

**WHITE & CASE**

**EXECUTION VERSION**

Dated 16 July 2021

**Amendment and Restatement Agreement**  
relating to a  
**Facility Agreement dated 13 May 2021**

between

**AFRICA OIL CORP.**  
as Parent, Borrower and Guarantor

**PETROVIDA HOLDING B.V.**  
as Borrower and Guarantor

**AFRICA OIL HOLDINGS B.V.**

**NATIXIS**  
as the Facility Agent

and

**Absa Bank Limited (acting through its Corporate and Investment Banking  
division)**  
as the New Lender

White & Case LLP  
5 Old Broad Street  
London EC2N 1DW

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**This Amendment and Restatement Agreement** (this “**Agreement**”) is dated 16 July 2021 and made as a deed between:

- (1) **PETROVIDA HOLDING B.V.**, (“**PetroVida**”) a private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*) with corporate seat in Rotterdam, the Netherlands, with address at Amaliastraat 5, 2514JC ‘s-Gravenhage, the Netherlands and with Trade Register number 72480181 in its capacity as a “**Borrower**” and a “**Guarantor**”;
- (2) **AFRICA OIL CORP.**, a public company incorporated under the laws of British Columbia, Canada (registered number BC0443700) and whose registered office is at Suite 2500 Park Place, 666 Burrard Street, Vancouver, British Columbia, V6C 2XE in its capacity as a “**Borrower**”, a “**Guarantor**”, the “**Parent**” and the “**Obligors’ Agent**”;
- (3) **AFRICA OIL HOLDINGS B.V.**, (“**AOHBV**”) a private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*) with corporate seat in Amsterdam, the Netherlands, with address at Amaliastraat 5, 2514JC ‘s-Gravenhage, the Netherlands and with Trade Register number 34336712 in its capacity as a “**Guarantor**”;
- (4) **NATIXIS**, as facility agent for itself and for and on behalf of each of the Finance Parties (the “**Facility Agent**”); and
- (5) **ABSA BANK LIMITED (ACTING THROUGH ITS CORPORATE AND INVESTMENT BANKING DIVISION)** as the “**New Lender**”.

**Whereas:**

- (A) This Agreement is supplemental to the facility agreement dated 13 May 2021 between, among others, the Borrowers, the Guarantor and the Facility Agent (the “**Original Facility Agreement**”).
- (B) The Parties have agreed to amend and restate the Original Facility Agreement on the terms, and subject to the conditions, set out in this Agreement.
- (C) The New Lender has agreed to accede to the Amended and Restated Facility Agreement on the terms, and subject to the conditions, set out in this Agreement.
- (D) The Parties intend this Agreement to take effect as a deed notwithstanding that a Finance Party may have executed it under hand.

**It is agreed** as follows:

## **1. Definitions and Interpretation**

### **1.1 Definitions**

- (a) In this Agreement:

“**Amended and Restated Facility Agreement**” means the Original Facility Agreement, as amended and restated by this Agreement, the terms of which are set out in Schedule 1 (*Amended and Restated Facility Agreement*).

“**Effective Date**” means the date of this Agreement.

“**Original Facility Agreement**” has the meaning given to such term in Recital (A).

- (b) Capitalised terms used in this Agreement (but not defined in this Agreement) shall have the same meanings as defined in the Original Facility Agreement (including by cross-reference to another document).

## **1.2 Construction**

- (a) Clause 1.3 (*Construction*) of the Original Facility Agreement shall be deemed to be incorporated into this Agreement as if such clause was set out in full in this Agreement, save that references in such clause to “this Agreement” shall be construed as references to this Agreement.
- (b) In this Agreement any reference to a “Clause” or a “Schedule” is, unless the context otherwise requires, a reference to a Clause or a Schedule of this Agreement.

## **1.3 Third Party Rights**

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

## **2. Amendment and Restatement**

### **2.1 Amendment and Restatement**

On and from the Effective Date and in accordance with the terms of the Original Facility Agreement, the Original Facility Agreement shall be amended and restated so that it reads as set out in Schedule 1 (*Amended and Restated Facility Agreement*) and:

- (a) all references in the Original Facility Agreement to “this Agreement” or to a provision of the Original Facility Agreement shall be construed as a reference to the Original Facility Agreement, or that provision, as amended and restated by this Agreement; and
- (b) the Finance Documents shall be read and construed as if all references therein to the Facility Agreement are references to the Amended and Restated Facility Agreement.

## **3. Accession of New Lender**

### **3.1 Accession of New Lender**

On and from the Effective Date, the New Lender agrees to assume and will assume all of the rights and obligations corresponding to the Loan Commitment set opposite its name in schedule 1 (*The Original Lenders*) to the Amended and Restated Facility Agreement.

### **3.2 New Lender Confirmations**

- (a) The New Lender confirms, for the benefit of the Facility Agent and without liability to any Obligor:
  - (i) that it consents to any amendment or waiver that has been approved by or on behalf of that requisite Lender or Lenders in accordance with the Agreement prior to the Effective Date and that it is bound by that decision to the same extent as it would have been had it been an Original Lender; and
  - (ii) that it is:
    - (A) a Treaty Lender; and
    - (B) a Canadian Qualifying Lender (other than a Canadian Treaty Lender).

- (b) The New Lender confirms to the Borrowers that it is a professional market party (*professionele marktpartij*) within the meaning of the Dutch Financial Supervision Act (*Wet op het financieel toezicht*).
- (c) The New Lender confirms to the Borrowers that it is not considered to be part of the “public” as referred to in article 4.1(1) of the Capital Requirements Regulation (EU/575/2013).

#### **4. Representations and Warranties**

The Repeating Representations are deemed to be made by the Obligor on the date of this Agreement, in each case, by reference to the facts and circumstances then existing at the date the representation or warranty is deemed to be made.

#### **5. Confirmations**

##### **5.1 Reliance**

All the confirmations in this Clause 5 (*Confirmations*) are given for the benefit of the Secured Parties and each person giving such confirmation acknowledges that it makes the confirmation with the intention of inducing the Secured Parties to enter into this Agreement and that the Secured Parties are entering into this Agreement in full reliance on each confirmation made in this Agreement.

##### **5.2 Obligor Confirmations**

Each Obligor confirms that:

- (a) it consents to the amendment of the Original Facility Agreement as contemplated by this Agreement and this consent is without prejudice to the ability of the relevant parties to amend the Original Facility Agreement in the future without such Obligor’s consent;
- (b) other than as otherwise contemplated by this Agreement, its obligations under each of the Finance Documents to which it is a party remain in full force and effect and are not affected by the amendments and restatement expressed by this Agreement, the designation of this Agreement as a “Finance Document” or the imposition of any obligation under the Original Facility Agreement in relation to an Obligor pursuant to this Agreement;
- (c) the definition of “Secured Obligations” under the Original Facility Agreement includes its obligations to any of the Secured Parties arising under this Agreement, the Amended and Restated Facility Agreement and any new Finance Document entered into in connection with this Agreement;
- (d) the provisions of any guarantee, indemnity, undertaking or other form of support granted by it under the Finance Documents remains in full force and effect and, for the avoidance of doubt, such support covers the Obligor’s obligations under the Amended and Restated Facility Agreement and any new Finance Document entered into by any Obligor, and/or to which an Obligor is a party, in connection with this Agreement, in each case, pursuant to the terms of such support.

##### **5.3 Timing**

All the confirmations in this Clause 4 (*Confirmations*) are made on the date of this Agreement.

## **6. Miscellaneous**

### **6.1 Continuing Obligations**

The provisions of the Finance Documents (including any waivers and consents granted prior to the date of this Agreement) shall, save as amended and waived by this Agreement, continue in full force and effect.

### **6.2 No other waivers or amendments**

Nothing in this Agreement shall constitute or be deemed to constitute a waiver of the rights of any Finance Party under, or an amendment of, any Finance Document, except as expressly set out in this Agreement. For the avoidance of doubt, each Finance Party expressly reserves all of its rights and remedies in respect of any breach or default which may be outstanding under the Finance Documents.

### **6.3 Further Assurances**

Each Obligor shall, at such Obligor's own expense, promptly do all such necessary acts as the Facility Agent may reasonably specify (and in such form as the Facility Agent may reasonably require) to give effect to the amendments effected or to be effected pursuant to this Agreement.

### **6.4 Incorporation of Terms**

The following provisions of the Amended and Restated Facility Agreement shall be incorporated into this Agreement as if such clauses are set out in full in this Agreement and as if such references therein to "this Agreement" are references to this Agreement:

- (a) clause 32 (*Notices*) ; and
- (b) clauses 34 (*Partial Invalidity*), 35 (*Remedies and Waivers*) and 42 (*Enforcement*).

### **6.5 Designation**

Each of the Facility Agent and the Obligors' Agent designate this Agreement (including, for the avoidance of doubt, the Amended and Restated Facility Agreement) a "*Finance Document*".

### **6.6 Counterparts**

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

## **7. Governing Law**

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

**This Agreement has been entered into on the date stated at the beginning of this Agreement and executed as a deed by each Obligor and is intended to be and is delivered by them as a deed on the date specified above.**

**Schedule 1**

**Amended and Restated Facility Agreement**

# BRACEWELL

Originally dated 13 May 2021 and amended and restated on 16 July 2021

## TERM LOAN AGREEMENT

U.S.\$160,000,000

FACILITY AGREEMENT

dated 16 July 2021

for

**AFRICA OIL CORP.**

as Parent, Borrower and Guarantor

and

**PETROVIDA HOLDING B.V.**

as Borrower and Guarantor

and

**AFRICA OIL HOLDINGS B.V.**

as Guarantor

with

**NATIXIS, THE MAURITIUS COMMERCIAL BANK LIMITED, RMB INTERNATIONAL  
(MAURITIUS) LTD, THE STANDARD BANK OF SOUTH AFRICA LTD, ISLE OF MAN  
BRANCH and ABSA BANK LIMITED (ACTING THROUGH ITS CORPORATE AND  
INVESTMENT BANKING DIVISION)**

as Original Lenders

**NATIXIS**

as Facility Agent

**NATIXIS**

as Security Agent

**FIRSTRAND BANK LIMITED, ACTING THROUGH ITS RAND MERCHANT BANK  
DIVISION**

as Modelling Bank

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**THIS AGREEMENT** is originally dated 13 May 2021 and amended and restated on 16 July 2021 and made

**BETWEEN:**

- (1) **PETROVIDA HOLDING B.V.**, (“**PetroVida**”) a private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*) with corporate seat in Rotterdam, the Netherlands, with address at Amaliastraat 5, 2514JC ‘s-Gravenhage, the Netherlands and with Trade Register number 72480181 in its capacity as a “**Borrower**” and a “**Guarantor**”;
- (2) **AFRICA OIL CORP.**, a public company incorporated under the laws of British Columbia, Canada (registered number BC0443700) and whose registered office is at Suite 2500 Park Place, 666 Burrard Street, Vancouver, British Columbia, V6C 2XE in its capacity as a “**Borrower**”, a “**Guarantor**” and the “**Parent**”;
- (3) **AFRICA OIL HOLDINGS B.V.**, (“**AOHBV**”) a private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*) with corporate seat in Amsterdam, the Netherlands, with address at Amaliastraat 5, 2514JC ‘s-Gravenhage, the Netherlands and with Trade Register number 34336712 in its capacity as a “**Guarantor**”;
- (4) **THE FINANCIAL INSTITUTIONS** listed in Schedule 1 (*The Original Lenders*) as lenders (the “**Original Lenders**”);
- (5) **NATIXIS** acting in its capacity as agent for and on behalf of itself and the other Finance Parties (the “**Facility Agent**”);
- (6) **NATIXIS** acting in its capacity as security trustee for and on behalf of itself and the other Finance Parties (the “**Security Agent**”); and
- (7) **FIRSTRAND BANK LIMITED, ACTING THROUGH ITS RAND MERCHANT BANK DIVISION** acting in its capacity as modelling bank for and on behalf of itself and the other Finance Parties (the “**Modelling Bank**”).

**THE PARTIES AGREE AS FOLLOWS:**

## PART 1 – DEFINITIONS AND INTERPRETATION

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Agreement:

“**Acceptable Bank**” means:

- (a) a Lender; or
- (b) a bank or financial institution which:
  - (i) has a rating for its long term unsecured and non credit enhanced debt obligations of BBB+ or higher by Standard & Poor’s Rating Services or Fitch Ratings Ltd or Baa3 or higher by Moody’s Investor Services Limited or a comparable rating from an internationally recognised credit rating agency; or
  - (ii) is otherwise approved by the Instructing Group.

“**Accession Undertaking**” means an accession undertaking substantially in the form set out in Part 2 (*Form of Accession Undertaking*) of Schedule 8 (*Hedging*) or any other form agreed between the Facility Agent and the Obligors’ Agent.

“**Account Bank**” means:

- (a) the Acceptable Bank that enters into an Accounts Agreement in such capacity on or by the date of Financial Close; and
- (b) any Acceptable Bank that is appointed as a successor Account Bank under and in accordance with an Accounts Agreement.

“**Accounting Principles**” means generally accepted accounting principles in Canada, including IFRS.

“**Accounts Agreement**” means:

- (a) the accounts agreement to be entered into between the Account Bank, PetroVida, the Security Agent and the Facility Agent prior to Financial Close; and
- (b) any replacement accounts agreement subsequently entered into by a successor Account Bank, PetroVida, the Security Agent and the Facility Agent, in form and substance satisfactory to the Facility Agent, acting reasonably.

“**Acquired Entity or Business**” means, in relation to any period, any person, property, business or material fixed asset acquired and not subsequently sold, transferred or otherwise disposed of, by any member of the Group during that period.

“**Acquisition Adjustment**” means:

- (a) in connection with any Relevant Acquisition, consolidating the target’s financial statements (consolidated if that entity itself has subsidiaries) with the financial statement of the Group on a pro forma basis as if the acquisition had occurred at the start of the applicable period; and

- (b) taking into account the full run-rate effect of any cost savings arising from combining the operations of any Acquired Entity or Business with the operations of the Group which the Company (acting reasonably and as confirmed in writing by an officer in good faith) believes can be obtained within the four financial quarters first following that Relevant Acquisition.

“**Additional Fee Letter**” means any letter or letters dated on or about the date of the Amendment and Restatement Agreement between a Finance Party and the Obligors’ Agent setting out any of the fees referred to in Clause 11 (*Fees*).

“**Adjusted EBITDAX**” means, in relation to a period, EBITDAX adjusted to reflect all Pro Forma Adjustments in relation to a Relevant Acquisition.

“**Amendment and Restatement Agreement**” means the amendment and restatement agreement dated 16 July 2021 and entered into in respect of this Agreement.

“**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, and in respect of Natixis also means any members of the Banque Populaire and Caisse d’Epargne networks within the meaning of articles L.512-11, L.512-86 and L.512-106 of the French Monetary and Financial Code (*Code Monétaire et Financier*).

“**Anti-Corruption Rules**” means any law or regulation aiming at preventing and/or sanctioning corruption, bribery, money laundering, influence peddling and more generally, offenses against probity including, but not limited to, Article 17 of the Act no. 2016-1691 dated 9 December 2016 on transparency, fight against corruption and modernisation of the economic life as well as the decrees adopted for its implementation (the “**Sapin II Act**”), the United Kingdom Bribery Act 2010 (the “**Bribery Act**”), the United State Foreign Corrupt Practices Act of 1977 (the “**FCPA**”) the Corruption of Foreign Public Officials Act (Canada) or the Criminal Code (Canada), in each case, as amended.

“**Applicable Prepayment**” means:

- (a) a voluntary prepayment made pursuant to Clause 7.4 (*Voluntary prepayment of Loans*) (excluding any voluntary prepayment made with POG Distributions); or
- (b) a mandatory prepayment made pursuant to Clause 7.2 (*Mandatory prepayment – Change of Control*),

in each case, made during the Prepayment Fee Period. For the avoidance of doubt, no repayments made pursuant to Clause 6 (*Repayment*) shall constitute an Applicable Prepayment.

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

“**Assignment Agreement**” means an agreement substantially in the form set out in Schedule 6 (*Form of Assignment Agreement*) or any other form agreed between the Facility Agent and the Obligors’ Agent.

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

“**Availability Period**” means the period commencing on the later of:

- (a) the date of Financial Close; and

(b) 30 July 2021,

and ending on the date falling one year after the date of this Agreement.

“**Available Commitment**” means a Lender’s Loan Commitment minus:

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

“**Available Facility**” means the aggregate for the time being of each Lender’s Available Commitment.

“**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.

“**Bank Levy**” means the Dutch bank levy (*bankenbelasting*) as set out in the Dutch Bank levy act (*Wet bankenbelasting*), or any levy or Tax of a similar nature announced or in force as at the date of this Agreement and imposed in any jurisdiction by reference to the assets or liabilities of a financial institution or other entity carrying out financial transactions, in each of the foregoing cases only to the extent that the rates are no higher than the rates applicable at the date of this Agreement.

“**Blocking Regulation**” means Regulation (EU) No 2271/96 of the European Parliament and of the Council of 22 November 1996 protecting against the effects of the extraterritorial application of legislation adopted by a third country, and actions based on or resulting therefrom.

“**Borrowers**” means Africa Oil Corp. and PetroVida.

“**Borrowing Base Asset**” has the meaning given to that term in the POG RBL Facility Agreement.

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

- (a) the interest (excluding the Margin) a Lender should have received for the period from the date of receipt of all or any part of its participation in the 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:

- (a) 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 in the London interbank market 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 London, New York and Paris.

“**BW**” means the Dutch Civil Code (*Burgerlijk Wetboek*).

“**Calculation Date**” means each 31 March and 30 September;

“**Canadian Parent’s Securities Pledge Agreement**” means the Canadian law pledge between the Parent and the Security Agent in respect of the securities held by the Parent in Eco (Atlantic) Oil & Gas Ltd. and Africa Energy Corp. and delivered pursuant to Clause 4.1 (*Initial conditions precedent*).

“**Cash**” means any credit balance on any deposit, savings, current or other account, and any cash in hand, of an entity which is:

- (a) not subject to any Security or Quasi Security (other than pursuant to any Transaction Security Document or the “*Transaction Security*” as defined under the POG RBL Facility Agreement, as applicable); and
- (b) denominated and payable in freely transferable and freely convertible currency.

“**Cash Equivalent Investments**” means:

- (a) securities with a maturity of less than 12 months from the date of acquisition issued or fully guaranteed or fully insured by the Government of the United States of America, the United Kingdom or any member state of the European Union which is rated as investment grade by Standard & Poor’s Ratings Services, Moody’s Investors Service, Inc. or Fitch Ratings Ltd;
- (b) commercial paper or other debt securities issued by an issuer rated investment grade by Standard & Poor’s Ratings Services, Moody’s Investors Service, Inc. or Fitch Ratings Ltd and with a maturity of less than 12 months;
- (c) certificates of deposit, time deposits of, or other equivalent debt securities issued by an entity who maintains, at all times, an investment grade credit rating by Standard & Poor’s Ratings Services, Moody’s Investors Service, Inc. or Fitch Ratings Ltd or a comparable rating from an internationally recognised credit rating agency for its long-term unsecured and non credit-enhanced debt obligations; and
- (d) certificates of deposit or time deposits of any commercial bank that is an Acceptable Bank and which has outstanding debt securities rated as referred to in paragraph (b) above, with a maturity of less than six Months,

in each case, not subject to any Security or Quasi Security (other than pursuant to any Transaction Security Document), denominated and payable in freely transferable and freely convertible currency.

“**Cash Sweep Amount**” has the meaning given to such term in Clause 7.3 (*Mandatory Prepayment – Cash Sweep*).

“**Cash Sweep Calculation Date**” means:

- (a) the First Cash Sweep Calculation Date; and
- (b) thereafter, the date falling five Business Days prior to the final Business Day of each calendar month until the Final Maturity Date.

“**Cash Sweep Date**” means:

- (a) the First Cash Sweep Date; and
- (b) thereafter, the final Business Day of each calendar month until the Final Maturity Date.

“**Cash Sweep Period**” means:

- (a) in respect of the First Cash Sweep Date:
  - (i) (if the Pre-Utilisation POG Distributions have been applied towards repayment of the Existing Facility in accordance with its terms) the period starting on the day after the Pre-Utilisation POG Distributions Date and ending on the First Cash Sweep Calculation Date; or
  - (ii) (if the Pre-Utilisation POG Distributions have not been applied towards repayment of the Existing Facility in accordance with its terms) the period starting on the Pre-Utilisation POG Distributions Date and ending on the First Cash Sweep Calculation Date; and
- (b) thereafter, the period starting on the day after a Cash Sweep Calculation Date and ending on the next Cash Sweep Calculation Date.

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

“**Change of Control**” means, with respect to:

- (a) a Dutch Obligor, the Parent ceasing to hold (directly or indirectly) at least 100% of the issued share capital and the voting rights of such company; and
- (b) the Parent, a Person obtains Control of such company.

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

“**Compliance Certificate**” means a certificate substantially in the form set out in Schedule 9 (*Form of Compliance Certificate*).

“**Confidential Information**” means all information relating to any Obligor, the Group, the Finance Documents or the Facility of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Finance Documents or the Facility from either:

- (a) 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 such information but excludes:

- (i) information that:
- (A) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 37 (*Confidentiality*); or
  - (B) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
  - (C) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality; and
- (ii) any Funding Rate.

“**Confidentiality Undertaking**” means a confidentiality undertaking substantially in a recommended form of the LMA or in any other form as may be agreed between the Parent and the Lenders.

“**Control**” means the possession, direct or indirect, of (a) the power to direct or cause the direction of the management and policies of a Person; (b) the beneficial ownership of more than fifty per cent (50%) of the shares having ordinary voting powers of such Person; or (c) the power to appoint or remove the majority of the directors or officers of such person; in each case, whether by way of ownership, proxy, contract, agency or otherwise (and the terms “Controlling” “Controlled by” and “under common Control with” having corresponding meanings).

“**Corresponding Debt**” has the meaning given to that term in Clause 26.2 (*Parallel Debt Covenant to pay the Security Agent*).

“**Dangerous Substance**” means any natural or artificial substance (including Petroleum and whether in a solid or liquid form or in the form of a gas or vapour and whether alone or in combination with any such other substance) capable of causing harm to the Environment or damaging the Environment or public health or welfare including any noxious, hazardous, toxic, dangerous, special or controlled waste or other polluting substance or matter.

“**Default**” means an Event of Default or any event or circumstance specified in Clause 21 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

“**Defaulting Lender**” means any Lender:

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

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

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

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

**“Delivered Information”** means any factual information provided to the Lenders by the Borrowers.

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

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

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

**“Distribution Collection Account”** has the meaning given to that term in the Accounts Agreement.

**“Distribution Collection Account Charge”** means the accounts security agreement executed by PetroVida and the Security Agent in respect of the Distribution Collection Account and delivered pursuant to Clause 4.1 (*Initial conditions precedent*).

**“Dollars”** means the lawful currency of the United States of America.

**“Dutch Obligor”** means an Obligor incorporated under Dutch law.

“**EBITDAX**” means, in respect of any period of 12 months, the consolidated gross pre-taxation profits of the Group for such period, adjusted as follows:

- (a) adding back any charge to profits represented by exploration expenses;
- (b) adding back the sum of interest expense of Financial Indebtedness minus interest earnings;
- (c) adding back depreciation, depletion and amortisation expense;
- (d) adding back any non-cash impairment charges;
- (e) adding back other finance charges;
- (f) adding back any costs incurred in connection with any acquisition;
- (g) adding, to the extent not already included, the proceeds of any insurance received during such period;
- (h) adding back accretion charges on provisions for asset retirement or abandonment obligations during such period;
- (i) adding back, to the extent otherwise deducted, any non-cash or non-recurring fees, expenses or charges paid or accrued during that period;
- (j) excluding any re-evaluation of an asset or any loss or gain over book value arising on the disposal of an asset (otherwise than in the ordinary course of trading) by a member of the Group;
- (k) excluding any exceptional or extraordinary gains or losses (as the case may be), in each case, as calculated in accordance with the Accounting Principles for such period;
- (l) excluding any costs or provisions relating to any share option or management incentive schemes or other share based payments of the Group;
- (m) excluding any share of the profit of any person that is not a member of the Group, save for (but not in the case of POG) dividends or other profit distributions (net of any applicable withholding tax) received in cash during such period by any member of the Group;
- (n) excluding any gain and adding back any loss on movements in foreign exchange by the Group during the period,

and taking into account 50% of the EBITDAX (calculated on the basis set out above) of POG and its subsidiaries.

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

“**Eligible Institution**” means any Lender or other bank, financial institution, trust, fund or other entity selected by the Obligor’s Agent and which, in each case, is not a member of the Group.

“**Enforcement Date**” means the date on which the Lenders take any of the actions contemplated by Clause 22 (*Acceleration*).

“**English Parent’s Securities Pledge Agreement**” means the English law pledge between the Parent and the Security Agent in respect of the securities held by the Parent in Impact, and delivered pursuant to Clause 4.1 (*Initial conditions precedent*).

“**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 Claim**” means any claim, notice of claim or administrative, regulatory or judicial action by any person in connection with (i) a breach (whether asserted or actual), or alleged breach, of Environmental Laws and/or Environmental Permits, (ii) any accident, fire, explosion or other event of any type involving an emission or substance which is capable of causing harm to the Environment, or (iii) any Environmental Contamination.

“**Environmental Contamination**” means each of the following, and their consequences:

- (a) any release, discharge, emission, leakage or spillage of any Dangerous Substance at or from any relevant site into any part of the Environment;
- (b) any accident, fire, explosion or sudden event at any relevant site which is directly or indirectly caused by, or attributable to, any Dangerous Substance; or
- (c) any other pollution of the Environment arising in connection with any relevant site,

where, for these purposes, “relevant site” means any site of a Petroleum Asset or Borrowing Base Asset (as the case may be) in which any member of the Group has an interest or otherwise owned, occupied or used by a member of the Group.

“**Environmental Law**” means any applicable law in any jurisdiction in which the Borrowers conduct business which relates to the pollution or protection of the environment or harm to or the protection of human health or the health of animals or plants.

“**Environmental Permits**” means any permit, licence, consent, approval and other authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of the Borrowers conducted on or from the properties owned or used by the Borrowers.

“**Equity Interest**” means the issued and outstanding share capital of POG owned by PetroVida from time to time, being 50% of the entire issued and outstanding share capital of POG at the date of this Agreement.

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

“**Event of Default**” means any event or circumstance specified as such in Clause 21 (*Events of Default*).

“**Existing Facility**” means the existing term loan facility agreement dated 11 January 2020 between, amongst others, PetroVida as borrower, the Existing Facility Lenders, the Existing Facility Agent and the Existing Security Agent.

“**Existing Facility Agent**” means BTG Pactual S.A. – Cayman Branch in its capacity as facility agent under the Existing Facility

“**Existing Facility Lenders**” means BTG Pactual S.A. – Cayman Branch and Natixis, each in its capacity as lender under the Existing Facility.

“**Existing Lender**” has the meaning given to such term in Clause 23.1 (*Assignments and Transfers by the Lenders*).

“**Existing Security Agent**” means BTG Pactual S.A. – Cayman Branch in its capacity as security agent under the Existing Facility.

“**Existing Security Documents**” means:

- (a) Dutch law first ranking notarial deed of pledge (*aandelenpandakte*) in respect of the entire issued share capital of PetroVida dated 13 January 2020;
- (b) the Cayman Islands law account charge agreement executed by PetroVida and the Existing Security Agent in respect of the “*Distribution Collection Account*” (as defined therein) dated 13 January 2020;
- (c) the Canadian law first ranking pledge between the Parent and the Security Agent in respect of the securities held by the Parent in Eco (Atlantic) Oil & Gas plc and Africa Energy Corp dated 13 January 2020; and
- (d) the English law first ranking pledge between the Parent and the Security Agent in respect of the securities held by the Parent in Impact dated 13 January 2020.

“**Existing Security Release Date**” means the date on which the Security under the Existing Security Documents is fully and finally released.

“**Facility**” means the term loan facility made available under this Agreement as described in Clause 2.1 (*The Facility*).

“**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:

- (a) any letter or letters dated on or about the date of this Agreement between a Finance Party and the Obligors’ Agent setting out any of the fees referred to in Clause 11 (*Fees*); and
- (b) any Additional Fee Letter.

“**Final Discharge Date**” means the date on which all the Secured Obligations have been unconditionally and irrevocably paid and discharged in full and none of the Secured Parties is under any obligation (whether actual or contingent) to make advances or provide other financial accommodation to an Obligor under the Finance Documents.

“**Final Maturity Date**” means the day falling thirty-six (36) Months after the date of this Agreement.

“**Finance Document**” means:

- (a) this Agreement;
- (b) each Fee Letter;
- (c) each Transaction Security Document;
- (d) the Accounts Agreement;
- (e) each Increase Confirmation;
- (f) each Compliance Certificate;
- (g) (other than for the purposes of Clause 12 (*Tax Gross Up and Indemnities*), Clause 13 (*Increased Costs*), Clause 15 (*Mitigation by the Lenders*), Clause 23 (*Changes to the Lenders*), Clause 29.7 (*No set-off by Obligors*), Clause 29.8 (*Business Days*), Clause 29.9 (*Currency of account*), Clause 29.10 (*Change of currency*), Clause 33 (*Calculations and Certificates*) and, in relation to any communications between the Obligors and a Secured Hedging Provider, Clause 32 (*Notices*)), any Secured Hedging Agreement;
- (h) the Amendment and Restatement Agreement; and

- (i) any other document designated as a Finance Document by the Facility Agent and the Obligors' Agent.

“**Finance Party**” means the Facility Agent, the Security Agent, the Modelling Bank, each Secured Hedging Provider and each Lender.

“**Financial Close**” means the date on which the Facility Agent informs the Obligors' Agent and the Lenders that it has received the documents, evidence and other items listed in Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to all the Lenders.

“**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 the Accounting Principles, 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 on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (i) (without double counting) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above.

“**Financial Model**” means the Original Financial Model as the same may be updated from time to time in accordance with Clause 19.7 (*POG Banking Case and Financial Model*).

“**First Cash Sweep Calculation Date**” means:

- (a) if the first Utilisation Date occurs more than five Business Days prior to the last Business Day of the month, the date falling five Business Days prior to the last Business Day of the month in which that Utilisation occurs; and

- (b) if the first Utilisation Date occurs less than five Business Days prior to the last Business Day of the month, the date falling five Business Days after the first Utilisation Date.

“**First Cash Sweep Date**” means the date falling five Business Days after the first Cash Sweep Calculation Date.

“**FLCR**” means, on each Calculation Date, the ratio of A to B where:

“**A**” is the NPV Field Life on such Calculation Date; and

“**B**” is an amount equal to:

the aggregate of:

- (a) the Outstandings on the Calculation Date (taking account of the repayments made on that date);
- (b) 50% of the principal amount of the loans under the POG RBL Facility Agreement on such Calculation Date; and
- (c) 50% of the principal amount of loans made to POG (other than pursuant to the POG RBL Facility Agreement) and which are scheduled to fall due for repayment prior to the expiry of the POG Licences;

*less*

- (d) an amount equal to 50% of the Cash and Cash Equivalent Investments held by POG and its subsidiaries as at the time of the calculation of the POG Field Life NPV (or, if the POG Final Discharge Date has occurred, at the time of determination of the amount of the NPV Field Life pursuant to paragraph (b) of the definition of that term) on such Calculation Date.

“**Governmental Authority**” means any ministry, administrative department, agency, commission, bureau, board, regulatory authority, registry, instrumentality, corporation or other governmental body or entity, judicial or administrative body or court (including, without limitation, banking and taxing authorities) of, or owned or controlled by, as the case may be, any nation or government, or any state, province, city, municipal entity or other political subdivision thereof.

“**Group**” means the Parent and its Subsidiaries for the time being.

“**Group Costs**” means all costs and expenses including, without limitation operating, administrative and capex costs and expenses but excluding any interest or other costs or expenses relating to Financial Indebtedness reasonably determined by the Parent to be incurred by the Parent and any of its wholly owned subsidiaries in a relevant period.

“**Group Costs Cap**” means:

(a) for each fiscal quarter of the fiscal year 2021, the following amounts:

(U.S.\$m)	Q1 2021	Q2 2021	Q3 2021	Q4 2021
Group Costs	[REDACTED]			

(b) in respect of each fiscal quarter in 2022 and thereafter, the Group Costs Cap shall be as agreed between the Majority Lenders and the Parent based on the Parent’s budget for the year in question to be presented to the Lenders in December of the preceding year, provided that if the Parent and Majority Lenders have not agreed such amount for any reason, the Group Costs Cap for any such fiscal quarter shall be [REDACTED] such time as the Group Costs Cap has been agreed for such fiscal quarter,

*provided that* to the extent that actual Group Costs for any fiscal quarter are less than the Group Costs Cap for such quarter, the Group Costs Cap for the subsequent fiscal quarter shall be increased by an amount equal to such difference; or

(c) such other amounts as may be agreed between the Obligors’ Agent and the Facility Agent.

“**Guarantor**” means each of Africa Oil Corp., AOHBV and PetroVida.

“**Hedging Agreement**” means any agreement based on the form of the ISDA Master Agreement and related schedule and confirmations entered into by an Obligor and a Hedging Provider from time to time in connection with a Treasury Transaction and in accordance with the Hedging Policy and this Agreement.

“**Hedging Costs**” means any amount falling due from an Obligor under a Hedging Agreement, but excluding any Hedging Termination Payment.

“**Hedging Policy**” means the hedging policy set out in Part 1 (*Hedging Policy*) of Schedule 8 (*Hedging*).

“**Hedging Provider**” means:

(a) in any respect of a Secured Hedging Agreement, a Secured Hedging Provider; or

(b) in any respect of any other Hedging Agreement with an Obligor, the counterparty to such Hedging Agreement.

“**Hedging Termination Payment**” means any amount payable by an Obligor or a Hedging Provider under a Hedging Agreement or as a result of the termination or close out (whether partial or total) of that Hedging Agreement or any “*Transaction*” thereunder (as defined in the Hedging Agreement), other than interest accruing on any amount not paid when due.

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

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

“**Impact**” means Impact Oil & Gas Ltd.

**“Impaired Facility Agent”** means the Facility Agent at any time when:

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

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

- (i) its failure to pay is caused by:
  - (A) administrative or technical error; or
  - (B) a Disruption Event; andpayment is made within three (3) 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.

**“Increase Confirmation”** means a confirmation substantially in the form set out in Schedule 7 (*Form Of Increase Confirmation*).

**“Increase Lender”** has the meaning given to such term in Clause 2.3(a) (*Increase Commitments*).

**“Insolvency Event”** in relation to an entity means that the entity:

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

- (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding up or liquidation; or
- (ii) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof;
- (f) has a resolution passed for its winding up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (g) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets (other than, for so long as it is required by law or regulation not to be publicly disclosed, any such appointment which is to be made, or is made, by a person or entity described in paragraph (d) above);
- (h) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 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.

“**Intercompany Loan Agreement**” means each loan agreement pursuant to which an Obligor makes available Financial Indebtedness to another Obligor, *provided that*, any such Intercompany Loan Agreement is governed by the laws of Canada, England or the Netherlands (as the case may be).

“**Interpolated Screen Rate**” means, in relation to any Loan, the rate which results from interpolating on a linear basis between:

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

each as of 11:00 a.m. on the Quotation Day for Dollars.

“**Interest Period**” means:

- (a) in relation to a Loan, each period determined in accordance with Clause 9 (*Interest Periods*); and
- (b) in relation to an Unpaid Sum, each period determined in accordance with Clause 8.4 (*Default interest*).

“**ISDA Master Agreement**” means the 2002 Master Agreement as published by the International Swaps and Derivatives Association, Inc.

**“Instructing Group”** means:

- (a) prior to the Enforcement Date, the Majority Lenders; and
- (b) following the Enforcement Date, the Majority Senior Creditors.

**“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;
- (c) the possibility that any contract, arrangement or undertaking to assume liability for or indemnify a person against non-payment or insufficient payment of UK stamp duty may be void and defences of set-off or counterclaim;
- (d) any other matters which are set out as qualifications or reservations as to matters of law of general application in any legal opinions supplied to a Lender in connection with this Agreement; and
- (e) similar principles, rights and defences under the laws of any Relevant Jurisdiction.

**“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 2.3 (*Increase Commitments*) or Clause 23 (*Changes to the Lenders*),

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

**“LIBOR”** means, in relation to any Loan:

- (a) the applicable Screen Rate as of 11:00 am on the Quotation Day for Dollars and for a period equal in length to the Interest Period of that Loan; or
- (b) as otherwise determined pursuant to Clause 10.1 (*Unavailability of Screen Rate*),

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

**“Limitation Acts”** means the Limitation Act 1980 and the Foreign Limitation Periods Act 1984.

**“Liquidity Test Date”** has the meaning given to such term in Clause 20.23 (*Group Liquidity Test*).

**“Liquidity Test Period”** has the meaning given to such term in Clause 20.23 (*Group Liquidity Test*).

**“LMA”** means the Loan Market Association.

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

“**Loan Commitment**” means:

- (a) in relation to an Original Lender, the amount set opposite its name under the heading “*Commitment*” in Schedule 1 (*The Original Lenders*) and the amount of any other Loan Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.3 (*Increase Commitments*); and
- (b) in relation to any other Lender, the amount of any Loan Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.3 (*Increase Commitments*),

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

“**Loan Office**” means a Lender’s offices as specified in Clause 32.2 (*Addresses*) or such other office as it may from time to time select by notice to the Parent as the office or offices through which it will perform its obligations under this Agreement.

“**Majority Lenders**” means:

- (a) if there are no Loans then outstanding, a Lender or Lenders whose Available Commitments aggregate 66⅔ or more of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated 66⅔ or more of the Total Commitments immediately prior to the reduction); or
- (b) at any other time, a Lender or Lenders whose participations in the Loans then outstanding aggregate 66⅔ or more of the Loans then outstanding.

“**Majority Senior Creditors**” means, at any time, those Senior Creditors whose Senior Credit Participations at that time aggregate more than 66⅔% of the total Senior Credit Participations at that time.

“**Margin**” means:

- (a) in respect of any part of any Loan which represents a PIK Amount, 8.50% per annum at all times;
- (b) in respect of any part of any Loan which does not represent a PIK Amount:
  - (i) from and including the date of Financial Close until the date falling on the first anniversary of the date of this Agreement, 6.5% per annum;
  - (ii) from and including the first anniversary of the date of this Agreement until the second anniversary of the date of this Agreement, 7% per annum; and
  - (iii) from and including the second anniversary of the date of this Agreement, 7.50% per annum,

provided that if on any day the aggregate principal amount of the Loans (including any PIK Amount) exceeds what is permitted under Clause 6.1(c) (*Repayment of Loans*) then the entire amount of the Loan shall bear interest at 8.50% per annum on such day.

“**Material Adverse Effect**” means a material adverse effect on:

- (a) the ability of the Borrowers to perform their payment obligations under any Finance Document;
- (b) the legality, validity, enforceability, effectiveness or ranking of any Security granted or purported to be granted pursuant to any of the Finance Documents; or
- (c) the legality, validity, enforceability or effectiveness of the rights and remedies of any Finance Party under any Finance Document.

provided that, for the avoidance of doubt, any deterioration in the oil price will not, in and of itself, give rise to a Material Adverse Effect.

“**Members’ Agreement**” means the members’ agreement dated 17 December 2020, between PetroVida, POG and BTG Pactual E&P B.V.

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

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

provided that the above rules will only apply to the last Month of any period.

“**New Lender**” has the meaning given to that term in Clause 23 (*Changes to the Lenders*).

“**NPV Field Life**” means, as at any Calculation Date and determined (in the case of paragraph (a) below) by reference to the latest POG Banking Case:

- (a) prior to POG Final Discharge Date, the amount agreed by PetroVida and the Modelling Bank (each acting reasonably) to be equal to 50% of the POG Field Life NPV, as most recently determined under the latest POG Banking Case, but calculated as if all capital expenditure in relation to the Borrowing Base Asset projected to be incurred in the period of 12 months following the calculation of the POG Field Life NPV under the latest POG Banking Case had been added back in calculating the POG Field Life NPV; and
- (b) following the POG Final Discharge Date, the amount agreed by the Parent and the Modelling Bank acting on the instructions of the Majority Lenders (all acting reasonably) to be equal to what the amount at paragraph (a) above would have been if the POG RBL Facility Agreement had remained in place and a banking case thereunder were current (the “**Projected NPV Field Life**”), *provided that* if the Modelling Bank and the Parent fail to mutually agree within 30 days, the Modelling Bank acting on the instructions of the Majority Lenders shall notify the Parent of its proposed Projected NPV Field Life (all acting reasonably and based on principles in line with market standard for international reserves based lending) and the amount set out in such notification shall be deemed to be the Projected NPV Field Life for the purposes of that

Calculation Date. If the Modelling Bank fails to deliver such notice prior to the Calculation Date, the Projected NPV Field Life shall be that proposed by the Parent.

“**Obligors**” means the Borrowers, the Parent and the Guarantors, and “**Obligor**” means any of them.

“**Original Facility Agreement**” means the up to US\$150,000,000 corporate facility agreement dated 13 May 2021 and made between, among others, the Obligors, the Facility Agent and the Security Agent.

“**Original Financial Statements**” has the meaning given to such term in paragraph 5.1 (*Financial Statements*) of Schedule 2 (*Conditions Precedent*).

“**Original Financial Model**” means the initial financial model delivered as a condition precedent pursuant to Clause 4.1 (*Initial Conditions Precedent*) setting out the forecast cashflow and debt service of the Obligors.

“**Original Jurisdiction**” means, in relation to an Obligor the jurisdiction under whose laws the Obligor is incorporated as at the date of this Agreement.

“**Outstandings**” means, at any time, the aggregate amount of all Loans then outstanding under the Facility.

“**Parallel Debt**” has the meaning given to that term in Clause 26.2 (*Parallel Debt (Covenant to pay the Security Agent)*)

“**Parent**” means Africa Oil Corp.

“**Parent’s Securities**” means the securities held by the Parent in Eco (Atlantic) Oil & Gas plc, Africa Energy Corp and Impact.

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

“**Permitted Indebtedness**” means:

- (a) the Financial Indebtedness under the Existing Facility, *provided that* it is discharged in full on or before the first Utilisation Date;
- (b) any Financial Indebtedness incurred under a Hedging Agreement;
- (c) any Financial Indebtedness incurred under an Intercompany Loan Agreement, *provided that*:
  - (i) such Financial Indebtedness has been subordinated (including in payment and recovery) to the Financial Indebtedness under the Finance Documents on terms and in form and substance satisfactory to the Facility Agent;
  - (ii) the relevant Obligors have each taken all such steps, and delivered all such documents as the Facility Agent may reasonably request for the purposes of ensuring that such subordination is effective;
  - (iii) Security, in such form and substance as the Security Agent reasonably requires, has been granted by the relevant Obligor extending such Financial Indebtedness over its rights and interests in respect of such Financial

Indebtedness (and any agreements related thereto) to the Security Agent (in its capacity as such); and

- (iv) the relevant Obligors have taken all such steps and delivered all such documents as the Security Agent may reasonably request with respect to the creation of such Security;
- (d) any Financial Indebtedness arising under a declaration of joint and several liability used for the purpose of section 2:403 BW (and any residual liability under such declaration arising pursuant to section 2:404(2) BW);
- (e) any liability arising as a result of two or more members of the Group being part of a fiscal unity (*fiscale eenheid*) for Dutch corporate income tax (*vennootschapsbelasting*) or VAT purposes that consists of Group members only; and
- (f) any indebtedness owed under the Finance Documents.

“**Permitted Security**” means:

- (a) the Transaction Security;
- (b) until the Existing Security Release Date, the Security under the Existing Security Documents;
- (c) any bankers’ set-off rights of the Account Bank under the Accounts Agreement;
- (d) any Security or Quasi Security entered into pursuant to any Finance Document; and
- (e) any Security entered into with the prior written consent of the Facility Agent.

“**Petroleum**” means any mineral, oil or relative hydrocarbon (including condensate and natural gas liquids) and natural gas existing in its natural condition in strata (but excluding coal or bituminous shale or other stratified deposits from which oil can be extracted by destructive distillation).

“**PetroVida Pledge Agreement**” means the Dutch law notarial deed of pledge in respect of the entire issued share capital of PetroVida and entered into between AOHBV as pledgor, the Security Agent as pledgee and PetroVida as company, delivered pursuant to Clause 4.1 (*Initial conditions precedent*).

“**Petroleum Asset**” has the meaning given to that term in the POG RBL Facility Agreement.

“**PIK Amount**” means the principal amount of a Loan which has arisen as a result of the capitalisation of interest pursuant to Clause 8.3 (*PIK interest*) (as reduced by any repayment or prepayment of such amount).

“**PIK Loan**” has the meaning given to such term in Clause 8.3 (*PIK interest*).

“**POG**” means Prime Oil & Gas Coöperatief U.A., a cooperative (*coöperatie*) with corporate seat in Rotterdam, the Netherlands, with address at Weena 505, 3013AL Rotterdam, the Netherlands and with Trade Register number 3422579.

“**POG Banking Case**” means the “*Banking Case*” as defined under the POG RBL Facility Agreement.

“**POG Distributions**” means any “*Distributions*” as that term is defined in the POG RBL Facility Agreement made by POG to PetroVida.

“**POG Field Life NPV**” means the “*Field Life NPV*” as defined under the POG RBL Facility Agreement.

“**POG Final Discharge Date**” means the “*Final Discharge Date*” as defined under the POG RBL Facility Agreement (as may be amended from time to time).

“**POG Licence**” means the “*Field Licence*” as defined under the POG RBL Facility Agreement

“**POG RBL Facility Agreement**” means the senior secured reserves based lending facility agreement originally dated 18 July 2014 and amended and restated from time to time and made between, amongst others, POG as borrower, Natixis as facility agent and the “*Lenders*” as defined therein.

“**POG Redetermination Date**” means each “*Redetermination Date*” as defined under the POG RBL Facility Agreement.

“**Pre-Utilisation POG Distributions**” means the last POG Distributions made immediately prior to the first Utilisation Date.

“**Pre-Utilisation POG Distributions Date**” means the date the Pre-Utilisation POG Distributions were made.

“**Prepayment Fee**” means, in respect of an Applicable Prepayment, the Reference Rate of the amount prepaid at that time, based on the actual number of days from but excluding the date of the prepayment to but including the last day of the Prepayment Fee Period and calculated on the basis of a 360 day year.

“**Prepayment Fee Period**” means the period starting from the date of this Agreement and ending on the date falling 12 Months thereafter.

“**Pro Forma Adjustments**” means, the pro forma increase or decrease in the EBITDAX of the Group for the applicable period pursuant to the Acquisition Adjustments.

“**Prohibited Payment**” means:

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

“**Qualifying Lender**” has the meaning given to it in Clause 12 (*Tax Gross-Up and Indemnities*).

“**Quasi Security**” means:

- (a) the sale, transfer or otherwise disposing of any assets on terms whereby they are or may be leased to or re acquired;

- (b) the sale, transfer or otherwise disposing of any receivables on recourse terms;
- (c) entry into any arrangement under which money or the benefit of a bank or other account may be applied, set off or made subject to a combination of accounts; or
- (d) entry 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.

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

**“Received Dividends”** means all dividends and distributions received on the Parent’s Securities.

**“Received Disposal Proceeds”** has the meaning given to such term in Clause 7.2(b) (*Mandatory Prepayment – Change of Control*).

**“Receiver”** means a receiver or receiver and manager or administrative receiver of the whole or any part of the Charged Property.

**“Reference Rate”** means, in relation to any prepayment of Loans, a rate of interest equal to the rate of interest which was payable on the Loans on the day immediately preceding the date of prepayment.

**“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 Acquisition”** means the acquisition of, or investment in, an Acquired Entity or Business.

**“Relevant Jurisdiction”** means, in relation to an Obligor:

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

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

“**Replacement 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.

“**Repeating Representations**” means each of the representations set out in Clauses 18.1 (*Status*) to 18.6 (*Governing law, enforcement*), Clause 18.11 (*No default*), Clause 18.13 (*Ranking; Indebtedness*), Clause 18.14 (*Legal and beneficial ownership*), Clause 18.16 (*Centre of main interest*), Clause 18.21 (*Anti-corruption law*), Clause 18.22 (*Restricted Parties*), Clause 18.23 (*Improper Acts*), Clause 18.24 (*Prohibited Payments and Anti-Corruption*), Clause 18.25 (*Sanctions*), Clause 18.27 (*Liens*), and Clause 18.28 (*Ranking*).

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

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

“**Restricted Party**” means a person that is:

- (a) listed on, or owned or controlled by or acting on behalf of, a person listed on any Sanctions List;
- (b) located in, incorporated under the laws or resident of, or owned or (directly or indirectly) controlled by or, acting on behalf of a person located in or organised under the laws or resident of a country or territory that is, or whose government is, the target of country wide or territory wide Sanctions; or
- (c) otherwise, or is otherwise owned or controlled by a person that is, a Target of Sanctions.

“**Sanctionable Activity**” means any condition or activity specifically identified under any Sanctions as constituting a basis for the imposition of Sanctions against a person engaged in such activity or described by such condition.

“**Sanctions**” means the economic, trade or financial sanctions laws, regulations, embargoes or other restrictive measures enacted, administered, implemented and/or enforced by any Sanctions Authority.

“**Sanctions Authority**” means each of the following:

- (a) the United Nations;
- (b) the European Union or any member state;
- (c) the Republic of France;
- (d) the United Kingdom;
- (e) the government of Canada; and
- (f) the United States Government or any U.S. Sanctions Authority,

and any other governmental institutions and agencies of any of the foregoing.

“**Sanctions List**” means any sanctions list maintained by, or public announcement of Sanctions designation made by, any of the Sanctions Authorities, including:

- (a) in the case of Her Majesty’s Treasury of the United Kingdom, the “Consolidated List of Financial Sanctions Targets”;
- (b) the List of Specially Designated Nationals and Blocked Persons and the Foreign Sanctions Evaders (FSE) List maintained by OFAC, or any other public announcement of Sanctions designations enacted by or enforced by any U.S. Sanctions Authority; and
- (c) by any national authority implementing at a national level the published lists prescribed by the United Nations Security Council or the European Union, provided that the scope of any such national implementation shall not exceed the scope of such published lists.

“**Screen Rate**” means the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for Dollars for the relevant period displayed on page LIBOR01 or LIBOR02 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters. If such page or service ceases to be available, the Facility Agent may specify another page or service displaying the relevant rate after consultation with the Obligors’ Agent.

“**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) in the opinion of the Majority Lenders and the Obligors, that Screen Rate is no longer appropriate for the purposes of calculating interest under this Agreement.

**“Secured Hedging Agreement”** means a Hedging Agreement between an Obligor and a Secured Hedging Provider.

**“Secured Hedging Liabilities”** means all present and future liabilities and obligations, actual and contingent, of an Obligor to any Secured Hedging Provider in connection with a Hedging Agreement.

**“Secured Hedging Provider”** means any Lender or any Affiliate of any Lender, that accedes, and becomes a party, to this Agreement as a *“Secured Hedging Provider”* in accordance with this Agreement (provided that (but subject to paragraphs (a) and (b) below)) such entity shall cease to be a *“Secured Hedging Provider”* when that Lender ceases to be a Lender or, if earlier, when it ceases to be an Affiliate of the relevant Lender) and which has entered into a Hedging Agreement in accordance with this Agreement, *provided that* such person shall continue to:

- (a) be a Hedging Provider only to the extent that such person is a party to a Hedging Agreement under which any present or future liability or obligation, actual and contingent, of an Obligor to the Hedging Provider is, or is capable of being, outstanding; and
- (b) be a *“Secured Hedging Provider”* notwithstanding if it or its Affiliate ceases to be a Lender so long as such person is a party to any Hedging Agreement (as at the date it ceases to be a Lender) under which any Secured Hedging Liability is, or is capable of being, outstanding.

**“Secured Obligations”** means all present and future obligations and liabilities at any time due, owing or incurred by any Obligor to any Secured Party under the Finance Documents, whether actual or contingent and whether incurred solely or jointly and as principal or surety or in any other capacity.

**“Secured Parties”** means the Finance Parties and any Receiver or Delegate.

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

**“Senior Credit Participation”** means, in relation to a Lender or a Secured Hedging Provider the aggregate of:

- (a) its aggregate Loan Commitments, if any;
- (b) in respect of any hedging transaction of that Secured Hedging Provider under any Hedging Agreement that has, as of the date the calculation is made, been terminated or closed out in accordance with the terms of this Agreement, the amount, if any, payable to it under any Hedging Agreement in respect of that termination or close-out as of the date of termination or close-out (and before taking into account any interest accrued on that amount since the date of termination or close-out) to the extent that amount is unpaid (that amount to be certified by the relevant Secured Hedging Provider and as calculated in accordance with the relevant Hedging Agreement); and
- (c) after the Enforcement Date only, in respect of any hedging transaction of that Secured Hedging Provider that has, as of the date the calculation is made, not been terminated or closed out in accordance with the terms of this Agreement, the amount, if any, which would be payable to it under any Hedging Agreement in respect of a termination or close-out, if the date on which the calculation is made was deemed to be an “Early Termination Date” (as defined in the ISDA Master Agreement) for which the relevant Obligor is the “Defaulting Party” (as defined in the ISDA Master Agreement).

**“Senior Creditors”** means:

- (a) each Lender; and
- (b) each Secured Hedging Provider.

**“Social Law”** means any applicable law or regulation (including international treaty obligations) which relates to:

- (a) the work, health, hygiene, security or protection of employees or citizens (including the relevant laws for the public protection of citizens in these domains);
- (b) the legal protection of property (including rights to intellectual property and protection, restoration and rehabilitation of cultural property and cultural heritage), land rights and traditional assets;
- (c) the regulation of industrial relations between the government, employers and employees; and
- (d) the protection and empowerment of indigenous persons and/or ethnic groups.

**“Structuring and Funding Fee Letter”** means the structuring and funding fee letter dated on or about the date hereof between the Obligors’ Agent, the Facility Agent and the Original Lenders.

**“Subsidiary”** means an entity of which a person has direct or indirect control or owns directly or indirectly more than 50% of the voting capital or similar right of ownership, and **“control”** for this purpose means the power to direct the management and the policies of the entity, whether through the ownership of voting capital, by contract or otherwise (and for such purpose, if any voting or other capital of a person is subject to a Security in favour of any person, the grantor (and not the beneficiary) of such Security shall be deemed to be the owner of such capital, even if the relevant shares are registered in the name of such beneficiary) *provided that*, for the avoidance of doubt, POG and its subsidiaries shall not be deemed to be

Subsidiaries of the Parent unless and until PetroVida (either alone or together with other members of the Group) holds more than 50% of the Equity Interests in POG.

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

“**Target of Sanctions**” means a country, territory or person with whom a national of any country that is subject to the jurisdiction of, or otherwise bound by the prescriptions of, a Sanctions Authority would be prohibited or restricted by law from engaging in trade, business or other activities.

“**Total Aggregate Commitments Amount**” means U.S.\$160,000,000.

“**Total Commitments**” means the aggregate of the Loan Commitments from time to time, being U.S.\$160,000,000 at the date of the Amendment and Restatement Agreement.

“**Total Net Debt**” means, at any time and without double counting, the aggregate of:

- (a) the principal amount of the Outstandings;
- (b) the aggregate of any other Financial Indebtedness of any member of the Group (but adjusted to take into account only the relevant portion of any Financial Indebtedness partly owned members of the Group) other than:
  - (i) Financial Indebtedness owed to another member of the Group; and
  - (ii) Financial Indebtedness falling within paragraphs (g) and (i) (in respect of (i), only to the extent that such Financial Indebtedness is not included on balance sheet for accounting purposes) of the definition of Financial Indebtedness at the relevant time; and
- (c) 50% of the Financial Indebtedness of POG (less 50% of the Cash and Cash Equivalent Investments of POG) at such time; and

after deducting the aggregate amount of Cash and Cash Equivalent Investments held by a member of the Group at that time (adjusted to take into account only the relevant portion of any Cash and Cash Equivalent Investments partly owned members of the Group).

“**Total Net Debt to Adjusted EBITDAX Ratio**” means the ratio of Total Net Debt to Adjusted EBITDAX.

“**Transaction Security**” means the Security created or expressed to be created in favour of the Security Agent for and on behalf of the Finance Parties pursuant to the Transaction Security Documents.

“**Transaction Security Documents**” means:

- (a) PetroVida Pledge Agreement;
- (b) Distribution Collection Account Charge;
- (c) Canadian Parent’s Securities Pledge Agreement;
- (d) English Parent’s Securities Pledge Agreement; and

- (e) any other document designated as a Transaction Security Document by the Facility Agent and the Obligors' Agent.

“**Transfer Certificate**” means a certificate substantially in the form set out in Schedule 5 (*Form of Transfer Certificate*) or any other form agreed between the Facility Agent and the Parent.

“**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.

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

“**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).

“**Unpaid Sum**” means any sum which is due and payable but unpaid by an Obligor under the Finance Documents and shall exclude any sum which remains unpaid in accordance with Clause 8.3 (*PIK interest*).

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

“**Utilisation Date**” means the date of a Utilisation, being the date on which a Loan is made.

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

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

“**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.

## 1.2 Dutch Terms

In this Agreement, where it relates to an Obligor incorporated and existing under Dutch law, a reference to:

- (a) a “**necessary action to authorise**” where applicable, includes without limitation
  - (i) any action required to comply with the Dutch Works Councils Act (*Wet op de ondernemingsraden*);
  - (ii) obtaining an unconditional positive or neutral advice (*advies*) from each competent works council.

## 1.3 Construction

- (a) Unless a contrary indication appears any reference in this Agreement to:
  - (i) the “**Security Agent**”, the “**Facility Agent**” any “**Lender**”, any “**Obligor**” or any “**Party**” shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
  - (ii) “**assets**” includes present and future properties, revenues and rights of every description;
  - (iii) “**disposal**” means, in respect of an asset the sale, transfer or assignment of the legal and/or beneficial interest in that asset;
  - (iv) a “**Finance Document**” or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended, replaced or restated;
  - (v) “**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;
  - (vi) 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);
  - (vii) a “**regulation**” includes any regulation, rule, official directive, order, request or guideline (whether or not having the force of law) of any Governmental Authority;

- (viii) “**shareholder**” includes members of a cooperative;
- (ix) a provision of law is a reference to that provision as amended or re-enacted; and
- (x) a time of day is a reference to London time unless otherwise specified.
- (b) Section, Clause and Schedule headings are for ease of reference only.
- (c) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
- (d) A Default is “**continuing**” if it has not been remedied or waived.
- (e) Unless specified to the contrary, any definition defined by reference to a definition in the POG RBL Facility Agreement shall be to such term as defined in the POG RBL Facility Agreement as at the date of this Agreement.
- (f) Any reference to the “date of this Agreement” shall be a reference to the original date of this Agreement, being 13 May 2021.

#### 1.4 **Currency Symbols and Definitions**

“**U.S.\$**” and “**Dollars**” denote the lawful currency of the United States of America.

#### 1.5 **Third-party rights**

A person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.

### 2. **THE FACILITY**

#### 2.1 **The Facility**

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

#### 2.2 **[Not used.]**

#### 2.3 **Increase Commitments**

- (a) The Obligors’ Agent may by giving prior notice to the Facility Agent by no later than the date falling 20 Business Days after the effective date of a cancellation of:
  - (i) the Available Commitments of a Defaulting Lender in accordance with Clause 7.9 (*Right of cancellation in relation to a Defaulting Lender*); or
  - (ii) the Loan Commitment of a Lender in accordance with:
    - (A) Clause 7.1 (*Mandatory Prepayment - Illegality*); or
    - (B) paragraph (a) of Clause 7.8 (*Right of cancellation and repayment in relation to a Single Lender*),

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

- (iii) the increased Loan 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 Loan Commitments which it is to assume, as if it had been an Original Lender in respect of those Loan Commitments;
  - (iv) each of the Obligor and any Increase Lender shall assume obligations towards one another and/or acquire rights against one another as the Obligor 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 Loan Commitments which it is to assume;
  - (v) 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 Loan Commitments which it is to assume;
  - (vi) the Loan Commitments of the other Lenders shall continue in full force and effect; and
  - (vii) any increase in the Loan Commitments shall take effect on the date specified by the Obligor’s Agent 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.
- (b) The Facility Agent shall, subject to paragraph (c) below, as soon as reasonably practicable after receipt by it of a duly completed Increase Confirmation appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Increase Confirmation.
  - (c) The 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 Loan Commitments by that Increase Lender.
  - (d) 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.
  - (e) The Obligor’s Agent shall promptly on demand pay the Facility Agent the amount of all costs and expenses (including legal fees) reasonably incurred by it in connection with any increase in Loan Commitments under this Clause 2.3.
  - (f) The Obligor’s Agent may pay to the Increase Lender a fee in the amount and at the times agreed between the Obligor’s Agent and the Increase Lender in a letter between

the Obligors' Agent and the Increase Lender setting out that fee. A reference in this Agreement to a Fee Letter shall include any letter referred to in this paragraph (f).

- (g) 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 23.3 (*Assignment or transfer fee*) if the increase was a transfer pursuant to Clause 23.5 (*Procedure for transfer*) and if the Increase Lender was a New Lender.
- (h) Neither the Facility Agent nor any Lender shall have any obligation to find an Increase Lender and in no event shall any Lender whose Loan Commitment is replaced by an Increase Lender be required to pay or surrender any of the fees received by such Lender pursuant to the Finance Documents.
- (i) Clause 23.2(h) (*Limitation of Responsibility of the Lenders*) shall apply *mutatis mutandis* in this Clause 2.3 in relation to an Increase Lender as if references in that Clause to:
  - (i) an “*Existing Lender*” were references to all the Lenders immediately prior to the relevant increase;
  - (ii) the “*New Lender*” were references to that “*Increase Lender*”; and
  - (iii) a “*re-transfer*” and “*re-assignment*” were references to respectively a “*transfer*” and “*assignment*”.

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

- (a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor is a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with sub-clause 2.4(c) below. The rights of each Finance Party include any debt owing to that Finance Party under the Finance Documents and, for the avoidance of doubt, any part of a Loan or any other amount owed by an Obligor which relates to a Finance Party's participation in the Facility or its role under a Finance Document (including any such amount payable to the Facility Agent on its behalf) is a debt owing to that Finance Party by that Obligor.
- (c) A Finance Party may, except as specifically provided in the Finance Documents, separately enforce its rights under or in connection with the Finance Documents.

#### 2.5 **Obligors' Agent**

- (a) Each Obligor (other than the Parent) by its execution of this Agreement irrevocably appoints the Parent to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:

- (i) the Parent on its behalf to supply all information concerning itself contemplated by this Agreement to the Finance Parties and to give all notices and instructions, to make such agreements and to effect the relevant amendments, supplements and variations capable of being given, made or effected by any Obligor notwithstanding that they may affect the Obligor, without further reference to or the consent of that Obligor; and
- (ii) each Finance Party to give any notice, demand or other communication to that Obligor pursuant to the Finance Documents to the Parent,

and, in each case, the Obligor shall be bound as though the Obligor itself had given the notices and instructions or executed or made the agreements or effected the amendments, supplements or variations, or received the relevant notice, demand or other communication.

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

### 3. **PURPOSE**

#### 3.1 **Purpose**

The Borrowers will apply all amount borrowed by them under the Facility towards:

- (a) repaying in full all amounts outstanding under the Existing Facility (together with any other amounts then due including interest and any break costs);
- (b) paying any interest, fees, cost or expenses payable under or in connection with the Facility; and/or
- (c) *provided that* the Existing Facility has been repaid in full, for its lawful general corporate purposes (including acquisitions made in accordance with this Agreement).

#### 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**

The Borrowers may not deliver a Utilisation Request unless the Facility Agent has received all of the documents and other evidence listed in Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Facility Agent acting on the instructions of all the Lenders. The Facility Agent shall notify the Obligors' Agent and the Lenders promptly upon being so satisfied.

#### 4.2 **Further conditions precedent**

Subject to Clause 4.1 (*Initial conditions precedent*), the Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) if on the date of a Utilisation Request and on the proposed Utilisation Date:

- (a) no Default is continuing or would result from the proposed Loan;
- (b) the Repeating Representations to be made by each Obligor are true in all material respects;
- (c) the aggregate of the amount of the proposed Loan and the aggregate principal amount of all outstanding Loans would not exceed the Total Commitments; and
- (d) immediately upon the making of the Loan, taking into account the proposed Loan and the aggregate principal amount of all outstanding Loans, the then-current FLCR would be equal or greater than 1.2:1.

#### 4.3 **Maximum Number of Utilisations**

No Borrower may deliver a Utilisation Request if, as a result of the proposed Utilisation, more than five Loans would be outstanding.

### 5. **UTILISATIONS**

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

A Borrower may utilise the Facility, by delivery to the Facility Agent of a duly completed Utilisation Request not later than 10:00 a.m. on the date that is three Business Days prior to the proposed Utilisation Date, or such other time as the Facility Agent (acting on the instructions of all the Lenders) may agree.

#### 5.2 **Completion of the Utilisation Request**

- (a) Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:
  - (i) the proposed Utilisation Date is a Business Day within the Availability Period;
  - (ii) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*); and
  - (iii) the proposed Interest Period complies with Clause 9 (*Interest Periods*).
- (b) Only one Loan may be requested in each Utilisation Request.

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

- (a) The currency specified in a Utilisation Request must be Dollars.
- (b) The amount of the proposed Loan must be an amount which is not more than the Available Facility and which is a minimum of U.S.\$5,000,000 or, if less, the Available Facility.

5.4 **Lenders' participation**

- (a) If the conditions set out in this Agreement have been met, each Lender shall make its participation in each Loan available by the Utilisation Date through its Loan Office.
- (b) The amount of each Lender's participation in each Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to making the Loan.
- (c) The Facility Agent shall notify each Lender of the amount of each Loan and the amount of its participation in that Loan by not later than 10:00 a.m. on the date that is two Business Days prior to the Utilisation Date for such Loan.

5.5 **Cancellation of Facility**

The unutilised Loan Commitments, shall be immediately cancelled at the end of the Availability Period.

6. **REPAYMENT**

6.1 **Repayment of Loans**

- (a) The Borrowers shall repay the Loans in full on the Final Maturity Date.
- (b) To the extent that any part of the Loans then outstanding represent a PIK Amount each repayment or prepayment shall be deemed to be applied first to those PIK Amounts and thereafter to any balance of the Loan.
- (c) Without prejudice to the Borrowers' obligations under paragraph (a) above, the Borrowers shall repay such principal amounts of the Loans as is required to ensure that after the date set out in the column headed "Date" in the table below, the aggregate principal amount of Loans does not exceed the amount set out in the column headed "Principal Amount" in the table below.

<b>Date</b>	<b>Principal Amount</b>
31 December 2022	U.S.\$75,000,000
30 June 2023	U.S.\$60,000,000
31 December 2023	U.S.\$50,000,000

- (d) The Borrowers may not reborrow any part of any part of the Facility that has been repaid.

7. **ILLEGALITY, PREPAYMENT AND CANCELLATION**

7.1 **Mandatory prepayment - Illegality**

If, at any time, it is or will become, in a Lender's reasonable determination, unlawful in any applicable jurisdiction, including as a result of Sanctions, for that Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in any Loan:

- (a) that Lender shall promptly notify the Facility Agent upon becoming aware of that event;
- (b) upon the Facility Agent notifying the Borrowers, the Loan Commitment of that Lender shall be immediately cancelled; and
- (c) to the extent that the Lender's participation has not been transferred pursuant to paragraph (d) of Clause 7.8 (*Right of Cancellation and Repayment in Relation to a Single Lender*) or Clause 36.5 (*Replacement of a Lender*), the Borrowers shall repay that Lender's participation in the Loans made to the Borrowers:
  - (i) on the last day of the Interest Period for the Loans occurring after the Facility Agent has notified the Borrowers; or
  - (ii) 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 Loan Commitment shall be immediately cancelled in the amount of the participations repaid.

## 7.2 **Mandatory Prepayment – Change of Control**

- (a) If PetroVida disposes all or any of the Equity Interest or any beneficial interest in the Equity Interest, the Borrowers shall within three Business Days of such disposal prepay the Loans in full, together with all accrued interest, Break Costs, Prepayment Fee (if applicable) and all other applicable charges.
- (b) If the Parent disposes all or any part of the Parent's Securities, the Parent shall, within three Business Days of such disposal or (at the Parent's option) on the next Cash Sweep Date to occur, apply the net disposal proceeds arising from such disposal (the "**Received Disposal Proceeds**") as follows:
  - (i) *firstly*, in prepayment of any interest, Break Costs and Prepayment Fees (if applicable) and other applicable charges associated with the prepayment in this Clause 7.2(b); and
  - (ii) *secondly*, in prepayment of the Loans,

and where any amount so repaid is a loan to PetroVida the repayment shall be treated as a deemed contribution through the Group to PetroVida.
- (c) If there is a Change of Control of an Obligor:
  - (i) the Parent shall promptly notify the Facility Agent upon becoming aware of that event;
  - (ii) no Lender shall be obliged to fund a Utilisation; and
  - (iii) if a Lender so requires, the Loan Commitment of that Lender shall be immediately cancelled and that Lender's portion of all outstanding Loans, together with accrued interest and all other Break Costs, fees and other amounts accrued or outstanding to that Lender under the Finance Documents together with the Prepayment Fee (if applicable) shall be due and payable 45 Business Days after the date on which such Lender notifies the Parent.

### 7.3 **Mandatory Prepayment – Cash Sweep**

On each Cash Sweep Date, the Borrowers shall prepay the Outstandings in an amount equal to the lesser of:

- (a) 90% (or if the Parent so elects, a higher percentage) of the POG Distributions received in the applicable Cash Sweep Period; and
- (b) 100% of the POG Distributions received in the applicable Cash Sweep Period, *less* (without double counting) the aggregate of:
  - (i) such amount as is required to ensure that the total amount of Cash and Cash Equivalent Investments held by the Group is equal to at least [REDACTED] as projected for the six Month period following such Cash Sweep Date;
  - (ii) an amount equal to the Group Costs up to the Group Costs Cap for the next six months; and
  - (iii) if the Parent so elects, an additional amount not exceeding the aggregate amount of interest under the Facility projected to fall due in the six months period commencing on the Cash Sweep Date in question,

calculated in accordance with Clause 19.4 (*Cash Sweep Amount*), such amount, the “**Cash Sweep Amount**”.

### 7.4 **Voluntary prepayment of Loans**

- (a) Subject to Clause 7.6 (*Prepayment Fee*), a Borrower may, if it requests in writing not less than five Business Days prior to the date of prepayment, prepay the whole or any part of any Loan made to it (but, if in part, being an amount that reduces the amount of the Loans by a minimum amount of U.S.\$5,000,000.00), provided that the Prepayment Fee is paid in accordance with Clause 7.6 (*Prepayment Fee*) (if applicable).
- (b) For the avoidance of doubt, Received Dividends may be applied in prepayment of Loans in accordance with this Clause 7.4.

### 7.5 **Voluntary Cancellation**

The Obligors’ Agent may, if it gives the Facility Agent no less than five Business Days’ prior written notice, cancel the whole or any part of the undrawn Available Commitments (but if in part, in a minimum amount of U.S. \$5,000,000).

### 7.6 **Prepayment Fee**

Concurrently with any Applicable Prepayment, the relevant Borrower shall pay the Prepayment Fee to the Facility Agent for the account of the Lenders, *provided that* no Prepayment Fee shall be due on any repayments made with POG Distributions.

### 7.7 **Restrictions**

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

- (b) No Borrower may reborrow any part of a Loan which is prepaid and (subject to Clause 2.3 (*Increase Commitments*)) no amount of the Loan Commitments cancelled under this Agreement may be subsequently reinstated.
- (c) Any prepayment under this Agreement shall be made together with:
  - (i) accrued interest on the amount prepaid; and
  - (ii) subject to the payment of any Break Costs or any Prepayment Fee, without premium or penalty.
- (d) The Borrowers shall not repay or prepay all or any part of a Loan or cancel all or any part of the Loan Commitments except at the times and in the manner expressly provided for in this Agreement.
- (e) If the Facility Agent receives a notice under this Clause 7, it shall promptly forward a copy of that notice to either the Borrowers or the affected Lenders, as appropriate.
- (f) The Facility Agent shall notify the Lenders as soon as possible of any proposed prepayment under this Clause 7.
- (g) Any prepayment of a Loan (other than a prepayment pursuant to Clause 7.1 (*Mandatory Prepayment - Illegality*), and Clause 7.8 (*Right of Cancellation and Repayment in Relation to a Single Lender*)) shall be applied *pro rata* to each Lender's participation in that Loan.

**7.8 Right of cancellation and repayment in relation to a single Lender**

- (a) If:
  - (i) any sum payable to any Lender by an Obligor is required to be increased under Clause 12.2(c) (*Tax gross-up*); or
  - (ii) any Lender claims indemnification from an Obligor under Clause 12.3 (*Tax indemnity*) or Clause 13 (*Increased Costs*)

the Obligor's Agent may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Facility Agent notice of cancellation of the Loan Commitment of that Lender and its intention to procure the repayment of that Lender's participation in the Loans.

- (b) On receipt of a notice referred to in Clause 7.8(a) (*Right of cancellation and repayment in relation to a single Lender*) above in relation to a Lender, the Loan Commitment of that Lender shall immediately be reduced to zero.
- (c) On the last day of each Interest Period which ends after the Obligor's Agent has given notice under Clause 7.8(a) (*Right of cancellation and repayment in relation to a single Lender*) above in relation to a Lender (or, if earlier, the date specified by the Obligor's Agent in that notice), the Borrowers shall repay that Lender's participation in the Loans and that Lender's corresponding Loan Commitment shall be immediately cancelled in the amount of the participations repaid, together with all interest and other amounts accrued under the Finance Documents.
- (d) If:

- (i) any of the circumstances set out in paragraph (a) above apply to a Lender; or,
- (ii) an Obligor becomes obliged to pay any amount in accordance with Clause 7.1 (*Mandatory Prepayment - Illegality*) to any Lender,

the Obligors' Agent may, on prior written notice to the Facility Agent and that Lender, replace that Lender by requiring that Lender to (and, to the extent permitted by law, that Lender shall) transfer pursuant to Clause 23 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement to an Eligible Institution which confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with Clause 23 (*Changes to the Lenders*) for a purchase price in cash payable at the time of the transfer in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Loans and all accrued interest (to the extent that the Facility Agent has not given a notification under Clause 23.9 (*Pro rata interest settlement*)), Break Costs and other amounts payable in relation thereto under the Finance Documents.

- (e) The replacement of a Lender pursuant to paragraph (d) above shall be subject to the following conditions:
  - (i) the Obligors' Agent shall have no right to replace the Facility Agent or the Security Agent;
  - (ii) neither the Facility Agent nor any Lender shall have any obligation to find a replacement Lender;
  - (iii) in no event shall the Lender replaced under paragraph (d) above be required to pay or surrender any of the fees received by such Lender pursuant to the Finance Documents; and
  - (iv) the Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (d) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer.
- (f) A Lender shall perform the checks described in paragraph (e)(iv) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (d) above and shall notify the Facility Agent and the Obligors' Agent when it is satisfied that it has complied with those checks.

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

- (a) If any Lender becomes a Defaulting Lender, the Parent may, at any time whilst a Lender continues to be a Defaulting Lender, give the Facility Agent three (3) Business Days' notice of cancellation of the undrawn Loan Commitment of that Lender.
- (b) On the notice referred to in Clause 7.9(a) (*Right of cancellation in relation to a Defaulting Lender*) above becoming effective, the undrawn Loan Commitment of the Defaulting Lender shall immediately be reduced to zero.
- (c) The Facility Agent shall as soon as practicable after receipt of a notice referred to in Clause 7.9(a) (*Right of cancellation in relation to a Defaulting Lender*) above, notify all the Lenders.

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:

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

8.2 **Payment of interest**

Subject to Clause 8.3 (*PIK interest*), each Borrower shall pay accrued interest on the Loans made to it on each Cash Sweep Date.

8.3 **PIK interest**

On the last day of each Interest Period in any month in which no POG Distributions are made or projected to be made, the Borrowers may elect, by notice in writing served on the Facility Agent not less than three Business Days prior to the last Business Day of the relevant Interest Period, to convert all or part of the interest then due to principal and on the last day of the Interest Period the amount of interest so converted shall be deemed to be a separate Loan (each, a "**PIK Loan**") (which shall be consolidated with the other PIK Loans as provided in Clause 9.3 (*Consolidation and division of Loans*)) with a principal amount equating to the amount of interest so converted, *provided that* at no time shall:

- (a) the aggregate amount of interest so converted (as reduced by the repayment or prepayment of any such amounts so converted) exceed U.S.\$15,000,000; and
- (b) the aggregate of the Outstandings plus the aggregate amount of interest so converted (as reduced by the repayment or prepayment of any such amounts so converted) exceed the Total Aggregate Commitments Amount.

8.4 **Default interest**

- (a) If an Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on any Unpaid Sum from the due date up to the date of actual payment (both before and after judgment) at a rate which is two percentage points p. a. higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan, which rate will apply for successive Interest Periods, each of a duration selected by the Facility Agent (acting reasonably).
- (b) Any interest accruing under this Clause 8.4 shall be immediately payable by the Obligors on demand by the Facility Agent.
- (c) 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:
  - (i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and

- (ii) the rate of interest applying to the overdue amount during that first Interest Period shall be 2% per annum higher than the rate which would have applied if the overdue amount had not become due.
- (d) 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.

#### 8.5 **Maximum Rate of Return**

Notwithstanding any provision herein to the contrary, in no event will the aggregate “interest” (as defined in section 347 of the *Criminal Code* (Canada)) payable under this Agreement exceed the maximum effective annual rate of interest on the “credit advanced” (as defined in that section 347) permitted under that section and, if any payment, collection or demand pursuant to this Agreement in respect of “interest” (as defined in that section 347) is determined to be contrary to the provisions of that section 347, such payment, collection or demand will be deemed to have been made by mutual mistake of the relevant Borrower and the applicable Lenders and the amount of such payment or collection will be refunded to the relevant Borrower. If any provision is determined to be contrary to the provisions of section 347 of the *Criminal Code* (Canada), then notwithstanding such provision, such amount or rate shall be deemed to have been adjusted *nunc pro tunc* 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 a Lender of interest at a criminal rate. For purposes of this Agreement, the effective annual rate of interest will be determined in accordance with generally accepted actuarial practices and principles over the term of the Facility on the basis of annual compounding of the lawfully permitted rate of interest.

#### 8.6 **Deemed Reinvestment Not Applicable**

For the purposes of the Interest Act (Canada), the principle of deemed reinvestment of interest will not apply to any interest calculation under the Finance Documents, and the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

#### 8.7 **Interest Act (Canada)**

For the purposes of the *Interest Act* (Canada) and any other applicable Canadian laws which may hereafter regulate the calculation or computation of interest on borrowed funds, the annual rates of interest and fees under the Finance Documents are the rates as determined under the applicable Finance Documents multiplied by the actual number of days in a period of one year commencing on the first day of the period for which such interest or fee is payable and divided by 365 or 366, as applicable.

### 9. **INTEREST PERIODS**

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

- (a) The first Interest Period for the first Loan shall start on the Utilisation Date (including such date) and end on the next Cash Sweep Date to occur.
- (b) Each subsequent Interest Period for a Loan shall start on the Utilisation Date or (if already made) on the last day of its preceding Interest Period and shall end on the next Cash Sweep Date to occur, or if earlier, the Final Maturity Date.

- (c) Subject to this Clause 9, a Borrower may select an Interest Period of any other period agreed between the Obligors' Agent and the Facility Agent (acting on the instructions of all the Lenders).
- (d) An Interest Period for a Loan shall not extend beyond the Final Maturity Date

## 9.2 Non-Business Days

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

## 9.3 Consolidation and division of Loans

- (a) Subject to paragraph (b) below, if two or more Interest Periods:

- (i) relate to Loans made to the same Borrower; and
- (ii) end on the same date,

including, for the avoidance of doubt, any PIK Loans, those Loans will, unless that Borrower (or the Obligors' Agent on its behalf) specifies to the contrary prior to the next Interest Period, be consolidated into, and treated as, a single Loan on the last day of the Interest Period, *provided that* PIK Loans may only be consolidated with other PIK Loans.

- (b) Subject to Clause 4.3 (*Maximum number of Utilisations*) and Clause 5.3 (*Currency and amount*), if a Borrower (or the Obligors' Agent on its behalf) requests in that a Loan be divided into two or more Loans, that Loan will, on the last day of its Interest Period, be so divided into the amounts specified, being an aggregate amount equal to the amount of the Loan immediately before its division.

## 10. CHANGES TO THE CALCULATION OF INTEREST

### 10.1 Unavailability of Screen Rate

- (a) Interpolated Screen Rate: If no Screen Rate is available for LIBOR for the Interest Period of a Loan, the applicable LIBOR shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of that Loan.
- (b) Cost of funds: If no Screen Rate is available for LIBOR for Dollars for the Interest Period of a Loan, and it is not possible to calculate the Interpolated Screen Rate, there shall be no LIBOR for that Loan and Clause 10.3 (*Cost of funds*) shall apply to that Loan for that Interest Period.

### 10.2 Market disruption

If before close of business in London on the Quotation Day for the relevant Interest Period the Facility Agent receives notifications from a Lender or Lenders (whose participations in a Loan exceed 66<sup>2/3</sup>% of that Loan) that the cost to it of funding its participation in that Loan from whatever source it may reasonably select would be in excess of LIBOR then Clause 10.3 (*Cost of funds*) shall apply to that Loan for the relevant Interest Period.

### 10.3 **Cost of funds**

- (a) If this Clause 10.3 applies, the rate of interest on the relevant Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:
  - (i) the Margin; and
  - (ii) the weighted average of the rates notified to the Facility Agent by each Lender as soon as practicable and in any event within three Business Days of the first day of that Interest Period (or, if earlier, on the date falling two Business Days before the date on which interest is due to be paid in respect of that Interest Period), to be that which expresses as a percentage rate per annum the cost to the relevant Lender of funding its participation in that Loan from whatever source it may select.
- (b) If this Clause 10.3 applies and the Facility Agent or the Obligors' Agent so requires, the Facility Agent and the Obligors' Agent shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.
- (c) Any alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Obligors' Agent, be binding on all Parties.
- (d) If this Clause 10.3 applies pursuant to Clause 10.2 (*Market disruption*) and:
  - (i) a Lender's Funding Rate is less than LIBOR ; or
  - (ii) a Lender does not supply a quotation by the time specified in paragraph (a)(ii) above,  
  
the cost to that Lender of funding its participation in that Loan for that Interest Period shall be deemed, for the purposes of paragraph (a) above, to be LIBOR.
- (e) If this Clause 10.3 applies pursuant to Clause 10.1 (*Unavailability of Screen Rate*) but any Lender does not supply a quotation by the time specified in paragraph (a)(ii) above the rate of interest shall be calculated on the basis of the quotations of the remaining Lenders.

### 10.4 **Notification to Company**

If Clause 10.3 (*Cost of funds*) applies the Facility Agent shall, as soon as is practicable, notify the Company.

### 10.5 **Break Costs**

- (a) Each Borrower shall, within three Business Days of demand by a Lender, pay to that Lender its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by that Borrower on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.
- (b) Each Lender shall, as soon as reasonably practicable after a demand by the Facility Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue

11. **FEES**

11.1 **Commitment Fee**

- (a) The Borrowers shall pay to the Facility Agent (for the account of each Lender) a fee computed at the Applicable Rate on that Lender's Available Commitment for each day of a Fee Period in which that Lender has a Loan Commitment, until the end of the Availability Period.
- (b) The accrued commitment fee is payable:
  - (i) on the date falling five Business Days after the Facility Agent making the notification in paragraph (d) below; and
  - (ii) if cancelled in full, on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.

- (c) For the purposes of Clause 11.1(a):

**"Fee Period"** means:

- (i) the period commencing on the date of this Agreement and ending on the First Cash Sweep Date; and
- (ii) each successive period of one month commencing on the day after a Cash Sweep Date and ending on the next Cash Sweep Date to occur thereafter,

provided that the last Fee Period shall end on the last day of the Availability Period.

**"Applicable Rate"** means:

- (i) in the period commencing on the date of this Agreement and ending on 30 July 2021, [REDACTED] the applicable Margin; and
- (ii) from 31 July 2021 to the first anniversary of the date of this Agreement, [REDACTED] of the applicable Margin.

- (d) The Facility Agent shall calculate the commitment fee for each Fee Period and shall notify the Parent of the same within five Business Days after the end of each Fee Period.
- (e) No commitment fee is payable to the Facility Agent (for the account of a Lender) on any Loan Commitment of a Lender for any day on which that Lender is a Defaulting Lender.

11.2 **Structuring and Funding fees**

The Obligors shall pay to each Lender a structuring fee and a funding fee in the amount and at the times agreed in the Structuring and Funding Fee Letter and in any Additional Fee Letter (as the case may be).

11.3 **Agency fees**

The Parent shall pay to:

- (a) the Facility Agent (for its own account) an agency fee in the amount and at the times agreed in the relevant Fee Letter;

- (b) the Security Agent (for its own account) an agency fee in the amount and at the times agreed in the relevant Fee Letter; and
- (c) the Modelling Bank (for its own account) a fee in the amount and at the times agreed in the relevant Fee Letter.

## 12. TAX GROSS-UP AND INDEMNITIES

### 12.1 Definitions

- (a) In this Agreement:
  - (i) “**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.
  - (ii) “**Canadian Qualifying Lender**” means a Lender which is entitled to receive interest payments in respect of a Facility without a Tax Deduction on account of Tax imposed by Canada either by virtue of being a Canadian Treaty Lender or by virtue of the fact that no such Tax Deduction is required under the laws of Canada.
  - (iii) “**Canadian Treaty Lender**” means a Lender which (a) is treated as a resident of a Canadian Treaty State, (b) does not carry on a business in Canada through a permanent establishment with which that Lender’s participation in the loan is effectively connected, and (c) meets all other conditions in the relevant Canadian Treaty such that any payment of interest in respect of a Facility may be made by the applicable Borrower to that Lender without a Tax Deduction on account of Tax imposed by Canada, subject to the completion of any necessary procedural formalities.
  - (iv) “**Canadian Treaty State**” means a jurisdiction having a double taxation agreement with Canada (a Canadian Treaty) which makes provision for full exemption from tax imposed by Canada on interest.
  - (v) “**Qualifying Lender**” means any Lender which:
    - (A) fulfils the conditions imposed by Dutch law in order for a payment not to be subject to (as the case may be, to be exempt from) any Tax Deduction; or
    - (B) is a Treaty Lender.
  - (vi) “**Tax Credit**” means a credit against, relief or remission for, or repayment of any Tax.
  - (vii) “**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.
  - (viii) “**Tax Payment**” means either the increase in a payment made by the Obligor to a Finance Party under Clause 12.2 (*Tax gross-up*) or a payment under Clause 12.3 (*Tax indemnity*).
  - (ix) “**Treaty Lender**” means any Lender which:

- (A) is treated as resident of a Treaty State for the purpose of the Treaty;
  - (B) does not carry on business in the Netherlands through a permanent establishment with which that Lender's participation in a Loan is effectively connected; and
  - (C) fulfils any other conditions which must be fulfilled under the Treaty by residents of the Treaty State for such residents to obtain full exemption from Tax imposed on interest by the Netherlands, subject to the completion of any necessary procedural formalities.
- (x) “**Treaty State**” means a jurisdiction having a double taxation agreement with the Netherlands (the “**Treaty**”), which makes provision for full exemption from Tax imposed by the Netherlands on interest payments.
- (b) 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

- (a) Each Obligor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) Each Obligor shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Facility Agent accordingly. Similarly, the relevant Lender shall promptly notify the Facility Agent on becoming so aware in respect of a payment payable to that Lender. If the Facility Agent receives such notification from a Lender it shall notify the Obligors' Agent.
- (c) If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from such Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) A payment shall not be increased under Clause 12.2(c) (*Tax gross-up*) above by reason of a Tax Deduction on account of Tax imposed by the Netherlands, if on the date on which the payment falls due:
  - (i) the payment could have been made to the relevant Lender without a Tax Deduction if the relevant Lender had been a Qualifying Lender, but on that date the relevant Lender is not or has ceased to be a Qualifying Lender other than as a result of any change after the date of this Agreement in (or in the interpretation, administration, or application of) any law, any Treaty, or any published practice or published concession of any relevant taxing authority; or
  - (ii) the relevant Lender is a Treaty Lender and the Obligor making the payment is able to demonstrate that the payment could have been made to the relevant Lender without the Tax Deduction had the relevant Lender complied with its obligation under sub-Clause 12.2(h) (*Tax gross-up*).
- (e) A payment shall not be increased under paragraph (c) above by reason of a Tax Deduction on account of Tax imposed by Canada on interest, if on the date on which the payment falls due:

- (i) the payment could have been made to the relevant Lender without a Tax Deduction if the Lender had been a Canadian Qualifying Lender, but on that date that Lender is not or has ceased to be a Canadian Qualifying Lender other than as a result of any change after the date it became a Lender under this Agreement in (or in the interpretation, administration, or application of) any law, regulation or Canadian Treaty or any published practice or published concession of any relevant taxing authority; or
  - (ii) the relevant Lender is a Canadian Treaty Lender and the Obligor is able to demonstrate that (subject to the Obligor completing any necessary procedural formalities) the payment could have been made to the Lender without the Tax Deduction had that Lender complied with its obligations under Clause 12.2(h) (*Tax gross-up*) below.
- (f) If an Obligor is required to make a Tax Deduction, the Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (g) Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the relevant Lender the relevant tax receipt or, if not applicable, any official and stamped document evidencing the payment paid to the relevant taxing authority.
- (h) A Treaty Lender or a Canadian Treaty Lender, as the case may be, and the Obligor which makes a payment to which that Treaty Lender is entitled shall co-operate in completing any procedural formalities necessary for the Obligor to obtain authorisation to make that payment without a Tax Deduction or with a reduced amount of Tax Deduction. Without limiting the above, the Treaty Lender or Canadian Treaty Lender (as the case may be) must:
- (i) notify each Obligor which makes a payment to which that Treaty Lender or a Canadian Treaty Lender, as the case may be, is entitled, within 3 Business Days of the date on which it becomes a Lender under this Finance Document, of the Treaty on which it is or will be relying; and must notify each relevant Obligor promptly if it ceased to rely on that Treaty and of any other Treaty on which it is or will be relying; and
  - (ii) file and submit any applications or other forms legally required in respect of any Treaty to enable each Obligor which makes a payment to which that Treaty Lender or a Canadian Treaty Lender, as the case may be, is entitled to obtain to make such payments without a Tax Deduction, and each relevant Obligor must co-operate with that Treaty Lender in completing any procedural formalities necessary for this purpose.

### 12.3 Tax indemnity

- (a) Each Obligor shall (within five 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.
- (b) Sub-Clause 12.3(a) (*Tax indemnity*) above shall not apply:
  - (i) with respect to any Tax assessed on a Finance Party:

- (A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident or as having a taxable permanent establishment or permanent representative for tax purposes;
- (B) under the law of the jurisdiction in which that Finance Party's Loan 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

- (ii) to the extent a loss, liability or cost:
  - (A) is compensated for by an increased payment under Clause 12.2 (*Tax gross-up*); or
  - (B) would have been compensated for by an increased payment under Clause 12.2 (*Tax gross-up*), Clause 12.4 (*Stamp taxes*) or Clause 12.7 (*Value added tax*) but was not so compensated solely because one of the exclusions in sub-Clause 12.2(d) (*Tax gross-up*), Clause 12.4 (*Stamp taxes*) or Clause 12.7 (*Value added tax*) applied; or
  - (C) relates to a FATCA Deduction required to be made by a Party;
  - (D) under the laws of the Netherlands to the extent any Tax becomes payable as a result of having a substantial interest (*aanmerkelijk belang*) in an Obligor as laid down in the Dutch Income Tax Act 2001 (*Wet inkomstenbelasting 2001*); or
  - (E) is suffered or incurred with respect to any Bank Levy (or any payment attributable to, or liability arising as a consequence of, a Bank Levy).
- (c) If a Protected Party makes, or intends to make a claim under sub-Clause 12.3(a) (*Tax indemnity*) above, it shall promptly notify the Facility Agent of the event which will give, or has given, rise to the claim, following which the Facility Agent will notify the Obligors' Agent.

#### 12.4 Stamp taxes

The Obligors shall pay and, within five 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 for any stamp duty, stamp duty land tax, registration and any other similar Tax which arises in respect of an assignment or transfer by a Lender of any of its rights or obligations under a Finance Document (unless such assignment or transfer takes place pursuant to Clause 7.8(d) (*Right of cancellation and repayment in relation to a single Lender*), Clause 15 (*Mitigation by the Lenders*) and/or the Structuring and Funding Fee Letter).

#### 12.5 Tax Credit

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

- (i) a Tax Credit is attributable either to an increased payment of which that Tax Payment forms part, or to that Tax Payment; and
- (ii) it has obtained and used that Tax Credit (directly or on an affiliated group basis),

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

- (b) If an Obligor makes a Tax Deduction in respect of a payment of interest to a Treaty Lender, and Clause 12.2 (*Tax gross-up*) applies to increase the amount of the payment due to that Treaty Lender from such Obligor, that Obligor must promptly provide the Treaty Lender with a tax deduction certificate evidencing the Tax Deduction.
- (c) Notwithstanding paragraphs (a) and (b) above, each Obligor shall, upon the request of a Finance Party, repay the Finance Party an amount equal to the Finance Party's reimbursement amount of such Tax Credit in the event that the Finance Party is required to pay an amount of such Tax Credit to the relevant tax authority. The Finance Party shall exercise its reasonable discretion as to when to claim any Tax Credit and the extent, order and manner in which it does so. Such Finance Party shall not be obliged to disclose any confidential information regarding its Tax affairs and computations but subject to that shall provide such reasonable information as the Obligor may request in order to ensure compliance with this Clause 12.5.

#### 12.6 Lender status confirmation

- (a) Each New Lender shall confirm, in the documentation which it executes on becoming a Party as a Lender, and for the benefit of the Facility Agent and without liability to any Obligor, which of the following categories it falls in:
  - (i) not a Qualifying Lender;
  - (ii) a Qualifying Lender (other than a Treaty Lender); or
  - (iii) a Treaty Lender,and also which of the following categories it falls within:
  - (iv) not a Canadian Qualifying Lender;
  - (v) a Canadian Qualifying Lender (other than a Canadian Treaty Lender); or
  - (vi) a Canadian Treaty Lender.
- (b) If such a Lender fails to confirm its status in accordance with this Clause 12.6 then that Lender shall be treated for the purposes of this Agreement (including by each Obligor) as if it is not a Qualifying Lender until such time as it notifies the Obligors' Agent. For the avoidance of doubt, the documentation which a Lender executes on becoming a Party as a Lender shall not be invalidated by any failure of a Lender to comply with this Clause 12.6.

## 12.7 Value added tax

- (a) All amounts expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).
- (b) If VAT is or becomes chargeable on any supply made by any Finance Party (the “**Supplier**”) to any other Finance Party (the “**Recipient**”) under a Finance Document, and any Party other than the Recipient (the “**Relevant Party**”) is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):
  - (i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
  - (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- (c) Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (d) Any reference in this Clause 12.7 to any Party shall, at any time when such Party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the representative member of such group at such time (the term “*representative member*” to have the same meaning as in the Council Directive 2006/112/EC, or any other similar provision in any jurisdiction).
- (e) In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party’s VAT registration and such other information as is reasonably requested in connection with such Finance Party’s VAT reporting requirements in relation to such supply.

## 12.8 FATCA information

- (a) Subject to paragraph (c) below, each Party shall, within ten Business Days of a reasonable request by another Party:
  - (i) confirm to that other Party whether it is:
    - (A) a FATCA Exempt Party; or
    - (B) not a FATCA Exempt Party;
  - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
  - (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.
- (b) If a Party confirms to another Party pursuant to paragraph 12.8(a)(i) (*FATCA information*) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Paragraph 12.8(a) (*FATCA information*) above shall not oblige a Lender to do anything, and paragraph 12.8(a)(iii) (*FATCA information*) above shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:
  - (i) any law or regulation;
  - (ii) any fiduciary duty; or
  - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph 12.8(a)(i) or (ii) (*FATCA information*) above (including, for the avoidance of doubt, where paragraph 12.8(c) (*FATCA information*) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.

## 12.9 FATCA Deduction

- (a) Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.
- (b) Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the Party to whom it is making the payment and, in addition, shall

notify the Obligors' Agent and the Facility Agent and the Facility Agent shall notify the other Finance Parties.

### 13. INCREASED COSTS

#### 13.1 Increased costs

- (a) Subject to Clause 13.3 (*Exceptions*), the Obligors shall, within five Business Days of a demand by the Facility Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of:
- (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation;
  - (ii) compliance with any law or regulation made after the date of this Agreement; or
  - (iii) the implementation or application of, or compliance with, Basel III or CRD IV, or any law or regulation that implements or applies Basel III or CRD IV, but only to the extent such law or regulation was made after the date of this Agreement.
- (b) In this Agreement:
- (i) “**AIFMD**” means the Alternative Investment Fund Managers Directive of the European Parliament and the Council of the European Union of 1 July 2011 (2011/61/EU).
  - (ii) “**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, amending Regulation (EU) No. 648/2012; 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.
  - (iii) “**Increased Costs**” means:
    - (A) a reduction in the rate of return from the Loans 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 a Lender having entered into the Loan

Commitment or funding or performing its obligations, in each case, under any Finance Document; and

- (iv) “**Basel III**” means:
  - (A) any further guidance or standards published after the date of this Agreement by the Basel Committee on Banking Supervision relating to “Basel III”;
  - (B) 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; and
  - (C) 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.

### 13.2 **Increased cost claims**

If a Finance Party intends to make a claim pursuant to Clause 13.1 (*Increased costs*), that Lender shall promptly notify the Facility Agent of the event giving rise to the claim and the amount of its Increased Cost, following which the Facility Agent shall promptly notify the Obligors’ Agent.

### 13.3 **Exceptions**

- (a) Clause 13.1 (*Increased costs*) does not apply to the extent any Increased Cost is:
  - (i) attributable to a Tax Deduction required by law to be made by an Obligor;
  - (ii) 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(b) (*Tax indemnity*) applied);
  - (iii) attributable to a FATCA Deduction required to be made by a Party;
  - (iv) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation;
  - (v) attributable to the implementation or application of, or compliance with, AIFMD, Basel III or CRD IV or any law or regulation which implements AIFMD, Basel III or CRD IV as in effect on the date hereof; or
  - (vi) suffered or incurred with respect to any Bank Levy (or any payment attributable to, or liability arising as a consequence of, a Bank Levy) as in effect at the date hereof.

In this Clause 13.3, a 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

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

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

the relevant Obligor shall as an independent obligation, within three 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 (i) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (ii) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

(b) Each Obligor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable hereunder.

### 14.2 Other indemnities

Each Obligor shall, within three Business Days of demand, indemnify each Finance Party against any cost, loss or liability incurred by that Finance Party as a result of:

- (a) the occurrence of any Event of Default;
- (b) a failure by an Obligor to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 28 (*Sharing among the Finance Parties*);
- (c) 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); or
- (d) a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by a Borrower.

### 14.3 Indemnity to the Facility Agent

Each Obligor jointly and severally shall promptly indemnify the Facility Agent against:

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

- (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
  - (iii) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement, and
- (b) any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Facility Agent (otherwise than by reason of the Facility Agent's gross negligence or wilful misconduct) in acting as Facility Agent under the Finance Documents.

#### 14.4 Indemnity to the Security Agent

- (a) Each Obligor jointly and severally shall promptly indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability incurred by any of them as a result of:
- (i) any failure by an Obligor to comply with its obligations under Clause 16 (*Costs and Expenses*);
  - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
  - (iii) the taking, holding, protection or enforcement of the Transaction Security;
  - (iv) acting as Security Agent, Receiver or Delegate under the Finance Documents or which otherwise relates to any of the Charged Property (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct);
  - (v) the exercise of any of the rights, powers, discretions and remedies vested in the Security Agent and each Receiver and Delegate by the Finance Documents or by law; and
  - (vi) any default by any Obligor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents.
- (b) The Security Agent and every Receiver and Delegate may, in priority to any payment to the Finance Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 14.4 and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all moneys payable to it.

### 15. MITIGATION BY THE LENDERS

#### 15.1 Mitigation

- (a) Each Lender shall, in consultation with the Obligors' Agent, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (*Mandatory Prepayment – Illegality*), Clause 12 (*Tax Gross-Up and Indemnities*) or Clause 13.1 (*Increased costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Loan Office.

- (b) Sub-Clause 15.1(a) (*Mitigation*) above does not in any way limit the obligations of any Obligor under the Finance Documents.

## 15.2 Limitation of liability

- (a) The Obligors shall promptly indemnify the Finance Parties for all costs and expenses reasonably incurred by the Finance Parties as a result of steps taken by it under Clause 15.1 (*Mitigation*).
- (b) No Finance Party is obliged to take any steps under Clause 15.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

## 16. COSTS AND EXPENSES

### 16.1 Transaction expenses

The Obligors shall promptly on demand pay the Facility Agent, the Modelling Bank and the Security Agent the amount of all third-party costs and expenses (including legal fees) reasonably incurred by it in connection with the negotiation, preparation, printing, execution and perfection of:

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

*provided that* any legal fees to be incurred in respect of this Clause 16.1 that are specified to be at the cost of the Obligors shall be subject to the prior agreement of the Obligors' Agent, acting reasonably.

### 16.2 Amendment costs

- (a) If:
  - (i) an Obligor requests an amendment, waiver or consent;
  - (ii) an amendment is made pursuant to Clause 36.8 (*Replacement of Screen Rate*); or
  - (iii) an amendment is required pursuant to Clause 29.10 (*Change of currency*),

the Obligors shall, within five Business Days of demand, reimburse each of the Facility Agent, the Modelling Bank and the Security Agent for the amount of all costs and expenses (including, but not limited to, legal fees) reasonably incurred by the Facility Agent, the Modelling Bank and the Security Agent in responding to, evaluating, negotiating or complying with that request or requirement, *provided that* any legal fees to be incurred in respect of this paragraph (a) that are specified to be at the cost of the Obligors shall be subject to the prior agreement of the Obligors' Agent, (acting reasonably).

- (b) All costs and expenses incurred by the Lenders in relation to any transfer or assignment of its interest in the Finance Documents will be for the account of the relevant Lenders (and for the avoidance of doubt, not for the account of any Obligor) (unless such assignment or transfer takes place pursuant to Clause 7.8(d) (*Right of cancellation and*

*repayment in relation to a single Lender*), Clause 15 (*Mitigation by the Lenders*) and/or the Structuring and Funding Fee Letter).

### 16.3 **Enforcement costs**

The Obligors shall, within five Business Days of demand, pay to the Finance Parties the amount of all costs and expenses (including, but not limited to, legal fees) incurred by the Finance Parties in connection with the enforcement of, or the preservation of any rights under, any Finance Document and any proceedings instituted by or against the Security Agent as a consequence of taking or holding the Transaction Security or enforcing these rights.

## 17. **GUARANTEE AND INDEMNITY**

### 17.1 **Guarantee and indemnity**

Each Guarantor, irrevocably and unconditionally, jointly and severally with each other Guarantor:

- (a) guarantees to each Finance Party punctual performance by each other Obligor of all the Obligors' obligations under the Finance Documents;
- (b) undertakes with each Finance Party that whenever an Obligor does not pay any amount when due under or in connection with any Finance Document, that Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and
- (c) agrees with each Finance Party that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal it will, as an independent and primary obligation, indemnify that Finance Party immediately on demand against any cost, loss or liability it incurs as a result of an Obligor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by each Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 17 if the amount claimed had been recoverable on the basis of a guarantee.

### 17.2 **Continuing guarantee**

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

### 17.3 **Reinstatement**

If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is made by a Finance Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Guarantor under this Clause 17 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

### 17.4 **Waiver of defences**

The obligations of each Guarantor under this Clause 17 will not be affected by any act, omission, matter or thing which, but for this Clause 17.4, would reduce, release or prejudice

any of its obligations under this Clause 17 (without limitation and whether or not known to it or a Finance Party) including:

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

#### 17.5 **Immediate recourse**

Each Guarantor waives any right it may have of first requiring a Finance Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under this Clause 17. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

#### 17.6 **Appropriations**

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

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by a Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and a Guarantor shall not be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from a Guarantor or on account of a Guarantor's liability under this Clause 17.

#### 17.7 **Deferral of Guarantor's rights**

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

performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 17:

- (a) to be indemnified by an Obligor;
- (b) to claim any contribution from any other guarantor of the Obligors' obligations under the Finance Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of a Finance Party under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by a Finance Party;
- (d) to bring legal or other proceedings for an order requiring an Obligor to make any payment, or perform any obligation, in respect of which a Guarantor has given a guarantee, undertaking or indemnity under Clause 17.1 (*Guarantee and indemnity*);
- (e) to exercise any right of set-off against an Obligor; and/or
- (f) to claim or prove as a creditor of an Obligor in competition with a Finance Party.

If a Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to a Finance Party by an Obligor under or in connection with the Finance Documents to be repaid in full on trust for a Finance Party and shall promptly pay or transfer the same to a Finance Party or as a Finance Party may direct for application in accordance with Clause 29 (*Payment Mechanics*).

#### 17.8 **Additional security**

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

#### 17.9 **Guarantee limitations - Dutch Obligors**

Notwithstanding the other provisions of this Clause 17, no Guarantor which is a Dutch Obligor shall be liable under this guarantee to the extent that, if it were so liable, its entry into this guarantee would violate section 2:98c BW.

### 18. **REPRESENTATIONS**

Each Obligor makes the representations and warranties set out in this Clause 18 to each Finance Party on the date of this Agreement and on the date of Financial Close.

#### 18.1 **Status**

- (a) It is a corporation duly incorporated and validly existing under the law of its jurisdiction of incorporation.
- (b) It has the power to own its assets and carry on its business as it is being conducted.

#### 18.2 **Binding obligations**

- (a) The obligations expressed to be assumed by it in each Finance Document are, subject to the Legal Reservations, legal, valid, binding and enforceable obligations.

- (b) Subject to the Legal Reservations, each Transaction Security Document to which it is a party creates the security interests which that Transaction Security Document purports to create and those security interests are valid and effective.

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

- (a) The entry into and performance by it of, and the transactions contemplated by, the Finance Documents do not and will not conflict with:
  - (i) any law or regulation applicable to it;
  - (ii) its constitutional documents; or
  - (iii) any agreement or instrument binding upon it or any of its or any of its assets.
- (b) The entry into and performance by it of, and the transactions contemplated by, the Finance Documents do not constitute a default or termination event under any agreement or instrument binding upon it or any of its or any of its assets, where such default or termination could be reasonably expected to have a Material Adverse Effect.

#### 18.4 **Power and authority**

- (a) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Finance Documents to which it is a party and the transactions contemplated by those Finance Documents.
- (b) 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 Finance Documents to which it is a party.

#### 18.5 **Validity and admissibility in evidence**

All Authorisations required:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party; and
- (b) to make the Finance Documents to which it is a party admissible in evidence in its jurisdiction of incorporation,

have been obtained or effected and are in full force and effect.

#### 18.6 **Governing law, enforcement**

- (a) Subject to the Legal Reservations:
  - (i) the choice of governing law of each of the Finance Documents will be recognised and enforced in its jurisdiction of incorporation; and
  - (ii) any judgment obtained in England in relation to this Agreement will be recognised and enforced in its jurisdiction of incorporation, subject to applicable enforcement (exequatur) procedure.
- (b) It is not entitled to immunity on any grounds from any legal action or proceeding (including, without limitation, suit, attachment prior to judgement, execution or other enforcement).

**18.7 Governmental Approvals; Consent**

The transactions contemplated by this Agreement and any other Finance Document and the Obligor's continuing obligations hereunder and thereunder do not require any consent or approval of, or notice to, any creditor by the terms of any agreement or instrument evidencing any Financial Indebtedness of the Obligor, other than where such consent, approval or notice has been obtained.

**18.8 Deduction of Tax**

It is not required to make any deduction for or on account of Tax from any payment it may make under any Finance Document to a Qualifying Lender.

**18.9 Insolvency**

No:

- (a) corporate action, legal proceeding or other procedure or step described in paragraph (i) of Clause 21.11(b) (*Insolvency proceedings*); or
- (b) creditors' process described in Clause 21.11(a) (*Insolvency proceedings*) or 20.12 (*Creditors' Process*),

has been taken or, to the knowledge of the Obligors, threatened in relation to the Obligors.

**18.10 No filing or stamp taxes**

Under the law of its jurisdiction of incorporation it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents

**18.11 No default**

- (a) No Event of Default is continuing or might reasonably be expected to result from the making of any Utilisation.
- (b) No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or to which its assets are subject which could reasonably be expected to have a Material Adverse Effect.

**18.12 No misleading information**

- (a) Any Delivered Information provided to the Lenders prior to the date of this Agreement was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.
- (b) Nothing has occurred or been omitted from any Delivered Information that results in the Delivered Information provided to the Lenders prior to the date of this Agreement being untrue or misleading in any material respect.

**18.13 Ranking; Indebtedness**

Its payment obligations under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

**18.14 Legal and beneficial ownership**

- (a) Subject to the Existing Security Documents until the Existing Security Release Date, it is the sole legal and beneficial owner of the respective assets over which it purports to grant Security.
- (b) The Equity Interests are legally and beneficially owned by PetroVida free from any claims, third party rights or competing interests other than those arising under the Transaction Security Documents.

**18.15 Shares**

- (a) The Equity Interests and the Parent's Securities are fully paid and not subject to any option to purchase or similar rights.
- (b) The constitutional documents of companies whose shares are subject to the Transaction Security do not and could not restrict or inhibit creation of the Transaction Security or (other than in respect of Impact) any transfer of those shares on enforcement of the Transaction Security.

**18.16 Centre of main interest**

For the purposes of Regulation (EU) 2015/848 of 20 May 2015 on insolvency proceedings (recast), the centre of main interest of PetroVida and AOHBV (as that term is used in Article 3(1) of the Regulation) is situated in the Netherlands.

**18.17 No proceedings pending or threatened**

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

**18.18 Environmental compliance**

It has performed and observed in all material respects all Environmental Law, Social Law, Environmental Permits and all other material covenants, conditions, restrictions or agreements directly or indirectly concerned with any environmental contamination, pollution or waste or the release or discharge of any toxic or hazardous substance in connection with any real property which is or was at any time owned, leased or occupied by it on which it has conducted any activity where failure to do so could reasonably be expected to have a Material Adverse Effect.

**18.19 Environmental Claims**

To the best of its knowledge and belief no Environmental Claim has been commenced or is threatened against it where that claim could reasonably be expected, if determined against the Obligor, to have a Material Adverse Effect.

**18.20 Taxation**

- (a) It has duly and punctually paid and discharged all Taxes imposed upon it or its assets within the time period allowed without incurring penalties (except to the extent that (a) payment is being contested in good faith, (b) it has maintained adequate reserves for those Taxes in accordance with the Accounting Principles and (c) payment can be law fully withheld).
- (b) It is not overdue in the filing of any Tax returns.
- (c) No claims are being or are reasonably likely to be asserted against it with respect to Taxes which could be reasonably likely to have a Material Adverse Effect.

**18.21 Anti-corruption law**

- (a) The Borrowers have conducted their business in compliance with applicable Anti-Corruption Rules in all material respects and instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.
- (b) Each of the Guarantors has conducted its business in compliance with applicable Anti-Corruption Rules in all material respects and instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.
- (c) None of the Obligor is subject to any action, proceedings, or investigation which relates to the Anti-Corruption Rules applicable to it, where such action, proceedings or investigation would (if adversely determined) have a Material Adverse Effect.

**18.22 Restricted Parties**

None of each Obligor, its subsidiaries and their respective directors, officers, employees, nor to the best of its knowledge, its affiliates and agents nor, to the knowledge of the Obligor, any persons acting on any of their behalf is:

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

**18.23 Improper Acts**

It is not, and has not been, involved in any illegal activities in relation to drugs, terrorism or money laundering.

**18.24 Prohibited Payments and Anti-Corruption**

- (a) Neither it nor any of its Subsidiaries, directors, officers, employees or agents or, to the best of its knowledge, any affiliate, or their officers, employees or agents, has:
  - (i) made or provided, directly or indirectly, any Prohibited Payment to, or for the benefit of, any public authority (or to any official, officer, director, agent or key employee of, or other person with management responsibilities in, any

public authority), in connection with the Borrowing Base Assets or any of the Finance Documents to which it is party; or

- (ii) otherwise engaged in any activity or conduct which would violate any Anti-Corruption Rules in any applicable jurisdiction.
- (b) Each party listed in paragraph (a) above has instituted and maintains policies and procedures designed to prevent violation of such laws, regulations and rules.

#### 18.25 **Sanctions**

- (a) Each Obligor has (and has procured that each of its Subsidiaries have) complied with applicable Sanctions and has maintained in effect and enforced policies and procedures designed to ensure such compliance.
- (b) Subject to paragraph (c) below, neither it nor any Obligor nor any director or officer (or to the best of its knowledge) any agent, employee or Affiliate of any Obligor, is currently a designated target of, or is otherwise a subject of, Sanctions.
- (c) The representation in paragraph (b) shall be given by and apply to each Obligor for the benefit of each Finance Party only to the extent that giving, complying with or receiving the benefit of (as applicable) such representation does not result in any violation of (i) the Blocking Regulation or (ii) any similar and applicable anti-boycott statute as adopted in the European Union.
- (d) The Borrowers are not (i) owned or controlled by a person that is subject to any Sanctions or (ii) located, organised or resident in a country or territory that is the subject of Sanctions (as of the date of this Agreement, comprising Crimea, Cuba, Iran, North Korea, Sudan and Syria, but subject to such changes as take place over time) (each a “**Sanctioned Country**”).

#### 18.26 **No Financial Indebtedness**

It has not incurred any Financial Indebtedness other than Permitted Indebtedness.

#### 18.27 **Liens**

There is no Security over the Equity Interests or over any of the Borrowers’ assets or property that are subject to the Transaction Security, other than Permitted Security.

#### 18.28 **Ranking**

Subject to the Legal Reservations, except as provided in a Finance Document and save for the Existing Security Documents which will be discharged on the Existing Security Release Date, the Transaction Security has or will have first ranking priority and the assets over which Transaction Security is granted are not subject to any prior ranking or pari passu ranking Security.

#### 18.29 **Private and commercial acts**

Its execution of the Finance Documents constitutes, and its exercise of its rights and performance of its obligations under this Agreement constitutes, private and commercial acts done and performed for private and commercial purposes.

### 18.30 **Repetition**

The Repeating Representations are deemed to be made by the Obligors (by reference to the facts and circumstances then existing) on the date of each Utilisation Request, on each Utilisation Date and on the first day of each Interest Period.

## 19. **INFORMATION UNDERTAKINGS**

The undertakings in this Clause 19 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Loan Commitment is in force.

### 19.1 **Financial statements and Budget**

- (a) Within 30 Business Days of the end of each calendar quarter, PetroVida shall supply to the Facility Agent (in sufficient copies for each Lender, if the Facility Agent so requests) its unaudited financial statements (balance sheet and income statement) for such calendar quarter.
- (b) Not later than 90 days following each 31<sup>st</sup> December the Parent shall supply to the Facility Agent (in sufficient copies for each Lender, if the Facility Agent so requests) its audited consolidated financial statements (balance sheet and profit and loss account) for the 12 months ending on such 31<sup>st</sup> December.
- (c) Not later than 60 days following each 30<sup>th</sup> June the Parent shall supply to the Facility Agent (in sufficient copies for each Lender, if the Facility Agent so requests) its unaudited consolidated financial statements (balance sheet and profit and loss account) for the 6 months ending on such 30<sup>th</sup> June.
- (d) Not later than each 15<sup>th</sup> January the Parent shall supply to the Facility Agent (in sufficient copies for each Lender, if the Facility Agent so requests) the Group budget for the calendar year in which such 15<sup>th</sup> January falls.

### 19.2 **Compliance Certificate**

- (a) On each date on which a Compliance Certificate is required to be provided in accordance with Clauses 20.10 (*Acquisitions*), 20.21 (*FLCR*), 20.22 (*Net Debt to Adjusted EBITDAX*), or Clause 20.23 (*Group Liquidity Test*), the Obligors' Agent shall supply to the Facility Agent a Compliance Certificate setting out (in reasonable detail) computations as to compliance with the requirements of such provisions as at the applicable date.
- (b) Each Compliance Certificate shall be signed by a duly authorised director of the Obligors' Agent.

### 19.3 **Information: miscellaneous**

The Obligors' Agent shall supply to the Facility Agent (in sufficient copies for all the Lenders, if the Facility Agent so requests):

- (a) all documents dispatched by any Obligor to its shareholders (or any class of them) or its creditors generally at the same time as they are dispatched;
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any

Obligor (or against its directors), and which could reasonably be expected to have a Material Adverse Effect;

- (c) promptly upon becoming aware of them, the details of any judgment or order of a court, arbitral body or agency which is made against any Obligor, and which could reasonably be expected to have a Material Adverse Effect;
- (d) within 10 Business Days of the end of each calendar quarter, its total hedged volumes and on all Treasury Transactions under Hedging Agreements then current and outstanding;
- (e) details of any claim, action, suit, proceedings or investigations against each Obligor with respect to Sanctions by any Sanctions Authority and details of any material claim, action, suit, proceedings or investigations against each Obligor in respect of Anti-Corruption Rules (in each case, on becoming aware of them, and to the extent permitted by law)
- (f) written notice of any business or transaction undertaking by any Obligor involving (directly or indirectly) any country or territory that, at the time of such business or transaction, is the subject of Sanctions, or that otherwise involves a Restricted Party, to the extent possible in advance of, and in any event promptly upon, that Obligor commencing such business or transaction, together with sufficient details of such business or transaction as a Lender may require to satisfy any Sanctions-related laws, regulations or requirements or any Anti-Corruption Rules to which that Lender is subject; and
- (g) promptly, such further information regarding the financial condition, business and operations of any Obligor as the Facility Agent may reasonably request and disclosure of which would not breach any applicable law or regulation.

#### 19.4 Cash Sweep Amount

- (a) In the period beginning on the date falling five Business Days prior to each Cash Sweep Calculation Date and ending on that Cash Sweep Calculation Date (inclusive), the Parent shall (on behalf of the Borrowers) supply to the Modelling Bank an updated Financial Model showing the calculation of the applicable Cash Sweep Amount for the Cash Sweep Date following such Cash Sweep Calculation Date (the “**Calculation**”). The Modelling Bank and the Parent (each, acting reasonably) shall consult and work in good faith to mutually agree the Cash Sweep Amount for the relevant Cash Sweep Date and the Modelling Bank shall give notice to the Facility Agent of such Cash Sweep Amount.
- (b) If the Modelling Bank and the Parent fail to mutually agree the Cash Sweep Amount on or prior to the relevant Cash Sweep Date, the Modelling Bank shall notify the Parent and the Facility Agent of its proposed Cash Sweep Amount (calculated in accordance with Clause 7.3 (*Mandatory Prepayment - Cash Sweep*) as applicable, acting reasonably) and the amount set out in such notification shall be deemed to be the Cash Sweep Amount for the purposes of that Cash Sweep Date. If the Modelling Bank fails to deliver such notice prior to the Cash Sweep Date, the Cash Sweep Amount shall be as set out in the Calculation.

#### 19.5 Notification of default

- (a) Each Obligor shall notify the Facility Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.

- (b) Promptly upon a request by the Facility Agent, the Parent shall supply to the Facility Agent a certificate signed by a duly authorised, director on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

#### 19.6 “Know your customer” checks

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

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

- (b) Each Lender shall promptly upon the request of the Facility Agent or any Obligor supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Facility Agent (for itself) or such Obligor (as applicable) in order for the Facility Agent or such Obligor (as applicable) 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.

#### 19.7 POG Banking Case and Financial Model

- (a) Prior to the POG Final Discharge Date, the Parent shall supply to the Facility Agent the then-current POG Banking Case promptly after the same is determined under the POG RBL Facility Agreement.
- (b) The Financial Model shall be updated by the Parent and the Modelling Bank (each acting reasonably) as of each Cash Sweep Calculation Date. If the Modelling Bank and the Parent fail to agree upon any updates to the Financial Model, such disputed updates shall be determined by the Modelling Bank (acting reasonably and in a manner consistent with previous determinations of the Financial Model).
- (c) Until the adoption of the first updated Financial Model in accordance with this Clause 19.7 (*POG Banking Case and Financial Model*), the Original Financial Model shall be the then-current Financial Model for the purposes of this Agreement.

## 19.8 **DAC6**

Each Borrower shall supply to the Facility Agent (in sufficient copies for all the Lender, if the Facility Agent so requests):

- (a) promptly upon the making of such analysis or the obtaining of such advice, any analysis made or advice obtained on whether any transaction contemplated by the Finance Documents or any transaction carried out (or to be carried out) in connection with any transaction contemplated by the Finance Documents contains a hallmark as set out in Annex IV of DAC6; and
- (b) promptly upon the making of such reporting and to the extent permitted by applicable law and regulation, any reporting made to any governmental or taxation authority by or, where it is aware of the same, on behalf of any member of the Group or by any adviser to such member of the Group in relation to DAC6 or any law or regulation which implements DAC6 and any unique identification number issued by any governmental or taxation authority to which any such report has been made (if available).

## 20. **GENERAL UNDERTAKINGS**

The undertakings in this Clause 20 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Loan Commitment is in force.

### 20.1 **Authorisations**

Each Obligor shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply certified copies to the Facility Agent of,

any Authorisation required under any law or regulation of its jurisdiction of incorporation to enable it to perform its obligations under the Finance Documents and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of any Finance Document.

### 20.2 **Compliance with laws**

Each Obligor shall (i) comply in all respects with all laws to which it may be subject and (ii) comply with all material contractual payment obligations with third parties, if in each case failure to comply has or could reasonably be expected to have a Material Adverse Effect.

### 20.3 **Arm's length basis**

The Obligors shall not enter into any transaction with any person other than with another member of the Group except on arm's length terms.

### 20.4 **No additional Financial Indebtedness**

PetroVida shall not incur any Financial Indebtedness other than Permitted Indebtedness.

20.5 **No liens**

- (a) No Obligor shall create or permit to subsist any Security or Quasi Security in respect of its assets that are the subject of any Transaction Security other than Permitted Security.
- (b) PetroVida shall not grant or permit to subsist any Security or Quasi Security over all or any part of the Equity Interest or over its right to receive the POG Distributions.

20.6 **Distribution Collection Account**

- (a) The Obligors shall procure that the Distribution Collection Account is maintained and operated with the Account Bank in accordance with this Agreement.
- (b) None of:
  - (i) the existence of the Distribution Collection Account;
  - (ii) the insufficiency of funds in it;
  - (iii) the restrictions on the withdrawal of funds from them contained in any Finance Document; or
  - (iv) the inability to apply any funds in any of them towards the relevant payment,shall affect the obligation of an Obligor to make all the payments required to be made to the Finance Parties or any of them on the respective due dates for payment in accordance with the Finance Documents.
- (c) The Obligors shall cause:
  - (i) all POG Distributions received by PetroVida following the first Utilisation Date; and
  - (ii) if the Parent elects to apply any Received Disposal Proceeds on a Cash Sweep Date pursuant to Clause 7.2(b) (*Mandatory Prepayment – Change of Control*), the amount of such Received Disposal Proceeds,to be paid directly into the Distribution Collection Account or immediately transferred into the Distribution Collection Account upon receipt and may not transfer any amounts out of the Distribution Collection Account unless permitted by Clause 20.6(d) (*Distribution Collection Account*) below.
- (d) Subject to paragraph (e) below, PetroVida may transfer funds out of the Distribution Collection Account in the following order of priority:
  - (i) **first;** (A) on each Cash Sweep Date, for the payment of (i) the applicable Cash Sweep Amount, and (ii) amounts of Received Disposal Proceeds (if the Parent elects to apply any Received Disposal Proceeds on a Cash Sweep Date pursuant to Clause 7.2(b) (*Mandatory Prepayment – Change of Control*)) (B) on any other date on which any amounts of principal, interest, fees, costs, expenses and other amounts become due under the Finance Documents, such amounts on the date on which they fall due; and

- (ii) *thereafter*, the remaining balance of the Distribution Collection Account at its discretion.
- (e) Upon being notified of an Event of Default, the Facility Agent shall promptly notify the Account Bank in writing of the occurrence of an Event of Default. Notwithstanding any other provision of any Finance Document, upon the occurrence of an Event of Default that is continuing:
  - (i) no amount may be withdrawn by or on behalf of an Obligor from the Distribution Collection Accounts (other than to make payments of amounts falling due under the Finance Documents); and
  - (ii) the Security Agent will be entitled (but not obliged) without prior notice to, or the consent of, any Obligor to be the sole signatory on the Distribution Collection Account.

#### 20.7 **No Sale or disposal of the Parent's Securities or the Equity Interest**

- (a) The Parent shall not sell or dispose of the Parent's Securities other than for fair market value to be paid in cash upon such sale or disposal (in which case Clause 7.2(b) (*Mandatory Prepayment – Change of Control*) shall apply).
- (b) PetroVida will not dispose of all or any part of the Equity Interest other than a disposal of the entirety of the Equity Interest (in which case Clause 7.2(a) (*Mandatory Prepayment – Change of Control*) shall apply).

#### 20.8 **Merger**

The Borrowers shall not enter into any amalgamation, demerger, merger or corporate reconstruction without the consent of the Instructing Group (such consent not to be unreasonably withheld).

#### 20.9 **Change of business**

Each Borrower shall ensure that no substantial change is made to the general nature of its business from that carried on at the date of this Agreement, other than those which are necessary for the performance of its obligations or otherwise contemplated under the Finance Documents.

#### 20.10 **Acquisitions**

- (a) PetroVida shall not make any investment or acquisition of any company, person, shares, securities, business or undertaking, oil or gas interests, oil or gas licence, or, in each case, any interest in them.
- (b) Subject to paragraph (a) above, the Parent shall procure that no acquisition of any person, shares, securities, business or undertaking, assets, equipment, oil or gas interests, oil or gas licence, or, in each case, any interest in them other than is made by any member of the Group save where:
  - (i) the consideration for the acquisition does not exceed [REDACTED] (or the equivalent amount in one or more currencies) per acquisition and [REDACTED] (or the equivalent amount in one or more currencies) in aggregate with all acquisitions until the Final Maturity Date; or

- (ii) no later than the date of the proposed acquisition, the Parent delivers to the Facility Agent a Compliance Certificate confirming compliance with a Group liquidity test calculated in accordance with Clause 20.23 (*Group Liquidity Test*) for the period ending 12 months after the planned date of the acquisition (the “**Forecast Period**”), showing that (based on reasonable management assumptions) on a consolidated basis the sources of funds for the Group exceed the uses of funds in each quarterly period in the Forecast Period, taking into account such proposed acquisition.

#### 20.11 **Environmental and Social Compliance**

The Borrowers shall comply in all material respects with all Environmental Law and Social Law and obtain and maintain any Environmental Permits and take all reasonable steps in anticipation of known or expected future changes to or obligations under the same where, in each case, failure to do might reasonably be expected to have a Material Adverse Effect.

#### 20.12 **Environmental Claims**

Each Borrower shall inform the Facility Agent in writing as soon as reasonably practicable upon becoming aware of:

- (a) any Environmental Claim that has been commenced or (to the best of its knowledge and belief) is threatened against it; or
- (b) any facts or circumstances which will or are reasonably likely to result in any Environmental Claim being commenced or threatened against it,

where the claim is reasonably likely to have a Material Adverse Effect.

#### 20.13 **Members’ Agreement**

PetroVida will not agree to any amendment to the Members’ Agreement that could reasonably be expected to have an adverse effect on the ability of the Borrowers to comply with their obligations under this Agreement save as otherwise agreed by the Instructing Group (such agreement not to be unreasonably withheld or delayed).

#### 20.14 **Further assurances**

The Obligors shall promptly do all such acts or execute all such documents including assignments, charges, notices and instructions) as the Facility Agent or the Security Agent may reasonably specify (and in such form as the Facility Agent or the Security Agent may reasonably require):

- (a) to perfect the Transaction Security created or intended to be created under or evidenced by the Transaction Security Documents (which may include the execution of a charge, assignment, or other Security over all or any of the assets which are, or are intended to be, Transaction Security) or for the exercise of any rights, powers and remedies of the Finance Parties provided by or pursuant to the Finance Documents or by law; and/or
- (b) to facilitate the realisation of the assets which are, or are intended to be, Transaction Security.

**20.15 Anti-corruption law**

- (a) The Obligors shall not directly or indirectly use the proceeds of the Facility for any purpose which would breach Anti-Corruption Rules in any applicable jurisdiction.
- (b) Each Obligor shall:
  - (i) conduct its businesses in compliance with applicable Anti-Corruption Rules in all material respects; and
  - (ii) maintain policies and procedures designed to promote and achieve compliance with such laws.

**20.16 Taxation**

- (a) Each Borrower shall 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 failure to pay those Taxes does not have or is not reasonably likely to have a Material Adverse Effect:
  - (i) such payment is being contested in good faith; or
  - (ii) adequate reserves 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 Lenders under Clause 19.1 (*Financial statements and Budget*); and
  - (iii) such payment can be lawfully withheld.
- (b) No Borrower shall change its residence for Tax purposes without the consent of the Facility Agent (such consent not to be unreasonably withheld).

**20.17 Insurance**

- (a) Each Borrower shall maintain insurances on and in relation to its business and assets against those risks and to the extent as is usual for companies incorporated in its jurisdiction of incorporation carrying on the same or substantially similar business.
- (b) All insurances must be with reputable independent insurance companies or underwriters.

**20.18 Pari passu ranking**

Each Obligor shall ensure that at all times any unsecured and unsubordinated claims of the Lenders against it under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies.

**20.19 Access**

If a Default is continuing or the Lenders reasonably suspect a Default is continuing or may occur, the Borrowers shall (not more than once in every financial year) permit the Lenders and/or accountants or other professional advisers and contractors of the Lenders free access at all reasonable times and on reasonable notice at the risk and cost of the Borrowers to (a) the

premises, assets, books, accounts and records of the Borrowers and (b) meet and discuss matters with management of the Borrowers.

#### 20.20 Sanctions

- (a) Subject to paragraph (b) below, the Borrowers shall not directly or indirectly, use the proceeds of the Loans (or lend, contribute or otherwise make available such proceeds to any person):
  - (i) to fund or facilitate any activities or business of or with (or otherwise make funds available to or for the benefit of) any person who is the subject of Sanctions or in a Sanctioned Country, in each case at the time of such funding or facilitation; or
  - (ii) in any manner or for any purpose that is prohibited by Sanctions applicable to a Borrower or would constitute Sanctionable Activity by, any Party participating in the transactions contemplated by this agreement; or
  - (iii) in a manner that could reasonably be expected to result in a violation of Sanctions by any Party.
- (b) The undertaking in paragraph (a) above shall be given and apply for the benefit of the Lenders only to the extent that giving, complying with or receiving the benefit of (as applicable) such undertaking does not result in any violation of the Blocking Regulation or any similar and applicable anti-boycott statute as adopted in the European Union.

#### 20.21 FLCR

- (a) The Borrowers shall procure that as at each Calculation Date commencing on 30 September 2021 the FLCR is not less than 1.1:1.
- (b) No later than 10 Business Days after each such Calculation Date, the Parent shall deliver to the Facility Agent a Compliance Certificate including its calculation of the FLCR with reasonable supporting detail.

#### 20.22 Net Debt to Adjusted EBITDAX

- (a) The Parent shall ensure that the Total Net Debt to Adjusted EBITDAX Ratio on 31 December 2021 and thereafter each 30 June and 31 December, is no greater than 3.0:1.
- (b) The financial covenant set out in Clause 20.22(a) shall be calculated in accordance with generally accepted accounting principles as used in the preparation of the consolidated financial statements of the Group and shall be tested by reference to the annual and half yearly consolidated financial statements of the Group delivered pursuant to Clause 19.1 (*Financial statements and Budget*).
- (c) The Parent shall deliver to the Facility Agent a Compliance Certificate including its calculation of the Total Net Debt to Adjusted EBITDAX Ratio with reasonable supporting detail at the same time as its annual and semi-annual accounts delivered pursuant to Clause 19.1 (*Financial statements and Budget*).

## 20.23 Group Liquidity Test

- (a) No later than 20 Business Days following each Calculation Date commencing on 30 September 2021 the Parent shall deliver to the Facility Agent in sufficient copies for all the Lenders (in written or electronic form), a Compliance Certificate setting out the liquidity projection for the Group in a format satisfactory to the Facility Agent (acting reasonably), which shall demonstrate on a consolidated basis during each of the four successive periods of three Months commencing on such Calculation Date (each such three Month period being a “**Liquidity Test Period**”), taking into account the items referred to in paragraph (b) below, that there are, or will be sufficient funds, available to the Group to meet all expenditure of the Group, of the type described in paragraph (b) below, to be incurred during each of the next four Liquidity Test Periods as they fall due.
- (b) For the purposes of the projection referred to in paragraph (a) above and in respect of any Liquidity Test Period:
  - (i) *Sources* – the Obligors may take into account any of the following, in each case based on reasonable management assumptions:
    - (A) forecast available cash flows due to be received in such Liquidity Test Period using management’s reasonable assumptions (including (i) Petroleum prices reflecting the higher of (x) the mid-point between the Petroleum price assumptions employed in the then-current POG Banking Case (using hedged prices where such prices are taken into account in the POG Banking Case) and the forward curve and (y) 90% of the forward curve; and (ii) any amounts to be received by the Group);
    - (B) the actual or forecast Cash balance (including Cash Equivalent Investments) of the Group on the first day of the Liquidity Test Period;
    - (C) the aggregate Available Commitments under the Facility, in that period and any other undrawn and uncanceled amount available under any other committed credit facility of the Group until the maturity of such facility;
    - (D) proceeds under any executed and binding sale and purchase agreement in the context of a committed disposal or any binding capital contribution commitment in each case due to be received by a member of the Group in such Liquidity Test Period; and
  - (ii) *Uses* – the Obligors shall take into account the following, in each case based on reasonable management assumptions:
    - (A) any committed exploration and appraisal costs projected to be payable in such Liquidity Test Period;
    - (B) any committed development costs projected to be payable in such Liquidity Test Period;
    - (C) any committed payment obligations under a sale and purchase agreement in the context of an acquisition or otherwise projected to be payable in such Liquidity Test Period;

- (D) any dividends or other shareholder payments projected to be payable in cash by the Parent in such Liquidity Test Period;
- (E) any principal, interest, fee, commission and other amounts which are projected to be due and payable by the Obligors in such Liquidity Test Period under or in respect of the Finance Documents (including any hedging costs that are due and payable under any Hedging Agreement);
- (F) any other committed liability falling due in such Liquidity Test Period including any guarantee, indemnity or other contingent liability which is expected by the Obligors, acting reasonably, to entail a cash outflow from the Group in such Liquidity Test Period.

**20.24 Hedging Policy**

Each Obligor may, from time to time and at its option, enter into a Treasury Transaction in accordance with the Hedging Policy.

**20.25 Existing Security Release Date**

The Obligors shall use their best efforts to procure that the Existing Security Release Date occurs on the first Utilisation Date and in any event as soon as possible following the repayment of the Existing Facility.

**20.26 Conditions Subsequent**

- (a) Each Obligor shall comply with all obligations in any Transaction Security Document to which it is party for the purpose of the creation, perfection, protection or maintenance of any Security created or purported to be created by an Transaction Security Document.
- (b) The Obligors shall procure that each Transaction Security Document grants fully perfected first ranking security in favour of the Security Agent over the assets that are subject to such Transaction Security Document by no later than the date falling 60 days after the first Utilisation Date.
- (c) By no later than the date falling 60 days after the first Utilisation Date, the Obligors shall deliver a legal opinion of Bennett Jones, legal advisers to the Obligors in Canada confirming the creation, perfection and priority of the Original Lenders' Security interests under the Canadian Parent's Securities Pledge Agreement, including customary opinions as to perfection by control in the applicable Parent's Securities, in form and substance satisfactory to the Original Lenders, acting reasonably.

**21. EVENTS OF DEFAULT**

Each of the events or circumstances set out in this Clause 21 is an Event of Default.

**21.1 Non-payment**

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

- (a) administrative or technical error; or

- (b) a Disruption Event,
- and, in each case, is remedied within three Business Days.

#### 21.2 Performance

- (a) An Obligor does not comply with any provision of Clause 20.20 (*Sanctions*).
- (b) An Obligor does not comply with any other provision of the Finance Documents (other than those obligations and/or provisions which if not complied with would result in an Event of Default under another sub-Clause or paragraph of this Clause 21), provided that no event of default under this paragraph (b) shall be deemed to occur if the default in question is capable of remedy and is remedied within 15 Business Days of the earlier of:
  - (i) the Facility Agent giving notice to the Obligors' Agent; and
  - (ii) an Obligor becoming aware of the failure to comply.

#### 21.3 Breach of Representations and Warranties

Any representation, certification or statement made or deemed to be made by an Obligor in any Finance Document, or which is contained in any certificate, statement, notice or other document provided by, or on behalf of, any 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 unless the circumstances giving rise to, and the effects of, such misrepresentation:

- (a) do not relate to the representations made in respect of Clause 18.9 (*Insolvency*), Clause 18.21 (*Anti-Corruption Laws*), Clause 18.22 (*Restricted Parties*) and (as it relates to the Events of Default under Clauses 21.10 (*Insolvency*), 21.11 (*Insolvency Proceedings*) and/or Clause 21.12 (*Creditors' Process*)) Clause 18.11 (*No Default*); and
- (b) is capable of remedy; and
- (c) is remedied within 15 Business Days of the earlier of:
  - (i) the Facility Agent giving notice to the Borrower; and
  - (ii) any Obligor becoming aware of the failure to comply.

#### 21.4 Cross-Defaults

- (a) Any Financial Indebtedness of any Obligor is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of any Obligor is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any commitment for any Financial Indebtedness of any Obligor is cancelled or suspended by a creditor of that Obligor as a result of an event of default (however described).

- (d) Any creditor of any Obligor becomes entitled to declare any Financial Indebtedness of that Obligor due and payable prior to its specified maturity as a result of an event of default (however described).
- (e) No Event of Default will occur under Clauses 21.4(a) to 21.4(d) (*Cross-Defaults*) if the aggregate amount of such Financial Indebtedness or commitment for Financial Indebtedness is:
  - (i) in respect of PetroVida, less than U.S.\$2,500,000.00 (or its equivalent in any other currency or currencies); or
  - (ii) in respect of any other Obligor, less than U.S.\$25,000,000.00 (or its equivalent in any other currency or currencies).

**21.5 Judgment and Enforcement Proceedings**

Any judgment or order is rendered against any of the Obligors and (i) upon which enforcement proceedings have commenced by any creditor (including for the enforcement of any Transaction Security), (ii) which has a Material Adverse Effect, and (iii) the enforcement proceedings with respect to which are not challenged by the Obligors within 15 Business Days.

**21.6 Legal Proceedings**

Any action, suit or proceeding by or before any arbitrator or Governmental Authority is filed or commenced against an Obligor that could reasonably be expected to result in a Material Adverse Effect.

**21.7 Invalidity or material impairment of any of the Finance Documents**

Subject to the Legal Reservations, any obligation or obligations of any Obligor under any of the Finance Documents, ceases to be legal, valid, binding or enforceable or any of the Finance Documents is materially impaired or cease to be in full force and effect.

**21.8 Security interest in Transaction Security not being valid or perfected**

Any failure to (i) subject to the Legal Reservations, create or maintain a valid and enforceable security interest under the Transaction Security or (ii) perfect and maintain the priority of such security interest in accordance with the terms of the Transaction Security Documents.

**21.9 Material Adverse Effect**

Any event or circumstance occurs that results in a Material Adverse Effect.

**21.10 Insolvency**

- (a) Any Obligor:
  - (i) is unable to pay or admits inability to pay its debts as they become due;
  - (ii) suspends making payments on any of its debts; or
  - (iii) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors generally with a view to rescheduling any of its indebtedness.
- (b) A moratorium is declared in respect of any indebtedness of any Obligor.

### 21.11 **Insolvency proceedings**

- (a) Any Obligor:
  - (i) files for or has filed against it any insolvency, winding-up, receivership, judicial or extrajudicial reorganization or any other similar action or legal proceeding that affects the rights of creditors in general and such proceeding is not contested by the entity entitled to contest such proceeding within the applicable legal deadline;
  - (ii) under the Bankruptcy and Insolvency Act (Canada), makes an assignment of its property for the general benefit of its creditors, or makes a proposal (or file a notice of its intention to do so) under such Act;
  - (iii) consents to or does not contest, by means of defence or otherwise, the filing of an insolvency bankruptcy, winding-up, receivership or reorganization proceeding against it; or
  - (iv) suffers any other form of judicial intervention similar to that described above (or any proceedings similar in purpose or effect in any jurisdiction).
- (b) Any corporate action or legal proceedings is taken in relation to:
  - (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Obligor .
  - (ii) a composition, compromise, assignment or arrangement with any creditor of any Obligor;
  - (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of any Obligor; or
  - (iv) enforcement of any Security over any assets of any Obligor,
  - (v) or any analogous procedure or step is taken in any jurisdiction.
- (c) This Clause 21.11 shall not apply to any winding-up petition or other similar process which is frivolous or vexatious and is discharged, stayed or dismissed within thirty (30) days of commencement.

### 21.12 **Creditors' Process**

Any expropriation, attachment, sequestration, execution or any analogous process in any jurisdiction affects any asset or assets of an Obligor that could reasonably be expected to result in a Material Adverse Effect.

### 21.13 **Litigation**

Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened in relation to the Finance Documents or the transactions contemplated in the Finance Documents against a Borrower or its assets which could reasonably be expected to have a Material Adverse Effect.

**21.14 Failure to comply with applicable laws**

A Borrower fails to comply with any applicable laws, rules and regulations applicable to it, which non-compliance is reasonably likely to have a Material Adverse Effect.

**21.15 Nationalisation**

- (a) All or substantially all of the assets of an Obligor are nationalised, expropriated or otherwise required to be transferred to any Governmental Authority; or
- (b) the authority or ability of an Obligor to conduct its business is limited or wholly or substantially hindered by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any Governmental Authority or other person in relation to all or substantially all of an Obligor's assets.

**21.16 Repudiation and rescission of agreements**

An Obligor rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document.

**21.17 Tax Status**

A notice under Article 36 Tax Collection Act (*Invorderingswet 1990*) has been given by any member of the Group.

**21.18 POG Licences**

A POG Licence is (a) revoked, or (b) suspended for a continuous period of more than six months.

**22. ACCELERATION**

On and at any time after the occurrence of an Event of Default, the Facility Agent may, and shall if so directed by the Instructing Group:

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

**23. CHANGES TO THE LENDERS**

**23.1 Assignments and Transfers by the Lenders**

Subject to Clause 23 each Lender (the "Existing Lender") may:

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

under the Finance Documents, in whole or in part, to another Lender, to any Affiliate of a Lender, to another bank, insurer, reinsurer, financial institution or to the extent applicable, any other licensed entity subject to the terms of book II of the French Mutual Societies Code (*Code de la Mutualité*) or to a securitization vehicle, trust, fund, or other entity (including state entity, federal reserve or central bank) 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**”).

### 23.2 Conditions of assignment or Transfer

- (a) Subject to Clause 23.2(b), an assignment or transfer by an Existing Lender is permitted to the extent that such transfer or assignment represents an amount which is equal to:
  - (i) at least \$5,000,000; or
  - (ii) if lower than \$5,000,000, the total of that Lender’s Loan Commitments.
- (b) An Existing Lender must obtain the consent of the Obligors’ Agent (such consent not to be unreasonably withheld) before it may make an assignment or transfer in accordance with Clause 23.1 (*Assignments and Transfers by the Lenders*) unless the assignment or transfer is:
  - (i) to another Lender or an Affiliate of a Lender; or
  - (ii) made at a time when an Event of Default is continuing.
- (c) The consent of the Obligors to an assignment or transfer must not be unreasonably withheld or delayed. Each Obligor will be deemed to have given its consent ten Business Days after the Existing Lender has supplied, or procured the supply of, such documentation and other evidence as is reasonably requested by such Obligors’ Agent in order for such Obligor 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 assignment or transfer, unless consent is expressly refused by such Obligor within that time.
- (d) An assignment will only be effective on:
  - (i) receipt by the Facility Agent 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 as it would have been under if it had been an Original Lender;
  - (ii) 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 shall promptly notify to the Existing Lender and the New Lender; and
  - (iii) performance by the Obligors of all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to such transfer or assignment to a New Lender, the completion of which the Borrowers shall promptly notify to the Existing Lender and the New Lender.

The Obligors shall carry out such checks promptly, acting reasonably and in good faith.

- (e) A transfer will only be effective if the procedure set out in Clause 23.5 (*Procedure for transfer*) is complied with.
- (f) If:
  - (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or any Lender changes its Loan Office; and
  - (ii) as a result of circumstances existing at the date the assignment, transfer or change of Loan Office (as applicable) occurs, an Obligor would be obliged to make a payment or increased payment to the New Lender or Lender acting through its new Loan Office under Clause 12 (*Tax Gross-Up and Indemnities*) or Clause 13 (*Increased Costs*),

then the New Lender (or Lender acting through a new Loan Office) is only entitled to receive payment under those Clauses to the same extent as the Existing Lender (or Lender acting through its previous Loan Office, if applicable) would have been if the assignment, transfer or change in Loan Office (if applicable) had not occurred.

- (g) If at the time of assignment or transfer by a Lender:
  - (i)
    - (A) the European Commission has not yet published a delegated act clarifying the definition of credit institution and the term “public” (as referred to in article 4.1(1) of the Capital Requirements Regulation (EU/575/2013)); or
    - (B) no interpretation is available yet from a competent authority of the term “public” (as referred to in article 4.1(1) of the Capital Requirements Regulation (EU/575/2013)); and
    - (C) the assignment or transfer does not include an amount outstanding from PetroVida of at least EUR 100,000 (or its equivalent in other currencies) (or such amount as may be required from time to time under the Dutch Financial Markets Supervision Act (*Wet op het financieel toezicht*)),

the New Lender shall confirm that it is a professional market party (*professionele marktpartij*) within the meaning of that act; or

- (ii)
  - (A) the European Commission has published a delegated act clarifying the definition of credit institution and the term “public” (as referred to in article 4.1(1) of the Capital Requirements Regulation (EU/575/2013));
  - (B) an interpretation is available from a competent authority of the term “public” (as referred to in article 4.1(1) of the Capital Requirements Regulation (EU/575/2013)),

the New Lender shall confirm that it is not to be considered part of the public on the basis of the delegated act or interpretation.

- (h) 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.

### 23.3 Assignment or transfer fee

Other than a New Lender which is an Existing Lender and subject to the terms of the Fee Letter referred to in Clause 11.2 (*Structuring and Funding fees*), the New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Agent (for its own account) a fee of U.S.\$3,500.

### 23.4 Limitation of responsibility of the Lenders

- (a) Unless expressly agreed to the contrary, no Lenders make any representation or warranty nor assumes any responsibility to a New Lender for:
  - (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;
  - (ii) the financial condition of the Obligors;
  - (iii) the performance and observance by any Obligor of its obligations under the Finance Documents or any other documents; or
  - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,and any representations or warranties implied by law are excluded.
- (b) Each New Lender confirms to the Existing Lender and the other Finance Parties that it:
  - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of the Obligors 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 Lenders in connection with any Finance Document; and
  - (ii) will continue to make its own independent appraisal of the creditworthiness of the Obligors and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Loan Commitment is in force.
- (c) Nothing in any Finance Document obliges any Lender to:
  - (i) accept a re-assignment from a New Lender of any of the rights assigned under this Clause 23.4(c); or

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

### 23.5 Procedure for transfer

- (a) Subject to the conditions set out in Clause 23.2 (*Conditions of assignment*) a transfer is effected in accordance with Clause 23.5(c) (*Procedure for transfer*) below 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 shall, subject to paragraph 23.5(b) (*Procedure for transfer*) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate.
- (b) The Facility Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied that it and the Obligors have 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.
- (c) On the Transfer Date:
  - (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents and in respect of the Transaction Security each of the Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and in respect of the Transaction Security and their respective rights against one another under the Finance Documents and in respect of the Transaction Security shall be cancelled (being the “**Discharged Rights and Obligations**”);
  - (ii) each of the Obligors and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Obligor and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;
  - (iii) the Facility Agent, the Modelling Bank, the Security Agent, the New Lender and the other Lenders shall acquire the same rights and assume the same obligations between themselves and in respect of the Transaction Security as they would have acquired and assumed had the New Lender been an Original Lender with the rights, and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Facility Agent, the Modelling Bank, the Security Agent and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and
  - (iv) the New Lender shall become a Party as a “Lender”.

### 23.6 Procedure for assignment

- (a) Subject to the conditions set out in Clause 23.2 (*Conditions of assignment*) an assignment may be effected in accordance with Clause 23.6(c) (*Procedure for assignment*) below 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 shall, subject to Clause 23.6(b) (*Procedure for assignment*) below,

as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.

- (b) The Facility Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.
- (c) On the Transfer Date:
  - (i) the Existing Lender will assign absolutely to the New Lender its rights under the Finance Documents and in respect of the Transaction Security expressed to be the subject of the assignment in the Assignment Agreement;
  - (ii) the Existing Lender will be released from the obligations (the “**Relevant Obligations**”) expressed to be the subject of the release in the Assignment Agreement (and any corresponding obligations by which it is bound in respect of the Transaction Security); and
  - (iii) the New Lender shall become a Party as a “Lender” and will be bound by obligations equivalent to the Relevant Obligations.
- (d) Lenders may utilise procedures other than those set out in this Clause 23.6 to assign their rights under the Finance Documents (but not, without the consent of the relevant Obligor or unless in accordance with Clause 23.5 (*Procedure for transfer*), to obtain a release by that Obligor from the obligations owed to that Obligor by the Lenders nor the assumption of equivalent obligations by a New Lender) *provided that* they comply with the conditions set out in Clause 23.2 (*Conditions of assignment*).

#### 23.7 **Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Parent**

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

#### 23.8 **Security over Lenders’ rights**

In addition to the other rights provided to Lenders under this Clause 23, each Lender may without consulting with or obtaining consent from any Obligor, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

- (a) any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and
- (b) any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities,

except that no such charge, assignment or Security shall:

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

**23.9 Pro rata interest settlement**

- (a) 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 transfer pursuant to Clause 23.5 (*Procedure for transfer*) or any assignment pursuant to Clause 23.6 (*Procedure for assignment*) the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period):
  - (i) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date (“**Accrued Amounts**”) and shall become due and payable to the Existing Lender (without further interest accruing on them) on the last day of the current Interest Period (or, if the Interest Period is longer than six Months, on the next of the dates which falls at six Monthly intervals after the first day of that Interest Period); and
  - (ii) the rights assigned or transferred by the Existing Lender will not include the right to the Accrued Amounts, so that, for the avoidance of doubt:
    - (A) when the Accrued Amounts become payable, those Accrued Amounts will be payable to 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 23.9 have been payable to it on that date, but after deduction of the Accrued Amounts.
- (b) In this Clause 23.8, references to “*Interest Period*” shall be construed to include a reference to any other period for accrual of fees.
- (c) An Existing Lender which retains the right to the Accrued Amounts pursuant to this Clause 23.8 but which does not have a Loan 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.

**24. NO ASSIGNMENT BY THE OBLIGORS**

The Obligors may not, without the prior written consent of all the Lenders, assign any of its respective rights or transfer any of its respective rights or obligations under the Finance Documents.

## 25. **ROLE OF THE FACILITY AGENT AND OTHERS**

### 25.1 **Appointment of the Facility Agent**

- (a) Each of the Lenders appoints the Facility Agent to act as its agent under and in connection with the Finance Documents.
- (b) Each of the Lenders authorises the Facility Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Facility Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

### 25.2 **Instructions**

- (a) The Facility Agent shall:
  - (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Facility Agent in accordance with any instructions given to it by:
    - (A) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision; and
    - (B) in all other cases, the Instructing Group; and
  - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (a) above.
- (b) The Facility Agent shall be entitled to request instructions, or clarification of any instruction, from the Instructing Group (or, if the relevant Finance Document stipulates the matter is a decision for any other Lender or group of Lenders, from that Lender or group of Lenders) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Facility Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
- (c) Save in the case of decisions stipulated to be a matter for any other Lender or group of Lenders under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Facility Agent by the Instructing Group shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties save for the Security Agent.
- (d) The Facility Agent may refrain from acting in accordance with any instructions of any Lender or group of Lenders until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability which it may incur in complying with those instructions.
- (e) In the absence of instructions, the Facility Agent may act (or refrain from acting) as it considers to be in the best interest of the Lenders.
- (f) The Facility Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document. This Clause 25.2(f) shall not apply to any legal or arbitration proceeding

relating to the perfection, preservation or protection of rights under the Transaction Security Documents or enforcement of the Transaction Security or Transaction Security Documents.

### 25.3 **Duties of the Facility Agent**

- (a) The Facility Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) Subject to Clause 25.3(c) (*Duties of the Facility Agent*) below, the Facility Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Facility Agent for that Party by any other Party.
- (c) Without prejudice to Clause 23.7 (*Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Parent*), Clause 25.3(b) (*Duties of the Facility Agent*) above shall not apply to any Transfer Certificate, any Assignment Agreement or any Increase Confirmation.
- (d) Except where a Finance Document specifically provides otherwise, the Facility Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (e) 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 shall promptly notify the other Finance Parties.
- (f) 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 the Facility Agent or the Security Agent) under this Agreement, it shall promptly notify the other Finance Parties.
- (g) The Facility Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

### 25.4 **No fiduciary duties**

- (a) Nothing in any Finance Document constitutes the Facility Agent as a trustee or fiduciary of any other person.
- (b) The Facility Agent shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

### 25.5 **Business with the Group**

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

### 25.6 **Rights and discretions**

- (a) The Facility Agent may:
  - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;

- (ii) assume that:
  - (A) any instructions received by it from the Instructing Group, any Lenders or any group of Lenders are duly given in accordance with the terms of the Finance Documents; and
  - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
- (iii) rely on a certificate from any person:
  - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
  - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,

as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Facility Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:
  - (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 21.1 (*Non-payment*));
  - (ii) any right, power, authority or discretion vested in any Party or any group of Lenders has not been exercised; and
  - (iii) any notice or request made by the Parent (other than a Utilisation Request) is made on behalf of and with the consent and knowledge of all the Obligor.
- (c) The Facility Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of Clause 25.6(c) (*Rights and discretions*) above or Clause 25.6(e) (*Rights and discretions*) below, the Facility Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Facility Agent (and so separate from any lawyers instructed by the Lenders) if the Facility Agent in its reasonable opinion deems this to be desirable.
- (e) The Facility Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Facility Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) The Facility Agent may act in relation to the Finance Documents through its officers, employees and agents and the Facility Agent shall not:
  - (i) be liable for any error of judgment made by any such person; or
  - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,

unless such error or such loss was directly caused by the Facility Agent's gross negligence or wilful misconduct.

- (g) Unless a Finance Document expressly provides otherwise the Facility Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.
- (h) Notwithstanding any other provision of any Finance Document to the contrary, the Facility Agent is not obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (i) Notwithstanding any provision of any Finance Document to the contrary, the Facility Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

#### 25.7 **Responsibility for documentation**

The Facility Agent is not responsible or liable for:

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

#### 25.8 **No duty to monitor**

The Facility Agent shall not be bound to enquire:

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

#### 25.9 **Exclusion of liability**

- (a) Without limiting Clause 25.9(b) (*Exclusion of liability*) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Facility Agent, the Facility Agent will not be liable (including, without limitation, for negligence or any other category of liability whatsoever) for:

- (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document or the Transaction Security, unless directly caused by its gross negligence or wilful misconduct;
- (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Finance Document, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document or the Transaction Security; or
- (iii) without prejudice to the generality of paragraphs (i) and (ii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
  - (A) any act, event or circumstance not reasonably within its control; or
  - (B) the general risks of investment in, or the holding of assets in, any jurisdiction,

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

- (b) No Party (other than the Facility Agent), may take any proceedings against any officer, employee or agent of the Facility Agent in respect of any claim it might have against the Facility Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of the Facility Agent may rely on this Clause subject to Clause 1.5 (*Third-party rights*) and the provisions of the Contracts (Rights of Third Parties) Act 1999.
- (c) The Facility Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Facility Agent if the Facility Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Facility Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Facility Agent to carry out:
  - (i) any “know your customer” or other checks in relation to any person; or
  - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Lender or for any Affiliate of any Lender,

on behalf of any Lender and each Lender confirms to the Facility Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Facility Agent.

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

#### 25.10 Lenders' indemnity to the Facility Agent

- (a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Facility Agent, within three Business Days of demand, against any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Facility Agent (otherwise than by reason of the Facility Agent's gross negligence or wilful misconduct) in acting as Facility Agent under the Finance Documents (unless the Facility Agent has been reimbursed by an Obligor pursuant to a Finance Document).
- (b) Subject to Clause 25.10(c) (*Lenders' indemnity to the Facility Agent*) below, the Parent shall immediately on demand reimburse any Lender for any payment that Lender makes to the Facility Agent pursuant to Clause 25.10(a) (*Lenders' indemnity to the Facility Agent*) above.
- (c) Clause 25.10(b) (*Lenders' indemnity to the Facility Agent*) above shall not apply to the extent that the indemnity payment in respect of which a Lender claims reimbursement relates to a liability of the Facility Agent to an Obligor.

#### 25.11 Resignation of the Facility Agent

- (a) The Facility Agent may resign and appoint one of its Affiliates as successor by giving notice to the Lenders and the Parent.
- (b) Alternatively the Facility Agent may resign by giving 30 days' notice to the Lenders and the Parent, in which case the Instructing Group (after consultation with the Obligors' Agent) may appoint a successor Facility Agent.
- (c) If the Instructing Group have not appointed a successor Facility Agent in accordance with Clause 25.11(b) (*Resignation of the Facility Agent*) above within 20 days after notice of resignation was given, the retiring Facility Agent (after consultation with the Parent) may appoint a successor Facility Agent.
- (d) If the Facility Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Facility Agent is entitled to appoint a successor Facility Agent under Clause 25.11(c) (*Resignation of the Facility Agent*) above, the Facility Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Facility Agent to become a party to this Agreement as Facility Agent) agree with the proposed successor Facility Agent amendments to this Clause 25 (*Role of the Facility Agent and Others*) consistent with then current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to the agency fee payable

under this Agreement which are consistent with the successor Facility Agent's normal fee rates and in line with market practice and those amendments will bind the Parties.

- (e) The retiring Facility Agent shall, at its own cost, make available to the successor Facility Agent such documents and records and provide such assistance as the successor Facility Agent may reasonably request for the purposes of performing its functions as Facility Agent under the Finance Documents. The Parent shall, within three Business Days of demand, reimburse the retiring Facility Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
- (f) The Facility Agent's resignation notice shall only take effect upon the appointment of a successor.
- (g) Upon the appointment of a successor, the retiring Facility Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph 25.11(e) (*Resignation of the Facility Agent*) above) but shall remain entitled to the benefit of Clause 14.3 (*Indemnity to the Facility Agent*) and this Clause 25 (*Role of the Facility Agent and Others*) (and any agency fees for the account of the retiring Facility Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (h) The Facility Agent shall resign in accordance with paragraph 25.11(b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Facility Agent pursuant to paragraph 25.11(c) (*Resignation of the Facility Agent*) above) if on or after the date which is three months before the earliest FATCA Application Date relating to any payment to the Facility Agent under the Finance Documents, either:
  - (i) the Facility Agent fails to respond to a request under Clause 12.8 (*FATCA information*) and the Parent or a Lender reasonably believes that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
  - (ii) the information supplied by the Facility Agent pursuant to Clause 12.8 (*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
  - (iii) the Facility Agent notifies the Parent and the Lenders that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

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

#### **25.12 Replacement of the Facility Agent**

- (a) After consultation with the Obligors' Agent, the Instructing Group may, by giving 30 days' notice to the Facility Agent (or, at any time the Facility Agent is an Impaired Facility Agent, by giving any shorter notice determined by the Instructing Group) replace the Facility Agent by appointing a successor Facility Agent.

- (b) The retiring Facility Agent shall (at its own cost if it is an Impaired Facility Agent and otherwise at the expense of the Lenders) make available to the successor Facility Agent such documents and records and provide such assistance as the successor Facility Agent may reasonably request for the purposes of performing its functions as Facility Agent under the Finance Documents.
- (c) The appointment of the successor Facility Agent shall take effect on the date specified in the notice from the Instructing Group to the retiring Facility Agent. As from this date, the retiring Facility Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under Clause 25.12(b) (*Replacement of the Facility Agent*) above) but shall remain entitled to the benefit of Clause 14.3 (*Indemnity to the Facility Agent*) and this Clause 25 (*Role of the Facility Agent and Others*) (and any agency fees for the account of the retiring Facility Agent shall cease to accrue from (and shall be payable on) that date).
- (d) Any successor Facility Agent and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

#### 25.13 Confidentiality

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

#### 25.14 Relationship with the Lenders

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

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

- (b) Any Lender 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 Lender under the Finance Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under Clause 32.4 (*Electronic communication*)) electronic mail address and/or any other information required to enable the transmission of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address (or such other information), department and officer by that Lender for the purposes of Clause 32.2 (*Addresses*) and Clause 32.4(a)(iii)

*(Electronic communication)* and the Facility Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.

#### **25.15 Credit appraisal by the Lenders**

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

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document 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 Finance Document or the Transaction Security;
- (c) whether that Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the Transaction Security or the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;
- (d) the adequacy, accuracy or completeness of any information provided by the Facility Agent any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property.

#### **25.16 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 shall be regarded as having received any amount so deducted.

#### **25.17 Reliance and engagement letters**

Each Finance Party and Finance Party confirms that 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 Facility Agent) the terms of any reliance letter or engagement letters relating to any reports or letters provided by accountants 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.

## 26. THE SECURITY AGENT

### 26.1 Security Agent as trustee

- (a) The Security Agent declares that it holds the Transaction Security on trust for the Finance Parties on the terms contained in this Agreement.
- (b) Each of the Finance Parties authorises the Security Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Security Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

### 26.2 Parallel Debt (Covenant to pay the Security Agent)

- (a) In this Clause 26.2 (*Parallel Debt (Covenant to pay the Security Agent)*):
  - (i) “**Corresponding Debt**” means the Secured Obligations of an Obligor, but excluding its Parallel Debt.
  - (ii) “**Parallel Debt**” means an Obligor’s undertaking pursuant to this Clause 26.2 (*Parallel Debt (Covenant to pay the Security Agent)*).
- (b) Notwithstanding any other provision of this Agreement, each Obligor hereby irrevocably and unconditionally undertakes to pay to the Security Agent an amount equal to the aggregate amount of its Corresponding Debt (as it may exist from time to time) as creditor in its own right and not as representative of the other Finance Parties, sums equal to and in the currency of its Corresponding Debt as and when that Corresponding Debt falls due for payment under the relevant Finance Document.
- (c) The Security Agent shall have its own independent right to demand payment of each Parallel Debt under this Clause 26.2.
- (d) Any amount due and payable by an Obligor to the Security Agent under this Clause 26.2 shall be decreased to the extent that its Corresponding Debt has been irrevocably paid or discharged and the Corresponding Debt shall be decreased to the extent that a Parallel Debt has been irrevocably paid or discharged.

### 26.3 Instructions

- (a) The Security Agent shall:
  - (i) subject to Clauses 26.3(c) and 26.3(d) (*Instructions*) below, exercise or refrain from exercising any right, power, authority or discretion vested in it as Security Agent in accordance with any instructions given to it by the Facility Agent (acting on behalf of the Instructing Group or, where the Finance Documents expressly stipulate, all the Senior Creditors); and
  - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above.
- (b) The Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Facility Agent as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the

Security Agent may refrain from acting unless and until it receives those instructions or that clarification.

- (c) Clause 26.3(a) (*Instructions*) above shall not apply:
  - (i) where a contrary indication appears in this Agreement;
  - (ii) where this Agreement requires the Security Agent to act in a specified manner or to take a specified action;
  - (iii) in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role of Security Agent for the Finance Parties including, without limitation, Clause 26.6 (*No duty to account*) to Clause 26.11 (*Exclusion of liability*), Clause 26.14 (*Confidentiality*) to Clause 26.20 (*Custodians and nominees*) and Clause 26.23 (*Acceptance of title*) to Clause 26.26 (*Powers supplemental*);
  - (iv) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:
    - (A) Clause 31.1 (*Order of Application*); and
    - (B) Clause 31.4 (*Permitted Deductions*).
- (d) If giving effect to instructions given by the Facility Agent (acting on the instructions of the Instructing Group) would (in the Security Agent's opinion) have an effect equivalent to an amendment or waiver which is subject to Clause 28.5 (*Exceptions*), the Security Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Security Agent) whose consent would have been required in respect of that amendment or waiver.
- (e) In exercising any discretion to exercise a right, power or authority under the Finance Documents where either:
  - (i) it has not received any instructions as to the exercise of that discretion; or
  - (ii) the exercise of that discretion is subject to paragraph 26.3(c)(iv) (*Instructions*) above,the Security Agent shall do so having regard to the interests of all the Finance Parties.
- (f) The Security Agent may refrain from acting in accordance with any instructions of the Facility Agent, the Instructing Group or any other group of Senior Creditors until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.
- (g) Without prejudice to the provisions of the remainder of this Clause 26.3 (*Instructions*), in the absence of instructions, the Security Agent may act (or refrain from acting) as it considers in its discretion to be appropriate.
- (h) At any time after receipt by the Security Agent of notice from the Facility Agent directing the Security Agent to exercise all or any of its rights, remedies, powers or discretions under any of the Finance Documents, the Security Agent may, and shall if

so directed by the Facility Agent, take any action as in its sole discretion it thinks fit to enforce the Transaction Security.

- (i) The Finance Parties shall not have any independent power to enforce or have recourse to, any of the Transaction Security or to exercise any right, power, authority or discretion arising under the Security Documents except through the Security Agent.

#### **26.4 Duties of the Security Agent**

- (a) The Security Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) The Security Agent shall promptly forward to the Facility Agent a copy of any document received by the Security Agent from any Obligor under any Finance Document.
- (c) Except where a Finance Document specifically provides otherwise, the Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) If the Security Agent receives notice from a Party referring to any Finance Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Facility Agent.
- (e) The Security Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

#### **26.5 No fiduciary duties to Obligors**

Nothing in this Agreement constitutes the Security Agent as an agent, trustee or fiduciary of any Obligor.

#### **26.6 No duty to account**

The Security Agent shall not be bound to account to any other Finance Party for any sum or the profit element of any sum received by it for its own account.

#### **26.7 Business with the Group**

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

#### **26.8 Rights and discretions**

- (a) The Security Agent may:
  - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
  - (ii) assume that:
    - (A) any instructions received by it from the Facility Agent, any Lenders or any group of Lenders are duly given in accordance with the terms of the Finance Documents;

- (B) unless it has received notice of revocation, that those instructions have not been revoked; and
  - (C) if it receives any instructions to act in relation to the Transaction Security, that all applicable conditions under the Finance Documents for so acting have been satisfied; and
- (iii) rely on a certificate from any person:
  - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
  - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,

as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Security Agent shall be entitled to carry out all dealings with the Lenders through the Facility Agent and may give to the Facility Agent any notice or other communication required to be given by the Security Agent to the Lenders.
- (c) The Security Agent may assume (unless it has received notice to the contrary in its capacity as security trustee for the Finance Parties) that:
  - (i) no Default has occurred;
  - (ii) any right, power, authority or discretion vested in any Party, any Lenders or any group of Lenders has not been exercised; and
  - (iii) any notice made by a Borrower is made on behalf of and with the consent and knowledge of all the Obligor.
- (d) The Security Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (e) Without prejudice to the generality of Clause 26.8(d) (*Rights and discretions*) above or Clause 26.8(f) (*Rights and discretions*) below, the Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Security Agent (and so separate from any lawyers instructed by any Finance Party) if the Security Agent in its reasonable opinion deems this to be desirable.
- (f) The Security Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Security Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (g) The Security Agent, any Receiver and any Delegate may act in relation to the Finance Documents and the Transaction Security through its officers, employees and agents and shall not:
  - (i) be liable for any error of judgment made by any such person; or

(ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,

unless such error or such loss was directly caused by the Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct.

- (h) Unless this Agreement expressly specifies otherwise, the Security Agent may disclose to any other Party any information it reasonably believes it has received as security trustee under this Agreement.
- (i) Notwithstanding any other provision of any Finance Document to the contrary, the Security Agent is not obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of any fiduciary duty or duty of confidentiality.
- (j) Notwithstanding any provision of any Finance Document to the contrary, the Security Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

#### 26.9 Responsibility for documentation

None of the Security Agent, any Receiver nor any Delegate is responsible or liable for:

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

#### 26.10 No duty to monitor

The Security Agent shall not be bound to enquire:

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

## 26.11 Exclusion of liability

- (a) Without limiting Clause 26.11(b) (*Exclusion of liability*) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate), none of the Security Agent, any Receiver nor any Delegate will be liable for:
- (i) any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document or the Transaction Security unless directly caused by its gross negligence or wilful misconduct;
  - (ii) exercising or not exercising any right, power, authority or discretion given to it by or in connection with any Finance Document, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document or the Transaction Security;
  - (iii) any shortfall which arises on the enforcement or realisation of the Transaction Security; or
  - (iv) without prejudice to the generality of paragraphs (i) to (iii) above, any damages, costs, losses, any diminution in value or any liability whatsoever arising as a result of:
    - (A) any act, event or circumstance not reasonably within its control; or
    - (B) the general risks of investment in, or the holding of assets in, any jurisdiction,including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets; breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.
- (b) No Party (other than the Security Agent, that Receiver or that Delegate (as applicable)) may take any proceedings against any officer, employee or agent of the Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Security Agent, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or any Transaction Security and any officer, employee or agent of the Security Agent may rely on this Clause subject to Clause 1.5 (*Third-party rights*) and the provisions of the Contracts (Rights of Third Parties) Act 1999.
- (c) Nothing in this Agreement shall oblige the Security Agent to carry out:
- (i) any “know your customer” or other checks in relation to any person; or
  - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Finance Party (other than the Security Agent),

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

- (d) Without prejudice to any provision of any Finance Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate, any liability of the Security Agent, any Receiver or Delegate arising under or in connection with any Finance Document or the Transaction Security shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Security Agent, Receiver or Delegate (as the case may be) or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Security Agent, Receiver or Delegate (as the case may be) at any time which increase the amount of that loss. In no event shall the Security Agent, any Receiver or Delegate be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Security Agent, Receiver or Delegate (as the case may be) has been advised of the possibility of such loss or damages.

#### 26.12 Lenders' indemnity to the Security Agent

- (a) Each Lender shall in proportion to its share of the Total Commitments (or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero), indemnify the Security Agent and every Receiver and every Delegate, within three Business Days of demand, against any cost, loss or liability incurred by any of them (otherwise than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct) in acting as Security Agent, Receiver or Delegate under, or exercising any authority conferred under, the Finance Documents (unless the relevant Security Agent, Receiver or Delegate has been reimbursed by an Obligor pursuant to a Finance Document).
- (b) Subject to paragraph (c) below, the Borrowers shall immediately on demand reimburse any Lender for any payment that Lender makes to the Security Agent pursuant to paragraph (a) above.
- (c) Paragraph (a) above shall not apply to the extent that the indemnity payment in respect of which a Lender claims reimbursement relates to a liability of the Security Agent to an Obligor.

#### 26.13 Resignation of the Security Agent

- (a) The Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Parties (or to the Facility Agent on behalf of the Lenders).
- (b) Alternatively the Security Agent may resign by giving 30 days' notice to the other Parties (or the Facility Agent on behalf of the Senior Creditors), in which case the Instructing Group may appoint a successor Security Agent.
- (c) If the Instructing Group have not appointed a successor Security Agent in accordance with paragraph 26.13(b) (*Resignation of the Security Agent*) above within 20 days after notice of resignation was given, the retiring Security Agent (after consultation with the Facility Agent) may appoint a successor Security Agent.

- (d) The retiring Security Agent shall make available to the successor Facility Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Finance Documents. The Borrowers shall, within three Business Days of demand, reimburse the retiring Security Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
- (e) The Security Agent's resignation notice shall only take effect upon:
  - (i) the appointment of a successor; and
  - (ii) the transfer of all the Transaction Security to that successor.
- (f) Upon the appointment of a successor, the retiring Security Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under Clause 26.13(d) (*Resignation of the Security Agent*) above and Clause 26.24(b) (*Winding up of trust*)) but shall remain entitled to the benefit of Clause 14.4 (*Indemnity to the Security Agent*) and this Clause 26.13 (*Resignation of the Security Agent*) (and any Security Agent fees for the account of the retiring Security Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.
- (g) The Instructing Group may, by notice to the Security Agent, require it to resign in accordance with Clause 26.13(b) (*Resignation of the Security Agent*) above. In this event, the Security Agent shall resign in accordance with Clause 26.13(b) (*Resignation of the Security Agent*) above.

#### 26.14 Confidentiality

- (a) In acting as trustee for the Finance Parties, the Security Agent shall be regarded as acting through its trustee division which shall be treated as a separate entity from any of its other divisions or departments.
- (b) If information is received by another division or department of the Security Agent, it may be treated as confidential to that division or department and the Security Agent shall not be deemed to have notice of it.
- (c) Notwithstanding any other provision of any Finance Document to the contrary, the Security Agent is not obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of any fiduciary duty.

#### 26.15 Information from the Lenders

Each Lender shall supply the Security Agent with any information that the Security Agent may reasonably specify as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent.

#### 26.16 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 the Security

Agent that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document, the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;
- (c) whether that Finance Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the Transaction Security, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;
- (d) the adequacy, accuracy or completeness of any information provided by the Security Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property.

**26.17 Security Agent's management time and additional remuneration**

- (a) On and following an Event of Default, any amount payable to the Security Agent under Clause 14.4 (*Indemnity to the Security Agent*), Clause 16 (*Costs and Expenses*) or Clause 26.12 (Lenders' indemnity to the Security Agent) shall include the cost of utilising the Security Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Security Agent may notify to the Parent and the Lenders, and is in addition to any other fee paid or payable to the Security Agent.
- (b) Without prejudice to Clause 26.17(a) (*Security Agent's management time and additional remuneration*) above, in the event of:
  - (i) An Event of Default; or
  - (ii) the Security Agent being requested by an Obligor or the Lenders to undertake duties which the Security Agent and the Parent agree to be of an exceptional nature or outside the scope of the normal duties of the Security Agent under the Finance Documents; or
  - (iii) the Security Agent and the Parent agreeing that it is otherwise appropriate in the circumstances,

the Parent shall pay to the Security Agent any additional remuneration (together with any applicable VAT) that may be agreed between them or determined pursuant to Clause 26.17(c) (*Security Agent's management time and additional remuneration*) below.

- (c) If the Security Agent and the Parent fail to agree upon the nature of the duties or upon the additional remuneration referred to in Clause 26.17(b) (*Security Agent's management time and additional remuneration*) above or whether additional remuneration is appropriate in the circumstances, any dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Security Agent and approved by the Parent or, failing approval, nominated (on the application of the Security Agent) by the President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Parent) and the determination of any investment bank shall be final and binding upon the Parties.

#### 26.18 **No responsibility to perfect Transaction Security**

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

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

#### 26.19 **Insurance by Security Agent**

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

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

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

#### 26.20 **Custodians and nominees**

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

#### 26.21 **Delegation by the Security Agent**

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

#### 26.22 **Additional Security Agents**

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

#### 26.23 **Acceptance of title**

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

#### 26.24 **Winding up of trust**

If the Security Agent, with the approval of the Instructing Group, determines that:

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

then:

- (i) the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Security Documents; and
- (ii) any Security Agent which has resigned pursuant to Clause 26.13 (*Resignation of the Security Agent*) shall release, without recourse or warranty, all of its rights under each Security Document.

#### 26.25 **Releases**

Upon a disposal of any of the Charged Property:

- (a) pursuant to the enforcement of the Transaction Security by a Receiver or the Security Agent; or
- (b) if that disposal is permitted under the Finance Documents,

the Security Agent shall (at the cost of the Obligors) release that property from the Transaction Security and is authorised to execute, without the need for any further authority from the Finance Parties, any release of the Transaction Security or other claim over that asset and to issue any certificates of non-crystallisation of floating charges that may be required or desirable.

#### 26.26 **Powers supplemental**

The rights, powers, authorities and discretions given to the Security Agent under or in connection with the Finance Documents shall be supplemental to any which may be vested in the Security Agent by law or regulation or otherwise. Where there are any inconsistencies between any provisions under law or regulation applicable to the Security Agent and the provisions of this Agreement, the provisions of this Agreement shall, to the extent permitted by law and regulation, prevail.

### 27. **CONDUCT OF BUSINESS BY THE FINANCE PARTIES**

#### 27.1 **Conduct of Business by the Finance Parties**

No provision of this Agreement shall:

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

- (c) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

## 27.2 No Independent Action

- (a) Without prejudice to the rights of the Instructing Group or the Lenders (as the case may be) to instruct the Security Agent pursuant to Clause 26.3 (*Instructions*) to take any such action, none of the Finance Parties (other than the Security Agent or any Finance Party acting on the instructions of the Security Agent or the Instructing Group) may (without the prior consent of the Security Agent):
  - (i) enforce any Security constituted by any Transaction Security Document or exercise any rights discretions or powers to grant any consents or releases under or pursuant to any Security Document or otherwise have direct recourse to such Security;
  - (ii) sue for or institute any creditor's process (including any injunction, garnishment, execution or levy, whether before or after judgement) in respect of:
    - (A) any obligation (whether or not for the payment of money) owing to it under or in respect of any Finance Document; or
    - (B) any debt owed to it under any Finance Document or otherwise take action for the enforcement of such obligation or debt (including any enforcement by way of attachment, execution or otherwise);
  - (iii) take any step (including petition, application, notice of meeting or proposal to creditors) for the liquidation, winding up, administration, dissolution or bankruptcy (or analogous proceeding in any jurisdiction) of any Obligor, or take any step for a voluntary arrangement or scheme of arrangement or analogous proceeding in relation to any Obligor;
  - (iv) apply for any order for an injunction or specific performance in respect of any Obligor in relation to any of the Finance Documents;
  - (v) sue or bring or support any proceedings against or make demand on any provider of any report in connection with any report provided by such person or receive any payment in connection with such suit, proceedings or demand; or
  - (vi) otherwise exercise any remedy for the recovery of any Secured Obligations or any sums due to it under any Finance Document, in the case, other than as expressly permitted or required under this Agreement.
- (b) For the purposes of this Clause 27.2, "report" means any report or opinion which has been provided for the benefit of the Finance Parties by an independent expert or adviser and which has been delivered to the Finance Parties (or any of them) or the Security Agent pursuant to the Finance Documents (including any legal opinion).

## 27.3 Secured Hedging Providers

- (a) Subject to Clause 27.2 (*No Independent Action*), a Secured Hedging Provider may exercise its rights under any Secured Hedging Agreement to terminate, or close out of, any Treasury Transaction and to demand payment of sums outstanding thereunder

provided that (unless the Security Agent or the Instructing Group otherwise consents) it shall only exercise such rights if:

- (i) an “Illegality” or a “Force Majeure” (each as defined in the ISDA Master Agreement) has occurred;
  - (ii) a “Tax Event” or a “Tax Event Upon Merger” (each as defined in the ISDA Master Agreement) has occurred;
  - (iii) an Obligor has not paid an amount due under that Hedging Agreement on its stated due date and the relevant Secured Hedging Provider notifies the Security Agent and the Facility Agent of such failure to pay (and of such Secured Hedging Provider’s intention to terminate or close out) unless:
    - (A) its failure to pay is caused by administrative or technical error; and
    - (B) such payment has been made within three Business Days of its due date;
  - (iv) any Event of Default referred to in Clause 21.10 (*Insolvency*) or 21.11 (*Insolvency Proceedings*) occurs and is continuing;
  - (v) the Enforcement Date has occurred and all or any amounts accrued or outstanding under the Finance Documents (other than the Hedging Agreements) have become immediately due and payable;
  - (vi) the Security Agent or the Facility Agent has confirmed that no amount under the Finance Documents (other than the Hedging Agreements) is outstanding or is capable of being outstanding;
  - (vii) it is so required under paragraph (d)(ii) below;
  - (viii) in the circumstances where a Hedging Provider is a Lender (or an Affiliate of a Lender) and:
    - (A) such Lender (or Affiliate of a Lender) has delivered a notice to the Facility Agent pursuant to Clause 7.1 (*Mandatory Prepayment - Illegality*); and
    - (B) 30 days has lapsed since the delivery date of such notice referred to in paragraph (a)(viii)(A) above and such Hedging Provider has been unable to novate its rights and obligations under each Hedging Agreement to which it is a party to another Lender that is an Eligible Institution; and
  - (ix) it is so required, or permitted, pursuant to the terms of the Hedging Policy.
- (b) If a Secured Hedging Provider exercises its termination rights:
- (i) pursuant to paragraph (a) above, then save where it exercises such rights pursuant to paragraph (a)(i), (ii) or (ix), it must terminate all the Treasury Transactions under the Hedging Agreements to which it is a party; and
  - (ii) pursuant to paragraph (a)(i), (ii) or (ix), it may only terminate the “Affected Transactions” (as defined in the ISDA Master Agreement).

- (c) Save for any Security or guarantee constituted by any Security Documents and the guarantees given under this Agreement, no Secured Hedging Provider shall permit to subsist or receive the benefit of any margin call arrangement, any collateral or credit support, any Security or any guarantee or other assurance against financial loss for, or in respect of, any Secured Hedging Liability.
- (d) Each Obligor and each Hedging Provider agrees that unless the Security Agent otherwise consents:
  - (i) at any time on or after the Enforcement Date, if an amount falls due from a Hedging Provider to any Obligor under any Hedging Agreement, that amount shall be paid by that Secured Hedging Provider to the Facility Agent or the Security Agent (in full discharge of its obligations to make such payments to such Obligor) for application in accordance with Clause 28 (*Sharing among the Finance Parties*) and Clause 29 (*Payment Mechanics*); and
  - (ii) promptly following the occurrence of the Enforcement Date, each Secured Hedging Provider will, if so instructed by the Security Agent, exercise any rights it may have to terminate or close out all or any of the Treasury Transactions under each Hedging Agreement to which it is a party (provided that the Security Agent shall not be entitled to issue any instructions under this paragraph (d) once all amounts outstanding under the Finance Documents (other than under any Hedging Agreements) have been paid or repaid in full).
- (e) Promptly upon request, each Obligor and each Secured Hedging Provider will provide to the Facility Agent copies of all Hedging Agreements to which it is a party.
- (f) If:
  - (i) any Hedging Agreement or any hedging transaction thereunder is terminated or closed out; or
  - (ii) any Hedging Agreement is modified in any material respect, the relevant Secured Hedging Provider and the Borrower shall:
    - (A) promptly notify the Facility Agent of the same; and
    - (B) if so requested by the Facility Agent, promptly provide any documents relating to such termination, closing out or modification (as the case may be).
- (g) Each Secured Hedging Provider shall on request by the Facility Agent from time to time notify the Facility Agent of the details of the outstanding amount of all of the Secured Hedging Liabilities (if any) owed to that Secured Hedging Provider.
- (h) Each Secured Hedging Provider and each Obligor agrees that each Hedging Agreement to which it is a party shall operate subject to the terms of this Agreement and, accordingly, in the event of any inconsistency between the terms of such Hedging Agreement and this Agreement, the terms of this Agreement shall prevail.
- (i) Each Secured Hedging Provider shall:
  - (i) consent to the grant by the Borrower of Security over its rights and interests in such Hedging Agreement in favour of the Finance Parties or, as the case may be, the Security Agent (in its capacity as such); and

- (ii) to the extent that such Security has been granted pursuant to a Transaction Security Document, acknowledge that it has received notice that each such Hedging Agreement to which it is a party is the subject of such Security.
- (j) If a person is a Secured Hedging Provider but it, or its Affiliates, has ceased to be a Lender, it may notify the Facility Agent of the same and, if so notified, the Facility Agent shall continue to provide information to that person as if it were a Lender until the Facility Agent is notified by such person that such person is not a Secured Hedging Provider or does not wish to receive such information. Any such person shall notify the Facility Agent promptly upon ceasing to be a Secured Hedging Provider.
- (k) Each Secured Hedging Provider shall benefit from:
  - (i) any guarantee under the Finance Documents; or
  - (ii) all Transaction Security,
 in each case, irrespective of when any Secured Hedging Liability is incurred.
- (l) Each Secured Hedging Provider agrees to continue to be bound by this Clause 27.3 notwithstanding that it may cease to be a "Hedging Provider" pursuant to the definition of "Secured Hedging Provider" set out in Clause 1.1 (*Definitions*) so long as it has any unexpired (and non-terminated) Treasury Transaction outstanding.

#### 27.4 Hedging Payments

- (a) Before the Enforcement Date:
  - (i) the Borrower may make, and each Secured Hedging Provider may receive and retain:
    - (A) any Hedging Costs; and
    - (B) any Hedging Termination Payments payable to such Hedging Provider pursuant to the termination of any Hedging Agreement (or hedging transaction thereunder) which is permitted under this Agreement;
  - (ii) each Secured Hedging Provider may only discharge any Secured Hedging Liability by set off in accordance with Clause 30 (*Set off*) and only to the extent that such Secured Hedging Liability is permitted to be paid under paragraph (a)(i) above; and
  - (iii) each Secured Hedging Provider may only discharge any Secured Hedging Liability under any netting arrangements in accordance with the terms of the relevant Hedging Agreement but only to the extent that such Secured Hedging Liability is permitted to be paid under paragraph (a)(i) above.
- (b) Prior to the Enforcement Date, no Secured Hedging Provider may receive or retain any payment of, or any distribution in respect of (or on account of), any Secured Hedging Liability in cash or in kind, or apply any money or assets in or towards the repayment or discharge of any Secured Hedging Liability save as provided in paragraph (a) above.
- (c) On and from the Enforcement Date:

- (i) no Secured Hedging Provider may receive or retain any payment of, or any distribution in respect of (or on account of), any Secured Hedging Liability in cash or in kind, or apply any money or assets in or towards the repayment or discharge of any Secured Hedging Liability which would otherwise be permitted under the preceding provisions of this Clause 27.4; and
- (ii) any Secured Hedging Liability may only be repaid or discharged pursuant to a distribution by the Facility Agent made in accordance with Clause 28 (*Sharing among the Finance Parties*), Clause 29 (*Payment Mechanics*) and Clause 32 (*Application of Proceeds*).
- (d) Nothing in this Clause 27.4 shall prevent a netting of payments pursuant to Sections 2(c) or 6(e) of the ISDA Master Agreement provided that, on and from the Enforcement Date, any resulting amount due to a Secured Hedging Provider is made to and/or through the Security Agent in accordance with Clause 36.1 (*Order of Application*).
- (e) Where an Obligor is required to clear or post collateral in respect of any transaction under a Hedging Agreement by the relevant Hedging Provider on the basis of applicable Law, the Parties shall negotiate in good faith and in a commercially reasonable manner to make any structural amendments to the Finance Documents which are necessary to allow the relevant Obligor to clear such transaction or post such collateral in respect of such transaction (as the case may be).

## 28. SHARING AMONG THE FINANCE PARTIES

### 28.1 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 29 (*Payment Mechanics*) (a “**Recovered Amount**”) and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery, to the Facility Agent;
- (b) the Facility Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Facility Agent and distributed in accordance with Clause 29 (*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
- (c) the Recovering Finance Party shall, within three Business Days of demand by the Facility Agent, pay to the Facility Agent an amount (the “**Sharing Payment**”) equal to such 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, in accordance with Clause 29.6 (*Partial payments*).

### 28.2 Redistribution of payments

The Facility Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Finance Parties (other than the Recovering Finance Party) (the “**Sharing Finance Parties**”) in accordance with Clause 29.6 (*Partial payments*) towards the obligations of that Obligor to the Sharing Finance Parties.

### 28.3 **Recovering Finance Party's rights**

On a distribution by the Facility Agent under Clause 28.2 (*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.

### 28.4 **Reversal of redistribution**

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

- (a) each Sharing Finance Party shall, upon request of the 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
- (b) as between the relevant Obligor and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Obligor.

### 28.5 **Exceptions**

- (a) This Clause 28 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Obligor.
- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
  - (i) it notified the other Finance Party of the legal or arbitration proceedings; and
  - (ii) the other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

## 29. **PAYMENT MECHANICS**

### 29.1 **Payments to the Facility Agent**

- (a) On each date on which an Obligor or a Lender is required to make a payment under a Finance Document (other than a Hedging Agreement), that Obligor or Lender shall make the same available to the Facility Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Facility Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency (or, in relation to euro, in a principal financial centre in such Participating Member State or London, as specified by the Facility Agent) and with such bank as the Facility Agent, in each case, specifies.

## 29.2 Distributions by the Facility Agent

Each payment received by the Facility Agent under the Finance Documents for another Party shall, subject to Clause 29.3 (*Distributions to an Obligor*) and Clause 29.4 (*Clawback and pre-funding*) be made available by the Facility Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Facility Agent by not less than five Business Days' notice with a bank specified by that Party in the principal financial centre of the country of that currency (or, in relation to euro, in the principal financial centre of a Participating Member State or London, as specified by that Party).

## 29.3 Distributions to an Obligor

The Facility Agent may (with the consent of the Obligor or in accordance with Clause 30 (*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.

## 29.4 Clawback and pre-funding

- (a) Where a sum is to be paid to the Facility Agent under the Finance Documents for another Party, the Facility Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) Unless Clause 29.4(c) (*Clawback and pre-funding*) below applies, if the Facility Agent pays an amount to another Party and it proves to be the case that the Facility Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Facility Agent shall on demand refund the same to the Facility Agent together with interest on that amount from the date of payment to the date of receipt by the Facility Agent, calculated by the Facility Agent to reflect its cost of funds.
- (c) If the Facility 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 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 a Borrower:
  - (i) the Facility Agent shall notify the Parent of that Lender's identity and the relevant Borrower shall on demand refund it to the Facility Agent; and
  - (ii) a Lender by whom those funds should have been made available or, if that Lender fails to do so, the relevant Borrower shall on demand pay to the Facility Agent the amount (as certified by the Facility Agent) which will indemnify the Facility Agent against any funding cost incurred by it as a result of paying out that sum before receiving those funds from that Lender.

## 29.5 Impaired Facility Agent

- (a) If, at any time, the Facility Agent becomes an Impaired Facility Agent, an Obligor or a Lender which is required to make a payment under the Finance Documents to the Facility Agent in accordance with Clause 29.1 (*Payments to the Facility Agent*) may instead either:
  - (i) pay that amount direct to the required recipient(s); or

- (ii) if in its absolute discretion it considers that it is not reasonably practicable to pay that amount direct to the required recipient(s), pay that amount or the relevant part of that amount to an interest-bearing account held with an Acceptable Bank within the meaning of paragraph (a) of the definition of “Acceptable Bank” and in relation to which no Insolvency Event has occurred and is continuing, in the name of the Obligor or a Lender making the payment (the “**Paying Party**”) and designated as a trust account for the benefit of the Party or Parties beneficially entitled to that payment under the Finance Documents (the “**Recipient Party**” or “**Recipient Parties**”).

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

- (b) All interest accrued on the amount standing to the credit of the trust account shall be for the benefit of the Recipient Party or the Recipient Parties *pro rata* to their respective entitlements.
- (c) A Party which has made a payment in accordance with this Clause 29.5 (*Impaired Facility Agent*) shall be discharged of the relevant payment obligation under the Finance Documents and shall not take any credit risk with respect to the amounts standing to the credit of the trust account.
- (d) Promptly upon the appointment of a successor Facility Agent in accordance with Clause 25.12 (*Replacement of the Facility Agent*), each Paying Party shall (other than to the extent that that Party has given an instruction pursuant to Clause 29.5(e) (*Impaired Facility Agent*) below) give all requisite instructions to the bank with whom the trust account is held to transfer the amount (together with any accrued interest) to the successor Facility Agent for distribution to the relevant Recipient Party or Recipient Parties in accordance with Clause 29.2 (*Distributions by the Facility Agent*).
- (e) A Paying Party shall, promptly upon request by a Recipient Party and to the extent:
  - (i) that it has not given an instruction pursuant to Clause 29.5(d) (*Impaired Facility Agent*) above; and
  - (ii) that it has been provided with the necessary information by that Recipient Party,

give all requisite instructions to the bank with whom the trust account is held to transfer the relevant amount (together with any accrued interest) to that Recipient Party.

## 29.6 Partial payments

- (a) Subject to Clause 8.3 (*PIK interest*), if the Facility Agent receives a payment that is insufficient to discharge all the amounts then due and payable by an Obligor under the Finance Documents, the Facility Agent shall apply that payment towards the obligations of that Obligor under the Finance Documents in the following order:
  - (i) **first**, in or towards payment pro rata of any unpaid amount owing to the Facility Agent, the Security Agent, the Modelling Bank and the Account Bank under the Finance Documents;
  - (ii) **secondly**, in or towards payment pro rata of any accrued interest, Hedging Costs, fee or commission due but unpaid under the Finance Documents;

- (iii) **thirdly**, in or towards payment pro rata of any principal due but unpaid under the Finance Documents and any Hedging Termination Payments; and
  - (iv) **fourthly**, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.
- (b) The Facility Agent may vary the order set out in paragraphs (ii) to (iv) of sub-Clause 29.6(a) (*Partial payments*) above.
  - (c) Sub-clauses 29.6(a) and 29.6(b) above will override any appropriation made by an Obligor.
  - (d) If any amendment made pursuant to paragraph (b) above adversely affects a Secured Hedging Provider then the consent of the Secured Hedging Provider must be obtained.

#### 29.7 **No set-off by Obligors**

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

#### 29.8 **Business Days**

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

#### 29.9 **Currency of account**

- (a) Subject to sub-clauses 29.9(b) and 29.9(c) (*Currency of account*) below Dollars is the currency of account and payment for any sum from an Obligor under any Finance Document.
- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (c) Any amount expressed to be payable in a currency other than Dollars shall be paid in that other currency.

#### 29.10 **Change of currency**

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

that currency or currency unit into the other, rounded up or down by the Facility Agent (acting reasonably).

- (b) 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 Obligors' Agent) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the London interbank market and otherwise to reflect the change in currency.

#### 29.11 **Disruption to Payment Systems etc.**

If the Instructing Group determine (in their discretion) that a Disruption Event has occurred or the Facility Agent is notified by the Obligors' Agent that a Disruption Event has occurred:

- (a) the Facility Agent may, and shall if requested to do so by the Obligors' Agent, consult with the Obligors' Agent with a view to agreeing with the Parent such changes to the operation or administration of the Facility as the Facility Agent may deem necessary in the circumstances;
- (b) the Facility Agent shall not be obliged to consult with the Obligors' Agent in relation to any changes mentioned in paragraph (a) if, in their opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) the Facility Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) above but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- (d) any such changes agreed upon by the Facility Agent and the Obligors' Agent shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 36 (*Amendments and Waivers*);
- (e) no Finance Party shall be liable for any damages, costs or losses whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the proven 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 29.11 (*Disruption to Payment Systems etc.*); and
- (f) the Facility Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

#### 30. **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.

## 31. APPLICATION OF PROCEEDS

### 31.1 Order of Application

All amounts from time to time received or recovered by the Security Agent in connection with the realisation or enforcement of all or any part of the Transaction Security shall be held by the Security Agent on trust to apply them at such times as the Security Agent sees fit, to the extent permitted by applicable law, in the following order of priority:

- (a) *firstly*, in or towards payment pro rata to the Security Agent, any Receiver or any Delegate for application towards the discharge of all costs and expenses incurred by them in connection with any realisation or enforcement of the Transaction Security taken in accordance with the terms of this Agreement;
- (b) *secondly*, in or towards payment pro rata of any unpaid fees, costs and expenses of the Facility Agent, the Security Agent, the Modelling Bank and the Account Bank under the Finance Documents;
- (c) *thirdly*, in or towards payment pro rata of any accrued interest, Hedging Costs, fee or commission due but unpaid under the Finance Documents;
- (d) *fourthly*, in or towards payment pro rata of any principal due but unpaid under those Finance Documents and any Hedging Termination Payments;
- (e) *fifthly*, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents;
- (f) *sixthly*, if none of the Obligors is under any further actual or contingent liability under any Finance Document, in payment to any person to whom the Security Agent is obliged to pay in priority to any Obligor; and
- (g) *finally*, the balance, if any, in payment or distribution to the relevant Obligor or other person entitled to it.

### 31.2 Investment of Proceeds

Prior to the application of the proceeds of the Transaction Security in accordance with Clause 31.1 (*Order of Application*) the Security Agent may, at its discretion, hold all or part of those proceeds in an interest bearing suspense or impersonal account(s) in the name of the Security Agent or Facility Agent with any financial institution (including itself) and for so long as the Security Agent thinks fit (the interest being credited to the relevant account) pending the application from time to time of those monies at the Security Agent's discretion in accordance with the provisions of this Clause 31 (*Application of Proceeds*).

### 31.3 Currency Conversion

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

#### 31.4 Permitted Deductions

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

#### 31.5 Discharge of Secured Obligations

- (a) Any payment to be made in respect of the Secured Obligations by the Security Agent:
- (i) may be made to the Facility Agent on behalf of the Lenders; or
  - (ii) shall be made directly to the Secured Hedging Providers,
- and that payment shall be a good discharge to the extent of that payment, to the Security Agent.
- (b) The Security Agent is under no obligation to make payment to the Facility Agent or the Secured Hedging Providers in the same currency as that in which any Secured Obligations owing to the relevant Finance Party are denominated.

#### 31.6 Sums received by Obligors

If any of the Obligors receives any sum which, pursuant to any of the Finance Documents, should have been paid to the Security Agent, that sum shall promptly be paid to the Security Agent for application in accordance with this Clause.

### 32. NOTICES

#### 32.1 Communications in writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter or in electronic form subject to the requirements set out in Clause 32.4 (*Electronic communication*).

#### 32.2 Addresses

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

- (a) in the case of the Borrowers and the Guarantors:

**PETROVIDA HOLDING B.V.**

For the attention of: the Managers

Address: Amaliastraat 5, 2514 JC Den Haag, the Netherlands

Email: [REDACTED]

With a copy (which shall not constitute, or be essential for, valid notice) to:  
Attn: Chief Financial Officer

Address: Africa Oil Corp., Suite 2500 Park Place, 666 Burrard Street, Vancouver,  
British Columbia, V6C 2XE  
Telephone: +44 (0)203 982 6803  
Fax: +1 604-689-4250  
Email: [REDACTED]

**AFRICA OIL CORP.**

Attn: Chief Financial Officer  
Address: Africa Oil Corp., Suite 2500 Park Place, 666 Burrard Street, Vancouver,  
British Columbia, V6C 2XE  
Telephone: +44 (0)203 982 6803  
Fax: +1 604-689-4250  
Email: [REDACTED]

**AFRICA OIL HOLDINGS B.V.**

For the attention of: the Managers  
Address: Amaliastraat 5, 2514 JC Den Haag, the Netherlands  
Email: [REDACTED]

With a copy (which shall not constitute, or be essential for, valid notice) to:  
Attn: Chief Financial Officer  
Address: Africa Oil Corp., Suite 2500 Park Place, 666 Burrard Street, Vancouver,  
British Columbia, V6C 2XE  
Telephone: +44 (0)203 982 6803  
Fax: +1 604-689-4250

- (b) in the case of the Facility Agent:

Global Financing Operations - Agency and Middle Office Structured Commodities  
68-76 quai de la Rapée, 75012 Paris, France  
Attention: Krystle Adamik / Sabah Kanouni (back-up)  
Telephone: + 33 1 58 32 66 87 / +33 1 58 19 22 14  
Email: krystle.adamik@natixis.com / sabah.kanouni@natixis.com

- (c) in the case of the Security Agent:

Global Financing Operations - Agency and Middle Office Structured Commodities  
68-76 quai de la Rapée, 75012 Paris, France  
Attention: Krystle Adamik / Sabah Kanouni (back-up)  
Telephone: + 33 1 58 32 66 87 / +33 1 58 19 22 14  
Email: krystle.adamik@natixis.com / sabah.kanouni@natixis.com

- (d) in the case of the Modelling Bank:

1 Merchant Place, 1 Fredman Drive, Sandton, Johannesburg 2196, South Africa

Attention: Gaby Armstrong

- (e) in the case of the Original Lenders, the applicable address specified in Schedule 11 (*Addresses*),

or any substitute address, fax number or department or officer as a 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 Business Days' notice.

### 32.3 **Delivery**

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
  - (i) if by way of fax, when received in legible form; or
  - (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 32.2 (*Addresses*), if addressed to that department or officer.

- (b) Each Lender may by notice to the other Parties appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to it under the Finance Documents. Such notice shall contain the address, fax number and/or any other information required to enable the sending and receipt 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, fax number, department and officer by that Lender for the purposes of Clause 32.2 (*Addresses*) and the Obligors shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were the relevant Lender.

### 32.4 **Electronic communication**

- (a) Any communication to be made between the Lenders and the Obligors under or in connection with the Finance Documents may be made by electronic mail or other electronic means, if the Lenders and Obligors:
  - (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
  - (ii) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
  - (iii) notify each other of any change to their address or any other such information supplied by them.
- (b) Any electronic communication made between a Lender and the Obligors will be effective only when actually received in readable form.

### 32.5 **Communication when Facility Agent is Impaired Facility Agent**

If the Facility Agent is an Impaired Facility Agent the Parties may, instead of communicating with each other through the Facility Agent, communicate with each other directly and (while the Facility Agent is an Impaired Facility Agent) 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.

### 32.6 **English language**

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
  - (i) in English; or
  - (ii) if not in English, and if so required by the Lenders, 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.

## 33. **CALCULATIONS AND CERTIFICATES**

### 33.1 **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, in the absence of manifest error, *prima facie* evidence of the matters to which they relate.

### 33.2 **Certificates and Determinations**

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

### 33.3 **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 Interbank Market differs, in accordance with that market practice.

## 34. **PARTIAL INVALIDITY**

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

35. **REMEDIES AND WAIVERS**

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

36. **AMENDMENTS AND WAIVERS**

36.1 **Required consents**

- (a) Subject to Clause 36.2 (*All Lender matters*) and Clause 36.3 (*Other exceptions*) any term of a Finance Document (other than a Fee Letter) may be amended or waived only with the consent of the Instructing Group and the Obligors' Agent and any such amendment or waiver will be binding on all Parties.
- (b) The Facility Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 36 (*Amendments and Waivers*).
- (c) Without prejudice to the generality of paragraphs 25.6(c), 25.6(d) and 25.6(e) of Clause 25.6 (*Rights and discretions*), the Facility Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement (*provided that* any legal fees to be incurred in respect of this paragraph (c) that are specified to be at the cost of the Obligors shall be subject to the prior agreement of the Obligors' Agent, acting reasonably).

36.2 **All Lender matters**

Subject to Clause 36.8 (*Replacement of Screen Rate*), an amendment, waiver or consent of, or in relation to, any term of any Finance Document that has the effect of changing or which relates to:

- (a) the definition of "*Instructing Group*", "*Majority Lenders*" or "*Majority Senior Creditors*" in Clause 1.1 (*Definitions*);
- (b) an extension to the date of payment of any amount under the Finance Documents;
- (c) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;
- (d) a change in currency of payment of any amount under the Finance Documents;
- (e) an increase in or extension of any Loan Commitment or the Total Commitments, an extension of the Availability Period or any requirement that a cancellation of Loan Commitments reduces the Loan Commitments of the Lenders rateably;
- (f) a change to any Obligor;
- (g) any provision which expressly requires the consent of all the Lenders;

- (h) Clause 2.2 (*Finance Parties' rights and obligations*), Clause 5.1 (*Delivery of Utilisation Request*), Clause 7.1 (*Mandatory prepayment - Illegality*), 7.2 (*Mandatory Prepayment – Change of Control*), Clause 7.3 (*Mandatory Prepayment – Cash Sweep*), the definition of “*Change of Control*” in Clause 1.1 (*Definitions*);
- (i) Clause 18.21 (*Anti-Corruption Laws*), Clause 18.22 (*Restricted Parties*), Clause 18.23 (*Improper Acts*), Clause 18.24 (*Prohibited Payments and Anti-Corruption*), Clause 18.25 (*Sanctions*); Clause 20.15 (*Anti-corruption law*), Clause 20.20(*Sanctions*) and any definitions related thereto;
- (j) Clause 22 (*Changes to the Lenders*), Clause 29.6 (*Partial Payments*), this Clause 35 (*Amendments and Waivers*), Clause 39 (*Governing Law*) or Clause 42.1 (*Jurisdiction*);
- (k) (other than as expressly permitted by the provisions of any Finance Document) the nature or scope of the guarantee and indemnity granted under Clause 17 (*Guarantee and Indemnity*);
- (l) the release of any guarantee and indemnity granted under Clause 17 (*Guarantee and Indemnity*), the property which is subject to the Transaction Security or of any Transaction Security unless expressly permitted under this Agreement or any other Finance Document; and
- (m) the manner in which the proceeds of enforcement of the Transaction Security are distributed,

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

### 36.3 **Other exceptions**

- (a) An amendment or waiver which relates to the rights or obligations of the Facility Agent, the Modelling Bank, Account Bank or the Security Agent (each in their capacity as such) may not be effected without the consent of the Facility Agent, the Modelling Bank, Account Bank or the Security Agent, as the case may be.
- (b) An amendment or waiver which directly affects the rights or obligations of a Secured Hedging Provider (each solely in its specific capacity as such, and not in relation to rights available or obligations applicable to Finance Parties generally) may not be effected without the consent of that Secured Hedging Provider.
- (c) Any term of any Fee Letter may be amended or waived solely with the prior written consent of the Finance Party that is a party to such Fee Letter.

### 36.4 **Excluded Commitments**

If any Lender fails to respond to a request for a consent, waiver, amendment of or in relation to any term of any Finance Document or any other vote of Lenders under the terms of this Agreement within 15 Business Days of that request being made, (unless the Obligors' Agent and the Facility Agent agree to a longer time period in relation to any request):

- (a) its Loan Commitment shall not be included for the purpose of calculating the Total Commitments when ascertaining whether any relevant percentage (including, for the avoidance of doubt, unanimity) 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.

### 36.5 Replacement of a Lender

- (a) If:
  - (i) any Lender becomes a Non Consenting Lender (as defined in paragraph 36.5(d) (*Replacement of a Lender*) below); or
  - (ii) an Obligor becomes obliged to repay any amount in accordance with Clause 7.1 (*Mandatory Prepayment – Illegality*) or to pay additional amounts pursuant to Clause 13 (*Increased Costs*) Clause 12.2 (*Tax gross-up*) or Clause 12.3 (*Tax indemnity*) to any Lender,

then the Parent may, on five 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 23 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement to a Lender or other bank, financial institution, trust, fund or other entity (a "**Replacement Lender**") selected by the Obligors' Agent and acceptable to the Facility Agent (acting reasonably) which confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with Clause 23 (*Changes to the Lenders*) for a purchase price in cash payable at the time of transfer in an amount equal to the outstanding principal amount of such Lender's participation in the Loans and all accrued interest (to the extent that the Facility Agent has not given a notification under Clause 23.9 (*Pro rata interest rate settlement*) and other amounts payable in relation thereto under the Finance Documents.

- (b) The replacement of a Lender pursuant to this Clause 36.5 shall be subject to the following conditions:
  - (i) the Obligors' Agent shall have no right to replace the Facility Agent, the Modelling Bank or the Security Agent;
  - (ii) neither the Facility Agent nor a Lender shall have any obligation to the Obligors' Agent to find a Replacement Lender;
  - (iii) in the event of a replacement of a Non Consenting Lender such replacement must take place no later than 90 days after the date on which that Lender is deemed a Non Consenting Lender;
  - (iv) in no event shall a Lender replaced under this Clause 36.5 (*Replacement of a Lender*) be required to pay or surrender to such Replacement Lender any of the fees received by such Lender pursuant to the Finance Documents; and
  - (v) a Lender shall only be obliged to transfer its rights and obligations pursuant to Clause 36.5(a) (*Replacement of a Lender*) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer.
- (c) A Lender shall perform the checks described in Clause 36.5(b)(v) (*Replacement of a Lender*) above as soon as reasonably practicable following delivery of a notice referred to in Clause 36.5(a) (*Replacement of a Lender*) above and shall notify the Facility Agent and the Parent when it is satisfied that it has complied with those checks.

- (d) In the event that:
  - (i) the Obligors' Agent or the Facility Agent (at the request of the Obligors' Agent) has requested the Lenders to give a consent in relation to, or to agree to a waiver or amendment of any provisions of the Finance Documents;
  - (ii) the consent, waiver or amendment in question requires the approval of all the Lenders; and
  - (iii) Lenders whose Loan Commitments aggregate more than 80% of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 80% of the Total Commitments prior to that reduction), have consented or agreed to such waiver or amendment,

then any Lender who does not and continues not to consent or agree to such waiver or amendment shall be deemed a "**Non Consenting Lender**".

### 36.6 **Disenfranchisement of Defaulting Lenders**

- (a) For so long as a Defaulting Lender has a Loan Commitment, in ascertaining:
    - (i) the Majority Lenders; or
    - (ii) whether:
      - (A) any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments; or
      - (B) the agreement of any specified group of Lenders,
- has been obtained to approve any request for a consent, waiver, amendment or other vote of Lenders under the Finance Documents, that Defaulting Lender's Loan Commitments will be reduced to zero.
- (b) For the purposes of this Clause 36.6 (*Disenfranchisement of Defaulting Lenders*), the Facility Agent may assume that the following Lenders are Defaulting Lenders:
    - (i) any Lender which has notified the Facility Agent that it has become a Defaulting Lender;
    - (ii) any Lender in relation to which it is aware that any of the events or circumstances referred to in paragraphs (a), (b) or (c) of the definition of "Defaulting Lender" has occurred,

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

### 36.7 **Replacement of a Defaulting Lender**

- (a) The Parent may, at any time a Lender has become and continues to be a Defaulting Lender, by giving 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 23 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement to a person

nominated by the Parent (a “**Replacement Lender**”) and which confirms its willingness to assume and does assume all the obligations, or all the relevant obligations of the transferring Lender in accordance with Clause 23 (*Changes to the Lenders*) for a purchase price in cash payable at the time of transfer which is either:

- (i) in an amount equal to the outstanding principal amount of such Lender’s participation in the Loans and all accrued interest and other amounts payable in relation thereto under the Finance Documents; or
  - (ii) in an amount agreed between that Defaulting Lender, the Replacement Lender and the Parent and which does not exceed the amount described in paragraph (a) above.
- (b) Any transfer of rights and obligations of a Defaulting Lender pursuant to this Clause 36.1 (*Required consents*) shall be subject to the following conditions:
- (i) the Parent shall have no right to replace the Facility Agent or Security Agent;
  - (ii) neither the Facility Agent nor the Defaulting Lender shall have any obligation to the Parent to find a Replacement Lender;
  - (iii) the transfer must take place no later than ninety (90) days after the notice referred to in Clause 36.1(a) (*Required consents*) above;
  - (iv) in no event shall the Defaulting Lender be required to pay or surrender to the Replacement Lender any of the fees received by the Defaulting Lender pursuant to the Finance Documents; and
  - (v) the Defaulting Lender shall only be obliged to transfer its rights and obligations pursuant to Clause 36.1(a) (*Required consents*) above once it is satisfied that it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to that transfer to the Replacement Lender.

The Defaulting Lender shall perform the checks described in Clause (v) above as soon as reasonably practicable following delivery of a notice referred to in Clause 36.1(a) (*Required consents*) above and shall notify the Facility Agent and the Parent when it is satisfied that it has complied with those checks.

### 36.8 Replacement of Screen Rate

- (a) Subject to Clause 36.3 (*Other exceptions*), if a Screen Rate Replacement Event has occurred in relation to any Screen Rate for Dollars, any amendment or waiver which relates to:
- (i) providing for the use of a Replacement Benchmark in relation to Dollars in place of that Screen Rate; and
  - (ii)
    - (A) aligning any provision of any Finance Document to the use of that Replacement Benchmark;
    - (B) 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);

- (C) implementing market conventions applicable to that Replacement Benchmark;
- (D) providing for appropriate fallback (and market disruption) provisions for that Replacement Benchmark; or
- (E) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement 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 (acting on the instructions of the Majority Lenders) and the Obligors.

- (b) If, as at 1 April 2022 (or such later dates as may be agreed by the Facility Agent (acting on the instructions of Majority Lenders) and the Parent) this Agreement provides that the rate of interest for a Loan in Dollars is to be determined by reference to the Screen Rate for LIBOR:
  - (i) a Screen Rate Replacement Event shall be deemed to have occurred on that date in relation to the Screen Rate for Dollars; and
  - (ii) the Facility Agent, (acting on the instructions of the Majority Lenders) and the Obligors shall enter into negotiations in good faith with a view to agreeing the use of a Replacement Benchmark in relation to Dollars in place of that Screen Rate from and including a date no later than 1 July 2022 or such later dates as may be agreed by the Facility Agent (acting on the instructions of Majority Lenders) and the Parent.

## 37. CONFIDENTIALITY

### 37.1 Confidential Information

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 37.2 (*Disclosure of Confidential Information*) 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.

### 37.2 Disclosure of Confidential Information

Each of the Finance Parties may subject (where applicable) to the provisions of article L.511-33 of the French Monetary and Financial Code (*Code Monétaire et Financier*) disclose:

- (a) to any of its Affiliates and Related Funds any of its or their officers, directors, employees, professional advisers, auditors, insurers, reinsurers, insurance brokers, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except

that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information:

- (b) to any person:
  - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Facility Agent and, in each case, to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
  - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Obligors and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
  - (iii) appointed by any Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under Clause 25.14(b) (*Relationship with the Lenders*));
  - (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;
  - (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
  - (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
  - (vii) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 23.8 (*Security over Lenders' rights*);
  - (viii) who is a Party;
  - (ix) who is a direct or indirect provider of credit protection to a Finance Party (or its brokers); or
  - (x) with the consent of the Obligors' Agent;
- (c) in each case, such Confidential Information as such Finance Party shall consider appropriate if:
  - (i) in relation to paragraphs (b)(i), (b)(ii), (b)(iii) or (b)(ix) above, the person to whom the Confidential Information is to be given has entered into a

Confidentiality Undertaking (it being agreed that a limited amount of Confidential Information may be disclosed as required for the purpose of negotiating the terms of the Confidentiality Undertaking including, but not limited to, the name of any Obligor and the term of the Facility), except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;

- (ii) in relation to paragraph (b)(iv) of sub-Clause (b) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking (it being agreed that a limited amount of Confidential Information may be disclosed as required for the purpose of negotiating the terms of the Confidentiality Undertaking including, but not limited to, the name of the Company and the term of the Facility), or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
- (iii) in relation to paragraphs (v), (vi) and (viii) of sub-Clause (b) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Lenders, it is not practicable so to do in the circumstances; and
- (d) to any person appointed by a Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this sub-Clause (d) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Obligors' Agent and the relevant Finance Party; and
- (e) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Obligors if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.
- (f) Nothing in any Finance Document shall prevent disclosure of any Confidential Information or other matter to the extent that preventing that disclosure would otherwise cause any transaction contemplated by the Finance Documents or any transaction carried out in connection with any transaction contemplated by the Finance Documents to become an arrangement described in Part II A 1 of Annex IV of Directive 2011/16/EU.

### **37.3 Disclosure to numbering service providers**

- (a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services

in respect of this Agreement, the Facility and/or one or more Obligors the following information:

- (i) names of Obligors;
- (ii) country of domicile of Obligors;
- (iii) place of incorporation of Obligors;
- (iv) date of this Agreement;
- (v) Clause 41 (*Governing law*);
- (vi) the name of the Facility Agent;
- (vii) date of each amendment and restatement of this Agreement;
- (viii) amounts of, and names of, the Facility (and any tranches);
- (ix) amount of Total Commitments;
- (x) currencies of the Facility;
- (xi) type of Facility;
- (xii) ranking of Facility;
- (xiii) Final Maturity Date for the Facility;
- (xiv) changes to any of the information previously supplied pursuant to paragraphs (i) to (xiii) above; and
- (xv) such other information agreed between such Finance Party and the Parent,

to enable such numbering service provider to provide its usual syndicated loan numbering identification services.

- (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facility and/or one or more Obligors by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.
- (c) The Facility Agent shall notify the Parent and the other Finance Parties of:
  - (i) the name of any numbering service provider appointed by the Facility Agent in respect of this Agreement, the Facility and/or one or more Obligors; and
  - (ii) the number or, as the case may be, numbers assigned to this Agreement, the Facility and/or one or more Obligors by such numbering service provider.

#### 37.4 **Entire agreement**

Subject (where applicable) to the provisions of article L.511-33 of the French Monetary and Financial Code (*Code Monétaire et Financier*), this Clause 37 (*Confidentiality*) 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.

**37.5 Inside Information**

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

**37.6 Notification of disclosure**

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

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to sub-Clause 37.2(b)(v) (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 37.

**37.7 Continuing obligations**

The obligations in this Clause 37 (*Confidentiality*) are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of twelve months from the earlier of:

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

**37.8 RGPD – Natixis**

As part of the signature and performance of this contract, and more generally the business relationship, Natixis will collect certain information about the Obligors. Information explaining why and how Natixis intends to use this information, how long it will be retained and the rights of each of the Borrowers has on its data are available at the following web site: [https://www.natixis.com/natixis/en/information-notice-of-natixis-s-a-rpaz5\\_117129.html](https://www.natixis.com/natixis/en/information-notice-of-natixis-s-a-rpaz5_117129.html).

**38. SUPPLY OF LENDER DETAILS TO PARENT**

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

under or in connection with the Finance Documents may be made by that means and the account details of each Lender for any payment to be distributed by the Facility Agent to that Lender under the Finance Documents.

39. **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.

40. **POWER OF ATTORNEY OF DUTCH OBLIGORS**

If any Obligor incorporated under the laws of the Netherlands, is represented by an attorney in connection with the signing and/or execution of this Agreement (including by way of accession to this Agreement) or any other agreement, deed or document referred to in or made pursuant to this Agreement, it is hereby expressly acknowledged and accepted by the other parties to this Agreement that the existence and extent of the attorney's authority and the effects of the attorney's exercise or purported exercise of his or her authority shall be governed by the laws of the Netherlands.

41. **GOVERNING LAW**

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

42. **ENFORCEMENT**

42.1 **Jurisdiction**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or the consequences of its nullity or any non-contractual obligation arising out of or in connection with this Agreement) (a “**Dispute**”).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) Notwithstanding paragraphs (a) and (b) above, no Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.

42.2 **Waiver of Immunity**

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

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

#### 42.3 Service of process

Each Obligor agrees that the documents which start any proceedings in relation to any Finance Document, and any other documents required to be served in connection with those proceedings, may be served on it by being delivered to Africa Oil UK Limited at 16 Great Queen Street, London, WC2B 5AH, or to such other address in England and Wales as each such Obligor may specify by notice in writing to the Facility Agent. Nothing in this Clause 42.3 (*Service of process*) shall affect the right of any Finance Party to serve process in any other manner permitted by law. This Clause 42.3 (*Service of process*) applies to proceedings in England and proceedings elsewhere.

#### 43. CONTRACTUAL RECOGNITION OF BAIL-IN

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

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

**SCHEDULE 1**

**THE ORIGINAL LENDERS**

<b>Name of Original Lender</b>	<b>Commitment</b>
The Mauritius Commercial Bank Limited	U.S.\$ [REDACTED]
Natixis	U.S.\$ [REDACTED]
RMB International (Mauritius) Ltd	U.S.\$ [REDACTED]
The Standard Bank of South Africa Ltd, Isle of Man Branch	U.S.\$ [REDACTED]
Absa Bank Limited (acting through its Corporate and Investment Banking division)	U.S.\$ [REDACTED]
<b>Total</b>	<b>U.S.\$ [REDACTED]</b>

## SCHEDULE 2

### CONDITIONS PRECEDENT

#### 1. OBLIGORS

##### 1.1 A copy of:

- (a) the articles of incorporation of the Parent; and
- (b) the articles of association (*statuten*) and deed of incorporation (*oprichtingsakte*) of each Dutch Obligor, as well as an extract (*uittreksel*) from the Dutch Commercial Register (*Handelsregister*) of each Dutch Obligor;

##### 1.2 A copy of the resolutions of the directors, the board of managing directors or managers (as applicable) of each Obligor:

- (a) 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 and perform its obligations thereunder;
- (b) if applicable, authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
- (c) if applicable, authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.

##### 1.3 A copy of the resolutions of the shareholder(s) of PetroVida approving the resolution of the board of managing directors referred to under paragraph 1.2 above.

##### 1.4 A specimen of the signature of each person authorised by the resolutions referred to in paragraphs 1.2(b) and/or (c) above in relation to the Finance Documents.

##### 1.5 A pdf copy of a certificate of each Obligor (signed by an authorised signatory of each Obligor and in the form set out in Schedule 4 (*Certificate*)) (i) confirming that borrowing, guaranteeing or provision of Security as appropriate as contemplated by the Finance Documents would not cause any borrowing, guaranteeing or similar limit binding on each Obligor to be exceeded; (ii) confirming that no Event of Default has occurred or is continuing and (iii) certifying that each copy document relating to it specified in this Schedule 2 (*Conditions Precedent*) is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.

#### 2. LEGAL OPINIONS

##### 2.1 A legal opinion of White & Case LLP, legal advisers to the Finance Parties in England.

##### 2.2 A legal opinion of NautaDutilh N.V., legal advisers to the Finance Parties in the Netherlands.

##### 2.3 A legal opinion of Bennett Jones, legal advisers to the Obligors in Canada.

##### 2.4 A legal opinion of the legal advisers to the Finance Parties in the jurisdiction of the place of the Distribution Collections Account.

3. **FINANCE DOCUMENTS**

Pdf. copies of each of the following Finance Documents, duly executed by each of the parties thereto:

- 3.1 the Original Facility Agreement;
- 3.2 each Transaction Security Document;
- 3.3 the Accounts Agreement;
- 3.4 each Fee Letter; and
- 3.5 the Amendment and Restatement Agreement.

4. **FINANCIAL RATIOS**

- 4.1 The Original Financial Model demonstrating compliance with the ratio referred to at Clause 20.21 (*FLCR*) as at 31 March 2021.
- 4.2 A Compliance Certificate demonstrating compliance with the ratio referred to at Clause 20.22 (*Net Debt to Adjusted EBITDAX*) as at 31 December 2020.

5. **FINANCIAL STATEMENTS**

- 5.1 A copy of the consolidated audited financial statements of the Group for the financial year ended 31 December 2020 (the “**Original Financial Statements**”).

6. **MEMBERS AGREEMENT**

- 6.1 A copy of the Members’ Agreement.

7. **EXISTING FACILITY**

- 7.1 A waiver executed by the Existing Facility Agent permitting the Obligors to grant security pursuant to the Transaction Security Documents.

8. **OTHER DOCUMENTS AND EVIDENCE**

- 8.1 A copy of the POG RBL Facility Agreement.
- 8.2 Evidence that the Distribution Collection Account has been opened.
- 8.3 Evidence that any process agent referred to in Clause 42.3 (*Service of process*) has accepted its appointment.
- 8.4 Evidence that all fees, costs and expenses of the Lenders and their advisors in relation to the Facility which are then due have been paid or, to the extent not paid, authority has been given to the Facility Agent to pay the same from the proceeds of the first Utilisation.

**SCHEDULE 3**

**UTILISATION REQUEST**

From: [●], as Borrower

To: [●] as Facility Agent

Dated:

Dear Sirs

**PetroVida Holding B.V. and Africa Oil Corp. Loan Agreement for U.S.\$160,000,000  
dated [●] (the “Agreement”)**

1. We refer to the Agreement. This is a Utilisation Request. Capitalised 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 on the following terms:

Proposed Utilisation Date:	[●] (or, if that is not a Business Day, the next Business Day)
Currency of Loan:	Dollars
Amount:	U.S.\$[●]
3. We confirm that each condition specified in Clause 4.1 (*Initial conditions precedent*) and Clause 4.2 (*Further Conditions Precedent*) is satisfied on or will be satisfied on the Utilisation Date.
4. The proceeds of the Loan should be credited to [account].
5. This Utilisation Request is irrevocable.
6. We hereby certify that on the date of this Utilisation Request, immediately upon the making of the Loan, when aggregating such Loan with all other outstanding Loan, the then-current FLCR would be equal or greater than 1.2:1.

Yours faithfully

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Authorised signatory for and on behalf of  
[PetroVida Holding B.V. / Africa Oil Corp.]

**SCHEDULE 4**  
**CERTIFICATE**

From: [●], as Borrower.

To: [●], as Facility Agent

Dated:

Dear Sirs

**PetroVida Holding B.V. and Africa Oil Corp. Loan Agreement for U.S.\$160,000,000  
dated [●] (the “Agreement”)**

We refer to the Agreement. Capitalised terms used in this letter shall have the meaning given to them in the Agreement unless otherwise agreed.

I undersigned, [●], acting as a duly authorised signatory of [●], hereby confirm and certify on behalf of [●], that:

1. the attached (marked as “**Appendix A**”) are correct and complete copies of the [*insert details of constitutional documents required to be delivered under CP 1.1*] of [●] which are in full force and effect as at the date of this certificate;
2. the attached (marked as “**Appendix B**”) is a true and correct copy of the resolution of the directors, board of managing directors or managers of [●] dated [●] 2021 which is in full force and effect as at the date of this certificate;
3. [the attached (marked as “**Appendix C**”) is a true and correct copy of the resolution of the shareholder(s) of PetroVida approving the resolutions of the board of managing directors referred to in paragraph 2 above dated [●] 2021 which is in full force and effect];
4. each name, title and specimen signature of the person(s) authorised to execute the Finance Documents on behalf of [●] (as set forth below) is a true and correct copy as at the date of this certificate:

Name	Title	Signature
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5. borrowing the Loans would not cause any borrowing, guarantee, security or similar limit binding on [●] to be exceeded;
6. each copy document relating to [●] specified in Schedule 2 (*Conditions Precedent*) of the Agreement is correct, complete and in full force and effect as at the present Date; and
7. no Event of Default has occurred or is continuing.

Made in [●]

on [●]

[Borrower] [Guarantor]

---

Name:

Title:

## SCHEDULE 5

### FORM OF TRANSFER CERTIFICATE

To: [ ] as Facility Agent

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

Dated:

**U.S.\$160,000,000 term loan agreement (the “Agreement”) dated [●] and made between PetroVida Holding B.V. and Africa Oil Corp. as borrowers, PetroVida Holding B.V., Africa Oil Holdings B.V. and Africa Oil Corp. as guarantors, [●] as agent and the Lenders as defined therein**

1. We refer to the Agreement. This is a transfer certificate. Terms defined in the Agreement have the same meaning in this transfer certificate unless given a different meaning in this transfer certificate.
2. We refer to Clause 23.5 (*Procedure for transfer*) of the Agreement:
  - (a) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation, and in accordance with Clause 23.5 (*Procedure for transfer*) of the Agreement, all of the Existing Lender’s rights and obligations under the Agreement, the other Finance Documents and in respect of the Transaction Security which relate to that portion of the Existing Lender’s Loan Commitment(s) and participations in Loans under the Agreement as specified in the Schedule.
  - (b) The proposed Transfer Date is [ ].
  - (c) The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 32.2 (*Addresses*) of the Agreement are set out in the Schedule.
3. The New Lender expressly acknowledges the limitations on the Existing Lender’s obligations set out in paragraph 23.2(h) (*Conditions of assignment or Transfer*) of the Agreement.
4. The New Lender confirms, for the benefit of the Facility Agent and without liability to any Obligor, that it is:
  - (a) [a Qualifying Lender (other than a Treaty Lender);]
  - (b) [a Treaty Lender;]
  - (c) [not a Qualifying Lender;]<sup>1</sup>
  - (d) [a Canadian Qualifying Lender (other than a Canadian Treaty Lender);]
  - (e) [a Canadian Treaty Lender;]

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<sup>1</sup> Delete as applicable – each New Lender is required to confirm which of these categories it falls within.

- (f) [not a Canadian Qualifying Lender].
5. The New Lender confirms to the Borrowers that it is a professional market party (*professionele marktpartij*) within the meaning of the Dutch Financial Supervision Act (*Wet op het financieel toezicht*).
- [6]. The New Lender confirms to the Borrowers that it is not considered to be part of the “public” as referred to in article 4.1(1) of the Capital Requirements Regulation (EU/575/2013).<sup>2</sup>
- [6/7]. 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.
- [7/8]. This Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by English law.
- [8/9] This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.

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

**WARNING: PLEASE SEEK DUTCH LEGAL ADVICE (I) UNTIL THE COMPETENT AUTHORITY PUBLISHES ITS INTERPRETATION OF THE TERM “PUBLIC” (AS REFERRED TO IN ARTICLE 4.1(1) OF THE CAPITAL REQUIREMENTS REGULATION (EU/575/2013)), IF THE SHARE OF A LENDER IN ANY UTILISATION REQUESTED BY A DUTCH BORROWER IS LESS THAN EUR100,000 (OR ITS EQUIVALENT IN ANOTHER CURRENCY) AND (II) AS SOON AS THE COMPETENT AUTHORITY PUBLISHES ITS INTERPRETATION OF THE TERM “PUBLIC”, IF THE LENDER IS CONSIDERED TO BE PART OF THE PUBLIC ON THE BASIS OF SUCH INTERPRETATION**

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<sup>2</sup> NOTE: This Clause [6] should be included (i) until (A) the European Commission has published a delegated act clarifying the definition of credit institution and the term “public” (as referred to in article 4.1(1) of the Capital Requirements Regulation (EU/575/2013)) or (B) an interpretation is available from a competent authority of the term “public” (as referred to in article 4.1(1) of the Capital Requirements Regulation (EU/575/2013)) and (ii) if the transfer does not include an amount outstanding from the Borrowers of at least EUR100,000 (or its equivalent in other currencies).

**THE SCHEDULE**

**Loan Commitment/rights and obligations to be transferred**

*[insert relevant details]*

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

For and on behalf of

[Existing Lender]

For and on behalf of

[New Lender]

By:

By:

This Transfer Certificate is accepted by the Facility Agent and the Transfer Date is confirmed as [        ].

For and on behalf of

[Facility Agent]

By:

NOTES:

- \* Delete as applicable – each New Lender is required to confirm which of these categories it falls within.

## SCHEDULE 6

### FORM OF ASSIGNMENT AGREEMENT

To: [ ] as Facility Agent and [ ] as Borrowers

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

Dated:

**U.S.\$160,000,000 term loan agreement (the “Agreement”) dated [●] and made between Africa Oil Corp. and PetroVida Holding B.V. as borrowers, PetroVida Holding B.V., Africa Oil Holdings B.V. and Africa Oil Corp. as guarantors, [●] as agent and the Lenders as defined therein**

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 23.6 (*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 relate to that portion of the Existing Lender’s Loan Commitment(s) and participations in Loans under the Agreement as specified in the Schedule.
  - (b) The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender’s Commitment(s) and participations in Loans under the Agreement specified in the Schedule.
  - (c) The New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph (b) above.
3. The proposed Transfer Date is [●].
4. On the Transfer Date the New Lender becomes Party to the relevant Finance Documents as a Lender.
5. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 32.2 (*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 23.2(h) (*Conditions of assignment or Transfer*) of the Agreement.
7. The New Lender confirms, for the benefit of the Facility Agent and without liability to any Obligor, that it is:
  - (a) [a Qualifying Lender (other than a Treaty Lender);]
  - (b) [a Treaty Lender;]

- (c) [not a Qualifying Lender;]<sup>3</sup>
  - (d) [a Canadian Qualifying Lender (other than a Canadian Treaty Lender);]
  - (e) [a Canadian Treaty Lender;]
  - (f) [not a Canadian Qualifying Lender].
8. The New Lender confirms to the Borrowers that it is a professional market party (*professionele marktpartij*) within the meaning of the Dutch Financial Supervision Act (*Wet op het financieel toezicht*).
- [9]. The New Lender confirms to the Borrowers that it is not considered to be part of the “public” as referred to in article 4.1(1) of the Capital Requirements Regulation (EU/575/2013).<sup>4</sup>
- [9/10]. This Assignment Agreement acts as notice to the Facility Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 23.7 (*Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Parent*) of the Agreement, to the Parent (on behalf of each Obligor) of the assignment referred to in this Assignment Agreement.
- [10/11]. 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.
- [11/12]. This Assignment Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
- [12/13]. This Assignment Agreement has been entered into on the date stated at the beginning of this Assignment Agreement.

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

**WARNING: PLEASE SEEK DUTCH LEGAL ADVICE (I) UNTIL THE COMPETENT AUTHORITY PUBLISHES ITS INTERPRETATION OF THE TERM “PUBLIC” (AS REFERRED TO IN ARTICLE 4.1(1) OF THE CAPITAL REQUIREMENTS REGULATION (EU/575/2013)), IF THE SHARE OF A LENDER IN ANY UTILISATION REQUESTED BY A DUTCH BORROWER IS LESS THAN EUR100,000 (OR ITS EQUIVALENT IN ANOTHER CURRENCY) AND (II) AS SOON AS THE COMPETENT AUTHORITY PUBLISHES ITS INTERPRETATION OF THE TERM “PUBLIC”, IF THE LENDER IS CONSIDERED TO BE PART OF THE PUBLIC ON THE BASIS OF SUCH INTERPRETATION**

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<sup>3</sup> Delete as applicable – each New Lender is required to confirm which of these categories it falls within.

<sup>4</sup> NOTE: This Clause [9] should be included (i) until (A) the European Commission has published a delegated act clarifying the definition of credit institution and the term “public” (as referred to in article 4.1(1) of the Capital Requirements Regulation (EU/575/2013)) or (B) an interpretation is available from a competent authority of the term “public” (as referred to in article 4.1(1) of the Capital Requirements Regulation (EU/575/2013)) and (ii) if the transfer does not include an amount outstanding from the Borrowers of at least EUR100,000 (or its equivalent in other currencies).

**THE SCHEDULE**

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

*[insert relevant details]*

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

[Existing Lender]

[New Lender]

By:

By:

This Agreement is accepted as an Assignment Agreement for the purposes of the Agreement 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 7

### FORM OF INCREASE CONFIRMATION

To: [●] as Facility Agent

[●] as Obligors' Agent, for and on behalf of each Obligor

From: [*the Increase Lender*] (the "**Increase Lender**")

Dated:

**U.S. \$160,000,000 term loan agreement (the "Agreement") dated [●] between, among others, [●] and [●] as modified from time to time.**

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.
1. We refer to Clause 2.3 (*Increase Commitments*).
2. The Increase Lender agrees to assume and will assume all of the obligations corresponding to the Loan Commitment specified in the Schedule (the "**Relevant Commitment**") as if it were an Original Lender under the Agreement in respect of the Relevant Commitment.
2. The proposed date on which the increase in relation to the Increase Lender and the Relevant Commitment is to take effect (the "**Increase Date**") is [●].
3. On the Increase Date, the Increase Lender becomes party to the relevant Finance Documents as a Lender.
4. On and from the Increase Date, the Increase Lender confirms that the Facility Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of that requisite Lender or Lenders in accordance with the Agreement on or prior to the Increase Date and that it is bound by that decision to the same extent as it would have been had it been an Original Lender.
5. The Facility Office and address, email address, fax number and attention details for notices to the Increase Lender for the purposes of Clause 32.2 (Addresses) of the Agreement are set out in the Schedule.
6. The Increase Lender confirms, for the benefit of the Facility Agent and without liability to any Obligor, that it is:
  - (a) [not a Qualifying Lender];
  - (b) [a Qualifying Lender (other than a Treaty Lender)];
  - (c) [a Treaty Lender;]
  - (d) [a Canadian Qualifying Lender (other than a Canadian Treaty Lender);]
  - (e) [a Canadian Treaty Lender;]
  - (f) [not a Canadian Qualifying Lender].

7. The Increase Lender expressly acknowledges the limitations on the Existing Lenders' obligations referred to in Clause 23.2(h) (*Conditions of assignment or Transfer*).
8. The Increase Lender confirms to the Borrowers that it is a professional market party (*professionele marktpartij*) within the meaning of the Dutch Financial Supervision Act (*Wet op het financieel toezicht*).
9. The Increase Lender confirms to the Borrowers that it is not considered to be part of the "public" as referred to in article 4.1(1) of the Capital Requirements Regulation (EU/575/2013).
10. The Increase Lender confirms that it is not a member of the Group or an Affiliate of any member of the Group.
11. 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.
12. This Increase Confirmation and any non-contractual obligations arising out of or in connection with it shall be governed by English law.
13. This Increase Confirmation has been entered into on the date stated at the beginning of this Increase Confirmation.

**WARNING: PLEASE SEEK DUTCH LEGAL ADVICE (I) UNTIL THE COMPETENT AUTHORITY PUBLISHES ITS INTERPRETATION OF THE TERM "PUBLIC" (AS REFERRED TO IN ARTICLE 4.1(1) OF THE CAPITAL REQUIREMENTS REGULATION (EU/575/2013)), IF THE SHARE OF A LENDER IN ANY UTILISATION REQUESTED BY A DUTCH BORROWER IS LESS THAN EUR100,000 (OR ITS EQUIVALENT IN ANOTHER CURRENCY) AND (II) AS SOON AS THE COMPETENT AUTHORITY PUBLISHES ITS INTERPRETATION OF THE TERM "PUBLIC", IF THE LENDER IS CONSIDERED TO BE PART OF THE PUBLIC ON THE BASIS OF SUCH INTERPRETATION**

**The Schedule**

**Relevant Commitment/Rights and obligations to be assumed by the Increase Lender**

*[insert relevant details]*

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

[Increase Lender]

By:

This Agreement is accepted as an Increase Confirmation for the purposes of the Agreement by the Facility Agent and the Increase Date is confirmed as [●].

Facility Agent

By:

## SCHEDULE 8

### HEDGING

#### Part 1 Hedging Policy

1. No Obligor shall be obliged to enter into any Treasury Transaction in connection with the Finance Documents and the failure to enter into any Treasury Transaction shall not constitute a breach of any term of the Finance Documents.
2. The Parties agree that any hedging transaction to be entered into pursuant to this Agreement is to be solely used as a risk management tool. For the avoidance of doubt, the Obligors shall not enter into any hedging transaction that is for speculative or investment purposes.
3. Each Obligor shall:
  - (a) prior to entry into any Secured Hedging Agreement, ensure such Secured Hedging Provider enters into an Accession Undertaking;
  - (b) on each Calculation Date, provide to the Facility Agent a report (in a form satisfactory to the Facility Agent acting reasonably) which summarises each Hedging Agreement to which an Obligor is a party, the counterparties thereto and the derivative transactions thereto;
  - (c) not enter into a Secured Hedging Agreement other than with a Secured Hedging Provider.
4. Promptly upon the entry into of any Secured Hedging Agreement after the date of this Agreement, the relevant Obligor shall:
  - (a) enter into a Transaction Security Document with the Security Agent in respect of such Hedging Agreement in form and substance satisfactory to the Facility Agent and the Security Agent (each acting reasonably);
  - (b) deliver to the relevant Secured Hedging Provider a notice of assignment in accordance with such Security Document; and
  - (c) use reasonable endeavours to procure that such Secured Hedging Provider delivers to the Security Agent an acknowledgement of assignment in accordance with such Security Document.
5. The tenor of any interest rate hedging entered into with a Secured Hedging Provider shall end no later than the Final Maturity Date.

**Part 2 Accession Letter**

To: [●] as Facility Agent

To: Africa Oil Corp as Obligors' Agent

From: [●] (the "Secured Hedging Provider")

Dated:

Dear Sirs

**U.S. \$160,000,000 term loan agreement (the "Agreement") dated [●] between, among others, [●] and [●] as modified from time to time**

1. We refer to the Agreement. This is an Accession Letter. Terms defined in the Agreement have the same meaning in this Accession Letter unless given a different meaning in this Accession Letter.
2. [*Secured Hedging Provider*] agrees to become Secured Hedging Provider and to be bound by the terms of the Agreement as a Secured Hedging Provider.
3. [*Secured Hedging Provider*] administrative details are as follows:  
Address:  
  
Fax No:  
  
Attention:
5. This Accession Letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

[*Secured Hedging Provider*]

**SCHEDULE 9**

**FORM OF COMPLIANCE CERTIFICATE**

To: [●] as Facility Agent

From: Africa Oil Corp. (the “Obligors’ Agent”)

Dated:

Dear Sirs

**U.S. \$160,000,000 term loan agreement (the “Agreement”) dated [●] between, among others, [●] and [●] as modified from time to time (the “Agreement”)**

1. We refer to the Agreement. This is a Compliance Certificate. Terms defined in the Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
2. We confirm that: [*Insert details of covenants to be certified*]
3. We attach the following: [*Insert details of supporting information*]
4. [We confirm that no Default is continuing.]\*

Signed: .....  
Director

---

\* If this statement cannot be made, the Compliance Certificate should identify any Default that is continuing and the steps, if any, being taken to remedy it.

**SCHEDULE 10**

**[NOT USED]**

**SCHEDULE 11****ADDRESSES****Natixis:**

<b>Principal Address:</b>	30, avenue Pierre Mendès-France, 75013 Paris, France
<b>Credit Contact</b>	<b>Name:</b> Ludwig Renard / Mylene Namvong
	<b>Address:</b> 68-76 quai de la Rapée, 75012 Paris, France
	<b>Phone:</b> +33 1 58 19 47 82 / + 33 1 58 19 50 11
	<b>Fax:</b> N/A
	<b>E-mail</b> [REDACTED]
<b>Documentation Contact</b>	<b>Name:</b> Ludwig Renard / Mylene Namvong
	<b>Address:</b> 68-76 quai de la Rapée, 75012 Paris, France
	<b>Phone:</b> +33 1 58 19 47 82 / + 33 1 58 19 50 11
	<b>Fax:</b> N/A
	<b>E-mail</b> [REDACTED]
<b>Operations Contact</b>	<b>Name:</b> Krystle Adamik / Sabah Kanouni (back-up)
	<b>Address:</b> Global Financing Operations - Agency and Middle Office Structured Commodities, 68-76 quai de la Rapée, 75012 Paris, France
	<b>Phone:</b> + 33 1 58 32 66 87 / +33 1 58 19 22 14
	<b>Fax:</b> N/A
	<b>E-mail</b> [REDACTED]

**The Mauritius Commercial Bank Limited:**

<b>Principal Address:</b>	MCB Head Office, 9-15, Sir William Newton Street, Port Louis, Mauritius
<b>Credit Contact</b>	<b>Name:</b> Matthew Thomas / Kunaal Beenessreesingh
	<b>Address:</b> Energy & Commodities BU, CIB SBU, MCB Head Office, 9-15, Sir William Newton Street, Port Louis, Mauritius
	<b>Phone:</b> +230 202 5139 ; + 230 202 6215; +230 405 7676; + 230 57970265
	<b>Fax:</b> +230 208 7976

	<b>E-mail:</b> [REDACTED]
<b>Documentation Contact</b>	<b>Name:</b> Stephan Latchigadu
	<b>Address:</b> Credit Analysis and Structuring BU, CIB SBU, MCB Head Office, 9-15, Sir William Newton Street, Port Louis, Mauritius
	<b>Phone:</b> + 230 202 5108
	<b>Fax:</b> +230 208 7976
	<b>E-mail:</b> [REDACTED]
<b>Operations Contact</b>	<b>Name:</b> Jayashree Errapah
	<b>Address:</b> Transaction Management and Monitoring, CIB SBU, MCB Head Office, 9-15, Sir William Newton Street, Port Louis, Mauritius
	<b>Phone:</b> +230 202 6424
	<b>Fax:</b> +230 208 7976
	<b>E-mail:</b> [REDACTED]

**RMB International (Mauritius) Ltd:**

<b>Principal Address:</b>	Office 110, Grand Baie Business Park, Grand Baie, Mauritius
<b>Credit Contact</b>	<b>Name:</b> Kabelo Moshesha / Warren Narotzky / Gaby Armstrong
	<b>Address:</b> 1 Merchant Place, 1 Fredman Drive, Sandton, Johannesburg, 2196, South Africa
	<b>Phone:</b> 0027 11 282 4827 / 0027 83 242 0488 / 0027 83 464 1999
	<b>Fax:</b> N/A
	<b>E-mail:</b> [REDACTED]
<b>Documentation Contact</b>	<b>Name:</b> Stephen Peters / Gaby Armstrong / Jonathan Ross
	<b>Address:</b> 1 Merchant Place, 1 Fredman Drive, Sandton, Johannesburg, 2196, South Africa
	<b>Phone:</b> 0027 82 467 1125 / 00230 5746 8393
	<b>Fax:</b> N/A

	<b>E-mail:</b> [REDACTED]
<b>Operations Contact</b>	<b>Name:</b> IBD International Support / Gaby Armstrong / Jonathan Ross
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	<b>Fax:</b> N/A
	<b>E-mail:</b> ibds@rmb.co.za / DLRMBMauritiusOperations@rmb.co.za / Gaby.Armstrong@rmb.co.za / Jonathan.Ross@rmb.co.uk

**The Standard Bank of South Africa Ltd, Isle of Man Branch:**

<b>Principal Address:</b>	Standard Bank House, One Circular Road, Douglas IM1 1SB, Isle of Man
<b>Credit Contact</b>	<b>Name:</b> Vusi Riba, Arnold van Wyk, Khumo Balepile
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	<b>Fax:</b> N/A
	<b>E-mail:</b> [REDACTED]
<b>Documentation Contact</b>	<b>Name:</b> N/A
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	<b>Phone:</b> N/A
	<b>Fax:</b> N/A
	<b>E-mail:</b> N/A
<b>Operations Contact</b>	<b>Name:</b> IOM Branch Transaction Management Unit/CIBOPS-LoansAdminJHB
	<b>Address:</b> SB House, One Circular Road, Douglas, Isle of Man IM1 1SB
	<b>Phone:</b> 00 44 1624 643818
	<b>Fax:</b> 00 44 1624 643808
	<b>E-mail:</b> [REDACTED]

	Copy: CIBOPS-LoansAdminJHB@standardbank.co.za
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**Absa Bank Limited (acting through its Corporate and Investment Banking division):**

<b>Principal Address:</b>	15 Alice Lane, Sandton, 2196, Johannesburg
<b>Credit Contact</b>	<b>Name:</b> Transaction Manager
	<b>Address:</b> 15 Alice Lane, Sandton, 2196, Johannesburg
	<b>Phone:</b> +27 11 772 7428
	<b>Fax:</b> +27 865 849 890
	<b>E-mail:</b> [REDACTED]
<b>Documentation Contact</b>	<b>Name:</b> Transaction Administration (IMPEX)
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	<b>Phone:</b> +27 11 895 6973
	<b>Fax:</b> N/A
	<b>E-mail:</b> [REDACTED]
<b>Operations Contact</b>	<b>Name:</b> CIB FICC Operations
	<b>Address:</b> 15 Alice Lane, Sandton, 2196, Johannesburg
	<b>Phone:</b> +27 11 895 7220
	<b>Fax:</b> N/A
	<b>E-mail:</b> [REDACTED]

## Signatures

**EXECUTED AS A DEED** by  
**PETROVIDA HOLDING B.V.**  
as Borrower and Guarantor

By:

[Redacted Signature]

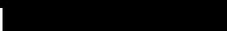
Name:

Title:

[Redacted Name and Title]

**EXECUTED AS A DEED** by  
**AFRICA OIL CORP.**  
as Borrower, Guarantor, Parent and Obligors' Agent

By:

  
Name:   
Title: 

**EXECUTED AS A DEED** by  
**AFRICA OIL HOLDINGS B.V.**  
as Guarantor

By:

[Redacted Signature]

Name:

[Redacted Name]

Title:

[Redacted Title]

**EXECUTED AS A DEED** by

**NATIXIS**

as Facility Agent (for itself and for and on behalf of  
each of the Finance Parties)

By:

[Redacted signature]

Name:

Title:

By:

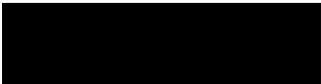
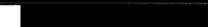
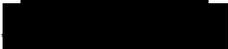
[Redacted signature]

Name:

Title:

[Redacted signature]

**EXECUTED AS A DEED by  
ABSA BANK LIMITED (ACTING THROUGH ITS  
CORPORATE AND INVESTMENT BANKING  
DIVISION)  
as New Lender**

By:   
Name:   
Title: 

By: \_\_\_\_\_  
Name:  
Title:

**EXECUTED AS A DEED** by  
**ABSA BANK LIMITED (ACTING THROUGH ITS  
CORPORATE AND INVESTMENT BANKING  
DIVISION)**  
as New Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_