter and Bookrunner</b> |
| FirstRand Bank Limited (acting through its Rand Merchant Bank Division)   |

**PART D**

**THE MANDATED LEAD ARRANGER**

|                                       |
|---------------------------------------|
| <b>Name of Mandated Lead Arranger</b> |
| Nil.                                  |

**PART E**

**THE LEAD ARRANGERS**

|                              |
|------------------------------|
| <b>Name of Lead Arranger</b> |
| Ecobank Ghana Plc            |
| Appian Sika LoanCo Limited   |

**PART F**  
**THE ORIGINAL LENDERS**

| <b>Name of Original Lender</b>  | <b>Facility A Commitment (\$)</b> | <b>Facility B Commitment (\$)</b> |
|---|-----------------------------------|-----------------------------------|
| FirstRand Bank Limited (acting through its Rand Merchant Bank Division) | -                                 | 10,000,000                        |
| RMB International (Mauritius) Ltd                                       | 50,000,000                        | -                                 |
| Appian Sika LoanCo Limited  | 40,000,000                        | -                                 |
| Fidelity Bank Ghana Limited   | 15,000,000                        | -                                 |
| Ecobank Ghana Plc   | 25,000,000                        | 10,000,000                        |

**PART G**

**ORIGINAL HEDGING BANK**

| <b>Name of Original Hedging Bank</b> |
|--------------------------------------|
|--------------------------------------|

|   |
|---|
| FirstRand Bank Limited (acting through its Rand Merchant Bank Division) |
|---|

**SCHEDULE 2**  
**CONDITIONS PRECEDENT**

**PART A**

**CONDITIONS PRECEDENT TO INITIAL UTILISATION**

- 1. OBLIGORS**
- 1.1 A certified copy of the constitutional documents of each Obligor.
- 1.2 A certified copy of a resolution of the board of directors of each Obligor:
  - 1.2.1 approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute the Finance Documents to which it is a party;
  - 1.2.2 authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
  - 1.2.3 authorising a specified person or persons, on its behalf, to sign and despatch all documents and notices (including, if relevant, any Utilisation Request) to be signed and despatched by it under or in connection with the Finance Documents to which it is a party.
- 1.3 A specimen of the signature of each person authorised by the resolution referred to in paragraph 1.2 above.
- 1.4 If required under its constitutional documents or any agreement between the shareholders, a certified copy of a resolution signed by all the holders of the issued shares in each Obligor or passed at a meeting of the holders of the issued shares of each Obligor approving the terms of, and the transactions contemplated by, the Finance Documents to which the relevant Obligor is a party, and resolving that it execute the Finance Documents to which the relevant Obligor is a party.
- 1.5 A copy of the shareholder resolutions of each of:
  - 1.5.1 Chirano Mines Limited; and
  - 1.5.2 Chirano Explorer Limited,amending its memorandum and articles of association to remove any restriction on any transfer of shares pursuant to any enforcement of the Transaction Security and evidence that a notice of amendment has been registered with the BVI Registry of Corporate Affairs.
- 1.6 A certificate signed by a director of each Obligor dated no earlier than the date of this Agreement:
  - 1.6.1 confirming that borrowing, securing or guaranteeing, as the case may be, the Total Commitments would not cause any borrowing, guaranteeing or securing or similar limit binding on any Obligor to be exceeded;
  - 1.6.2 certifying its compliance with the terms of the Finance Documents; and
  - 1.6.3 that each document relating to it specified in this Part A of Schedule 2 is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement, and, when providing a copy of a document, certifying that copy is a true copy of the original.
- 1.7 Certified copies of Authorisations of any governmental or other authority, bureau or agency (if any), or any other Authorisations or board approvals, required by each Obligor in connection with the Development Plan and the execution, delivery, performance, validity or enforceability of the Finance Documents to which it is a party or any document to be delivered under the Finance Documents, other than any Deferred Deliverable.

## 2. **FINANCE DOCUMENTS**

- 2.1 An electronic copy of this Agreement, executed by each of the parties to it.
- 2.2 An electronic copy of each of the following other Finance Documents, duly executed by each of the parties to them:
  - 2.2.1 the Intercreditor Agreement;
  - 2.2.2 the Offshore Account Bank Agreement with FirstRand Bank Limited (acting through its Rand Merchant Bank Division);
  - 2.2.3 the Onshore Account Bank Agreements with Société Générale Ghana Plc, First National Bank Ghana Ltd, GCB Bank Ltd, Fidelity Bank Ghana LTD, Ecobank Ghana Plc and Calbank plc;
  - 2.2.4 the Deposit Account Control Agreement;
  - 2.2.5 each Security Document other than the Swiss Law Security Documents;
  - 2.2.6 the Supplemental Creditor Agreement; and
  - 2.2.7 each Fee Letter.

## 3. **PROJECT DOCUMENTS**

- 3.1 A certified copy of each Project Document entered into on or prior to Financial Close, executed by each of the parties to it.
- 3.2 A certified copy of each Intercompany Loan Agreement entered into on or prior to Financial Close, executed by each of the parties to it.

## 4. **TECHNICAL AND ENVIRONMENTAL MATTERS**

- 4.1 A copy of the Environmental and Social Action Plan.
- 4.2 A copy of the Resettlement Action Plan.
- 4.3 A copy of Bibiani Underground Feasibility Study.
- 4.4 A copy of the latest Technical Reports.

## 5. **COST TO COMPLETE CERTIFICATE**

A Cost to Complete Certificate which shows that there is no Funding Shortfall Amount or Cost Overrun.

## 6. **ACCOUNTS**

- 6.1 Evidence that the Project Accounts have been opened.
- 6.2 A copy of the initial Relevant Account Proportion Notice.

## 7. **OTHER FINANCIAL INDEBTEDNESS**

- 7.1 A copy of the Mezzanine Facility Agreement and each Stream Agreement and evidence that each condition precedent to such agreements (other than payment of the Deposit under each Stream Agreement) has been satisfied or waived, or will be satisfied or waived immediately prior to, or concurrently with, Financial Close.
- 7.2 Copies of the Kinross Documents.
- 7.3 A certificate signed by a director of each Borrower dated no earlier than the date of this Agreement confirming that it has not incurred any Financial Indebtedness other than Permitted Financial Indebtedness.

## 8. **FINANCIAL INFORMATION**

- 8.1 A copy of the Original Financial Statements.
- 8.2 A copy of the Base Case Model.

- 8.3 A copy of the Funds Flow Statement.
- 8.4 The Base Case Model demonstrates to its satisfaction that the Ratios are as set out below as at each Calculation Date up to Facility A Final Repayment Date:

| <b>Ratio</b>                      | <b>Level</b>         |
|-----------------------------------|----------------------|
| Forecast Debt Service Cover Ratio | not less than 1.50:1 |
| Forecast Net Debt to EBITDA Ratio | not more than 2.00:1 |
| Loan Life Cover Ratio             | not less than 1.50:1 |
| Project Life Cover Ratio          | not less than 1.70:1 |
| Reserve Tail Ratio                | not less than 30%    |

## 9. **REPORTS**

- 9.1 A report, in form and substance satisfactory to the Technical Bank, by the Technical Adviser in relation to the Projects including a review of the Bibiani Underground Feasibility Study, Technical Reports and Base Case Model.
- 9.2 A copy of a legal due diligence report prepared by the legal advisers to the Facility Agent in England & Wales and Ghana.
- 9.3 An insurance report by the Insurance Adviser in relation to the insurances for the Projects.
- 9.4 An environmental and social due diligence report prepared by the Independent E&S Consultant.
- 9.5 Reliance and/or appointment letters from each of the persons preparing a report delivered under this Agreement entitling the Finance Parties to rely on the content of the relevant report, to the extent the necessary reliance language is not already included in the relevant report.

## 10. **INSURANCES**

- 10.1 Evidence satisfactory to the Insurance Adviser that, in respect of the Insurances required to be effected as at Financial Close under Schedule 13 (*Insurances*):
- 10.1.1 such Insurances are in full force and effect;
- 10.1.2 the Insurances name the Finance Parties as additional insured parties and as loss payee to the extent specified in Schedule 13 (*Insurances*); and
- 10.1.3 that all costs required to be paid under those Insurances on or prior to Financial Close have been paid.
- 10.2 An insurance broker's letter of undertaking in relation to the Insurances.
- 10.3 Copies of all policies in respect of the Insurances required to be effected by Financial Close in accordance with Schedule 13 (*Insurances*).

## 11. **SECURITY**

- 11.1 Evidence of the prior approval of the Minister of Lands and Natural Resources in respect of the security over the Mining Concessions.
- 11.2 Evidence that the Obligors have signed all documents, given all notices and taken all actions requested by the Facility Agent or the Security Agent to enable the Security granted or to be granted by the Security Documents (except the Swiss Law Security Documents) to be perfected, including to facilitate:

- 11.2.1 all filings, stampings, registrations, recordings, notifications, notarisations and other actions (or documents to effect those actions) in all relevant jurisdictions necessary or, in the opinion of legal advisers to the Facility Agent, advisable in order to create in favour of the Finance Parties valid perfected first-priority Security over all of the assets purported to be covered by each such Security Document; and
- 11.2.2 the giving of notices of pledge, assignment or charge, as applicable, in relation to the Transaction Security to each of the parties to the contractual arrangements and accounts which are the subject of such Security Documents, but excluding any Deferred Deliverable.
- 11.3 All Title Documents to be provided to the Security Agent under the Security Documents, other than any Deferred Deliverable.
- 11.4 A copy of each deed of release relating to the Existing Security Documents and the Unsecured Collateral Registrations in respect of Fidelity Bank (Ghana) Limited duly executed by the parties thereto.
- 11.5 A copy of the Deferred Deliverables List.
- 12. AUTHORISATIONS**
- 12.1 A copy of each Material Authorisation.
- 12.2 Evidence satisfactory to the Facility Agent that the following authorisations are in the process of being renewed and will be in full force and effect promptly following Financial Close:
  - 12.2.1 the environmental permit for mineral exploration at Amafie issued to Chirano;
  - 12.2.2 the environmental permit for mineral exploration at Bibiani issued to Bibiani;
  - 12.2.3 the environmental permit for operations at Amafie issued to Chirano;
  - 12.2.4 the environmental permit for operations at Bibiani issued to Bibiani;
  - 12.2.5 the forest entry permit for mining activities in the Bibiani Forest District issued to Chirano;
  - 12.2.6 the licence to operate a health clinic issued by the Health Facilities Regulatory Agency to Chirano;
  - 12.2.7 the data protection certificate issued by the Data Protection Commission to Chirano;
  - 12.2.8 the data protection certificate issued by the Data Protection Commission to Bibiani;
  - 12.2.9 the fire certificate issued by the Ghana National Fire Service to Chirano;
  - 12.2.10 the fire certificate issued by the Ghana National Fire Service to Bibiani; and
  - 12.2.11 the water use permits issued by the Water Resources Commission to Bibiani.
- 13. LEGAL OPINIONS**
- 13.1 A legal opinion of Herbert Smith Freehills Kramer LLP, legal advisers to the Facility Agent in England & Wales on the enforceability and validity of each English law-governed Finance Document.
- 13.2 A legal opinion of Herbert Smith Freehills Kramer LLP, legal advisers to the Facility Agent in Australia on the enforceability and validity of each Australian law-governed Finance

Document and on the corporate existence and capacity of each Obligor incorporated in Australia to execute each Finance Document to which each such Obligor is a party to.

- 13.3 A legal opinion of Herbert Smith Freehills Kramer LLP, legal advisers to the Facility Agent in New York on the enforceability and validity of each New York law-governed Finance Document.
- 13.4 A legal opinion of Herbert Smith Freehills Kramer South Africa LLP, legal advisers to the Facility Agent in South Africa on the enforceability and validity of each South African law-governed Finance Document.
- 13.5 A legal opinion of Chancery Chambers, legal advisers to the Facility Agent in Barbados on the enforceability and validity of each Barbados law-governed Finance Document.
- 13.6 A legal opinion of AB & David, legal advisers to the Facility Agent in the Republic of Ghana on the enforceability and validity of each Ghana law-governed Finance Document.
- 13.7 A legal opinion of Maples and Calder, legal advisers to the Facility Agent as to laws of the British Virgin Islands on the enforceability and validity of each British Virgin Islands law-governed Finance Document.
- 13.8 A legal opinion of McCarthy Tétrault, legal advisers to the Facility Agent in British Columbia on the enforceability and validity of each Canadian law governed Finance Document.
- 13.9 A legal opinion of Bentsi-Enchill, Letsa & Ankomah, Ghanaian law legal advisers to the Obligors on the corporate existence and capacity of each Obligor incorporated in Ghana to execute each Finance Document to which it is a party.
- 13.10 A legal opinion of Bennett Jones LLP, British Columbia law legal advisers to the Obligors on the corporate existence and capacity of the Sponsor to execute each Finance Document to which it is a party.
- 13.11 A legal opinion of Mourant Ozannes, BVI legal advisers to the Obligors in the British Virgin Islands on the corporate existence and capacity of Chirano Mines Limited and Chirano Explorer Limited to execute each Finance Document to which it is a party.
- 13.12 A legal opinion of Clarke Gittens Farmer, Barbados law legal advisers to the Obligors on the corporate existence and capacity of each of Bibiani Finco and Chirano Finco to execute each Finance Document to which it is a party.

#### 14. **OTHER DOCUMENTS AND EVIDENCE**

- 14.1 Provision by each Obligor of all information necessary to comply with any 'know your customer' checks and other identification procedures as may be requested by the Facility Agent.
- 14.2 Evidence that any process agent referred to in Clause 43.2 (*Service of Process*) has accepted its appointment.
- 14.3 Evidence that the fees, costs and expenses then due from the Borrowers pursuant to Clause 11 (*Fees*) and Clause 16 (*Costs and expenses*) have been paid or will be paid on the first Utilisation Date, either using the proceeds of the first Utilisation or otherwise.
- 14.4 A copy of any other Authorisation or other document, opinion or assurance which the Facility Agent considers to be necessary in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.
- 14.5 A copy of the Litigation Register.
- 14.6 A copy of the Creditor List.
- 14.7 A certificate signed by a director of the Sponsor dated no earlier than the date of this Agreement certifying that:
  - 14.7.1 the Litigation Register is correct, complete and, to the best of its knowledge and belief (having made reasonable enquiries), fairly presents the potential financial exposure for the Obligors of each matter it describes;

- 14.7.2 the Creditor List is correct, complete and, to the best of its knowledge and belief (having made reasonable enquiries), fairly presents all liabilities of the Obligors which would be considered overdue in accordance with IFRS;
- 14.7.3 except as identified in the Litigation Register, to the best of its knowledge and belief (having made reasonable enquiries), there is no litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency has been commenced, threatened in writing or is pending against any Obligor which, if adversely determined, are likely to result in a liability to an Obligor exceeding \$5,000,000;
- 14.7.4 there is no litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency has been commenced, threatened in writing or is pending against any Obligor which, if adversely determined, would have or be reasonably likely to have a Material Adverse Effect; and
- 14.7.5 following payment of the amounts identified in the Creditor List as outstanding to PW Mining and Genser Energy, the Mining Services Contract (Bibiani) and Power Contract will remain in full force and effect, and the counterparties under those agreements will not have any presently exercisable right as of the date of such payment to terminate those agreements.

## PART B

### CONDITIONS PRECEDENT REQUIRED TO BE DELIVERED BY AN ADDITIONAL OBLIGOR

1. An Accession Deed executed by the Additional Obligor and the Sponsor.
2. A Debtor Accession Deed executed by the Additional Obligor.
3. A copy of the constitutional documents of the Additional Obligor.
4. A copy of a resolution of the board of directors of the Additional Obligor:
  - 4.1 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;
  - 4.2 authorising a specified person or persons to execute the Accession Deed and other Finance Documents on its behalf;
  - 4.3 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
  - 4.4 authorising the Sponsor to act as its agent in connection with the Finance Documents.
5. A specimen of the signature of each person authorised by the resolution referred to in paragraph 4 above.
6. If required, a copy of a resolution signed by all the holders of the issued shares of the Additional Obligor, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Additional Obligor is a party.
7. A copy of a resolution of the board of directors of each corporate shareholder of each Additional Obligor approving any terms of the resolution required pursuant to in paragraph 6 above.
8. A certificate of the Additional Obligor (signed by a director) confirming that guaranteeing or securing, as appropriate, the Total Commitments would not cause any guarantee, security or similar limit binding on it to be exceeded.
9. A certificate of an authorised signatory of the Additional Obligor certifying that each copy document listed in this Part B 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.
10. A copy of any other Authorisation or other document, opinion or assurance which the Facility 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.
11. If available, the latest audited financial statements of the Additional Obligor.
12. The following legal opinions, each addressed to the Facility Agent, the Security Agent and the Lenders:
  - 12.1 A legal opinion of the legal advisers to the Facility Agent in England, as to English law in the form distributed to the Lenders prior to signing the Accession Deed.
  - 12.2 If the Additional Obligor is incorporated in a jurisdiction other than England and Wales or is executing a Finance Document which is governed by a law other than English law, a legal opinion of the legal advisers to the Facility Agent in the jurisdiction of its incorporation or, as the case may be, the jurisdiction of the governing law of that Finance Document (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.

13. If the proposed Additional Obligor is incorporated in a jurisdiction other than England and Wales, evidence that the process agent specified in Clause 43.2 (*Service of process*), if not an Obligor, has accepted its appointment in relation to the proposed Additional Obligor.
14. Any security documents which are required by the Facility Agent to be executed by the proposed Additional Obligor and the Holding Company of such Additional Obligor, including over the shares in, and Intercompany Loans provided to, such Additional Obligor.
15. Any notices or documents required to be given or executed under the terms of those security documents.
16. Such documentary evidence as legal counsel to the Facility Agent may reasonably require, that such Additional Obligor has complied with any law in its jurisdiction relating to financial assistance or analogous process.

**SCHEDULE 3**

**UTILISATION REQUEST**

From: [Asante Gold Bibiani Ltd]/[Asante Gold Chirano Ltd]

To: [Facility Agent]

Dated:

Dear Sir / Madam

**Asante Gold Corporation – \$150,000,000 Facilities Agreement  
dated [ • ] (the 'Agreement')**

1. We refer to the Agreement. This is a Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to borrow [a] Loan[s] on the following terms:  
  
Borrower to which the proposed [ • ]  
Loan[s] will be made:  
  
Proposed Utilisation Date: [ • ] (or, if that is not a Business Day, the next  
Business Day)  
  
Facilit[y]/[ies] to be utilised: [ • ]  
  
Amount and currency: [ • ] or, if less, the Available Facility
3. We confirm that each condition specified in Clause 4.2.1 (*Further conditions precedent*) of the Agreement is satisfied on the date of this Utilisation Request.
4. [The proceeds of the Loan[s] are required to pay Project Capital Expenditure in accordance with the Development Plan within ninety (90) days of the Utilisation Date and reasonable details as to the applicable Project Capital Expenditure are attached to this Utilisation Request.]
5. The proceeds of the Loan will not be used to pay any overdue amount to any creditor of any Obligor.
6. [Any amounts previously disbursed have been or on or by the proposed Utilisation Date will have been applied by the Borrowers in accordance with the certification provided in the relevant Utilisation Request.]
7. A Cost to Complete Certificate is attached to this Utilisation Request[ which shows that there is no Funding Shortfall Amount or Cost Overrun].
8. The proceeds of this Loan[, net of any fees that may be set off against the proceeds of this Loan in accordance with the Fee Letters,] should be credited to the Offshore USD Proceeds Account of [*insert relevant Borrower*].
9. This Utilisation Request is irrevocable.

Yours faithfully

[Asante Gold Bibiani Ltd]/[Asante Gold Chirano Ltd]

.....  
Authorised signatory

**SCHEDULE 4**  
**COST TO COMPLETE CERTIFICATE**

*[Redacted – Commercially Sensitive Information]*

**SCHEDULE 5**  
**COMPLIANCE CERTIFICATE**

*[Redacted – Commercially Sensitive Information]*

**SCHEDULE 6**  
**COMPLETION TESTS**

*[Redacted – Commercially Sensitive Information]*

**SCHEDULE 7**  
**GROUP STRUCTURE**

*[Redacted – Commercially Sensitive]*

## SCHEDULE 8

### FORM OF TRANSFER CERTIFICATE

To: FirstRand Bank Limited (acting through its Rand Merchant Bank Division) as Facility Agent, FirstRand Bank Limited (acting through its Rand Merchant Bank Division) as Security Agent and Asante Gold Bibiani Ltd and Asante Gold Chirano Ltd as Borrowers

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

Dated:

#### **Asante Gold Corporation – \$150,000,000 Facilities Agreement dated [●] (the 'Agreement')**

1. We refer to the Agreement. This is a Transfer Certificate. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
1. We refer to Clause 26.7 (*Procedure for Transfer*) of the Agreement. The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation, and in accordance with Clause 26.7 (*Procedure for transfer*) of the Agreement, all of the Existing Lender's rights and obligations under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment(s) and participations in Utilisations under the Agreement as specified in the Schedule.
2. The proposed Transfer Date is [        ].
3. On the Transfer Date the New Lender becomes Party to the Finance Documents as a Lender.
4. 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 Agreement are set out in the Schedule.
5. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in Clause 26.6.3 (*Limitation of responsibility of Existing Lenders*) of the Agreement.
6. This Transfer Certificate acts as notice to the Facility Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 26.9 (*Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Borrower*) of the Agreement, to the Borrowers and each other Obligor of the assignment referred to in this Assignment Agreement.
7. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
8. This Transfer Certificate and any dispute or claim arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability (including any non-contractual disputes or claims) is to be governed by and construed in accordance with English law.
9. This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.

**THE SCHEDULE**

**Commitment/rights and obligations to be transferred**

*[insert relevant details of Commitment/rights]*

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

[Existing Lender]

[New Lender]

By:

By:

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

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

Facility Agent

By:

## SCHEDULE 9

### FORM OF ASSIGNMENT AGREEMENT

To: FirstRand Bank Limited (acting through its Rand Merchant Bank Division) as Facility Agent, FirstRand Bank Limited (acting through its Rand Merchant Bank Division) as Security Agent and Asante Gold Bibiani Ltd and Asante Gold Chirano Ltd as Borrowers

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

Dated:

**Asante Gold Corporation – \$150,000,000 Project Facilities Agreement  
dated [●] (the 'Agreement')**

1. We refer to the Agreement. This is an Assignment Agreement. Terms defined in the Agreement have the same meaning in this Assignment Agreement unless given a different meaning in this Assignment Agreement.
2. We refer to Clause 26.8 (*Procedure for assignment*) of the Agreement:
  - (a) The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Agreement, the other Finance Documents and in respect of the Transaction Security which correspond to that portion of the Existing Lender's Commitment and participations in Utilisations under the Agreement as specified in the Schedule.
  - (b) The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender's Commitment and participations in Utilisations under the Agreement specified in the Schedule.
  - (c) The New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph (b) above.
3. The proposed Transfer Date is [     ].
4. On the Transfer Date the New Lender becomes Party to the Finance Documents as a Lender.
5. The Facility Office and address, electronic mail address and attention details for notices of the New Lender for the purposes of Clause 33.2 (*Addresses*) of the 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 26.6.3 (*Limitation of responsibility of Existing Lenders*) of the Agreement.
7. This Assignment Agreement acts as notice to the Facility Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 26.9 (*Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Borrower*) of the Agreement, to the Borrowers and each other Obligor of the assignment referred to in this Assignment Agreement.
8. This Assignment Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Assignment Agreement.
9. This Assignment Agreement and any dispute or claim arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability (including any non-contractual disputes or claims) is to be governed by and construed in accordance with English law.
10. This Assignment Agreement has been entered into on the date stated at the beginning of this Assignment Agreement.

**THE SCHEDULE**

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

*[insert relevant details of rights assigned, etc.]*

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

[Existing Lender]

[New Lender]

By:

By:

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

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

Facility Agent

By:

**SCHEDULE 10**

**FORM OF ACCESSION DEED**

To: [ ] as Facility Agent  
From: [*Subsidiary*] and Asante Gold Corporation  
Dated:  
Dear Sir or Madam,

**Facilities Agreement**

**dated [ ] (the "Facilities Agreement")**

1. We refer to the Facilities Agreement. This deed (the "**Accession Deed**") shall take effect as an Accession Deed for the purposes of the Facilities Agreement. Terms defined in the Facilities Agreement have the same meaning in this Accession Deed unless given a different meaning in this Accession Deed.
2. [*Subsidiary*] agrees to become an Additional Obligor [and the Hedging Company] and to be bound by the terms of the Facilities Agreement and the other Finance Documents as an Additional Obligor [and the Hedging Company] pursuant to Clause 27.2 (*Additional Obligors*) of the Facilities Agreement.
3. [Subsidiary] is a company duly incorporated under the laws of [name of relevant jurisdiction] and is a limited liability company with registered number [ ].
4. [*Subsidiary's*] administrative details for the purposes of the Facilities Agreement are as follows:  
Address:  
Email address:  
Attention:
5. This Accession Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.
6. This Accession Deed is intended to take effect as a deed notwithstanding that the Facility Agent may have executed it under hand only.

This Accession Deed has been duly executed and delivered as a deed on the date stated above.

*[insert applicable signature blocks]*

**SCHEDULE 11**  
**TIMETABLES**

*[Redacted – Commercially Sensitive Information]*

## SCHEDULE 12

### FORM OF INCREASE CONFIRMATION

To: FirstRand Bank Limited (acting through its Rand Merchant Bank Division) as Facility Agent, FirstRand Bank Limited (acting through its Rand Merchant Bank Division) as Security Agent and Asante Gold Bibiani Ltd and Asante Gold Chirano Ltd as Borrowers

From: [the Increase Lender] (the **Increase Lender**)

Dated:

**Asante Gold Corporation – \$150,000,000 Facilities Agreement  
dated [●] (the 'Agreement')**

1. We refer to the Agreement. This is an Increase Confirmation. Terms defined in the Agreement have the same meaning in this Increase Confirmation unless given a different meaning in this Increase Confirmation.
2. We refer to Clause 2.2 (*Increase*) of the 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 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 Finance Documents as a Lender.
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 Agreement are set out in the Schedule.
7. The Increase Lender expressly acknowledges the limitations on the Lenders' obligations referred to in Clause 2.2.9 (*Increase*) of the Agreement.
8. This Increase Confirmation 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 Increase Confirmation.
9. This Increase Confirmation and any dispute or claim arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability (including any non-contractual disputes or claims) is to be governed by and construed in accordance with English law.
10. This Increase Confirmation has been entered into on the date stated at the beginning of this Increase Confirmation.

**SCHEDULE 13**  
**INSURANCES**

*[Redacted – Commercially Sensitive Information]*

**SCHEDULE 14**

**FORM OF ENVIRONMENTAL AND SOCIAL MONITORING REPORT**

*[Redacted – Commercially Sensitive Information]*

**SCHEDULE 15**  
**FORM OF OPERATING REPORT**

*[Redacted – Commercially Sensitive Information]*

## SCHEDULE 16

### FORM OF ACCORDION CONFIRMATION

To: FirstRand Bank Limited (acting through its Rand Merchant Bank Division) as Facility Agent, FirstRand Bank Limited (acting through its Rand Merchant Bank Division) as Security Agent and Asante Gold Bibiani Ltd and Asante Gold Chirano Ltd as Borrowers

From: [the Increase Lender] (the **Increase Lender**)

Dated:

**Asante Gold Corporation – \$150,000,000 Facilities Agreement  
dated [•] (the 'Agreement')**

1. We refer to the Agreement. This is an Accordion Confirmation. Terms defined in the Agreement have the same meaning in this Accordion Confirmation unless given a different meaning in this Accordion Confirmation.
2. We refer to Clause 2.3 (*Accordion*) of the Agreement.
3. The Accordion 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 Agreement in respect of the Relevant Commitment(s).
4. The proposed date on which the increase in relation to the Accordion Lender and the Relevant Commitment(s) is to take effect is [•].
5. On the Accordion Increase Date, the Accordion Lender becomes party to the relevant Finance Documents as a Lender.
6. The Facility Office and address, electronic mail address and attention details for notices to the Accordion Lender for the purposes of Clause 33.2 (*Addresses*) of the Agreement are set out in the Schedule.
7. The Accordion Lender expressly acknowledges the limitations on the Lenders' obligations referred to in Clause 2.3.11 (*Accordion*) of the Agreement.
8. This Accordion Confirmation 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 Accordion Confirmation.
9. This Accordion Confirmation and any dispute or claim arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability (including any non-contractual disputes or claims) is to be governed by and construed in accordance with English law.
10. This Accordion Confirmation has been entered into on the date stated at the beginning of this Accordion Confirmation.

**THE SCHEDULE**

**Relevant Commitment(s)/rights and obligations to be assumed by the Accordion Lender**

*[Insert relevant details]*

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

[Accordion Lender]

By:

This agreement is accepted as an Accordion Confirmation for the purposes of the Agreement by the Facility Agent and the Accordion Increase Date is confirmed as [•].

[Facility Agent]

By:

**SCHEDULE 17**

**PRE-APPROVED NEW LENDER LIST**

*[Redacted – Commercially Sensitive Information]*

**SIGNATURES**

**THE BORROWERS**

Signed for and on behalf of

**ASANTE GOLD BIBIANI LTD**

**as Borrower**

acting by a director: )

David Anthony ) (signed) *"David Anthony"*

Name of director ) (Signature of director)

(in **BLOCK CAPITALS**)

Position: Director

**Notice details:**

Address: No. 17 Jungle Avenue, East Legon, Accra

Email: *[Redacted – Personal Information]*

Attention of: David Wiens (Chief Financial Officer)

Signed for and on behalf of

**ASANTE GOLD CHIRANO LTD**

**as Borrower**

acting by a director: )

David Anthony ) (signed) *"David Anthony"*

Name of director ) (Signature of director)

(in **BLOCK CAPITALS**)

Position: Director

**Notice details:**

Address: No.17 Jungle Avenue, East Legon, Accra

Email: *[Redacted – Personal Information]*

Attention of: David Wiens (Chief Financial Officer)

**THE SPONSOR**

Signed for and on behalf of

**ASANTE GOLD CORPORATION**

**as Sponsor**

acting by a director: )

David Anthony ) (signed) *"David Anthony"*

Name of director ) (Signature of director)

(in **BLOCK CAPITALS**)

PositionDirector

**Notice details:**

Address: Suite 615, 800, West Pender Street, Vancouver, British Columbia, Canada,  
V6C 2V6

Email: *[Redacted – Personal Information]*

Attention of: David Wiens (Chief Financial Officer)

**THE ORIGINAL OBLIGORS**

Signed for and on behalf of

**ASANTE GOLD BIBIANI LTD**

**as Original Obligor**

acting by a director: )

David Anthony ) (signed) *"David Anthony"*

Name of director ) (Signature of director)

(in **BLOCK CAPITALS**)

Position: Director

Before Me:

(signed) *"Juliet Manteaw-Kutin"*

(Signature of witness)

Name: Juliet Manteaw-Kutin

Address: 10 Oak Avenue, East Legon, Accra

Occupation: Lawyer

**Notice details:**

Address: No. 17 Jungle Avenue, East Legon, Accra

Email: *[Redacted – Personal Information]*

Attention of: David Wiens (Chief Financial Officer)

Signed for and on behalf of

**ASANTE GOLD CHIRANO LTD**

**as Original Obligor**

acting by a director: )

David Anthony ) (signed) *"David Anthony"*

Name of director ) (Signature of director)

(in **BLOCK CAPITALS**)

Position: Director

**Notice details:**

Address: No.17 Jungle Avenue, East Legon, Accra

Email: *[Redacted – Personal Information]*

Attention of: David Wiens (Chief Financial Officer)

Signed for and on behalf of

**ASANTE GOLD CORPORATION**

**as Original Obligor**

acting by a director: )

David Anthony ) (signed) "*David Anthony*"

Name of director ) (Signature of director)

(in **BLOCK CAPITALS**)

Position: Director

**Notice details:**

Address: Suite 615, 800, West Pender Street, Vancouver, British Columbia, Canada,  
V6C 2V6

Email: *[Redacted – Personal Information]*

Attention of: David Wiens (Chief Financial Officer)

Signed for and on behalf of

**ASANTE CHIRANO AUSTRALIA PTY LTD**

ACN 072 977 710 in accordance with section 127 of the Corporations Act 2001 (Cth)

**as Original Obligor**

acting by: )

Martijn Kol ) (signed) "*Martijn Kol*"

Name of director ) Signature of director

(in **BLOCK CAPITALS**)

and by )

Malik Easah ) (signed) "*Malik Easah*"

Name of director/company secretary ) Signature of director/company secretary

(in **BLOCK CAPITALS**)

**Notice details:**

Address: c/o Hopgood Ganim Lawyers, Level 8, Waterfront Place, 1 Eagle Street, Brisbane, Qld, 4000

Email: *[Redacted – Personal Information]*

Attention of: David Wiens (Chief Financial Officer)

Signed for and on behalf of

**MENSIN BIBIANI PTY LTD**

ACN 616 380 173 in accordance with section 127 of the Corporations Act 2001 (Cth)

**as Original Obligor**

acting by a director: )

Malik Easah ) (signed) "*Malik Easah*"

Name of director ) (Signature of director)

(in **BLOCK CAPITALS**)

and by )

David Anthony ) (signed) "*David Anthony*"

Name of director/company secretary ) Signature of director/company secretary

(in **BLOCK CAPITALS**)

**Notice details:**

Address: c/o Hoppgood Ganim Lawyers, Level 8, Waterfront Place, 1 Eagle Street, Brisbane, Qld, 4000

Email: *[Redacted – Personal Information]*

Attention of: David Wiens (Chief Financial Officer)

Signed for and on behalf of

**CHIRANO MINES LIMITED**

**as Original Obligor**

acting by: )

Malik Easah ) (signed) "*Malik Easah*"

Name of director ) (Signature of director)

(in **BLOCK CAPITALS**)

Position: Director

**Notice details:**

Address: Commerce House, Wickhams Cay 1, Road Town, Tortola, VG1110, British Virgin Islands

Email: *[Redacted – Personal Information]*

Attention of: David Wiens (Chief Financial Officer)

Signed for and on behalf of

**ASANTE GOLD CORPORATION (INTERNATIONAL) LIMITED**

**as Original Obligor**

acting by a director

)

David Anthony

)

(signed) "*David Anthony*"

Name of director

)

(Signature of director)

(in **BLOCK CAPITALS**)

Position: Director

Before Me:

(signed) "*Juliet Manteaw-Kutin*"

(Signature of witness)

Name: Juliet Manteaw-Kutin

Address: 10 Oak Avenue, East Legon,  
Accra

Occupation: Lawyer

**Notice details:**

Address: First Floor, Hastings House, Balmoral Gap, Hastings, Christ Church,  
Barbados

Email: *[Redacted – Personal Information]*

Attention of: David Wiens (Chief Financial Officer)

Signed for and on behalf of

**AGCL (INTERNATIONAL) LIMITED**

**as Original Obligor**

acting by a director:

David Anthony

Name of director

(in **BLOCK CAPITALS**)

)

)

)

(signed) "*David Anthony*"

(Signature of director)

Position: Director

Before Me:

(signed) "*Juliet Manteaw-Kutin*"

(Signature of witness)

Name: Juliet Manteaw-Kutin

Address: 10 Oak Avenue, East Legon, Accra

Occupation: Lawyer

**Notice details:**

Address: First Floor, Hastings House, Balmoral Gap, Hastings, Christ Church,  
Barbados

Email: *[Redacted – Personal Information]*

Attention of: David Wiens (Chief Financial Officer)

Signed for and on behalf of

**CHIRANO EXPLORER LIMITED**

**as Original Obligor**

acting by a director: )

Malik Easah ) (signed) "*Malik Easah*"

Name of director ) (Signature of director)

(in **BLOCK CAPITALS**)

Position: Director

**Notice details:**

Address: Commerce House, Wickhams Cay 1, Road Town, Tortola, VG1110,  
British Virgin Islands

Email: *[Redacted – Personal Information]*

Attention of: David Wiens (Chief Financial Officer)

Signed for and on behalf of

**CHIRANO EXPLORATION LIMITED**

**as Original Obligor**

acting by a director: )

Juliet Manteaw-Kutin ) (signed) "*Juliet Manteaw-Kutin*"

Name of director ) (Signature of director)

(in **BLOCK CAPITALS**)

Position: Director

Before Me:

(signed) "*Jemimah Aidoo*"

(Signature of witness)

Name: Jemimah Aidoo

Address: P.O. Box 5496, Accra

Occupation: Lawyer

**Notice details:**

Address: 2nd Floor, Office 1 (A.S.1)- Marvel House, No.148 A, Giffard Road,  
Cantonments, Accra- Ghana

Email: *[Redacted – Personal Information]*

Attention of: David Wiens (Chief Financial Officer)

**THE INITIAL MANDATED LEAD ARRANGER, UNDERWRITER AND BOOKRUNNER**

Signed for and on behalf of

**FIRSTRAND BANK LIMITED (acting through its Rand Merchant Bank Division)  
as Initial Mandated Lead Arranger, Underwriter And Bookrunner**

acting by: )

Julian Grieve ) (signed) "*Julian Grieve*"

Name of authorised signatory ) (Signature of authorised signatory)

(in **BLOCK CAPITALS**)

and by: )

Kwenzakonke Mncwango ) (signed) "*Kwenzakonke Mncwango*"

Name of authorised signatory ) (Signature of authorised signatory)

(in **BLOCK CAPITALS**)

**Notice details:**

Address: 1 Merchant Place, Corner Fredman Drive and Rivonia Road, Sandton, 2196,  
South Africa

Email: *[Redacted – Personal Information]*

Attention of: Siphesihle Khoza

**THE LEAD ARRANGERS**

Signed for and on behalf of

**ECOBANK GHANA PLC**

**as Lead Arranger**

acting by:

Amaki Sogbodjor

Name of authorised signatory  
(in **BLOCK CAPITALS**)

and by:

Rushie Nylander-Dufu

Name of authorised signatory  
(in **BLOCK CAPITALS**)

)

) (signed) "*Amaki Sogbodjor*"

) (Signature of authorised signatory)

)

) (signed) "*Rushie Nylander-Dufu*"

) (Signature of authorised signatory)

**Notice details:**

Address: 2 Morocco Lane, Off Independence Avenue, Ministerial Area, Accra.

Email: *[Redacted – Personal Information]*

Attention of: Elorm Seneadza / Buerki Plahar

Signed for and on behalf of

**APPIAN SIKA LOANCO LIMITED**

**as Lead Arranger**

acting by its directors:

**OAK DIRECTORS (JERSEY) LIMITED**

acting by:

SARAH EARLES

Name of authorised signatory

(in **BLOCK CAPITALS**)

)

)

)

(signed) "*Sarah Earles*"

(Signature of authorised signatory)

Title: Authorised Signatory

and by:

GRAEME PATON

Name of authorised signatory

(in **BLOCK CAPITALS**)

)

)

)

(signed) "*Graeme Paton*"

(Signature of authorised signatory)

Title: Authorised Signatory

**AND**

**OAK SERVICES (JERSEY) LIMITED**

acting by:

SARAH EARLES

Name of authorised signatory

(in **BLOCK CAPITALS**)

)

)

)

(signed) "*Sarah Earles*"

(Signature of authorised signatory)

Title: Authorised Signatory

and by:

GRAEME PATON

Name of authorised signatory

(in **BLOCK CAPITALS**)

)

)

)

(signed) "*Graeme Paton*"

(Signature of authorised signatory)

Title: Authorised Signatory

**Notice details:**

Address: 600 Lexington Avenue, Suite 501, New York, NY 10022

Email: *[Redacted – Personal Information]*

Copy to: *[Redacted – Personal Information]*

Attention of: Alyssa McAnney, Head of Legal

**THE ORIGINAL LENDERS**

Signed for and on behalf of

**FIRSTRAND BANK LIMITED (acting through its Rand Merchant Bank Division)**

**as Original Lender**

|                              |   |  |
|------------------------------|---|--|
| acting by:                   | ) |  |
| Julian Grieve                | ) | (signed) " <i>Julian Grieve</i> "        |
| Name of authorised signatory | ) | (Signature of authorised signatory)      |
| (in <b>BLOCK CAPITALS</b> )  | ) |  |
| and by:                      | ) |  |
| Kwenzakonke Mncwango         | ) | (signed) " <i>Kwenzakonke Mncwango</i> " |
| Name of authorised signatory | ) | (Signature of authorised signatory)      |
| (in <b>BLOCK CAPITALS</b> )  | ) |  |

**Notice details:**

Address: 1 Merchant Place, Corner Fredman Drive and Rivonia Road, Sandton, 2196,  
South Africa  
Email: *[Redacted – Personal Information]*  
Attention of: Siphesihle Khoza

Signed for and on behalf of

**RMB INTERNATIONAL (MAURITIUS) LTD  
as Original Lender**

|   |   |  |
|---|---|--|
| acting by:  | ) |  |
| Stephen Peters  | ) | (signed) " <i>Stephen Peters</i> "         |
| Name of authorised signatory<br>(in <b>BLOCK CAPITALS</b> ) | ) | (Signature of authorised signatory)        |
| and by:   | ) |  |
| Sanora Gobin Dageromar                                      | ) | (signed) " <i>Sanora Gobin Dageromar</i> " |
| Name of authorised signatory<br>(in <b>BLOCK CAPITALS</b> ) | ) | (Signature of authorised signatory)        |

**Notice details:**

Address: 2nd Floor, the Precinct, Plaine des Papayes Road, Grand Baie, Mauritius,  
1207-02  
Email: *[Redacted – Personal Information]*  
Attention of: Stephen Peters

Signed for and on behalf of

**APPIAN SIKA LOANCO LIMITED**

**as Original Lender**

acting by its directors:

**OAK DIRECTORS (JERSEY) LIMITED**

acting by:

SARAH EARLES

Name of authorised signatory

(in **BLOCK CAPITALS**)

)

)

)

(signed) "*Sarah Earles*"

(Signature of authorised signatory)

Title: Authorised Signatory

and by:

GRAEME PATON

Name of authorised signatory

(in **BLOCK CAPITALS**)

)

)

)

(signed) "*Graeme Paton*"

(Signature of authorised signatory)

Title: Authorised Signatory

**AND**

**OAK SERVICES (JERSEY) LIMITED**

acting by:

SARAH EARLES

Name of authorised signatory

(in **BLOCK CAPITALS**)

)

)

)

(signed) "*Sarah Earles*"

(Signature of authorised signatory)

Title: Authorised Signatory

and by:

GRAEME PATON

Name of authorised signatory

(in **BLOCK CAPITALS**)

)

)

)

(signed) "*Graeme Paton*"

(Signature of authorised signatory)

Title: Authorised Signatory

**Notice details:**

Address: 600 Lexington Avenue, Suite 501, New York, NY 10022

Email: *[Redacted – Personal Information]*

Copy to: *[Redacted – Personal Information]*

Attention of: Alyssa McAnney, Head of Legal

Signed for and on behalf of  
**FIDELITY BANK GHANA LIMITED**  
**as Original Lender**

acting by: )  
Julian Opuni ) (signed) "*Julian Opuni*"  
Name of authorised signatory ) (Signature of authorised signatory)  
(in **BLOCK CAPITALS**)  
and by: )

**Notice details:**

Address: Fidelity Bank Ghana LTD, Number 10 Ambassadorial Enclave, Ridge Tower,  
Ridge, Accra  
Email: *[Redacted – Personal Information]*  
Attention of: Kwabena Boateng

Signed for and on behalf of  
**ECOBANK GHANA PLC**  
**as Original Lender**

|                              |   |  |
|------------------------------|---|--|
| acting by:                   | ) |  |
| Amaki Sogbodjor              | ) | (signed) " <i>Amaki Sogbodjor</i> "      |
| Name of authorised signatory | ) | (Signature of authorised signatory)      |
| (in <b>BLOCK CAPITALS</b> )  |   |  |
| and by:                      | ) |  |
| Rushie Nylander-Dufu         | ) | (signed) " <i>Rushie Nylander-Dufu</i> " |
| Name of authorised signatory | ) | (Signature of authorised signatory)      |
| (in <b>BLOCK CAPITALS</b> )  |   |  |

**Notice details:**

Address: 2 Morocco Lane, Off Independence Avenue, Ministerial Area, Accra.  
Email: *[Redacted – Personal Information]*  
Attention of: Elorm Seneadza / Buerki Plahar

**THE ORIGINAL HEDGING BANK**

Signed for and on behalf of

**FIRSTRAND BANK LIMITED (acting through its Rand Merchant Bank Division)**

**as Original Hedging Bank**

acting by: )

Sorelle Jayne Gross )

(signed) "*Sorelle Jayne Gross*"

Name of authorised signatory )

(Signature of authorised signatory)

(in **BLOCK CAPITALS**)

and by: )

Thobeka Tubela )

(signed) "*Thobeka Tubela*"

Name of authorised signatory )

(Signature of authorised signatory)

(in **BLOCK CAPITALS**)

**Notice details:**

Address: 1 Merchant Place, Corner Fredman Drive and Rivonia Road, Sandton, 2196,  
South Africa

Email: *[Redacted – Personal Information]*

Attention of: Siphesihle Khoza

**THE FACILITY AGENT**

Signed for and on behalf of

**FIRSTRAND BANK LIMITED (acting through its Rand Merchant Bank Division)**

**as Facility Agent**

|                              |   |                                      |
|------------------------------|---|--------------------------------------|
| acting by:                   | ) |                                      |
| Lindie Niklaas               | ) | (signed) " <i>Lindie Niklaas</i> "   |
| Name of authorised signatory | ) | (Signature of authorised signatory)  |
| (in <b>BLOCK CAPITALS</b> )  |   |                                      |
| and by:                      | ) |                                      |
| Siphesihle Khoza             | ) | (signed) " <i>Siphesihle Khoza</i> " |
| Name of authorised signatory | ) | (Signature of authorised signatory)  |
| (in <b>BLOCK CAPITALS</b> )  |   |                                      |

**Notice details:**

Address: 1 Merchant Place, Corner Fredman Drive and Rivonia Road, Sandton, 2196,  
South Africa  
Email: *[Redacted – Personal Information]*  
Attention of: Siphesihle Khoza

**THE TECHNICAL BANK**

Signed for and on behalf of

**FIRSTRAND BANK LIMITED (acting through its Rand Merchant Bank Division)**

**as Technical Bank**

acting by: )

Julian Grieve )

(signed) "*Julian Grieve*"

Name of authorised signatory )

(Signature of authorised signatory)

(in **BLOCK CAPITALS**)

and by: )

Kwenzakonke Mncwango )

(signed) "*Kwenzakonke Mncwango*"

Name of authorised signatory )

(Signature of authorised signatory)

(in **BLOCK CAPITALS**)

**Notice details:**

Address: 1 Merchant Place, Corner Fredman Drive and Rivonia Road, Sandton, 2196,  
South Africa

Email: *[Redacted – Personal Information]*

Attention of: Siphesihle Khoza

**THE ES AGENT**

Signed for and on behalf of

**FIRSTRAND BANK LIMITED (acting through its Rand Merchant Bank Division)**

**as ES Agent**

acting by: )

Julian Grieve )

(signed) "*Julian Grieve*"

Name of authorised signatory )

(Signature of authorised signatory)

(in **BLOCK CAPITALS**)

and by: )

Kwenzakonke Mncwango )

(signed) "*Kwenzakonke Mncwango*"

Name of authorised signatory )

(Signature of authorised signatory)

(in **BLOCK CAPITALS**)

**Notice details:**

Address: 1 Merchant Place, Corner Fredman Drive and Rivonia Road, Sandton, 2196,  
South Africa

Email: *[Redacted – Personal Information]*

Attention of: Siphesihle Khoza

**THE SECURITY AGENT**

Signed for and on behalf of

**FIRSTRAND BANK LIMITED (acting through its Rand Merchant Bank Division)  
as Security Agent**

acting by: )  
Lindie Niklaas ) (signed) "*Lindie Niklaas*"  
Name of authorised signatory ) (Signature of authorised signatory)  
(in **BLOCK CAPITALS**)

and by: )  
Siphesihle Khoza ) (signed) "*Siphesihle Khoza*"  
Name of authorised signatory ) (Signature of authorised signatory)  
(in **BLOCK CAPITALS**)

**Notice details:**

Address: 1 Merchant Place, Corner Fredman Drive and Rivonia Road, Sandton, 2196,  
South Africa

Email: *[Redacted – Personal Information]*

Attention of: Siphesihle Khoza