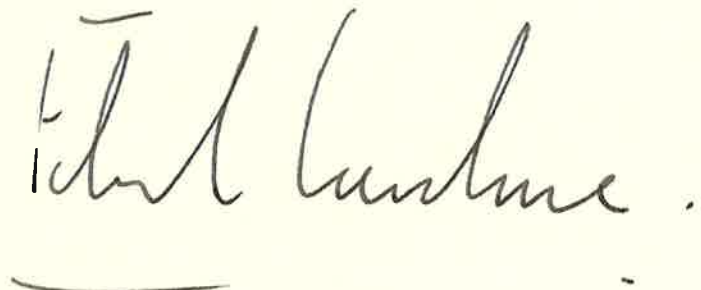


TO ALL TO WHOM THESE PRESENTS SHALL COME, I **EDWARD GARDINER** of the City of London, England **NOTARY PUBLIC** by royal authority duly admitted, sworn and holding a faculty to practise throughout England and Wales, DO HEREBY CERTIFY that the document hereunto annexed was signed this day in my presence by the persons named in column 1 below for the parties to the said document set forth in column 2 below in the capacity or in accordance with an authority bearing the date set forth in column 3 below:

<u>Column 1</u>	<u>Column 2</u>	<u>Column 3</u>
<b>RAYMOND ANTHONY SMEDY and NIMRITA BEDI</b>	<u>The Initial Mandated Lead Arranger</u> <b>STANDARD CHARTERED BANK</b>	Authorised signatories
<b>RAYMOND ANTHONY SMEDY and NIMRITA BEDI</b>	<u>The Original Lender</u> <b>STANDARD CHARTERED BANK</b>	Authorised signatories
<b>NIMRITA BEDI</b>	<u>The Agent</u> <b>STANDARD CHARTERED BANK</b>	Authorised signatory

IN FAITH AND TESTIMONY WHEREOF I the said notary have subscribed my name and set and affixed my seal of office in London, England this twenty eighth day of March in the year two thousand and fourteen.



NO TEXT

EXECUTION VERSION

Dated 27 March 2014

- (1) **KANSANSHI MINING PLC** as Borrower
- (2) **FIRST QUANTUM MINERALS LTD.** as  
Guarantor
- (3) **STANDARD CHARTERED BANK** as Initial  
Mandated Lead Arranger
- (4) **STANDARD CHARTERED BANK**  
as Agent

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TERM FACILITY AGREEMENT  
for US\$350,000,000

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**MAYER • BROWN**

LONDON

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- Form of Assignment Agreement
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**THIS AGREEMENT** is dated 27 March 2014 and made between:

- (1) **KANSANSHI MINING PLC**, a company organised and existing under the laws of the Republic of Zambia (the "**Borrower**");
- (2) **FIRST QUANTUM MINERALS LTD.**, a company organised and existing under the laws of Province of British Columbia, Canada (the "**Guarantor**");
- (3) **STANDARD CHARTERED BANK** as initial mandated lead arranger the "**Arranger**";
- (4) **THE FINANCIAL INSTITUTIONS** listed in Part 2 of Schedule 1 (*The Original Parties*) as lenders (the "**Original Lenders**"); and
- (5) **STANDARD CHARTERED BANK** incorporated in England by Royal Charter 1853 reference number ZC18 and duly authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority and whose principal office is situated in England at One Basinghall Avenue, London EC2V 5DD, as agent of the other Finance Parties (the "**Agent**").

**IT IS AGREED that:**

## 1. **DEFINITIONS AND INTERPRETATION**

### 1.1 **Definitions**

In this Agreement:

**"Acceptable Bank"** means:

- (a) a bank or financial institution which has a rating for its long-term unsecured and non credit-enhanced debt obligations of A- or higher by Standard & Poor's Rating Services or Fitch Ratings Ltd or A3 or higher by Moody's Investors Service Limited or a comparable rating from an internationally recognised credit rating agency;
- (b) the Original Lender; or
- (c) any other bank or financial institution approved by the Agent.

**"Accounting Reference Date"** means 31 December.

**"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.

**"Agent's Spot Rate of Exchange"** means the Agent's spot rate of exchange for the purchase of the relevant currency with the Base Currency in the London foreign exchange market at or about 11.00 a.m. on a particular day.

**"Agreed Environmental and Social Requirements"** means:

- (a) any Environmental Law or Social Law;
- (b) the World Bank Group (including IFC and MIGA) Environmental Health and Safety Policies and Guidelines including the International Finance Corporation Environmental Health and Safety Guidelines for Mining, the International Finance Corporation General Environmental Health and Safety Guidelines and the Performance Standards;
- (c) the Equator Principles; and
- (d) the "**Principles and Standards of Practice**" contained in the International Cyanide Management Code.

"**Annual Financial Statements**" has the meaning given to that term in Clause 21 (*Information Undertakings*).

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

"**Auditors**" means PriceWaterhouseCoopers LLP, KPMG LLP or any other firm approved in advance by the Majority Lenders (such approval not to be unreasonably withheld or delayed).

"**Authorisation**" means an authorisation, consent, approval, resolution, licence (including, without limitation, any Mining Licences), exemption, filing, notarisation or registration.

"**Availability Period**" means the period from and including the date of this Agreement to and including the date which falls three Months after the date of this Agreement.

"**Available Commitment**" means a Lender's Commitment under the Facility minus (subject as set out below):

- (a) the Base Currency Amount of its participation in any outstanding Loans under the Facility; and
- (b) in relation to any proposed Loan, the Base Currency Amount of its participation in any other Loan that is due to be made under the Facility on or before the proposed Utilisation Date.

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

"**Base Case Model**" means the financial model including profit and loss, balance sheet and cashflow projections relating to the Borrower and the Guarantor in the agreed form to be delivered by the Borrower to the Agent pursuant to Clause 4.1 (*Initial conditions precedent*) and as the same may be updated from time to time pursuant to Clause 21.4 (*Base Case Model*).

"**Base Currency**" means US\$.

**"Base Currency Amount"** means, in relation to a Loan, the amount specified in the Utilisation Request delivered by the Borrower for that Loan, as adjusted to reflect any repayment, prepayment or consolidation of a Loan.

**"Base Reference Bank Rate"** means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Agent at its request by the Base Reference Banks as the rate at which the relevant Base Reference Bank could borrow funds in the London interbank market in the relevant currency and for the relevant period, were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size in that currency and for that period.

**"Base Reference Banks"** means, in relation to LIBOR, the principal London office of Standard Chartered Bank or such other banks as may be appointed by the Agent in consultation with the Borrower.

**"Basel III"** means:

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

**"Borrowings"** has the meaning given to that term in Clause 22.1 (*Financial definitions*).

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

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

exceeds:

- (b) the amount which that Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the Relevant 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 and New York.

**"Capital Expenditure"** has the meaning given to that term in Clause 22.1 (*Financial definitions*).

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

- (a) certificates of deposit maturing within one year after the relevant date of calculation and issued by an Acceptable Bank;
- (b) commercial paper not convertible or exchangeable to any other security:
  - (i) for which a recognised trading market exists;
  - (ii) issued by an issuer incorporated in Canada, the United States of America or the United Kingdom;
  - (iii) which matures within one year after the relevant date of calculation; and
  - (iv) which has a credit rating of either A-1 or higher by Standard & Poor's Rating Services or F1 or higher by Fitch Ratings Ltd or P-1 or higher by Moody's Investors Service Limited, or, if no rating is available in respect of the commercial paper, the issuer of which has, in respect of its long-term unsecured and non-credit enhanced debt obligations, an equivalent rating;
- (c) any other debt security approved by the Majority Lenders,

in each case, denominated in US\$, Canadian Dollars, euros or sterling and to which any member of the Group is alone (or together with other members of the Group) beneficially entitled at that time and which is not issued or guaranteed by any member of the Group or subject to any Security; or

- (d) cash (denominated in an internationally recognised currency which is freely convertible) in hand or at bank and (in the latter case) credited to an account in the name of a member of the Group with an Acceptable Bank and to which a member of the Group is alone (or together with other members of the Group) beneficially entitled and for so long as:
  - (i) that cash is repayable within 90 days after the relevant date of calculation;
  - (ii) repayment of that cash is not contingent on the prior discharge of any other indebtedness of any member of the Group or of any other person whatsoever or on the satisfaction of any other condition;

- (iii) there is no Security over that cash except for any Permitted Security constituted by a netting or set-off arrangement entered into by members of the Group in the ordinary course of their banking arrangements; and
- (iv) the cash is freely available (except as mentioned in paragraph (i)) to be applied in repayment or prepayment of the Facility.

**"Change of Control"** occurs if:

- (a) in relation to the Guarantor, any person or group of persons acting jointly or in concert gains control or acquires securities of the Guarantor having 20% or more of the ordinary voting power to elect the board of directors of the Guarantor.

For the purposes of this paragraph (a), **"control"** and **"acting jointly or in concert"** have the meanings given to them in the Securities Act (Ontario) and any rules promulgated thereunder; and

- (b) in relation to the Borrower, if the Guarantor ceases to control the Borrower, directly or indirectly.

For the purposes of this paragraph (b), **"control"** means the power, whether by way of ownership of shares, proxy, contract, agency or otherwise, to direct the management and policies of an entity.

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

**"Commitment"** means:

- (a) in relation to an Original Lender, the amount in the Base Currency set opposite its name under the heading **"Commitment"** in Schedule 1, Part 2 (*The Original Lenders*) and the amount of any other Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*); and
- (b) in relation to any other Lender, the amount in the Base Currency of any Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*),

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

**"Compliance Certificate"** means a certificate substantially in the form set out in Schedule 6 (*Form of Compliance Certificate*).

**"Confidential Information"** means all information relating to the Borrower, 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 information that:

- (i) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 38 (*Confidentiality*);
- (ii) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
- (iii) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

**"Confidentiality Undertaking"** means a confidentiality undertaking substantially in a recommended form of the LMA as set out in Schedule 7 (*LMA Form of Confidentiality Undertaking*) or in any other form agreed between the Borrower and the Agent.

**"Constitutional Documents"** means in respect of any Obligor, the articles of incorporation, articles of amendment and/or articles of amalgamation, as applicable, of such entity, and, in each case, such entity's by-laws.

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

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

any Commitment or amount outstanding under this Agreement.

**"Default"** means an Event of Default or any event or circumstance specified in Clause 24 (*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 Agent or the Borrower (which has notified the Agent) that it will not make its participation in a Loan available) by the Utilisation Date of that Loan in accordance with Clause 5.4 (*Lenders' participation*);

- (b) which has otherwise rescinded or repudiated a Finance Document; or
  - (c) with respect to which an Insolvency Event has occurred and is continuing,
- unless, in the case of paragraph (a):

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

**"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.

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

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

**"Environmental or Social Claim"** means any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law and/or Social Law.

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

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

**"Environmental Permits"** means any permit and other Authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of any member of the Group conducted on or from the properties owned or used by any member of the Group.

**"Equator Principles"** means that set of ten principles set out in the paper entitled "A financial industry benchmark for determining, assessing and managing social and environmental risk in project financing" dated July 2006 and developed in co-operation with the International Finance Corporation and adopted by various banks and financial institutions, together with any amendments thereto as from time to time in effect, including Equator Principles III dated 4 June 2013 (to the extent applicable).

**"Event of Default"** means any event or circumstance specified as such in Clause 24 (*Events of Default*).

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

**"Facility Office"** means:

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

**"FATCA"** means:

- (a) sections 1471 to 1474 of the Code or any associated regulations or other official guidance;
- (b) any treaty, law, regulation or other official guidance enacted in any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of paragraph (a) above; or
- (c) any agreement pursuant to the implementation of 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;
- (b) in relation to a "withholdable payment" described in section 1473(1)(A)(ii) of the Code (which relates to "gross proceeds" from the disposition of property of a type that can produce interest from sources within the US), 1 January 2017; or
- (c) in relation to a "passthru payment" described in section 1471(d)(7) of the Code not falling within paragraphs (a) or (b) above, 1 January 2017,

or, in each case, such other date from which such payment may become subject to a deduction or withholding required by FATCA as a result of any change in FATCA after the date of this Agreement.

**"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.

**"FATCA FFI"** means a foreign financial institution as defined in section 1471(d)(4) of the Code which, if any Finance Party is not a FATCA Exempt Party, could be required to make a FATCA Deduction.

**"Fee Letter"** means:

- (a) any letter or letters dated on or about the date of this Agreement between the Arranger and the Borrower (or the Agent and the Borrower) setting out any of the fees referred to in Clause 13 (*Fees*); and
- (b) any agreement setting out fees payable to a Finance Party referred to in Clause 2.2(f)(*Increase*) of this Agreement or under any other Finance Document.

**"Finance Document"** means this Agreement, any Compliance Certificate, any Fee Letter, any Selection Notice, the Subordination Agreement, any Utilisation Request and any other document designated as a "Finance Document" by the Agent and the Borrower.

**"Finance Party"** means the Agent, the Arranger, a Lender, the On-Shore Account Bank or the Off-Shore Account Bank.

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

- (a) moneys borrowed and debit balances at banks or other financial institutions;
- (b) any acceptance under any acceptance credit or bill discounting facility (or dematerialised equivalent);

- (c) any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of Finance Leases;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis and meet any requirement for de-recognition under IFRS);
- (f) any Treasury Transaction (and, when calculating the value of that Treasury Transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that Treasury Transaction, that amount) shall be taken into account);
- (g) (without double counting) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;
- (h) any amount raised by the issue of shares which are redeemable (other than at the option of the issuer) before the Termination Date or are otherwise classified as borrowings under IFRS);
- (i) any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind entering into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question or (ii) the agreement is in respect of the supply of assets or services and payment is due more than 90 days after the date of supply;
- (j) any amount raised under any other transaction (including any forward sale or purchase, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing or otherwise classified as borrowings under IFRS; and
- (k) (without double counting) the amount of any liability in respect of any guarantee for any of the items referred to in paragraphs (a) to (j) above.

**"Financial Half Year"** has the meaning given to that term in Clause 22.1 (*Financial definitions*).

**"Financial Year"** has the meaning given to that term in Clause 22.1 (*Financial definitions*).

**"FQMOL Acquisition"** means the acquisition by the Borrower of certain of the assets of First Quantum Mining and Operations Limited for a consideration of up to US\$500,000,000 (subject to final valuation).

**"FQM Facility Agreement"** means the US\$2,500,000,000 revolving and term loan facilities agreement to be entered into between, amongst others, the Guarantor as borrower, certain members of the Group as guarantors and Standard Chartered Bank as agent and security agent.

**"Franco-Nevada Streaming Agreement"** means the US\$1,000,000,000 precious metals stream agreement between Franco-Nevada (Barbados) Corporation, Inmet Finance Company S.àr.L., Minera Panama S.A., Inmet Panama I S.àr.L. and Inmet Panama II S.àr.L. referred to on its front page as a purchase and sale agreement dated 20 August 2012 as amended, novated, supplemented, extended or restated.

**"Group"** means the Guarantor and each of its Subsidiaries for the time being.

**"HMT"** has the meaning given to that term in the definition of Sanctions in this Agreement.

**"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.

**"Impaired Agent"** means the Agent at any time when:

- (a) it has failed to make (or has notified a Party that it will not make) a payment required to be made by it under the Finance Documents by the due date for payment;
- (b) the Agent otherwise rescinds or repudiates a Finance Document;
- (c) (if the Agent is also a Lender) it is a Defaulting Lender under paragraph (a) or (b) of the definition of "**Defaulting Lender**"; or
- (d) an Insolvency Event has occurred and is continuing with respect to the Agent;  
unless, in the case of paragraph (a) above:
  - (i) its failure to pay is caused by:
    - (A) administrative or technical error; or
    - (B) a Disruption Event; andpayment is made within three Business Days of its due date; or
  - (ii) the Agent is disputing in good faith whether it is contractually obliged to make the payment in question.

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

**"Increase Lender"** has the meaning given to that term in Clause 2.2 (*Increase*).

**"Information Memorandum"** means the document in the form approved by the Borrower which, at the request of the Borrower and the Guarantor and on their behalf, is to be prepared in relation to this transaction, and distributed by the Arranger prior to the Syndication Date in connection with the syndication of the Facility.

**"Insolvency Event"** in relation to a Finance Party means that the Finance Party:

- (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; or
- (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.

**"Interpolated Screen Rate"** means, in relation to LIBOR for any Loan, the rate (rounded upwards to four decimal places) which results from interpolating on a linear basis between:

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

each as of the Specified Time on the Quotation Day for the currency of that Loan.

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

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

**"Kansanshi Facilities Agreement"** means the US\$1,000,000,000 facilities agreement for the Borrower with Standard Chartered Bank as Facility Agent, dated 25 January 2012 in the form as at the date of this Agreement.

**"KMP Group"** means each of:

- (a) FQM Finance Ltd., a company organised and existing under the law of the British Virgin Islands;
- (b) Black Bark Investments Limited, a limited liability company organised and existing under the laws of the British Virgin Islands;
- (c) Kansanshi Holdings Limited, a company organised and existing under the laws of Ireland; and
- (d) the Borrower.

**"KPMC Loan"** means Financial Indebtedness provided by Korea Panama Mining Corporation (or successor or assignee pursuant to the terms of the MPSA Shareholders Agreement) to Minera Panama S.A., of up to US\$1,200,000,000.

**"LCIA"** means the London Court of International Arbitration.

**"Legal Opinion"** means any legal opinion delivered to the Agent under Clause 4.1 (*Initial conditions precedent*) or Clause 27 (*Changes to the Obligors*).

**"Legal Reservations"** means:

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

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

**"Lender"** means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party as a Lender in accordance with Clause 2.2 (*Increase*) or Clause 25 (*Changes to the Lenders*),

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

**"LIBOR"** means, in relation to any Loan:

- (a) the applicable Screen Rate; or
- (b) (if no Screen Rate is available for the Interest Period of that Loan) the Interpolated Screen Rate for that Loan; or
- (c) if:
  - (i) no Screen Rate is available for the currency of that Loan; or
  - (ii) no Screen Rate is available for the Interest Period of that Loan and it is not possible to calculate an Interpolated Screen Rate for that Loan,

the Base Reference Bank Rate,

as of, in the case of paragraphs (a) and (c) above, the Specified Time on the Quotation Day for the currency of that Loan and for a period equal in length to the Interest Period of that Loan and, if 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.

**"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.

**"Majority Lenders"** means a Lender or Lenders whose Commitments aggregate more than 66<sup>2</sup>/<sub>3</sub>% of the Total Commitments (or, if the Total Commitments have been

reduced to zero, aggregated more than 66<sup>2</sup>/<sub>3</sub>% of the Total Commitments immediately prior to that reduction).

**"Margin"** means 2.75% per annum.

**"Material Adverse Effect"** means a material adverse effect on:

- (a) the business, operations, assets or condition (financial or otherwise) of the Group (taken as a whole) or the Borrower;
- (b) the ability of any Obligor to perform any of its obligations under any of the Finance Documents; or
- (c) the validity or enforceability of, or the effectiveness of any of the Finance Documents or the rights or remedies of any Finance Party under any of the Finance Documents.

**"Mining Licences"** means any mining, exploration, transportation, processing or milling licence, mining concession or mining approval (or any other licence required to carry out activities related to a mining business in a given jurisdiction).

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

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

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

**"MPSA Shareholders Agreement"** means the amended and restated MPSA shareholders agreement dated 20 August 2012 between Inmet Mining Corporation, Korea Panama Mining Corp, Minera Panama S.A., LS-Nikko Copper Inc, Korea Resources Corporation and Inmet Panama II as amended, novated, supplemented, extended or restated.

**"New Lender"** has the meaning given to that term in Clause 25 (*Changes to the Lenders*).

**"Non-Consenting Lender"** has the meaning given to that term in Clause 37.5 (*Replacement of Lender*).

**"Obligor"** means the Borrower or the Guarantor.

"OFAC" has the meaning given to that term in the definition of Sanctions in this Agreement.

"Off-Shore Account Bank" means Standard Chartered Bank London Branch.

"On-Shore Account Bank" means Standard Chartered Bank Zambia Plc.

"Original Financial Statements" means:

- (a) in relation to the Guarantor, the consolidated audited financial statements for its Financial Year ended 31 December 2013; and
- (b) in relation to the Borrower, the audited financial statements for its Financial Year ended 31 December 2012.

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

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

"Party" means a party to this Agreement.

"Permitted Acquisition" means an acquisition by the Borrower of a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them) but only if at the date of such acquisition:

- (a) there is no breach of a financial covenant in Clause 22 (*Financial Covenants*) and no breach of a financial covenant in Clause 22 (*Financial Covenants*) would occur as a result of the acquisition;
- (b) the acquired company, business or undertaking is principally engaged in the business of mining or metal processing, or is engaged in the furtherance of such activities;
- (c) the consideration (excluding associated costs and expenses) for the acquisition and any Financial Indebtedness or other assumed actual or contingent liability, in each case remaining in the acquired company (or any such business) at the date of acquisition (when aggregated with the consideration (excluding associated costs and expenses) for any other Permitted Acquisition and any Financial Indebtedness or other assumed actual or contingent liability, in each case remaining in any such acquired companies or businesses at the time of acquisition) does not exceed in aggregate US\$100,000,000 or its equivalent in any other currency or currencies over the life of the Facility; and
- (d) no Event of Default is continuing or would occur as a result of the acquisition.

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

- (a) in respect of the Borrower only, of output from the mines owned by it made in the ordinary course of business by it and any disposal of obsolete or redundant assets which are no longer used or required or of assets which are to be replaced;
- (b) arising as a result of any Permitted Security; or
- (c) of cash or cash equivalent investments of the Borrower in exchange for other cash or cash equivalent investments to be owned by the Borrower.

**"Permitted Distribution"** means the payment of a dividend or other distribution on or in respect of share capital:

- (a) by the Borrower, provided that on the date of the payment:
  - (i) there is no breach of a financial covenant in Clause 22.2(a) (*Financial covenants*) and no breach of a financial covenant in Clause 22.2(a) (*Financial covenants*) would occur as a result of the making of the payment; and
  - (ii) no Event of Default is continuing or would occur as a result of the making of the payment; and
- (b) by the Guarantor, provided that on the date of payment:
  - (i) there is no breach of a financial covenant in Clause 22.2(b) (*Financial condition*) and no breach of a financial covenant in Clause 22.2(b) (*Financial condition*) would occur as a result of the making of the payment;
  - (ii) no Event of Default is continuing or would occur as a result of the making of the payment; and
  - (iii) the amount of such dividend or other distribution, when aggregated with the amount of any other dividend or distribution paid or declared by the Guarantor, in any financial year, does not exceed fifty per cent. (50%) of the consolidated net income of the Guarantor for the immediately preceding financial year (provided that to the extent that dividends or other distributions are less than fifty per cent. (50%) of the consolidated net income of the Guarantor in any year, such shortfall may be carried forward and distributed by the Guarantor in subsequent years subject to the other requirements of this paragraph (iii) being met).

**"Permitted Financial Indebtedness"** means Financial Indebtedness:

- (a) incurred by the Borrower, provided that such Financial Indebtedness is by way of an unsecured working capital term facility having a term of less than one year and on the date of incurrence of such Financial Indebtedness:
  - (i) there is no breach of a financial covenant in Clause 22 (*Financial covenants*) and no breach of a financial covenant in Clause 22

*(Financial covenants)* would occur as a result of the incurrence of such Financial Indebtedness;

- (ii) no Event of Default is continuing or would occur as a result of the incurrence of such Financial Indebtedness; and
  - (iii) such Financial Indebtedness shall be subordinated to or rank pari passu with the claims of the Finance Parties under the Finance Documents;
- (b) incurred by the Borrower pursuant to a loan or deposit from a member of the Group provided that such member of the Group is or shall become a party to the Subordination Agreement as an "Intra-Group Lender" (as defined in the Subordination Agreement);
- (c) arising under or in connection with the Finance Documents; and
- (d) permitted by Clause 23.24 (*Treasury Transactions*).

**"Permitted Joint Venture"** means any investment in any Joint Venture where:

- (a) the Joint Venture is engaged in a business substantially the same as that carried on by the Group; and
- (b) the aggregate of:
  - (i) all amounts subscribed for shares in, lent to, or invested in all such Joint Ventures by the Borrower;
  - (ii) the contingent liabilities of the Borrower under any guarantee given in respect of the liabilities of any such Joint Venture; and
  - (iii) the book value of any assets transferred by the Borrower to any such Joint Venture,

does not exceed US\$200,000,000 (or its equivalent in other currency or currencies) during the term of this Agreement.

**"Permitted Loan"** means:

- (a) any trade credit extended by the Borrower to its customers on normal commercial terms and in the ordinary course of its trading activities; and
- (b) a loan or deposit made by the Borrower to another member of the Group.

**"Permitted Security"** means:

- (a) any lien arising by operation of law and in the ordinary course of trading and not as a result of any default or omission by the Borrower;
- (b) security incurred in the ordinary course of business in connection with unemployment insurance or other forms of governmental insurance or benefits, or to secure performance of tenders, statutory obligations, leases and

contracts (other than for financial indebtedness) entered into in the ordinary course of business or to secure obligations on surety or appeal bonds;

- (c) security incurred for taxes, assessments or other governmental charges or levies not at the time delinquent or thereafter payable without penalty or being contested in good faith by appropriate proceedings and for which adequate reserves in accordance with IFRS shall have been set aside on its books;
- (d) security of carriers, warehousemen, mechanics, materialmen, suppliers and landlords incurred in the ordinary course of business for sums not overdue or being contested in good faith by appropriate proceedings and for which adequate reserves in accordance with IFRS shall have been set aside on its books;
- (e) any netting or set-off arrangement entered into by the Borrower in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances of members of the Group but only so long as (i) such arrangement does not permit credit balances of the Borrower to be netted or set off against debit balances of members of the Group other than the Guarantor and (ii) such arrangement does not give rise to other Security over the assets of the Borrower in support of liabilities of members of the Group other than the Guarantor;
- (f) any payment or close out netting or set-off arrangement pursuant to any Treasury Transaction or foreign exchange transaction entered into by the Borrower which constitutes Permitted Financial Indebtedness;
- (g) any lien over any metal and/or by-product arising in connection with payments being made under any forward sale contracts for the purchase of such metal and/or by-product prior to the transfer of title of such metal and/or by-product;
- (h) any Security or Quasi-Security over or affecting any asset acquired by the Borrower after the date of this Agreement if:
  - (i) the Security or Quasi-Security was not created in contemplation of the acquisition of that asset by the Borrower;
  - (ii) the principal amount secured has not been increased in contemplation of or since the acquisition of that asset by the Borrower; and
  - (iii) the Security or Quasi-Security is removed or discharged within three months of the date of acquisition of such asset; and
- (i) any Security or Quasi-Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to the Borrower in the ordinary course of trading and on the supplier's standard or usual terms and not arising as a result of any default or omission by the Borrower.

"Quasi-Security" has the meaning given to that term in Clause 23.14 (*Negative pledge*).

**"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 Relevant Interbank Market for a currency, in which case the Quotation Day for that currency will be determined by the Agent in accordance with market practice in the Relevant Interbank Market (and if quotations would normally be given by leading banks in the Relevant Interbank Market on more than one day, the Quotation Day will be the last of those days).

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

**"Relevant Interbank Market"** means the London interbank market.

**"Relevant Jurisdiction"** means, in relation to an Obligor:

- (a) its Original Jurisdiction; and
- (b) any jurisdiction where it conducts its business.

**"Relevant Period"** has the meaning given to that term in Clause 22.1 (*Financial definitions*).

**"Reliance Parties"** means the Agent, the Arranger, each Original Lender and each person which becomes a Lender as part of the primary syndication of the Facility.

**"Repayment Date"** means each date set out in Clause 6.1(a) (*Repayment of Loans*).

**"Repayment Instalment"** has the meaning given to that term in Clause 6.1(a) (*Repayment of Loans*).

**"Repeating Representations"** means each of the representations set out in Clause 20.2 (*Status*) to Clause 20.8 (*Insolvency*), Clause 20.11 (*No default*), Clause 20.12(e) (*No misleading information*), Clause 20.13(d) and (e) (*Original Financial Statements*), Clause 20.14 (*No proceedings pending or threatened*), Clause 20.16 (*Agreed Environmental and social laws*), Clause 20.19 (*Sanctions*), Clause 20.21 (*Title to assets*) and Clause 20.23 (*Immunity*).

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

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

**"Sanctions"** means the economic sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by: (i) the United States government; (ii) the United Nations; (iii) the European Union (iv) the United Kingdom; or (v) the respective governmental institutions and agencies of any of the foregoing, including, without limitation, the Office of Foreign Assets Control of the US Department of Treasury ("**OFAC**"), the United States Department of State, and Her Majesty's Treasury ("**HMT**") (together the "**Sanctions Authorities**").

**"Sanctions Authorities"** has the meaning given to that term in the definition of Sanctions in this Agreement.

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

**"Screen Rate"** means the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant currency and for the relevant period displayed on page LIBOR01 or LIBOR02 of the Reuters Screen (or any replacement 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 Reuters. If such page or service ceases to be available, the Agent may specify another page or service displaying the relevant rate after consultation with the Borrower.

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

**"Selection Notice"** means a notice substantially in the form set out in Part 2 of Schedule 3 (*Requests and Notices*) given in accordance with Clause 11 (*Interest Periods*) in relation to the Facility.

**"Social Law"** means any law, rule or regulation in any country in which an Obligor carries on business which are binding on that Obligor and which relates to:

- (a) labour;
- (b) social security;
- (c) the regulation of industrial relations (between government, employers and employees);
- (d) the protection of occupational and public health and safety;
- (e) the regulation of public participation in businesses or enterprises;
- (f) the protection and regulation of ownership of land rights (both formal and traditional), immovable goods and intellectual and cultural property rights;
- (g) the protection and empowerment of indigenous peoples or ethnic groups;

- (h) the projection, restoration and promotion of cultural heritage;
- (i) all other laws, rules and regulations providing for the protection of employees and citizens;
- (j) the implementation of any International Labour Conventions signed and ratified by any country in which a member of the Group operates;
- (k) the implementation of any United Nations treaty, convention or covenant on human rights signed and ratified by any country in which a member of the Group operates.

**"Specified Time"** means a time determined in accordance with Schedule 8 (*Timetables*).

**"Subordination Agreement"** means the subordination agreement dated on or about the same date as this Agreement and made between, among others, the Borrower, the Guarantor, certain members of the Group and the Agent.

**"Subsidiary"** means an entity of which a person has direct or indirect control or owns directly or indirectly more than 50 per cent. 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.

**"Syndication Date"** means the day on which each Arranger confirms to the Borrower that the primary syndication of the Facility has been completed.

**"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), and whether disputed or not.

**"Termination Date"** means the date falling five (5) years after the date of this Agreement (or if not a Business Day, the preceding Business Day).

**"Total Commitments"** means the aggregate of the Commitments, being US\$350,000,000 as at the date of this Agreement.

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

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

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

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

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

**"US Tax Obligor"** means an Obligor resident for tax purposes in the United States of America or some or all of whose payments under the Finance Documents are from sources within the United States for US federal income tax purposes.

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

**"Utilisation Request"** means a notice substantially in the relevant form set out in Part 1 of Schedule 3 (*Requests and Notices*).

**"VAT"** means:

- (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere.

## 1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
  - (i) the **"Agent"**, the **"Arranger"**, any **"Finance Party"**, any **"Lender"**, any **"Obligor"**, any **"Party"** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents;
  - (ii) a document in **"agreed form"** is a document which is previously agreed in writing by or on behalf of the Borrower and the Agent;
  - (iii) **"assets"** includes present and future properties, revenues and rights of every description;
  - (iv) unless a contrary indication appears, 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 or restated;
  - (v) a **"group of Lenders"** includes all the Lenders;
  - (vi) **"guarantee"** means (other than in Clause 19 (*Guarantee and Indemnity*)) a standby letter of credit, an indemnity and any other obligation (howsoever called) of any person to pay, purchase or provide funds (whether by the advance of money, the purchase of or subscription for shares or other securities, the purchase of assets or services or otherwise) for the payment of or to assist in or provide

means of discharging or otherwise be responsible for, any indebtedness of, or the solvency of any other person;

- (vii) "**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;
  - (viii) 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);
  - (ix) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, being of a type with which any person to which it applies is accustomed to comply) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
  - (x) the equivalent in any currency (the "**first currency**") of any amount in another currency (the "**second currency**") shall be construed as a reference to the amount in the first currency which could be purchased with that amount in the second currency at the Agent's Spot Rate of Exchange on a particular day;
  - (xi) a "**provision of law**" is a reference to that provision as amended or re-enacted; and
  - (xii) a "**time of day**" is a reference to London time.
- (b) 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 (other than an Event of Default) is "**continuing**" if it has not been remedied or waived and an Event of Default is "**continuing**" if it has not been waived.

### 1.3 Currency symbols and definitions

- (a) "\$", "USD", "US\$" and "**dollars**" denote the lawful currency of the United States of America.
- (b) "**Canadian Dollars**" and "**CAD\$**" denote the lawful currency of Canada.
- (c) "**euro**" denote the single currency of the Participating Member States.
- (d) "**sterling**" denote the lawful currency of the United Kingdom.

- (e) "ZMW" denote the lawful currency of the Republic of Zambia.

#### 1.4 **Third party rights**

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

### 2. **THE FACILITY**

#### 2.1 **The Facility**

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

#### 2.2 **Increase**

- (a) The Borrower may by giving prior notice to the Agent by no later than the date falling 15 Business Days after the effective date of a cancellation of:
  - (i) the Available Commitments of a Defaulting Lender in accordance with Clause 7.7 (*Right of cancellation in relation to a Defaulting Lender*); or
  - (ii) the Commitments of a Lender in accordance with:
    - (A) Clause 7.1 (*Illegality*); or
    - (B) Clause 7.6(a) (*Right of cancellation and repayment in relation to a single Lender*),

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

- I. the increased Commitments will be assumed by one or more Lenders or other banks, financial institutions, trusts, funds or other entities (each an "**Increase Lender**") selected by the Borrower (each of which shall not be a member of the Group) and each of which confirms in writing (whether in the relevant Increase Confirmation or otherwise) its willingness to assume and does assume all the obligations of a Lender corresponding to that part of the increased Commitments which it is to assume, as if it had been an Original Lender;
- II. each of the Obligors and any Increase Lender shall assume obligations towards one another and/or acquire rights against one another as the

Obligors and the Increase Lender would have assumed and/or acquired had the Increase Lender been an Original Lender;

- III. 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;
  - IV. the Commitments of the other Lenders shall continue in full force and effect; and
  - V. any increase in the Commitments relating to the Facility shall take effect on the date specified by the Borrower in the notice referred to above or any later date on which the conditions set out in paragraph (b) below are satisfied.
- (b) An increase in the Commitments will only be effective on:
- (i) the execution by the Agent of an Increase Confirmation from the relevant Increase Lender; and
  - (ii) in relation to an Increase Lender which is not a Lender immediately prior to the relevant increase, the Agent being satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assumption of the increased Commitments by that Increase Lender. The Agent shall promptly notify the Borrower and the Increase Lender upon being so satisfied.
- (c) Each Increase Lender, by executing the Increase Confirmation, confirms (for the avoidance of doubt) that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the increase becomes effective.
- (d) The Borrower shall promptly on demand pay the Agent the amount of all costs and expenses (including legal fees) reasonably incurred by it in connection with any increase in Commitments under this Clause 2.2 (*Increase*).
- (e) The Increase Lender shall, on the date upon which the increase takes effect, pay to the Agent (for its own account) a fee in an amount equal to the fee which would be payable under Clause 25.3 (*Assignment or transfer fee*) if the increase was a transfer pursuant to Clause 25.5 (*Procedure for transfer*) and if the Increase Lender was a New Lender.
- (f) The Borrower may pay to the Increase Lender a fee in the amount and at the times agreed between the Borrower and the Increase Lender in a Fee Letter.

- (g) Clause 25.4 (*Limitation of responsibility of Existing Lenders*) shall apply mutatis mutandis in this Clause 2.2 (*Increase*) in relation to an Increase Lender as if references in that Clause to:
- (i) an "**Existing Lender**" were references to all the Lenders immediately prior to the relevant increase;
  - (ii) the "**New Lender**" were references to that "**Increase Lender**"; and
  - (iii) a "**re-transfer**" and "**re-assignment**" were references to respectively a "**transfer**" and "**assignment**".

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

- (a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor shall be a separate and independent debt.
- (c) A Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.

## 3. **PURPOSE**

### 3.1 **Purpose**

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

- (a) refinancing the Kansanshi Facilities Agreement and payment of all refinancing costs associated thereto;
- (b) its general corporate purposes and to be used for Capital Expenditure and operating expenditure, excluding in each case for use in connection with the FQMOL Acquisition;
- (c) payment of all fees, costs and expenses incurred in connection with the Facility; and/or
- (d) any other purpose with the prior written consent of the Lenders.

### 3.2 **Monitoring**

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

## 4. CONDITIONS OF UTILISATION

### 4.1 Initial conditions precedent

- (a) The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to any Loan if on or before the Utilisation Date for that Loan, the Agent has received all of the documents and other evidence listed in Part 1 of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Agent. The Agent shall notify the Borrower and the Lenders promptly upon being so satisfied.
- (b) Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent gives the notification described in paragraph (a) above, the Lenders authorise (but do not require) the Agent to give that notification. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

### 4.2 Further conditions precedent

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

- (a) no Default is continuing or would result from the proposed Loan; and
- (b) in relation to the initial Loan, all the representations and warranties in Clause 20 (*Representations*) or, in relation to any other Loan, the Repeating Representations to be made by each Obligor are true in all material respects.

### 4.3 Maximum number of Loans

The Borrower may not deliver a Utilisation Request if as a result of the proposed Loan five (5) or more Loans would be outstanding.

## 5. UTILISATION - LOANS

### 5.1 Delivery of a Utilisation Request

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

### 5.2 Completion of a Utilisation Request for Loans

- (a) Each Utilisation Request for a Loan 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 Loan comply with Clause 5.3 (*Currency and amount*); and

(iii) the proposed Interest Period complies with Clause 11 (*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 the Base Currency.

(b) The amount of the proposed Loan must be an amount equal to US\$50,000,000 or more (in increments of US\$10,000,000) 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 Facility Office.

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

### 5.5 **Cancellation of Commitment**

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

### 5.6 **Agent's calculations**

Each Lender's participation in a Loan will be determined in accordance with Clause 5.4(b) (*Lenders' participation*).

## 6. **REPAYMENT**

(a) The Borrower shall repay the aggregate Loans in instalments by repaying on each Repayment Date an amount which reduces the Base Currency Amount of the outstanding aggregate Loans by the amount set out opposite that Repayment Date below:

<b>Repayment Date</b>	<b>Repayment Instalment</b>
30 months from the date of this Agreement	One sixth of the aggregate Loans outstanding on the first Repayment Date
36 months from the date of this Agreement	One sixth of the aggregate Loans outstanding on the first Repayment Date
42 months from the date of this Agreement	One sixth of the aggregate Loans outstanding on the first

	Repayment Date
48 months from the date of this Agreement	One sixth of the aggregate Loans outstanding on the first Repayment Date
54 months from the date of this Agreement	One sixth of the aggregate Loans outstanding on the first Repayment Date
Termination Date	The outstanding balance in full

(b) The Borrower may not reborrow any part of the Facility which is repaid.

## 7. ILLEGALITY, VOLUNTARY PREPAYMENT AND CANCELLATION

### 7.1 Illegality

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

- (a) that Lender, shall promptly notify the Agent upon becoming aware of that event;
- (b) upon the Agent notifying the Borrower, each Available Commitment of that Lender will be immediately cancelled; and
- (c) to the extent that the Lender's participation has not been transferred pursuant to Clause 37.5 (*Replacement of Lender*), the Borrower shall repay that Lender's participation in the Loans on the last day of the Interest Period for each Loan occurring after the Agent has notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law) and that Lender's corresponding Commitment(s) shall be cancelled in the amount of the participations repaid.

### 7.2 Sanctions

If a member of the Group directly or indirectly, uses, lends, makes payments of, contributes or otherwise makes available, all or any part of the proceeds of any Loan or other transaction(s) contemplated by this Agreement to fund any trade, business or other activities (or permits or authorises any other person to do any of the foregoing) in any manner that results in any Lender being in breach of any Sanctions or becoming a Restricted Party:

- (a) that Lender shall promptly notify the Agent upon becoming aware of that event;

- (b) upon the Agent notifying the Borrower, each Available Commitment of that Lender will be immediately cancelled; and
- (c) the Borrower shall repay that Lender's participation in the Loans on the last day of the Interest Period for each Loan occurring after the Agent has notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law or regulation) and that Lender's corresponding Commitment(s) shall be cancelled in the amount of the participations repaid.

### **7.3 Voluntary cancellation**

The Borrower may, if it gives the Agent not less than five Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, cancel the whole or any part (being a minimum amount of US\$5,000,000 and integral multiples of US\$1,000,000) of the Available Facility. Any cancellation under this Clause 7.3 shall reduce the Commitments of the Lenders rateably.

### **7.4 Voluntary prepayment**

- (a) The Borrower may, if it gives the Agent not less than five Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of that Loan (but, if in part, being an amount that reduces the Base Currency Amount of that Loan by a minimum amount of US\$5,000,000 and integral multiples of US\$1,000,000).
- (b) A Loan may only be prepaid on the last day of an Interest Period after the last day of the Availability Period (or, if earlier, the day on which the Available Facility is zero).

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

- (a) If at any time on or after the date which is three months before the earliest FATCA Application Date for any payment by a Party to a Lender (or to the Agent for the account of that Lender), that Lender is not, or has ceased to be, a FATCA Exempt Party and, as a consequence, a Party will be required to make a FATCA Deduction from a payment to that Lender (or to the Agent for the account of that Lender) on or after that FATCA Application Date, then, in the case of a Lender not being, or ceasing to be, a FATCA Exempt Party that Lender or the Agent on behalf of that Lender shall as soon as possible notify the Borrower and, in all such circumstances, the Borrower may, whilst the circumstance giving rise to the requirement for that increase or indemnification or FATCA Deduction continues, give the Agent notice of cancellation of the Commitment(s) of that Lender and its intention to procure the repayment of that Lender's participation in the Loans.
- (b) On receipt by the Agent of the notice from the Borrower referred to in paragraph (a) above in relation to a Lender, the Commitment(s) of that Lender shall immediately be reduced to zero.

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

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

- (a) If any Lender becomes a Defaulting Lender, the Borrower may, at any time whilst the Lender continues to be a Defaulting Lender, give the Agent fifteen (15) Business Days' notice of cancellation of each Available Commitment of that Lender.
- (b) On the notice referred to in paragraph (a) above becoming effective, each Available Commitment of the Defaulting Lender shall immediately be reduced to zero.
- (c) The Agent shall as soon as practicable after receipt of a notice referred to in paragraph (a) above, notify all the Lenders.

### **8. MANDATORY PREPAYMENT AND CANCELLATION**

Upon the occurrence of a Change of Control the Facility will be cancelled and all outstanding Loans, together with accrued interest, and all other amounts accrued under the Finance Documents, shall become immediately due and payable.

### **9. RESTRICTIONS**

#### **9.1 Notices of cancellation or prepayment**

Any notice of cancellation, prepayment, authorisation or other election given by any Party under Clause 7 (*Illegality, Voluntary Prepayment and Cancellation*) or Clause 8 (*Mandatory prepayment and cancellation*) shall (subject to the terms of those Clauses) be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.

#### **9.2 Interest and other amounts**

Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.

#### **9.3 No reborrowing of Facility**

The Borrower may not reborrow any part of the Facility which is prepaid.

#### **9.4 Prepayment in accordance with Agreement**

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

## 9.5 **No reinstatement of Commitments**

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

## 9.6 **Agent's receipt of notices**

If the Agent receives a notice under Clause 7 (*Illegality, Voluntary Prepayment and Cancellation*), it shall promptly forward a copy of that notice or election to either the Borrower or the affected Lender, as appropriate.

## 9.7 **Effect of repayment and prepayment on Commitments**

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

## 9.8 **Application of prepayments**

Any prepayment of a Loan (other than a prepayment pursuant to Clause 7.1 (*Illegality*) or Clause 7.5 (*Right of cancellation and repayment in relation to a single Lender*)) shall be applied pro rata between the Loans and in inverse order of maturity, to each Lender's participation in that Loan.

## 10. **INTEREST**

### 10.1 **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.

### 10.2 **Payment of interest**

The Borrower shall pay accrued interest on each Loan on the last day of each Interest Period (and, if the Interest Period is longer than six Months, on the dates falling at six Monthly intervals after the first day of the Interest Period);

### 10.3 **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 the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is 2% per annum higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Agent (acting

reasonably). Any interest accruing under this Clause 10.3 shall be immediately payable by the Obligor on demand by the Agent.

- (b) If any overdue amount consists of all or part of a Loan 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.
- (c) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

#### 10.4 Notification of rates of interest

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

### 11. INTEREST PERIODS

#### 11.1 Selection of Interest Periods and Terms

- (a) The Borrower may select an Interest Period for a Loan in the Utilisation Request for that Loan or (if the Loan has already been borrowed) in a Selection Notice.
- (b) Each Selection Notice is irrevocable and must be delivered to the Agent by the Borrower to which that Loan was made not later than the Specified Time.
- (c) If the Borrower fails to deliver a Selection Notice to the Agent in accordance with paragraph (b) above, the relevant Interest Period will, subject to Clause 11.2 (*Changes to Interest Periods*), be one Month.
- (d) Subject to this Clause 11, the Borrower may select an Interest Period of three or six Months for a Loan or any other period agreed between the Borrower and the Agent (acting on the instructions of all the Lenders in relation to the relevant Loan). In addition the Borrower may select an Interest Period of a period of one Month or less, if necessary to ensure that there are Loans (with an aggregate Base Currency Amount equal to or greater than the Repayment Instalment) which have an Interest Period ending on a Repayment Date for the Borrower to make the Repayment Instalment due on that date.
- (e) An Interest Period for a Loan shall not extend beyond the Termination Date.
- (f) Each Interest Period for a Loan shall start on the Utilisation Date or (if already made) on the last day of its preceding Interest Period.

- (g) Prior to the Syndication Date, Interest Periods shall be one Month or such other period as the Agent and the Borrower may agree and any Interest Period which would otherwise end during the Month preceding or extend beyond the Syndication Date shall end on the Syndication Date.

#### 11.2 **Changes to Interest Periods**

- (a) Prior to determining the interest rate for a Loan, the Agent may shorten an Interest Period for any Loan to ensure there are sufficient Loans (with an aggregate Base Currency Amount equal to or greater than the relevant Repayment Instalment) which have an Interest Period ending on a Repayment Date for the Borrower to make the relevant Repayment Instalment due on that date.
- (b) If the Agent makes any of the changes to an Interest Period referred to in this Clause 11.2, it shall promptly notify the Borrower and the Lenders.

#### 11.3 **Non-Business Days**

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

#### 11.4 **Consolidation of Loans**

If two or more Interest Periods end on the same date, those Loans will, unless the Borrower specifies to the contrary in the Selection Notice for the next Interest Period, be consolidated into, and treated as, a single Loan on the last day of the Interest Period. The Interest Period for any Loan (other than the first) shall end on the same date as the current Interest Period in relation to the first Loan.

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

#### 12.1 **Absence of quotations**

Subject to Clause 12.2 (*Market disruption*), if LIBOR is to be determined by reference to the Base Reference Banks but a Base Reference Bank does not supply a quotation by the Specified Time on the Quotation Day, the applicable LIBOR shall be determined on the basis of the quotations of the remaining Base Reference Banks.

#### 12.2 **Market disruption**

- (a) If a Market Disruption Event occurs in relation to a Loan for any Interest Period, then the rate of interest on each Lender's share of that Loan for the Interest Period shall be the percentage rate per annum which is the sum of:
  - (i) the Margin; and
  - (ii) the rate notified to the Agent by that Lender as soon as practicable and in any event by close of business on the date falling 15 Business Days after the Quotation Day (or, if earlier, on the date falling 10 Business Days prior to 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 that Lender of funding its participation in that Loan from whatever source it may reasonably select; and

- (b) If:
  - (i) the percentage rate per annum notified by a Lender pursuant to paragraph (a)(ii) above is less than LIBOR; or
  - (ii) a Lender has not notified the Agent of a percentage rate per annum pursuant to 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.

- (c) If a Market Disruption Event occurs the Agent shall, as soon as is practicable, notify the Borrower.
- (d) In this Agreement:

**"Market Disruption Event"** means:

- (i) at or about noon on the Quotation Day for the relevant Interest Period LIBOR is to be determined by reference to the Base Reference Banks and none or only one of the Base Reference Banks supplies a rate to the Agent to determine LIBOR for the relevant currency and Interest Period; or
- (ii) before close of business in London on the Quotation Day for the relevant Interest Period, the Agent receives notifications from a Lender or Lenders (whose participations in a Loan exceed 30% 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.

### 12.3 **Alternative basis of interest or funding**

- (a) If a Market Disruption Event occurs and the Agent or the Borrower so requires, the Agent and the Borrower shall enter into negotiations (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the rate of interest.
- (b) Any alternative basis agreed pursuant to paragraph (a) above shall, with the prior consent of all the Lenders and the Borrower, be binding on all Parties.

### 12.4 **Break Costs**

- (a) The Borrower shall, within three Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by the Borrower on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.

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

## 12.5 **Yearly Rate of Interest**

For the purposes of the Interest Act (Canada) and disclosure thereunder, whenever any interest or any fee to be paid hereunder or in connection herewith by the Guarantor is to be calculated on the basis of a 360-day or 365-day year, the yearly rate of interest to which the rate used in such calculation is equivalent is the rate so used multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by 360 or 365, as applicable. The rates of interest under this Agreement are nominal rates, and not effective rates or yields. The principle of deemed reinvestment of interest does not apply to any interest calculation under this Agreement.

## 12.6 **Criminal Interest**

If any provision of this Agreement would oblige the Guarantor to make any payment of interest or other amount payable to any Finance Party in an amount or calculated at a rate which would be prohibited by applicable laws or would result in a receipt by that Finance Party of "interest" at a "criminal rate" (as such terms are construed under the Criminal Code (Canada)), then, notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or so result in a receipt by that Finance Party of "interest" at a "criminal rate", such adjustment to be effected, to the extent necessary (but only to the extent necessary), as follows:

- (a) first, by reducing the amount or rate of interest required to be paid to the affected Finance Party under Clause 10 (*Interest*); and
- (b) thereafter, by reducing any fees, commissions, costs, expenses, premiums and other amounts required to be paid to the affected Finance Party which would constitute interest for purposes of s347 of the Criminal Code (Canada).

## 13. **FEES**

### 13.1 **Arrangement fee**

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

### 13.2 **Agency fee**

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

## 14. TAX GROSS-UP AND INDEMNITIES

### 14.1 Definitions

In this Agreement:

**"FATCA Payment"** means either:

- (a) the increase in a payment made by an Obligor to a Finance Party under Clause 14.7 (*FATCA Deduction and gross-up by Obligor*) or Clause 14.8(b) (*FATCA Deduction by Finance Party*); or
- (b) a payment under Clause 14.8(d) (*FATCA Deduction by Finance Party*).

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

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

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

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

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

### 14.2 Tax gross-up

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

Deduction within the time allowed and in the minimum amount required by law.

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

### 14.3 Tax indemnity

- (a) The Borrower shall (within three Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.
- (b) Paragraph (a) above shall not apply:
  - (i) with respect to any Tax assessed on a Finance Party:
    - (A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or
    - (B) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or
  - (ii) to the extent a loss, liability or cost:
    - (A) is compensated for by an increased payment under Clause 14.2 (*Tax gross-up*), Clause 14.7 (*FATCA Deduction and gross-up by Obligor*) or Clause 14.8(b) (*FATCA Deduction by Finance Party*); or
    - (B) is compensated for by a payment under Clause 14.8(d) (*FATCA Deduction by Finance Party*).
- (c) A Protected Party making, or intending to make a claim under paragraph (a) above shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Borrower.
- (d) A Protected Party shall, on receiving a payment from an Obligor under this Clause 14.3, notify the Agent.

#### 14.4 Tax Credit

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

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

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

#### 14.5 Stamp taxes

The Borrower shall pay and, within three 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.

#### 14.6 VAT

- (a) All amounts expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).
- (b) If VAT is or becomes chargeable on any supply made by any Finance Party (the "**Supplier**") to any other Finance Party (the "**Recipient**") under a Finance Document, and any Party other than the Recipient (the "**Relevant Party**") is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):
  - (i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and

- (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- (c) Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (d) Any reference in this Clause 14.6 to any Party shall, at any time when such Party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the representative member of such group at such time (the term "representative member" to have the same meaning as in the Value Added Tax Act 1994) or any similar term to have the meaning in the similar legislation in the relevant 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.

#### **14.7 FATCA Deduction and gross-up by Obligor**

- (a) If an Obligor is required to make a FATCA Deduction, that Obligor shall make that FATCA Deduction and any payment required in connection with that FATCA Deduction within the time allowed and in the minimum amount required by FATCA.
- (b) If a FATCA Deduction is required to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any FATCA Deduction) leaves an amount equal to the payment which would have been due if no FATCA Deduction had been required.
- (c) The Borrower shall immediately, upon becoming aware that an Obligor must make a FATCA Deduction (or that there is any change in the rate or the basis of a FATCA Deduction), notify the Agent accordingly. Similarly, a Finance Party shall immediately notify the Agent on becoming so aware in respect of a payment payable to that Finance Party. If the Agent receives such notification from a Finance Party, it shall notify the Borrower and that Obligor.
- (d) Within 30 days of making either a FATCA Deduction or any payment required in connection with that FATCA Deduction, the Obligor making that FATCA Deduction or payment shall deliver to the Agent for the Finance Party

entitled to the payment evidence reasonably satisfactory to that Finance Party that the FATCA Deduction has been made or (as applicable) any appropriate payment paid to the relevant governmental or taxation authority.

#### 14.8 FATCA Deduction by a Finance Party

- (a) Each Finance Party may make any FATCA Deduction it is required by FATCA to make, and any payment required in connection with that FATCA Deduction, and no Finance 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. A Finance Party which becomes aware that it must make a FATCA Deduction in respect of a payment to another Party (or that there is any change in the rate or the basis of such FATCA Deduction) shall immediately notify that Party and the Agent.
- (b) If the Agent is required to make a FATCA Deduction in respect of a payment to a Finance Party under Clause 31.2 (*Distributions by the Agent*) which relates to a payment by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after the Agent has made such FATCA Deduction), leaves the Agent with an amount equal to the payment which would have been made by the Agent if no FATCA Deduction had been required.
- (c) The Agent shall promptly upon becoming aware that it must make a FATCA Deduction in respect of a payment to a Finance Party under Clause 31.2 (*Distributions by the Agent*) which relates to a payment by an Obligor (or that there is any change in the rate or the basis of such a FATCA Deduction) notify the Borrower, the relevant Obligor and the relevant Finance Party.
- (d) The Borrower shall (within three Business Days of demand by the Agent) pay to a Finance Party an amount equal to the loss, liability or cost which that Finance Party determines will be or has been (directly or indirectly) suffered by that Finance Party as a result of another Finance Party making a FATCA Deduction in respect of a payment due to it under a Finance Document. This paragraph shall not apply to the extent a loss, liability or cost is compensated for by an increased payment under paragraph (b) above.
- (e) A Finance Party making, or intending to make, a claim under paragraph (d) above shall promptly notify the Agent of the FATCA Deduction which will give, or has given, rise to the claim, following which the Agent shall notify the Borrower.

#### 14.9 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; and
- (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA (including its applicable "passthru percentage" or other information required under relevant US Treasury regulations or other official guidance including intergovernmental agreements) as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA.
- (b) If a Party confirms to another Party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has ceased to be a FATCA Exempt Party, that Party shall promptly notify that other Party and the Agent.
- (c) Paragraph (a) above shall not oblige any Finance Party to do anything which would or might in its reasonable opinion constitute a breach of:
  - (i) any law or regulation;
  - (ii) any policy of that Finance Party;
  - (iii) any fiduciary duty; or
  - (iv) any duty of confidentiality.
- (d) If a Party fails to confirm its status or to supply forms, documentation or other information requested in accordance with paragraph (a) above (including, for the avoidance of doubt, where paragraph (c) above applies), then:
  - (i) if that Party failed to confirm whether it is (and/or remains) a FATCA Exempt Party then such Party shall be treated for the purposes of the Finance Documents as if it is not a FATCA Exempt Party; and
  - (ii) if that Party failed to confirm its applicable "passthru percentage" then such Party shall be treated for the purposes of the Finance Documents (and payments made thereunder) as if its applicable passthru percentage is 100%,

until (in each case) such time as the Party in question provides the requested confirmation, forms, documentation or other information.

#### 14.10 Tax Credit and FATCA

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

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

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

## 15. INCREASED COSTS

### 15.1 Increased costs

- (a) Subject to Clause 15.3 (*Exceptions*) the Borrower shall, within three Business Days of a demand by the Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (ii) compliance with any law or regulation made after the date of this Agreement.
- (b) In this Agreement "**Increased Costs**" means:
  - (i) a reduction in the rate of return from the Facility or on a Finance Party's (or its Affiliate's) overall capital;
  - (ii) an additional or increased cost; or
  - (iii) a reduction of any amount due and payable under any Finance Document,

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

### 15.2 Increased cost claims

- (a) A Finance Party intending to make a claim pursuant to Clause 15.1 (*Increased costs*) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Borrower.
- (b) Each Finance Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount of its Increased Costs.

### 15.3 Exceptions

- (a) Clause 15.1 (*Increased costs*) does not apply to the extent any Increased Cost is:
  - (i) attributable to a Tax Deduction required by law to be made by an Obligor;
  - (ii) attributable to a FATCA Deduction required to be made by an Obligor or a Finance Party;
  - (iii) compensated for by Clause 14.8(d) (*FATCA Deduction by a Finance Party*);

- (iv) compensated for by Clause 14.3 (*Tax indemnity*) (or would have been compensated for under Clause 14.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in Clause 14.3(b) (*Tax indemnity*) applied);
  - (v) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation; or
  - (vi) attributable to the implementation or application of or compliance with the "International Convergence of Capital Measurement and Capital Standards, a Revised Framework" published by the Basel Committee on Banking Supervision in June 2004 in the form existing on the date of this Agreement (but excluding any amendment arising out of Basel III) (Basel II) or any other law or regulation which implements Basel II (whether such implementation, application or compliance is by a government, regulator, Finance Party or any of its Affiliates).
- (b) In this Clause 15.3 reference to a "**Tax Deduction**" has the same meaning given to the term in Clause 14.1 (*Definitions*).

## 16. **OTHER INDEMNITIES**

### 16.1 **Currency indemnity**

- (a) If any sum due from an Obligor under the Finance Documents (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:
  - (i) making or filing a claim or proof against that Obligor; or
  - (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

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

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

### 16.2 **Other indemnities**

The Borrower shall (or shall procure that an Obligor will), within three Business Days of demand, indemnify the Arranger and each other Finance Party against any cost, loss or liability incurred by it as a result of:

- (i) the occurrence of any Event of Default;
- (ii) a failure by an Obligor to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 30 (*Sharing among the Finance Parties*);
- (iii) funding, or making arrangements to fund, its participation in a Loan requested by the Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone); or
- (iv) a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower.

### 16.3 Indemnity to the Agent

The Borrower shall immediately on demand indemnify the Agent against:

- (a) any cost, loss or liability incurred by the Agent (acting reasonably) as a result of:
  - (i) investigating any event which it reasonably believes is a Default;
  - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
  - (iii) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement; and
- (b) any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 31.11 (*Disruption to Payment Systems etc.*) notwithstanding the Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent in acting as Agent under the Finance Documents.

## 17. MITIGATION BY THE LENDERS

### 17.1 Mitigation

- (a) Each Finance Party shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (*Illegality*), Clause 14 (*Tax Gross Up and Indemnities*) or Clause 15 (*Increased Costs*) including (but not limited to)

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

- (b) Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.

## 17.2 **Limitation of liability**

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

## 18. **COSTS AND EXPENSES**

### 18.1 **Transaction expenses**

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

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

### 18.2 **Amendment costs**

If:

- (a) an Obligor requests an amendment, waiver or consent; or
- (b) an amendment is required pursuant to Clause 31.10 (*Change of currency*),

the Borrower shall, within three Business Days of demand, reimburse the Agent for the amount of all costs and expenses (including legal fees) reasonably incurred by the Agent in responding to, evaluating, negotiating or complying with that request or requirement.

### 18.3 **Enforcement and preservation costs**

The Borrower shall, within three Business Days of demand, pay to each Finance Party the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of or the preservation of any rights under any Finance Document.

## 19. **GUARANTEE AND INDEMNITY**

### 19.1 **Guarantee and indemnity**

The Guarantor irrevocably and unconditionally jointly and severally:

- (a) guarantees to each Finance Party punctual performance by each other Obligor of all that Obligor's obligations under the Finance Documents;
- (b) undertakes with each Finance Party that whenever another Obligor does not pay any amount when due under or in connection with any Finance Document, it 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 the Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 19 if the amount claimed had been recoverable on the basis of a guarantee.

### 19.2 **Continuing guarantee**

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

### 19.3 **Reinstatement**

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

### 19.4 **Waiver of defences**

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

- (a) any time, waiver or consent granted to, or composition with, any Obligor or other person;
- (b) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;

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

#### 19.5 **Guarantor intent**

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

#### 19.6 **Immediate recourse**

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

#### 19.7 **Appropriations**

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

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Finance Party (or any trustee or agent on its behalf) in respect

of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Guarantor shall not be entitled to the benefit of the same; and

- (b) hold in an interest-bearing suspense account any moneys received from the Guarantor or on account of the Guarantor's liability under this Clause 19.

#### 19.8 **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 Agent otherwise directs, the Guarantor will not exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 19:

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

If the 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 the Finance Parties by the Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Finance Parties and shall promptly pay or transfer the same to the Agent or as the Agent may direct for application in accordance with Clause 31 (*Payment mechanics*).

#### 19.9 **Additional security**

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

## 20. REPRESENTATIONS

### 20.1 General

Each Obligor makes the representations and warranties set out in this Clause 20 to each Finance Party.

### 20.2 Status

- (a) It is a limited liability company/corporation, duly incorporated and validly existing under the law of its Original Jurisdiction.
- (b) It has the power to own its assets and carry on its business as it is being conducted.
- (c) It is not a FATCA FFI or a US Tax Obligor.

### 20.3 Binding obligations

Subject to the Legal Reservations the obligations expressed to be assumed by it in each Finance Document to which it is a party are legal, valid, binding and enforceable obligations.

### 20.4 Non-conflict with other obligations

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

- (a) any law or regulation applicable to it;
- (b) its Constitutional Documents; or
- (c) any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument.

### 20.5 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 or will be 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 or giving of guarantees or indemnities contemplated by the Finance Documents to which it is a party.

### 20.6 Validity and admissibility in evidence; Authorisations

- (a) All Authorisations required:
  - (i) 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

- (ii) to make the Finance Documents to which it is a party admissible in evidence in its Relevant Jurisdictions,

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

- (b) All Authorisations and contracts necessary for the conduct of its business, trade and ordinary activities have been obtained or effected and are in full force and effect unless the absence of which has or is reasonably likely to have a Material Adverse Effect.
- (c) It is not in breach of any contract or Authorisation which breach has or is reasonably likely to have a Material Adverse Effect.

## 20.7 **Governing law and enforcement**

Subject to the Legal Reservations:

- (a) the choice of governing law of the Finance Documents will be recognised and enforced in its Relevant Jurisdictions; and
- (b) any judgment obtained in relation to a Finance Document in the jurisdiction of the governing law of that Finance Document will be recognised and enforced in its Relevant Jurisdictions.

## 20.8 **Insolvency**

No:

- (a) corporate action, legal proceeding or other procedure or step described in Clause 24.7(a) (*Insolvency proceedings*); or
- (b) creditors' process described in Clause 24.8 (*Creditors' process*),

has been taken or, to the knowledge of the Borrower, threatened in relation to any member of the Group; and none of the circumstances described in Clause 24.6 (*Insolvency*) applies to any member of the Group provided that in the case of a member of the Group which is not an Obligor, such event has or is reasonably likely to have a Material Adverse Effect.

## 20.9 **No filing or stamp taxes**

Under the laws of its Relevant Jurisdiction it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents except any filing or recording which is referred to in any Legal Opinion and which will be made promptly prior to or after the date of the relevant Finance Document.

#### 20.10 Deduction of Tax

Except for withholding tax in Zambia, 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 Lender.

#### 20.11 No default

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

#### 20.12 No misleading information

Save as disclosed in writing to the Agent and the Arranger prior to the date of this Agreement (or, in relation to the Information Memorandum, prior to the date of the Information Memorandum):

- (a) any factual information contained in the Information Memorandum was true and accurate in all material respects as at the date of the relevant report or document containing the information or (as the case may be) as at the date the information is expressed to be given;
- (b) the Base Case Model has been prepared in accordance with IFRS as applied to the Original Financial Statements, and the financial projections contained in the Base Case Model have been prepared on the basis of recent historical information, are fair and based on reasonable assumptions and was fair (as at the date of the relevant report or document containing the projection or forecast) and arrived at after careful consideration;
- (c) the expressions of opinion or intention provided by or on behalf of an Obligor for the purposes of the Information Memorandum were made after careful consideration and (as at the date of the relevant report or document containing the expression of opinion or intention) were fair and based on reasonable grounds;
- (d) no event or circumstance has occurred or arisen and no information has been omitted from the Information Memorandum and no information has been given or withheld that results in the information, opinions, intentions, forecasts or projections contained in the Information Memorandum being untrue or misleading in any material respect;

- (e) all other factual written information provided by any Obligor (including its advisers) to a Finance Party was true, complete and accurate in all material respects as at the date it was provided and is not misleading in any respect; and
- (f) The budgets and forecasts supplied under this Agreement were arrived at after careful consideration and have been prepared in good faith on the basis of recent historical information and on the basis of assumptions which were reasonable as at the date they were prepared and supplied.

#### 20.13 **Financial Statements**

- (a) Its Original Financial Statements were prepared in accordance with IFRS consistently applied.
- (b) Its audited Original Financial Statements give a true and fair view of its financial condition and results of operations during the relevant financial year.
- (c) There has been no material adverse change in its assets, business or financial condition (or the assets, business or consolidated financial condition of the Group, in the case of the Guarantor) since the date of the Original Financial Statements.
- (d) Its most recent financial statements delivered pursuant to Clause 21.1 (*Financial statements*):
  - (i) have been prepared in accordance with IFRS as applied to the Original Financial Statements and the Base Case Model; and
  - (ii) give a true and fair view of (if audited) or fairly represent (if unaudited) its financial condition as at the end of, and results of operations (or its consolidated financial condition as at the end of, and consolidated results of operations, in the case of the Guarantor) for, the period to which they relate.
- (e) Since the date of the most recent financial statements delivered pursuant to Clause 21.1 (*Financial statements*) there has been no material adverse change in its business, assets or financial condition.

#### 20.14 **No proceedings pending or threatened**

No litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which, if adversely determined, are reasonably likely to have a Material Adverse Effect have (to the best of its knowledge and belief (having made due and careful enquiry)) been started or threatened against it.

#### 20.15 **No breach of laws**

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

- (b) No labour disputes are current or, to the best of its knowledge and belief (having made due and careful enquiry), threatened against it which have or are reasonably likely to have a Material Adverse Effect.

#### 20.16 **Environmental and social laws**

- (a) Each member of the Group is in compliance with Clause 23.3 (*Environmental and Social Compliance*) and to the best of its knowledge and belief (having made due and careful enquiry) no circumstances have occurred which would prevent such compliance in a manner or to an extent which has or is reasonably likely to have a Material Adverse Effect.
- (b) No Environmental or Social Claim has been commenced or (to the best of its knowledge and belief (having made due and careful enquiry)) is threatened against any member of the Group where that claim has or is reasonably likely, if determined against that member of the Group, to have a Material Adverse Effect.

#### 20.17 **Taxation**

- (a) It is not materially overdue in the filing of any Tax returns and it is not overdue in the payment of any amount in respect of Tax of US\$1,000,000 (or its equivalent in any other currency or currencies) or more.
- (b) No claims or investigations are being, or are reasonably likely to be, made or conducted against it with respect to Taxes.
- (c) It is resident for Tax purposes only in its Original Jurisdiction.

#### 20.18 **Anti-corruption law**

Each member of the Group has conducted its businesses in compliance with applicable anti-corruption laws and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

#### 20.19 **Sanctions**

No Obligor, nor any member of the Group, nor any of their respective directors, officers or employees nor, to the knowledge of the Obligors, any joint venture partner or other persons acting on any of their behalf:

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

#### 20.20 **Security and Financial Indebtedness**

- (a) No Security or Quasi-Security exists over all or any of the present or future assets of the Borrower other than as permitted by this Agreement.

- (b) The Borrower has no Financial Indebtedness outstanding other than as permitted by this Agreement.

#### 20.21 **Title to assets**

It has a good, valid and marketable title to, or valid leases or licences of, and all appropriate Authorisations to use, the assets necessary to carry on its business as presently conducted.

#### 20.22 **Accounting Reference Date**

The Accounting Reference Date of each Obligor is 31 December.

#### 20.23 **Immunity**

- (a) The entry into by it of each Finance Document constitutes, and the exercise by it of its rights and performance of its obligations under each Finance Document will constitute, private and commercial acts performed for private and commercial purposes.
- (b) It will not be entitled to claim immunity from suit, execution, attachment or other legal process in any proceedings taken in its jurisdiction of incorporation in relation to any Finance Document.

#### 20.24 **Independent advice**

- (a) It has sought independent legal advice in relation to its entry into this Agreement and in particular in giving the guarantee and indemnity under Clause 19 (*Guarantee and Indemnity*) and, accordingly, each Obligor has made its own independent decision to enter into this Agreement; and
- (b) It confirms that in entering into this Agreement, it has not relied on or been influenced by any advice, communication or act of the Agent or any other Finance Party.

#### 20.25 **Times when representations made**

- (a) All the representations and warranties in this Clause 20 are made by each Obligor on the date of this Agreement.
- (b) The Repeating Representations are deemed to be made by each Obligor on the date of each Utilisation Request, on each Utilisation Date and on the first day of each Interest Period.
- (c) The representations and warranties in Clause 20.12 (*No misleading information*) are deemed to be made by each Obligor on the Syndication Date.
- (d) Each representation or warranty deemed to be made after the date of this Agreement shall be deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made.

## 21. INFORMATION UNDERTAKINGS

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

In this Clause 21:

**"Annual Financial Statements"** means the financial statements for a Financial Year delivered pursuant to Clause 21.1(a)(i) or 21.1(b)(i) (*Financial statements*).

**"Half Year Financial Statements"** means the financial statements delivered pursuant to Clause 21.1(a)(ii) or 21.1(b)(ii) (*Financial statements*).

### 21.1 Financial statements

- (a) The Borrower shall supply to the Agent in sufficient copies for all the Lenders:
  - (i) as soon as they are available, but in any event within 120 days after the end of each of its Financial Years, its audited financial statements for that Financial Year;
  - (ii) as soon as they are available, but in any event within 45 days after the end of each Financial Half Year, its management accounts for that Financial Half Year (other than the Financial Half Year ending on 31 December).
- (b) The Guarantor shall supply to the Agent sufficient copies for all the Lenders:
  - (i) as soon as they are available, but in any event within 120 days after the end of each of its Financial Years, its audited consolidated financial statements for that Financial Year;
  - (ii) as soon as they are available, but in any event within 45 days after the end of each Financial Half Year, its consolidated financial statements for that Financial Half Year (other than the Financial Half Year ending on 31 December).

### 21.2 Provision and contents of Compliance Certificate

- (a) The Borrower shall supply to the Agent semi-annually with each set of financial statements delivered under Clause 21.1 (*Financial statements*), a Compliance Certificate.
- (b) The Guarantor shall supply to the Agent with each set of financial statements delivered under Clause 21.1(b) (*Financial Statements*) a Compliance Certificate.
- (c) Each Compliance Certificate shall, amongst other things, set out (in reasonable detail) computations as to compliance with Clause 22 (*Financial Covenants*).

- (d) Each Compliance Certificate shall be signed by at least one of either the Chief Financial Officer or a Director or the Treasurer of the Borrower or the Guarantor as applicable.

### 21.3 Requirements as to financial statements

- (a) The Borrower and the Guarantor shall procure that each set of its Annual Financial Statements and Half Year Financial Statements includes a balance sheet, profit and loss account and cashflow statement. In addition the Borrower and the Guarantor shall procure that:
  - (i) each set of Annual Financial Statements shall be audited by the Auditors;
  - (ii) in respect of the Guarantor only, each set of Annual Financial Statements and Half Year Financial Statements is accompanied by a statement by the Chief Financial Officer of the Guarantor as applicable commenting on the performance of the Group for the period to which the financial statements relate and the Financial Year to date and any material developments or proposals affecting the Group or its business; and
  - (iii) in relation to the Borrower only, include budgeted mining production data.
- (b) Each set of financial statements delivered pursuant to Clause 21.1 (*Financial statements*):
  - (i) shall be certified by a director of the Borrower or the Guarantor as applicable as giving a true and fair view of (in the case of Annual Financial Statements for any Financial Year), or fairly representing (in other cases), its financial condition and operations as at the date as at which those financial statements were drawn up and, in the case of the Annual Financial Statements, shall be accompanied by any letter addressed to the management of the Borrower or the Guarantor as applicable by the Auditors and accompanying those Annual Financial Statements; and
  - (ii) shall be prepared using IFRS, accounting practices and financial reference periods consistent with those applied in the preparation of the then current Base Case Model and the Original Financial Statements, unless, in relation to any set of financial statements, the Borrower or the Guarantor notifies the Agent that there has been a change in IFRS or the accounting practices and its Auditors (or, if appropriate, the Auditors of the Obligor) deliver to the Agent:
    - (A) a description of any change necessary for those financial statements to reflect IFRS or accounting practices upon which the then current Base Case Model or, as the case may be, that Obligor's Original Financial Statements were prepared; and

- (B) sufficient information, in form and substance as may be reasonably required by the Agent, to enable the Lenders to determine whether Clause 22 (*Financial covenants*) has been complied with, and to make an accurate comparison between the financial position indicated in those financial statements and the Base Case Model or an Obligor's Original Financial Statements.

Any reference in this Agreement to any financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Base Case Model or, as the case may be, the Original Financial Statements were prepared.

#### 21.4 **Base Case Model**

- (a) The Borrower shall provide the Agent with an updated Base Case Model acceptable to the Majority Lenders:
  - (i) by 31 March of each year during the life of the Facility from 2015; and
  - (ii) within 90 days of the FQMOL Acquisition or a Permitted Acquisition if not contemplated in the then current Base Case Model.
- (b) Each updated Base Case Model shall:
  - (i) be based on the same set of assumptions and methodology agreed by the Lenders and used by the Obligors to prepare the initial Base Case Model to be provided as a condition precedent pursuant to Clause 4.1 (*Initial conditions precedent*);
  - (ii) include (for the avoidance of doubt) the revised cash flow forecasts and budgeted production levels for the 60 Months following the preceding Financial Year; and
  - (iii) demonstrate compliance with the financial covenants in Clause 22 (*Financial covenants*) for the period from and including the date of the updated Base Case Model to and including the Termination Date.

#### 21.5 **Information: miscellaneous**

The Borrower and the Guarantor shall supply to the Agent (in sufficient copies for all the Lenders, if the Agent so requests):

- (a) at the same time as they are dispatched, copies of all documents dispatched by each of them to its shareholders generally (or any class of them) or dispatched by each of them to its creditors generally (or any class of them);
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group, and which, if adversely determined, are reasonably likely to have a Material Adverse Effect;

- (c) promptly upon becoming aware of them, details of any event or circumstance which has or is reasonably likely to have a Material Adverse Effect; and
- (d) promptly, on request, such further information regarding the financial condition, business and operations of any Obligor as the Agent (acting on the instructions of the Majority Lenders) may reasonably request; and
- (e) promptly, details of any insurance claims made by the Borrower where the value of the claim is equal to or exceeds US \$100,000,000.

#### 21.6 **Notification of default**

- (a) Each Obligor shall notify the Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).
- (b) Promptly upon a reasonable request by the Agent, the Borrower shall supply to the Agent a certificate signed by the Chief Financial Officer and a director or two of its directors on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

#### 21.7 **"Know your customer" checks**

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

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

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

## 22. FINANCIAL COVENANTS

### 22.1 Financial definitions

In this Agreement:

**"Borrowings"** means, at any time, the aggregate outstanding principal, capital or nominal amount (and any fixed or minimum premium payable on prepayment or redemption) of any indebtedness of members of the Group for or in respect of:

- (a) moneys borrowed and debit balances at banks or other financial institutions;
- (b) any acceptances under any acceptance credit or bill discount facility (or dematerialised equivalent);
- (c) any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) any Finance Lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis and meet any requirements for de-recognition under IFRS);
- (f) (without double counting) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;
- (g) any amount raised by the issue of shares which are redeemable (other than at the option of the issuer) before the Termination Date or are otherwise classified as borrowings under IFRS;
- (h) any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind the entry into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question or (ii) the agreement is in respect of the supply of assets or services and payment is due more than 90 days after the date of supply;
- (i) any amount raised under any other transaction (including any forward sale or purchase agreement, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing or otherwise classified as borrowings under IFRS;
- (j) the KPMC Loan; and

- (k) (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 (j) above.

**"Capital Expenditure"** means any expenditure or obligation in respect of expenditure which, in accordance with IFRS, is treated as capital expenditure (and including the capital element of any expenditure or obligation incurred in connection with a Finance Lease), but excluding any capitalised interest which would be classified as capital expenditure.

**"Cash Available for Debt Service"** means, for any period, the excess of:

- (a) the proceeds of production of metals and/or by-products generated by the Group during such period converted into US\$, if necessary;

less

- (b) operating and non-operating costs incurred by the Group (excluding any operating and non-operating costs funded directly or indirectly by any arrangements which constitute Group Financial Indebtedness during such period) including taxes, royalties, maintenance Capital Expenditures relating to such production but excluding interest.

**"Cash Available for KMP Debt Service"** means, for any period, the excess of:

- (a) the proceeds of production of metals and/or by-products generated by the Borrower during such period converted into US\$, if necessary;

less

- (b) operating and non-operating costs incurred by the Borrower (excluding any operating and non-operating costs funded directly or indirectly by any arrangements accepted as Permitted Financial Indebtedness during such period) including taxes, royalties, maintenance Capital Expenditures relating to such production but excluding interest.

**"Consolidated Tangible Net Worth"** means, on any date, the aggregate of:

- (a) the amounts paid up or credited as paid up on the issued share capital of the Guarantor (other than any redeemable shares which have, on such date, been called for redemption in accordance with their terms and excluding any amount in respect of any convertible security constituting indebtedness when originally issued until such time as such security is converted into an equity security); and

- (b) the net amount standing to the credit (or debit) of the consolidated reserves of the Guarantor (including share capital and share premiums, capital reserves and non-distributable reserves, retained earnings and other distributable reserves), based on the latest published audited consolidated balance sheet of the Guarantor (the "**latest balance sheet**") but adjusted by:

- (i) deducting any dividend or other distribution proposed, declared or made by members of the Group (except to the extent it has been taken into account in the latest balance sheet);
- (ii) deducting any amount attributable to goodwill or any other intangible asset;
- (iii) deducting any amount attributable to an upward revaluation of assets (other than financial instruments) after 31 December 2013 or, in the case of assets of a company which becomes a member of the Group after that date, the date on which that company becomes a member of the Group;
- (iv) reflecting any variation in the amount of the issued share capital of the members of the Group after the date of the latest balance sheet (and any change in the consolidated reserves of the Guarantor resulting from that variation);
- (v) reflecting any variation in the interest of a member of the Group in any other member of the Group since the date of the latest balance sheet (to be calculated on the assumption that the variation had occurred immediately before the latest balance sheet date);
- (vi) excluding any amounts debited or credited to deferred tax which relates to the revaluation of any item which is excluded from the calculation; and
- (vii) excluding any amounts relating to warrants issued by the Guarantor prior to conversion thereof into issued share capital.

**"Consolidated Total Debt"** means, on any date, the Total Debt of the Group calculated on a consolidated basis.

**"Debt Service"** means, for any period, the sum of:

- (a) the principal amount of loans or other similar amounts in respect of any Borrowings of the Group as scheduled to be repaid during such period; and
- (b) Interest Expense for such period,

(including, for the avoidance of doubt (without double counting), all Debt Service payable in respect of the Finance Documents for such period).

**"Debt Service Cover Ratio (Historic)"** means, in respect of any Relevant Period, the ratio of:

- (a) Cash Available for Debt Service on the last day of such Relevant Period, to
- (b) Debt Service on the last day of such Relevant Period.

**"Debt to Equity Ratio"** means, in respect of any Relevant Period, the ratio of:

- (a) Consolidated Total Debt on the last day of such Relevant Period, to
- (b) Consolidated Tangible Net Worth on the last day of such Relevant Period.

**"Debt to EBITDA Ratio"** means, in respect of any Relevant Period, the ratio of KMP Debt on the last day of that Relevant Period to KMP EBITDA in respect of that Relevant Period.

**"EBITDA"** means, in respect of any Relevant Period, the consolidated operating profit of the Group before taxation (excluding the results from discontinued operations):

- (a) before deducting any interest, commission, fees, discounts, prepayment fees, premiums or charges and other finance payments whether paid, payable or capitalised by any member of the Group (calculated on a consolidated basis) in respect of that Relevant Period;
- (b) not including any accrued interest owing to any member of the Group;
- (c) after adding back any amount attributable to the amortisation or depreciation of assets of members of the Group;
- (d) after deducting the amount of any profit of any Non-Group Entity to the extent that the amount of the profit included in the financial statements of the Group exceeds the amount actually received in cash by members of the Group through distributions by the Non-Group Entity;
- (e) before taking into account any unrealised gains or losses on any derivative instrument (other than any derivative instrument which is accounted for on a hedge accounting basis);
- (f) before taking into account any gain or loss arising from an upward or downward revaluation of any other asset; and
- (g) excluding the charge to profit represented by the expensing of stock options,

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

**"Finance Lease"** means any lease or hire purchase contract which would, in accordance with IFRS, be treated as a finance or capital lease.

**"Financial Half Year"** means the period commencing on the day after 31 December in each year and ending on the next 30 June.

**"Financial Year"** means the annual accounting period of the Group ending on or about 31 December in each year.

**"Group Financial Indebtedness"** means any Financial Indebtedness extended to any member of the Group pursuant to any arrangements with any bank or financial institution to the extent permitted under any then current financing arrangements with any bank or financial institution.

**"Interest Expense"** means, for any period, the amount in US\$ necessary to pay in full all interest, premium and similar amounts (howsoever characterised and including:

- (a) the interest element of Finance Leases;
- (b) discount and acceptance fees payable (or deducted);
- (c) fees payable in connection with the issue or maintenance of any bond or letter of credit, guarantee or other insurance against Financial Indebtedness and issued by a third party on behalf of the Group;
- (d) repayment and prepayment premiums payable or incurred in repaying or prepaying any Financial Indebtedness; and
- (e) commitment, utilisation and non-utilisation fees payable or incurred in respect of Financial Indebtedness accruing in respect of this Agreement and all other Financial Indebtedness of the Group which has become due and payable during that period, other than any arrangement or underwriting fees payable or incurred in respect of this Agreement or the FQM Facility Agreement.

**"KMP Debt"** means, at any time the aggregate amount of all obligations of the Borrower for or in respect of Borrowings at that time but:

- (a) excluding any such obligations to any other member of the Group; and
- (b) including, in the case of Finance Leases only, their capitalised value;

and so that no amount shall be included or excluded more than once.

**"KMP Debt Service"** means, for any period, the sum of:

- (a) the principal amount of loans or other similar amounts in respect of any Borrowings of the Borrower as scheduled to be repaid during such period; and
- (b) Interest Expense payable or incurred by the Borrower for such period,

(including, for the avoidance of doubt (without double counting), all KMP Debt Service payable in respect of the Finance Documents for such period).

**"KMP Debt Service Cover Ratio (Historic)"** means, in respect of any Relevant Period, the ratio of:

- (a) Cash Available for KMP Debt Service on the last day of such Relevant Period, to;
- (b) KMP Debt Service on the last day of such Relevant Period.

**"KMP Debt to Equity Ratio"** means, in respect of any Relevant Period, the ratio of:

- (a) KMP Debt on the last day of such Relevant Period, to
- (b) KMP Tangible Net Worth on the last day of such Relevant Period.

**"KMP EBITDA"** means, in respect of any Relevant Period, the operating profit of the Borrower before taxation (excluding the results from discontinued operations):

- (a) before deducting any interest, commission, fees, discounts, prepayment fees, premiums or charges and other finance payments whether paid, payable or capitalised by the Borrower in respect of that Relevant Period;
- (b) not including any accrued interest owing to the Borrower;
- (c) after adding back any amount attributable to the amortisation or depreciation of assets of the Borrower;
- (d) before taking into account any unrealised gains or losses on any derivative instrument (other than any derivative instrument which is accounted for on a hedge accounting basis);
- (e) before taking into account any gain or loss arising from an upward or downward revaluation of any other asset; and
- (f) excluding the charge to profit represented by the expensing of stock options,

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

**"Net Debt to EBITDA Ratio"** means, in respect of any Relevant Period, the ratio of Total Debt (less Cash or Cash Equivalent Investments) on the last day of that Relevant Period to EBITDA in respect of that Relevant Period.

**"KMP Tangible Net Worth"** means on any date, the aggregate of:

- (a) the amounts paid up or credited as paid up on the issued share capital of the Borrower (other than any redeemable shares which have, on such date, been called for redemption in accordance with their terms and excluding any amount in respect of any convertible security constituting indebtedness when originally issued until such time as such security is converted into an equity security); and
- (b) the net amount standing to the credit (or debit) of the reserves of the Borrower (including share capital and share premiums, capital reserves and non-distributable reserves, retained earnings and other distributable reserves), based on the latest published audited balance sheet of the Borrower but adjusted by:
  - (i) deducting any dividend or other distribution proposed, declared or made by the Borrower (except to the extent it has been taken into account in the latest balance sheet);
  - (ii) deducting any amount attributable to goodwill or any other intangible asset;
  - (iii) deducting any amount attributable to an upward revaluation of assets (other than financial instruments) after 31 December 2013;

- (iv) reflecting any variation in the amount of the issued share capital of the Borrower after the date of the latest balance sheet (and any change in the reserves of the Borrower resulting from that variation);
- (v) reflecting any variation in the interest of the Borrower in any other member of the Group since the date of the latest balance sheet (to be calculated on the assumption that the variation had occurred immediately before the latest balance sheet date);
- (vi) excluding any amounts debited or credited to deferred tax which relates to the revaluation of any item which is excluded from the calculation; and
- (vii) excluding any amounts relating to warrants issued by the Borrower prior to conversion thereof into issued share capital.

**"Non-Group Entity"** means any investment or entity (which is not itself a member of the Group (including associates and Joint Ventures)) in which any member of the Group has an ownership interest.

**"Relevant Period"** means each period of 12 months ending on or about the last day of the Financial Year and each period of 12 months ending on or about the last day of each Financial Half Year.

**"Total Debt"** means, at any time, the aggregate amount of all obligations of members of the Group for or in respect of Borrowings at that time but:

- (a) excluding any such obligations to any other member of the Group;
- (b) including, in the case of Finance Leases only, their capitalised value; and
- (c) excluding any such obligations under either the Franco-Nevada Streaming Agreement or the KPMC Loan,

and so that no amount shall be included or excluded more than once.

## 22.2 Financial condition

- (a) The Borrower shall ensure that:
  - (i) *KMP Debt Service Cover Ratio (Historic)*: The KMP Debt Service Cover Ratio (Historic) in respect of any Relevant Period specified in column 1 below shall not be less than the ratio set out in column 2 below opposite that Relevant Period:

<b>Column 1</b>	<b>Column 2</b>
<b>Relevant Period</b>	<b>Ratio</b>
Each Relevant Period	1.25:1

- (ii) *Debt to EBITDA Ratio*: Debt to EBITDA Ratio in respect of any Relevant Period specified in column 1 below shall not exceed the ratio set out in column 2 below opposite that Relevant Period.

<b>Column 1 Relevant Period</b>	<b>Column 2 Ratio</b>
Each Relevant Period	2.5:1

- (iii) *KMP Debt to Equity Ratio*: The KMP Debt to Equity Ratio in respect of any Relevant Period specified in column 1 below shall not exceed the ratio set out in column 2 below opposite that Relevant Period:

<b>Column 1 Relevant Period</b>	<b>Column 2 Ratio</b>
Each Relevant Period	1:1

- (b) The Guarantor shall ensure that:

- (i) *Debt Service Cover Ratio (Historic)*: The Debt Service Cover Ratio (Historic) in respect of any Relevant Period specified in column 1 below shall not be less than the ratio set out in column 2 below opposite that Relevant Period:

<b>Column 1 Relevant Period</b>	<b>Column 2 Ratio</b>
Each Relevant Period	1.25:1

- (ii) *Net Debt to EBITDA Ratio*: Net Debt to EBITDA Ratio in respect of any Relevant Period specified in column 1 below shall not exceed the ratio set out in column 2 below opposite that Relevant Period.

<b>Column 1 Relevant Period</b>	<b>Column 2 Ratio</b>
Each Relevant Period from the date of this Agreement to 30 June 2015	4.25:1
Each Relevant Period from 1 July 2015 to the Termination Date	3.25:1

- (iii) *Debt to Equity Ratio*: The Debt to Equity Ratio in respect of any Relevant Period specified in column 1 below shall not exceed the ratio set out in column 2 below opposite that Relevant Period:

<b>Column 1 Relevant Period</b>	<b>Column 2 Ratio</b>
Each Relevant Period	1:1

### 22.3 **Financial testing**

The financial covenants set out in Clause 22.2 (*Financial condition*) shall be calculated in accordance with IFRS and tested by reference to each of the financial statements delivered pursuant to Clause 21.1(a) and (b) (*Financial statements*) and/or each Compliance Certificate delivered pursuant to Clause 21.2 (*Provision and contents of Compliance Certificate*).

## 23. **GENERAL UNDERTAKINGS**

The undertakings in this Clause 23 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

### *Authorisations and compliance with laws*

#### 23.1 **Authorisations**

Each Obligor shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) if requested by any Lender supply copies to the Agent (certified by an authorised signatory) of:

any Authorisation required under any law or regulation of a Relevant Jurisdiction to:

- (i) enable it to perform its obligations under the Finance Documents;
- (ii) ensure the legality, validity, enforceability or admissibility in evidence of any Finance Document; and
- (iii) carry on its business where failure to do so has or is reasonably likely to have a Material Adverse Effect.

#### 23.2 **Compliance with laws**

Each Obligor shall comply in all respects with all laws to which it may be subject, if failure so to comply has or is reasonably likely to have a Material Adverse Effect.

#### 23.3 **Environmental and Social Compliance**

Each Obligor shall (and the Guarantor shall ensure that each member of the Group will):

- (a) comply with the Agreed Environmental and Social Requirements;
- (b) obtain, maintain and ensure compliance with all requisite Environmental Permits; and

- (c) implement procedures to monitor compliance with and to prevent liability under any Environmental or Social Law,

where (in relation to a member of the Group other than the Borrower) failure to do so has or is reasonably likely to have a Material Adverse Effect and where in relation to the Borrower it is a material failure.

#### 23.4 **Environmental or Social Claims**

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

- (a) any Environmental or Social Claim against any member of the Group which is current, pending or threatened; and
- (b) any facts or circumstances which are reasonably likely to result in any Environmental or Social Claim being commenced or threatened against any member of the Group,

where (in relation to a member of the Group other than the Borrower) the claim, if determined against that member of the Group, has or is reasonably likely to have a Material Adverse Effect and where in relation to the Borrower it is a material claim.

#### 23.5 **Anti-corruption law**

- (a) No Obligor shall (and the Guarantor shall ensure that no other member of the Group will) directly or indirectly use the proceeds of the Facility for any purpose which would breach the Bribery Act 2010, the United States Foreign Corrupt Practices Act of 1977 or other similar legislation in other jurisdictions.
- (b) Each Obligor shall (and the Guarantor shall ensure that each other member of the Group will):
  - (i) conduct its businesses in compliance with applicable anti-corruption laws; and
  - (ii) maintain policies and procedures designed to promote and achieve compliance with such laws.

#### 23.6 **Sanctions**

The Obligors shall not, and shall not permit or authorise any member of the Group or other person to, directly or indirectly, use, lend, make payments of, contribute or otherwise make available, all or any part of the proceeds of any Loan or other transaction(s) contemplated by this Agreement to fund any trade, business or other activities: (i) involving or for the benefit of any Restricted Party, or (ii) in any other manner that would reasonably be expected to result in any Obligor being in breach of any Sanctions (if and to the extent applicable to it) or becoming a Restricted Party.

### 23.7 **Taxation**

- (a) Each Obligor 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:
  - (i) such payment is being contested in good faith;
  - (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 Agent under Clause 21.1 (*Financial statements*); and
  - (iii) such payment can be lawfully withheld and failure to pay those Taxes does not have or is not reasonably likely to have a Material Adverse Effect.
- (b) No Obligor may change its residence for Tax purposes.

#### *Restrictions on business focus*

### 23.8 **Merger**

The Borrower shall not enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction other than the FQMOL Acquisition without the prior written consent of the Majority Lenders.

### 23.9 **Change of business**

The Borrower shall not engage in any business other than the exploration for minerals and development and operation of mines and activities incidental thereto.

### 23.10 **Acquisitions**

- (a) Except as permitted under paragraph (b) below, the Borrower shall not:
  - (i) acquire a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them) without the prior written consent of the Majority Lenders provided no Event of Default is continuing or would occur as a result of granting such consent; or
  - (ii) incorporate a company.
- (b) Paragraph (a) above does not apply to the FQMOL Acquisition (provided that such acquisition is not funded by indebtedness from a bank or other financial institution) or an acquisition of a company, of shares, securities or a business or undertaking (or, in each case, any interest in any of them) or the incorporation of a company which is:
  - (i) a Permitted Acquisition; or

- (ii) a Permitted Joint Venture.

### 23.11 Joint ventures

- (a) Except as permitted under paragraph (b) below, the Borrower shall not:
  - (i) enter into, invest in or acquire (or agree to acquire) any shares, stocks, securities or other interest in any Joint Venture; or
  - (ii) transfer any assets or lend to or guarantee or give an indemnity for or give Security for the obligations of a Joint Venture or maintain the solvency of or provide working capital to any Joint Venture (or agree to do any of the foregoing),

without the prior written consent of the Majority Lenders.

- (b) Paragraph (a) above does not apply to:
  - (i) a Permitted Disposal; or
  - (ii) a Permitted Joint Venture.

### *Restrictions on dealing with assets and Security*

### 23.12 Preservation of assets

The Borrower shall maintain in good working order and condition (ordinary wear and tear excepted) all of its assets necessary in the conduct of its business.

### 23.13 Pari passu ranking

Each Obligor shall ensure that at all times any unsecured and unsubordinated claims of a Finance Party 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.

### 23.14 Negative pledge

In this Clause 23.14, "**Quasi-Security**" means an arrangement or transaction described in paragraph (b) below.

Except as permitted under paragraph (c) below:

- (a) The Borrower shall not create or permit to subsist any Security over any of its assets.
- (b) The Borrower shall not:
  - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by any other member of the Group;

- (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
  - (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
  - (iv) enter into any other preferential arrangement having a similar effect, in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.
- (c) Paragraphs (a) and (b) above do not apply to any Security or (as the case may be) Quasi-Security, which is Permitted Security.

### 23.15 Disposals

- (a) Except as permitted under paragraph (b) below, the Borrower shall not enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset, undertaking or business and the Guarantor shall not (and shall ensure that no other member of the Group shall) enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, licence, transfer or otherwise dispose of any asset, undertaking or business of or interest in the Borrower.
- (b) Paragraph (a) above does not apply to any sale, lease, licence, transfer or other disposal which is:
  - (i) a Permitted Disposal; or
  - (ii) a Permitted Joint Venture.

### 23.16 Arm's length basis

- (a) Except as permitted by paragraph (b) below, the Borrower shall not enter into any transaction with any person (including any other member of the Group) except on arm's length terms and for full market value.
- (b) The following transactions shall not be a breach of this Clause 23.16:
  - (i) intra-Group loans permitted under Clause 23.17 (*Loans or credit*) and;
  - (ii) fees, costs and expenses payable under the Finance Documents in the amounts set out in the Finance Documents delivered to the Agent under Clause 4.1 (*Initial conditions precedent*) or agreed by the Agent.

### 23.17 Loans or credit

- (a) Except as permitted under paragraph (b) below, the Borrower shall not be a creditor in respect of any Financial Indebtedness.

(b) Paragraph (a) above does not apply to a Permitted Loan.

#### 23.18 **No guarantees or indemnities**

The Borrower shall not incur or allow to remain outstanding any guarantee in respect of any obligation of any person.

#### 23.19 **Dividends and share redemption**

(a) Except as permitted under paragraph (b) below, neither Obligor shall:

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

(b) Paragraph (a) above does not apply to a Permitted Distribution.

#### 23.20 **Financial Indebtedness**

(a) Except as permitted under paragraph (b) below, the Borrower shall not incur or allow to remain outstanding any Financial Indebtedness.

(b) Paragraph (a) above does not apply to Financial Indebtedness which is Permitted Financial Indebtedness.

#### 23.21 **Insurance**

(a) Each Obligor shall maintain insurances on and in relation to its business and assets, against those risks and to the extent as is usual for companies carrying on the same or substantially similar business.

(b) All insurances must be with reputable independent insurance companies or underwriters.

(c) All proceeds of any insurance claim (except those to be applied to meet a third party claim) shall be applied in the replacement, reinstatement and/or repair of the assets or otherwise in amelioration of the loss in respect of which the claim was made as soon as possible after receipt.

### **23.22 Maintenance of books and records and access**

- (a) Each Obligor shall ensure that the statutory books required to be maintained by it under each applicable law are maintained in a form and manner required by each such applicable law.
- (b) If a Default is continuing or the Agent reasonably suspects a Default is continuing, each Obligor shall, within 72 hours notice by the Agent to the relevant Obligor, permit the Agent and/or accountants or other professional advisers and contractors of the Agent free access at all reasonable times at the risk and cost of the Obligor to the premises, assets, books, accounts and records of such Obligor.

### **23.23 Amendments**

- (a) Neither Obligor shall amend, vary, novate, supplement, supersede, waive or terminate any term of its Constitutional Documents except in a way which could not be reasonably expected materially and adversely to affect the interests of the Finance Parties under the Finance Document.
- (b) The Borrower shall promptly supply to the Agent a copy of any document relating to any of the matters referred to in paragraph (a) above.

### **23.24 Treasury Transactions**

No Obligor shall enter into any Treasury Transaction, other than those entered into in the ordinary course of business and not primarily for speculative purposes.

### **23.25 Syndication**

The Obligors shall provide reasonable assistance to the Arranger in the preparation of the Information Memorandum and the primary syndication of the Facility (including, without limitation, by making senior management available for the purpose of making presentations to, or meeting, potential lending institutions) and will comply with all reasonable requests for information from potential syndicate members prior to completion of syndication.

### **23.26 Application of FATCA**

No Obligor shall become a FATCA FFI or a US Tax Obligor.

### **23.27 Change of ownership**

The Guarantor shall remain the legal and beneficial owner (directly or indirectly) of at least 80% of the issued share capital (excluding any part of that issued share capital that carries no right to vote or participate beyond a specified amount in a distribution of either profits or capital) in the Borrower.

### **23.28 Accounts**

- (a) The Borrower shall maintain during the term of this Agreement:

- (i) an off-shore USD collection account with the Off-Shore Account Bank (the "**Off-Shore Account**"); and
  - (ii) an on-shore ZMW collection account with the On-Shore Account Bank (the "**On-Shore Account**").
- (b) The Borrower shall ensure that at least 50% of its proceeds of production of metals and/or by-products generated by the Borrower denominated in ZMW as realised from time to time are deposited by the Borrower directly into the On-Shore Account and that at least 50% of its proceeds of production of metals and/or by-products generated by the Borrower denominated in US\$ as realised from time to time are deposited directly by the Borrower into the Off-Shore Account.

## 24. **EVENTS OF DEFAULT**

Each of the events or circumstances set out in this Clause 24 is an Event of Default (save for Clause 24.17 (*Acceleration*)).

### 24.1 **Non-payment**

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

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

### 24.2 **Financial covenants**

Any requirement of Clause 22 (*Financial covenants*) is not satisfied.

### 24.3 **Other obligations**

- (a) An Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 24.1 (*Non-payment*) and Clause 24.2 (*Financial covenants*)).
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within five days of the earlier of (i) the Agent giving notice to the Borrower or the Guarantor and (ii) the Borrower or the Guarantor becoming aware of the failure to comply.

### 24.4 **Misrepresentation**

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

under or in connection with any Finance Document is or proves to have been incorrect or misleading when made or deemed to be made.

#### 24.5 **Cross default**

- (a) Any Financial Indebtedness of any member of the Group is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of any member of the Group 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 member of the Group is cancelled or suspended by a creditor of any member of the Group as a result of an event of default (however described).
- (d) Any creditor of any member of the Group becomes entitled to declare any Financial Indebtedness of any member of the Group due and payable prior to its specified maturity as a result of an event of default (however described).
- (e) No Event of Default will occur under this Clause 24.5 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than US\$25,000,000 (or its equivalent in any other currency or currencies) or such event does not have or is unlikely to have a Material Adverse Effect.

#### 24.6 **Insolvency**

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

provided that in the case of any member of the Group which is not an Obligor, such event has or is reasonably likely to have a Material Adverse Effect.

- (b) The value of the assets of any member of the Group is less than its liabilities (taking into account contingent and prospective liabilities) provided that in the case of any member of the Group which is not an Obligor, such event has or is reasonably likely to have a Material Adverse Effect.

- (c) A moratorium is declared in respect of any indebtedness of any member of the Group provided that in the case of any member of the Group which is not an Obligor, such event has or is reasonably likely to have a Material Adverse Effect. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

#### **24.7 Insolvency proceedings**

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

#### **24.8 Creditors' process**

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of a member of the Group having an aggregate value of US\$25,000,000 or its equivalent in any other currency or currencies and is not discharged within 14 days, provided that in the case of any member of the Group which is not an Obligor, such event has or is reasonably likely to have a Material Adverse Effect.

#### **24.9 Unlawfulness and invalidity**

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

#### **24.10 Cessation of business**

The Borrower suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business.

#### **24.11 Audit qualification**

The Auditors of the Group qualify the Annual Financial Statements in any material respect.

#### **24.12 Expropriation**

- (a) The authority or ability of the Borrower to conduct its business is materially limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to the Borrower or any of its assets.
- (b) The Borrower is prevented by any person acting under the authority of any national, regional or local government from exercising normal control over all or any material part of its assets and revenues and such event in the opinion of the Lender has or is reasonably likely to have a Material Adverse Effect.

#### **24.13 Repudiation and rescission of agreements**

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

#### **24.14 Litigation**

- (a) 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 or against any member of the KMP Group or its assets which have or are reasonably likely to have a Material Adverse Effect.

- (b) For the purposes of this Clause 24.14 (*Litigation*), a reference to any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes that are threatened in relation to the Finance Documents or against any member of the KMP Group or their respective assets is a reference to an overt threat made in writing and evidencing a present intention to sue but not any unasserted possible claims.

#### 24.15 **Material adverse change**

Any event or circumstance (or series of events or circumstances) occurs which, in the opinion of the Majority Lenders, has or is reasonably likely to have a Material Adverse Effect unless:

- (a) in the opinion of the Majority Lenders, such event or circumstance is (or such series of events or circumstances are) capable of remedy;
- (b) the Borrower commences good faith discussions with the Agent (acting on the instructions of the Majority Lenders) within five Business Days of the date of occurrence of such event or circumstance (or series of events or circumstances) with a view to remedying such Material Adverse Effect; and
- (c) the Borrower remedies or mitigates to the reasonable satisfaction of the Facility Agent (acting on the instructions of the Majority Lenders) such event or circumstance (or series of events or circumstances) within the period specified by the Agent during the good faith discussions.

#### 24.16 **Licences and other business related Authorisations**

- (a) The production licence or any other Authorisation required by the Borrower to conduct its business is revoked, suspended, terminated or there is a material breach by the Borrower of the terms of any production licence or any other Authorisation required by the Borrower to conduct its business.
- (b) The Borrower shall abandon all or any significant portion of its interest in any material assets if such action has or is reasonably likely to have a Material Adverse Effect.

#### 24.17 **Acceleration**

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

- (a) cancel the Total Commitments at which time they shall immediately be cancelled;
- (b) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be

immediately due and payable, at which time they shall become immediately due and payable;

- (c) declare that all or part of the Loans be payable on demand, at which time they shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders; and/or
- (d) exercise any or all of its rights, remedies, powers or discretions under the Finance Documents,

provided that each of paragraphs (a) to (c) above shall be deemed to have taken effect automatically and without any further action on the part of the Agent or the Lenders upon the occurrence of an Event of Default by any member of the Group which Event of Default is described in Clauses 24.6 (*Insolvency*) or 24.7 (*Insolvency proceedings*).

## 25. CHANGES TO THE LENDERS

### 25.1 Assignments and transfers by the Lenders

- (a) Subject to this Clause 25 and to Clause 26 (*Restriction on Debt Purchase Transactions*), a Lender (the "**Existing Lender**") may:

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

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

### 25.2 Conditions of assignment or transfer

- (a) Following the Syndication Date only, an Existing Lender must obtain the consent of the Borrower before it may make an assignment or transfer in accordance with Clause 25.1 (*Assignments and transfers by the Lenders*) unless the assignment or transfer is:
  - (i) to another Lender or an Affiliate of a Lender;
  - (ii) if the Existing Lender is a fund, to a fund which is a Related Fund of the Existing Lender; or
  - (iii) made at a time when an Event of Default is continuing.
- (b) The consent of the Borrower (if required) must not be unreasonably withheld or delayed. The Borrower will be deemed to have given its consent five Business Days after the Borrower is given notice of the request by that Existing Lender unless it is expressly refused by the Borrower within that time.
- (c) An assignment will only be effective on:

- (i) receipt by the Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that the New Lender will assume the same obligations to the other Finance Parties as it would have been under if it was an Original Lender; and
  - (ii) the performance by the Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Agent shall promptly notify to the Existing Lender and the New Lender.
- (d) A transfer will only be effective if the procedure set out in Clause 25.5 (*Procedure for transfer*) is complied with.
- (e) If:
- (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
  - (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 15 (*Increased Costs*),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under that Clause to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred. This paragraph (e) shall not apply:

- (i) in respect of an assignment or transfer made in the ordinary course of the primary syndication of the Facility; or
  - (ii) to the extent that the payment under Clause 14 (*Tax gross-up and indemnities*) relates to a FATCA Deduction.
- (f) Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

### 25.3 Assignment or transfer fee

Unless the Agent otherwise agrees and excluding an assignment or transfer (i) to an Affiliate of a Lender, (ii) to a Related Fund or (iii) made prior to the Syndication

Date, 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 US\$2,000.

#### 25.4 **Limitation of responsibility of Existing Lenders**

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
- (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;
  - (ii) the financial condition of any Obligor;
  - (iii) the performance and observance by any Obligor or any other member of the Group 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 each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender or any other Finance Party in connection with any Finance Document; and
  - (ii) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.
- (c) Nothing in any Finance Document obliges an Existing Lender to:
- (i) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 25; or
  - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under the Transaction Documents or otherwise.

#### 25.5 **Procedure for transfer**

- (a) Subject to the conditions set out in Clause 25.2 (*Conditions of assignment or transfer*) a transfer is effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to

paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate.

- (b) The Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.
- (c) Subject to Clause 25.9 (*Pro rata interest settlement*), on the Transfer Date:
  - (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents each of the Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and their respective rights against one another under the Finance Documents shall be cancelled (being the **"Discharged Rights and Obligations"**);
  - (ii) each of the Obligors and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Obligor or other member of the Group and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;
  - (iii) the Agent, the Arranger, the New Lender and the other Lenders shall acquire the same rights and assume the same obligations between themselves as they would have acquired and assumed had the New Lender been an Original Lender with the rights, and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Agent, the Arranger 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".

#### 25.6 Procedure for assignment

- (a) Subject to the conditions set out in Clause 25.2 (*Conditions of assignment or transfer*) an assignment may be effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.
- (b) The Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it

has complied with all necessary "know your customer" or similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.

- (c) Subject to Clause 25.9 (*Pro rata interest settlement*), on the Transfer Date:
- (i) the Existing Lender will assign absolutely to the New Lender its rights under the Finance Documents 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
  - (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 25.6 to assign their rights under the Finance Documents (but not, without the consent of the relevant Obligor or unless in accordance with Clause 25.5 (*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 25.2 (*Conditions of assignment or transfer*).

#### **25.7 Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Borrower**

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

#### **25.8 Security over Lenders' rights**

In addition to the other rights provided to Lenders under this Clause 25, 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) in the case of any Lender which is a fund, any charge, assignment or other Security granted to any holders (or agent, 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 other Security for the Lender as a party to any of the Finance Documents; or
- (ii) require any payments to be made by an Obligor 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.

#### 25.9 Pro rata interest settlement

- (a) If the Agent has notified the Lenders that it is able to distribute interest payments on a "pro rata basis" to Existing Lenders and New Lenders then (in respect of any transfer pursuant to Clause 25.5 (*Procedure for transfer*) or any assignment pursuant to Clause 25.6 (*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 for the account of the Existing Lender; and
    - (B) the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 25.9, have been payable to it on that date, but after deduction of the Accrued Amounts.
- (b) In this Clause 25.9 references to "Interest Period" shall be construed to include a reference to any other period for accrual of fees.

#### 26. RESTRICTION ON DEBT PURCHASE TRANSACTIONS

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

## 27. CHANGES TO THE OBLIGORS

### 27.1 Assignment and transfers by Obligors

No Obligor or any other member of the Group may assign any of its rights or transfer any of its rights or obligations under the Finance Documents without the consent of all the Lenders.

## 28. ROLE OF THE AGENT AND THE ARRANGER

### 28.1 Appointment of the Agent

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

### 28.2 Instructions

- (a) The Agent shall:
  - (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Agent 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;
    - (B) in all other cases, the Majority Lenders; and
  - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above.
- (b) The Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Lender or group of Lenders, from that Lender or group of Lenders) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Agent may refrain from acting unless and until it receives those instructions or that clarification.
- (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 Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties.

- (d) The 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 Agent may act (or refrain from acting) as it considers to be in the best interest of the Lenders.
- (f) The Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document.

### 28.3 Duties of the Agent

- (a) The Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) Subject to paragraph (c) below, the Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party.
- (c) Without prejudice to Clause 25.7 (*Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Borrower*) paragraph (b) above, shall not apply to any Transfer Certificate, any Assignment Agreement or any Increase Confirmation.
- (d) Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (e) If the Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (f) If the Agent is aware of the non-payment of any principal, interest or fee payable to a Finance Party (other than the Agent or the Arranger) under this Agreement it shall promptly notify the other Finance Parties.
- (g) The Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

### 28.4 Role of the Arranger

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

## 28.5 No fiduciary duties

- (a) Nothing in any Finance Document constitutes the Agent or the Arranger as a trustee or fiduciary of any other person.
- (b) Neither the Agent nor the Arranger shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

## 28.6 Business with the Group

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

## 28.7 Rights and discretions

- (a) The Agent may:
  - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
  - (ii) rely on any statement made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his or her knowledge or within his or her power to verify;
  - (iii) assume that:
    - (A) any instructions received by it from the Majority Lenders, any Lenders or any group of Lenders are duly given in accordance with the terms of the Finance Documents; and
    - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
  - (iv) 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 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 24.1 (*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 Borrower (other than a Utilisation Request or Selection Notice) is made on behalf of and with the consent and knowledge of all the Obligors.
- (c) The Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Agent (and so separate from any lawyers instructed by the Lenders) if the Agent in its reasonable opinion deems this to be desirable.
- (e) The Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) The Agent may act in relation to the Finance Documents through its officers, employees and agents and the 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 Agent's gross negligence or wilful misconduct.
- (g) Unless a Finance Document expressly provides otherwise the Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.
- (h) Without prejudice to the generality of paragraph (g) above, the Agent:
  - (i) may disclose; and
  - (ii) on the written request of the Borrower or the Majority Lenders shall, as soon as reasonably practicable, disclose,the identity of a Defaulting Lender to the Borrower and to the other Finance Parties.
- (i) Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent nor the Arranger is obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.

- (j) The Agent is not obliged to disclose to any Finance Party any details of the rate notified to the Agent by any Lender or the identity of any such Lender for the purpose of Clause 12.2 (a)(ii) (*Market disruption*).
- (k) Notwithstanding any provision of any Finance Document to the contrary, the 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.

#### 28.8 **Responsibility for documentation**

Neither the Agent nor the Arranger is responsible or liable for:

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

#### 28.9 **No duty to monitor**

The Agent shall not be bound to enquire:

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

#### 28.10 **Exclusion of liability**

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Agent), the 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, 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 or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document; 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 Agent) may take any proceedings against any officer, employee or agent of the Agent, in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of the Agent may rely on this Clause subject to Clause 1.4 (*Third party rights*) and the provisions of the Third Parties Act.

(c) The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Agent if the Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Agent for that purpose.

(d) Nothing in this Agreement shall oblige the Agent or the Arranger 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,

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

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

#### **28.11 Lenders' indemnity to the Agent**

- (a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, immediately on demand, against any cost, loss or liability (including, without limitation, for negligence, in relation to any FATCA related liability or any other category of liability whatsoever) incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 31.11 (*Disruption to Payment Systems etc.*), notwithstanding the Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) in acting as Agent under the Finance Documents (unless the Agent has been reimbursed by an Obligor pursuant to a Finance Document).
- (b) Subject to paragraph (c) below, the Borrower shall immediately on demand reimburse any Lender for any payment that Lender makes to the Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Agent to an Obligor.

#### **28.12 Resignation of the Agent**

- (a) The Agent may resign and appoint one of its Affiliates acting through an office as successor by giving notice to the Lenders and the Borrower.
- (b) Alternatively the Agent may resign by giving 30 days' notice to the Lenders and the Borrower, in which case the Majority Lenders (after consultation with the Borrower) may appoint a successor Agent.

- (c) If the Majority Lenders have not appointed a successor Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Agent (after consultation with the Borrower) may appoint a successor Agent.
- (d) If the Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Agent is entitled to appoint a successor Agent under paragraph (c) above, the Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Agent to become a party to this Agreement as Agent) agree with the proposed successor Agent amendments to this Clause 28 and any other term of this Agreement dealing with the rights or obligations of the Agent consistent with then current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to the agency fee payable under this Agreement which are consistent with the successor Agent's normal fee rates and those amendments will bind the Parties.
- (e) The retiring Agent shall make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents. The Borrower shall, within three Business Days of demand, reimburse the retiring Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
- (f) The Agent's resignation notice shall only take effect upon the appointment of a successor.
- (g) Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (e) above) but shall remain entitled to the benefit of Clause 16.3 (*Indemnity to the Agent*) and this Clause 28 (and any agency fees for the account of the retiring 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.

### 28.13 Replacement of the Agent

- (a) After consultation with the Borrower, the Majority Lenders may, by giving 30 days' notice to the Agent (or, at any time the Agent is an Impaired Agent, by giving any shorter notice determined by the Majority Lenders) replace the Agent by appointing a successor Agent.
- (b) The retiring Agent shall (at its own cost if it is an Impaired Agent and otherwise at the expense of the Lenders) make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.

- (c) The appointment of the successor Agent shall take effect on the date specified in the notice from the Majority Lenders to the retiring Agent. As from this date, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) above) but shall remain entitled to the benefit of Clause 16.3 (*Indemnity to the Agent*) and this Clause 28 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date).
- (d) Any successor 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.

#### 28.14 Confidentiality

- (a) In acting as agent for the Finance Parties, the Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by another division or department of the Agent, it may be treated as confidential to that division or department and the Agent shall not be deemed to have notice of it.
- (c) Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent nor the Arranger is 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 a fiduciary duty.

#### 28.15 Relationship with the Lenders

- (a) Subject to Clause 25.9 (*Pro rata interest settlement*), the Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Agent's principal office as notified to the Finance Parties from time to time) as the 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 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 33.6 (*Electronic*

*communication*)) electronic mail address 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, electronic mail address, department and officer by that Lender for the purposes of Clause 33.2 (*Addresses*) and Clause 33.6 (a)(i) (*Electronic communication*) and the Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.

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

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (c) whether that has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (d) the adequacy, accuracy or completeness of the Information Memorandum and any information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document.

#### **28.17 Base Reference Banks**

If a Base Reference Bank (or, if a Base Reference Bank is not a Lender, the Lender of which it is an Affiliate) ceases to be a Lender, the Agent shall (in consultation with the Borrower) appoint another Lender or an Affiliate of a Lender to replace that Base Reference Bank.

#### **28.18 Agent's management time**

Any amount payable to the Agent under Clause 16.3 (*Indemnity to the Agent*), Clause 18 (*Costs and Expenses*) and Clause 28.11 (*Lenders' indemnity to the Agent*) shall

exclude the cost of utilising the Agent's management time which is included in any fee paid or payable to the Agent under Clause 13 (*Fees*).

#### 28.19 **Deduction from amounts payable by the Agent**

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

#### 28.20 **Reliance and engagement letters**

Each Finance Party confirms that each of the Arranger and the Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by the Arranger or 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.

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

No provision of this Agreement will:

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

### 30. **SHARING AMONG THE FINANCE PARTIES**

#### 30.1 **Payments to Finance Parties**

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

- (a) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery, to the Agent;
- (b) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause 31 (*Payment Mechanics*), without taking account of any Tax

which would be imposed on the Agent in relation to the receipt, recovery or distribution; and

- (c) the Recovering Finance Party shall, within three Business Days of demand by the Agent, pay to the Agent an amount (the "**Sharing Payment**") equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 31.6 (*Partial payments*).

### 30.2 **Redistribution of payments**

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

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

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

### 30.4 **Reversal of redistribution**

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

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

### 30.5 **Exceptions**

- (a) This Clause 30 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.

## 31. PAYMENT MECHANICS

### 31.1 Payments to the Agent

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

### 31.2 Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 31.3 (*Distributions to an Obligor*) and Clause 31.4 (*Clawback and pre-funding*) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five Business Days' notice with a bank specified by that Party in the principal financial centre of the country of that currency.

### 31.3 Distributions to an Obligor

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

### 31.4 Clawback and pre-funding

- (a) Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) Unless paragraph (c) below applies, if the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to

the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.

- (c) If the Agent has notified the Lenders that it is willing to make available amounts for the account of the Borrower before receiving funds from the Lenders then if and to the extent that the Agent does so but it proves to be the case that it does not then receive funds from a Lender in respect of a sum which it paid to the Borrower:
  - (i) the Borrower shall on demand refund it to the Agent; and
  - (ii) the Lender by whom those funds should have been made available or, if that Lender fails to do so, the Borrower, shall on demand pay to the Agent the amount (as certified by the Agent) which will indemnify the Agent against any funding cost incurred by it as a result of paying out that sum before receiving those funds from that Lender.

### 31.5 Impaired Agent

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

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

- (b) All interest accrued on the amount standing to the credit of the trust account shall be for the benefit of the Recipient Party or the Recipient Parties pro rata to their respective entitlements.
- (c) A Party which has made a payment in accordance with this Clause 31.5 shall be discharged of the relevant payment obligation under the Finance Documents and shall not take any credit risk with respect to the amounts standing to the credit of the trust account.

- (d) Promptly upon the appointment of a successor Agent in accordance with Clause 28.13 (*Replacement of the Agent*), each Paying Party shall (other than to the extent that that Party has given an instruction pursuant to paragraph (e) below) give all requisite instructions to the bank with whom the trust account is held to transfer the amount (together with any accrued interest) to the successor Agent for distribution to the relevant Recipient Party or Recipient Parties in accordance with Clause 31.2 (*Distributions by the Agent*).
- (e) A Paying Party shall, promptly upon request by a Recipient Party and to the extent:
  - (i) that it has not given an instruction pursuant to paragraph (d) above; and
  - (ii) that it has been provided with the necessary information by that Recipient Party,

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

### 31.6 Partial payments

- (a) If the Agent receives a payment for application against amounts due in respect of any Finance Documents that is insufficient to discharge all the amounts then due and payable by an Obligor under those Finance Documents, the Agent shall apply that payment towards the obligations of that Obligor under those Finance Documents in the following order:
  - (i) first, in or towards payment pro rata of any unpaid amount owing to the Agent under those Finance Documents;
  - (ii) secondly, in or towards payment pro rata of any accrued interest, fee or commission due but unpaid under those Finance Documents; and
  - (iii) thirdly, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.
- (b) The Agent shall, if so directed by the Majority Lenders, vary the order set out in paragraphs (a)(ii) to (iii) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by an Obligor.

### 31.7 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.

### 31.8 Business Days

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

### 31.9 Currency of account

- (a) Subject to paragraphs (b) to (e) below, the Base Currency is the currency of account and payment for any sum due from an Obligor under any Finance Document.
- (b) A repayment of a Loan or Unpaid Sum or a part of a Loan or Unpaid Sum shall be made in the currency in which that Loan or Unpaid Sum is denominated, pursuant to this Agreement, on its due date.
- (c) Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated, pursuant to this Agreement, when that interest accrued.
- (d) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (e) Any amount expressed to be payable in a currency other than the Base Currency shall be paid in that other currency.

### 31.10 Change of currency

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

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

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

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

### 32. **SET-OFF**

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

### 33. **NOTICES**

#### 33.1 **Communications in writing**

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

### 33.2 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 Obligor that identified with its name below;
- (b) in the case of each Lender or any other Obligor, that notified in writing to the Agent on or prior to the date on which it becomes a Party; and
- (c) in the case of the Agent, that identified with its name below,

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

### 33.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
  - (i) if by way of 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 33.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Agent will be effective only when actually received by the Agent and then only if it is expressly marked for the attention of the department or officer identified with the Agent's signature below (or any substitute department or officer as the Agent shall specify for this purpose).
- (c) All notices from or to an Obligor shall be sent through the Agent.
- (d) Any communication or document made or delivered to the Borrower in accordance with this Clause 33.3 will be deemed to have been made or delivered to each of the Obligors.
- (e) Any communication or document which becomes effective, in accordance with paragraphs (a) to (d) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

#### 33.4 **Notification of address and fax number**

Promptly upon receipt of notification of an address or fax number or change of address or fax number pursuant to 33.2 (*Addresses*) or changing its own address or fax number, the Agent shall notify the other Parties.

#### 33.5 **Communication when Agent is Impaired Agent**

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

#### 33.6 **Electronic communication**

- (a) Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication and if those two Parties:
  - (i) 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
  - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any electronic communication made between those two Parties will be effective only when actually received in readable form and in the case of any electronic communication made by a Party to the Agent only if it is addressed in such a manner as the Agent shall specify for this purpose.
- (c) Any electronic communication which becomes effective, in accordance with paragraph (b) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

#### 33.7 **Use of websites**

- (a) The Borrower may satisfy its obligation under this Agreement to deliver any information in relation to those Lenders (the "**Website Lenders**") who accept this method of communication by posting this information onto an electronic website designated by the Borrower and the Agent (the "**Designated Website**") if:
  - (i) the Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;

- (ii) both the Borrower and the Agent are aware of the address of and any relevant password specifications for the Designated Website; and
- (iii) the information is in a format previously agreed between the Borrower and the Agent.

If any Lender (a "**Paper Form Lender**") does not agree to the delivery of information electronically then the Agent shall notify the Borrower accordingly and the Borrower shall at its own cost supply the information to the Agent (in sufficient copies for each Paper Form Lender) in paper form. In any event the Borrower shall at its own cost supply the Agent with at least one copy in paper form of any information required to be provided by it.

- (b) The Agent shall supply each Website Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by the Borrower and the Agent.
- (c) The Borrower shall promptly upon becoming aware of its occurrence notify the Agent if:
  - (i) the Designated Website cannot be accessed due to technical failure;
  - (ii) the password specifications for the Designated Website change;
  - (iii) any new information which is required to be provided under this Agreement is posted onto the Designated Website;
  - (iv) any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or
  - (v) the Borrower becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.

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

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

### 33.8 **English language**

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:

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

## **34. CALCULATIONS AND CERTIFICATES**

### **34.1 Accounts**

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

### **34.2 Certificates and determinations**

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

### **34.3 Day count convention**

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.

## **35. PARTIAL INVALIDITY**

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

## **36. REMEDIES AND WAIVERS**

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

## 37. AMENDMENTS AND WAIVERS

### 37.1 Required consents

- (a) Subject to Clause 37.2 (*All Lender matters*) and Clause 37.3 (*Other exceptions*), any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Borrower and any such amendment or waiver will be binding on all Parties.
- (b) The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 37.
- (c) Without prejudice to the generality of Clause 28.7(c), (d) and (e) (*Rights and discretions*), the Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement.
- (d) Each Obligor agrees to any such amendment or waiver permitted by this Clause 37 which is agreed to by the Borrower. This includes any amendment or waiver which would, but for this paragraph (d), require the consent of all of the Obligors.

### 37.2 All Lender matters

An amendment, waiver or a consent of, or in relation to, any term of any Finance Document that has the effect of changing or which relates to:

- (a) the definition of "Majority Lenders" in Clause 1.1 (*Definitions*);
- (b) an extension to the date of payment of any amount under the Finance Documents;
- (c) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;
- (d) a change in currency of payment of any amount under the Finance Documents;
- (e) an increase in any Commitment or the Total Commitments, an extension of any Availability Period or any requirement that a cancellation of Commitments reduces the Commitments of the Lenders rateably;
- (f) a change to the Obligors or the addition of any borrower under this Agreement;
- (g) any provision which expressly requires the consent of all the Lenders;
- (h) Clause 2.3 (*Finance Parties' rights and obligations*), Clause 8 (*Mandatory prepayment and cancellation*), Clause 9.8 (*Application of prepayments*), Clause 25 (*Changes to the Lenders*), this Clause 37, Clause 40 (*Governing law*) or Clause 41.1 (*Jurisdiction of English courts*);

- (i) (other than as expressly permitted by the provisions of any Finance Document) the nature or scope of the guarantee and indemnity granted under Clause 19 (*Guarantee and indemnity*).
- (j) the release of any guarantee and indemnity granted under Clause 19 (*Guarantee and Indemnity*) unless permitted under this Agreement or any other Finance Document; or
- (k) any amendment to the order of priority or subordination under the Subordination Agreement,

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

### 37.3 Other exceptions

- (a) An amendment or waiver which relates to the rights or obligations of the Agent or the Arranger (each in their capacity as such) may not be effected without the consent of the Agent or the Arranger.
- (b) Any amendment or waiver which:
  - (i) relates only to the rights or obligations applicable to a particular Loan or class of Lender; and
  - (ii) does not adversely affect the rights or interests of Lenders in respect of any other Loan another class of Lender,

may be made in accordance with this Clause 37 but as if references in this Clause 37 to the specified proportion of Lenders (including, for the avoidance of doubt, all the Lenders) whose consent would, but for this paragraph (b), be required for that amendment or waiver were to that proportion of the Lenders participating in that particular Loan or forming part of that particular class.

### 37.4 Excluded Commitments

If:

- (a) any Defaulting Lender fails to respond to a request for a consent, waiver, amendment of or in relation to any term of any Finance Document or any other vote of Lenders under the terms of this Agreement within 15 Business Days of that request being made; or
- (b) any Lender which is not a Defaulting Lender fails to respond to such a request (other than an amendment, waiver or consent referred to in Clause 37.2 (b), (c) and (e) (*All Lender matters*)) within 20 Business Days of that request being made,

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

- (i) its Commitment(s) shall not be included for the purpose of calculating the Total Commitments under the Facility when ascertaining whether any relevant

percentage (including, for the avoidance of doubt, unanimity) of Total Commitments has been obtained to approve that request; and

- (ii) its status as a Lender shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve that request.

### 37.5 Replacement of Lender

- (a) If:
  - (i) any Lender becomes a Non-Consenting Lender (as defined in paragraph (d) below); or
  - (ii) an Obligor becomes obliged to repay any amount in accordance with Clause 7.1 (*Illegality*) or to pay additional amounts pursuant to Clause 15.1 (*Increased costs*), to any Lender,

then the Borrower may, on 20 Business Days' prior written notice to the Agent and such Lender, replace such Lender by requiring such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 25 (*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 Borrower and which confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with Clause 25 (*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 outstanding Loans and all accrued interest (to the extent that the Agent has not given a notification under Clause 25.9 (*Pro rata interest settlement*)), Break Costs and other amounts payable in relation thereto under the Finance Documents.

- (b) The replacement of a Lender pursuant to this Clause 37.5 shall be subject to the following conditions:
  - (i) the Borrower shall have no right to replace the Agent;
  - (ii) neither the Agent nor the Lender shall have any obligation to the Borrower to find a Replacement Lender;
  - (iii) in the event of a replacement of a Non-Consenting Lender such replacement must take place no later than 30 days after the date on which that Lender is deemed a Non-Consenting Lender;
  - (iv) in no event shall the Lender replaced under Clause 37.5 be required to pay or surrender to such Replacement Lender any of the fees received by such Lender pursuant to the Finance Documents; and
  - (v) the Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (a) above once it is satisfied that it has complied

with all necessary know your customer or other similar checks under all applicable laws and regulations in relation to that transfer.

- (c) A Lender shall perform the checks described in paragraph (b)(v) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a) above and shall notify the Agent and the Borrower when it is satisfied that it has complied with those checks.
- (d) In the event that:
  - (i) the Borrower or the Agent (at the request of the Borrower) has requested the Lenders to give a consent in relation to, or to agree to a waiver or amendment of, any provisions of the Finance Documents;
  - (ii) the consent, waiver or amendment in question requires the approval of all the Lenders; and
  - (iii) Lenders whose Commitments aggregate, in the case of a consent, waiver or amendment requiring the approval of all the Lenders, 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**".

### 37.6 Disenfranchisement of Defaulting Lenders

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

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

- (b) For the purposes of this Clause 37.6, the Agent may assume that the following Lenders are Defaulting Lenders:

- (i) any Lender which has notified the Agent that it has become a Defaulting Lender; and
- (ii) any Lender in relation to which it is aware that any of the events or circumstances referred to in paragraphs (a), (b), or (c) of the definition of "**Defaulting Lender**" has occurred,

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

### 37.7 Replacement of a Defaulting Lender

- (a) The Borrower may, at any time a Lender has become and continues to be a Defaulting Lender, by giving 15 Business Days' prior written notice to the Agent and such Lender, replace such Lender by requiring such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 25 (*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 Borrower, 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 25 (*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 outstanding Loans and all accrued interest (to the extent that the Agent has not given a notification under Clause 25.9 (*Pro rata interest settlement*)), Break Costs and other amounts payable in relation thereto under the Finance Documents; or
  - (ii) in an amount agreed between that Defaulting Lender, the Replacement Lender and the Borrower and which does not exceed the amount described in paragraph (a) above.
- (b) Any transfer of rights and obligations of a Defaulting Lender pursuant to this Clause 37.7 shall be subject to the following conditions:
  - (i) the Borrower shall have no right to replace the Agent;
  - (ii) neither the Agent nor the Defaulting Lender shall have any obligation to the Borrower to find a Replacement Lender;
  - (iii) the transfer must take place no later than 30 Business Days after the notice referred to in paragraph (a) above;
  - (iv) in no event shall the Defaulting Lender be required to pay or surrender to the Replacement Lender any of the fees received by the Defaulting Lender pursuant to the Finance Documents; and

- (v) the Defaulting Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (a) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer to the Replacement Lender.
- (c) The Defaulting Lender shall perform the checks described in paragraph (b)(v) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a) above and shall notify the Agent and the Borrower when it is satisfied that it has complied with those checks.

## 38. CONFIDENTIALITY

### 38.1 Confidential Information

Except as permitted by Clause 38.2 (*Disclosure of Confidential Information*) and Clause 38.3 (*Disclosure to numbering service providers*):

- (a) each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone; and
- (b) each Finance Party agrees to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

### 38.2 Disclosure of Confidential Information

Any Finance Party may disclose:

- (a) to any of its Affiliates (which, in the case of the Original Lenders, shall include any of its Affiliates (including branches), and any of its or their representatives in any jurisdiction) and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives (and including, for the avoidance of doubt, in each case, any of its or their head offices or branches) such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
  - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Agent 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 Clause 38.2(b)(i) or Clause 38.2(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 28.15(b) (*Relationship with the Lenders*));
- (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;
- (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or tribunal or any governmental, quasi-governmental, administrative, supervisory, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law, rule 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 25.8 (*Security over Lenders' rights*);
- (viii) who is an insurer, insurance broker, service provider, rating agency or any direct or indirect provider of credit protection to that Finance Party or any of its Affiliates (which, in the case of the Original Lenders, shall include any of its Affiliates (including any head office or branch), and any of its or their representatives in any jurisdiction);
- (ix) who is a Party; or
- (x) with the consent of the Borrower,

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

- (A) in relation to paragraphs (b)(i), (b)(ii) and (b)(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;

- (B) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
  - (C) in relation to paragraphs (b)(v), (b)(vi), (b)(vii), and (b)(viii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances; and
- (c) to any person appointed by that Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Borrower and the relevant Finance Party; and
  - (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Obligors if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

### 38.3 Disclosure to numbering service providers

- (a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facility and/or one or more Obligors the following information:
  - (i) names of Obligors;
  - (ii) country of domicile of Obligors;
  - (iii) place of incorporation of Obligors;
  - (iv) date of this Agreement;
  - (v) Clause 40 (*Governing law*);

- (vi) the names of the Agent and the Arranger;
- (vii) date of each amendment and restatement of this Agreement;
- (viii) amounts of, and names of, the Facility;
- (ix) amount of Total Commitments;
- (x) currencies of the Facility;
- (xi) type of Facility;
- (xii) ranking of Facility;
- (xiii) Termination Date for 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 Borrower,

to enable such numbering service provider to provide its usual syndicated loan numbering identification services.

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

#### 38.4 Entire agreement

This Clause 38 constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

### 38.5 **Inside information**

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

### 38.6 **Notification of disclosure**

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

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to Clause 38.1(b)(v) (*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 38.

### 38.7 **Continuing obligations**

The obligations in this Clause 38 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of 12 months from the earlier of:

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

## 39. **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. **GOVERNING LAW**

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

## 41. **ENFORCEMENT**

### 41.1 **Jurisdiction of English courts**

- (a) In relation to any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a "**Dispute**"), the Majority Lenders shall elect to settle

such Dispute either in accordance with this Clause 41.1 or in accordance with Clause 41.3.

- (b) Subject to Clause 41.3, the courts of England have exclusive jurisdiction to settle any Dispute.
- (c) 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.

#### 41.2 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in England and Wales):
  - (i) irrevocably appoints First Quantum Minerals (UK) Ltd., Tennyson House, 159-165 Great Portland Street, London, England W1W 5PA as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
  - (ii) agrees that failure by an agent for service of process to notify the relevant Obligor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Borrower (on behalf of all the Obligors) must immediately (and in any event within five days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may appoint another agent for this purpose.

#### 41.3 Arbitration

- (a) Notwithstanding the procedures referred to in Clause 41.1 (*Jurisdiction of English courts*), the Majority Lenders may elect that any dispute, difference, controversy or claim arising out of or in connection with the Finance Documents, including the breach, termination or invalidity thereof, may be settled by arbitration in accordance with the LCIA rules as in force and effect from time to time.
- (b) The arbitral tribunal shall be composed of three arbitrators. Each Party in dispute shall appoint one arbitrator and the President for the time being of the London Court of International Arbitration shall appoint the third arbitrator.
- (c) The request for arbitration shall be also served on each and every Party who hereby agrees to submit any dispute, difference, controversy or claim arising out of or in connection with any Finance Document before the same arbitral tribunal by intervening in the pending arbitration proceedings commenced pursuant to paragraphs (a) and (b). In the event that such proceedings have already been declared closed or discontinued for other reasons the dispute, difference, controversy or claim arising out of or in connection with any

Finance Document shall be settled through fresh arbitral proceedings to be commenced in compliance with paragraphs (a) and (b).

- (d) The arbitral tribunal shall be empowered to settle each and every dispute submitted to it in separate awards and at different times.
- (e) The place of arbitration shall be London, England and the English language shall be used throughout the arbitral proceedings.
- (f) The Parties hereby waive any rights under any applicable and procedural law to appeal any arbitration award or to seek determination of a preliminary point of law with respect to such proceedings.
- (g) Judgement of the award may be entered into any court having jurisdiction thereof.

**EXECUTION:**

The parties have shown their acceptance of the terms of this Agreement by executing it after the Schedules.

**SCHEDULE 1  
THE ORIGINAL PARTIES**

**Part 1  
The Original Obligors**

<b>BORROWER</b>	<b>REGISTRATION NUMBER (OR EQUIVALENT, IF ANY) AND ORIGINAL JURISDICTION</b>
Kansanshi Mining Plc	37529, Zambia
<b>OTHER ORIGINAL OBLIGORS</b>	<b>REGISTRATION NUMBER (OR EQUIVALENT, IF ANY) AND ORIGINAL JURISDICTION</b>
First Quantum Minerals Ltd.	C0726351, British Columbia

**Part 2**  
**The Original Lenders**

<b>Name of Original Lender</b>	<b>Commitment (US\$)</b>
STANDARD CHARTERED BANK	350,000,000

**SCHEDULE 2**  
**CONDITIONS PRECEDENT**

**Part 1**  
**Conditions Precedent To First Utilisation**

**1. Obligor**

- (a) A copy of the Constitutional Documents of each Obligor.
- (b) A copy of a resolution of the board of directors:
  - (i) authorising and approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute, deliver and perform the Finance Documents to which it is a party;
  - (ii) in the case of the Guarantor, confirming the transactions contemplated by the Finance Documents to which it is a party are in the best interest of the Guarantor, giving reasons; and
  - (iii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf.
- (c) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above in relation to the Finance Documents and related documents.
- (d) A certificate of the Borrower (signed by a director) confirming that borrowing or guaranteeing, as appropriate, the Total Commitments would not cause any borrowing, guarantee or similar limit binding on either Obligor to be exceeded, nor breach the terms of any Financial Indebtedness outstanding in respect of either Obligor and that there is no event or circumstance existing which would have a Material Adverse Effect.
- (e) A certificate of the Borrower (signed by a director) confirming that all necessary consents and waivers with respect to its contractual obligations for the purposes of the transactions contemplated under the Facility have been obtained or waived.
- (f) A certificate of an authorised signatory of the Borrower certifying that each copy document relating to it specified in this Part 1 of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of this Agreement.
- (g) A certificate of the Guarantor (signed by a director):
  - confirming that borrowing or guaranteeing, as the case may be, the Total Commitments would not cause any borrowing, guarantee or similar limit binding on it to be exceeded.

- certifying that each copy document relating to it specified in this Part 1 of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of this Agreement.

**2. Finance Documents**

- (a) The Subordination Agreement executed by all parties thereto.
- (b) This Agreement executed by the Borrower and the Guarantor.
- (c) The Fee Letters executed by the Borrower.

**3. Legal opinions**

The following legal opinions, each addressed to the Agent and the Original Lenders and capable of being relied upon by any persons who become Lenders pursuant to the primary syndication of the Facility:

- (a) A legal opinion of Blake, Cassels & Graydon LLP, legal advisers to the Agent and the Arranger as to Canadian law;
- (b) A legal opinion of Mayer Brown International LLP, legal advisers to the Agent and the Arranger as to English law; and
- (c) A legal opinion of Musa Dudhia & Co., legal advisers to the Agent and the Arranger as to Zambian law;

**4. Other documents and evidence**

- (a) Evidence that the fees, costs and expenses then due from the Borrower pursuant to Clause 13 (*Fees*), Clause 14.5 (*Stamp taxes*) and Clause 18 (*Costs and Expenses*) have been paid or will be paid by the first Utilisation Date.
- (b) Evidence that any process agent referred to in Clause 41.2 (*Service of process*), has accepted its appointment.
- (c) The Base Case Model.
- (d) A copy, certified by an authorised signatory of the Guarantor to be a true copy, of its Original Financial Statements.
- (e) A copy, certified by an authorised signatory of the Borrower to be a true copy of its Original Financial Statements.
- (f) A copy of any documentation or other evidence which is reasonably requested by the Agent (for itself or on behalf of any Lender) in order for the Agent or such Lender to comply with all necessary "know your customer" requirements under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents which the Agent or any Lender is obliged to comply with where the necessary information is not already available to it.

- (g) A certified copy of the large-scale mining licence owned by the Borrower, evidenced by Licence No. 7057-HQ-LML and issued on 18<sup>th</sup> June 2010 by the Republic of Zambia Mines Development Department in accordance with the provisions of the Mines and Minerals Development Act, 2008 (No. 7 of 2008) and the Mines and Minerals Development (General) Regulations, 2008 of the Republic of Zambia.
- (h) Evidence that the Borrower has opened the On-Shore Account with the On-Shore Account Bank and the Off-Shore Account with the Off-Shore Account Bank.
- (i) A copy of any other Authorisation or other document, opinion or assurance which the Agent considers to be necessary or desirable (if it has notified the Borrower accordingly) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.
- (j) Evidence that the amounts outstanding pursuant to the Kansanshi Facilities Agreement have been repaid in full or will be repaid in full by first Utilisation Date and the available commitments cancelled and that all security granted pursuant to these arrangements has been released or will be released by first Utilisation Date.

**SCHEDULE 3  
REQUESTS AND NOTICES**

**Part 1  
Utilisation Request – Loans**

From: [Borrower]

To: [Agent] / [On-Shore Account Bank]

Dated:

Dear Sirs

**US\$350,000,000 Term Facility Agreement  
dated [            ] (the "Facility Agreement")**

1. We refer to the Facility Agreement. This is a Utilisation Request. Terms defined in the Facility Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to borrow a Loan on the following terms:
  - (a) Proposed Utilisation Date: [            ] (or, if that is not a Business Day, the next Business Day)
  - (b) Currency of Loan: US\$
  - (c) Amount: [            ] or, if less, the Available Facility
  - (d) Interest Period: [            ]
3. We confirm that each condition specified in Clause 4.2 (*Further conditions precedent*) is satisfied on the date of this Utilisation Request.
4. The proceeds of this Loan should be credited to [account].<sup>1</sup> [The On-Shore Account Bank is hereby instructed immediately on receipt of the proceeds of the Loan to apply such proceeds in repayment of all amounts outstanding pursuant to the Kansanshi Facilities Agreement.] \*
5. This Utilisation Request is irrevocable.

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<sup>1</sup> Specify account details of On-Shore Account Bank.

Yours faithfully

authorised signatory for  
the Borrower

**NOTES:**

\* First Utilisation only.

**Part 2**  
**Selection Notice applicable to a Loan**

From: [Borrower]

To: [Agent]

Dated:

Dear Sirs

**US\$350,000,000 Term Facility Agreement**  
**dated [            ] (the "Facility Agreement")**

1. We refer to the Facility Agreement. This is a Selection Notice. Terms defined in the Facility Agreement have the same meaning in this Selection Notice unless given a different meaning in this Selection Notice.
2. We refer to the following Loan[s] with an Interest Period ending on [    ]\*.
3. We request that the next Interest Period for the above Loan[s] is [    ].
4. This Selection Notice is irrevocable.

Yours faithfully

authorised signatory for  
the Borrower

**NOTES:**

- \* Insert details of all Loans which have an Interest Period ending on the same date.

**SCHEDULE 4**  
**FORM OF TRANSFER CERTIFICATE**

To: [            ] as Agent

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

Dated:

**US\$350,000,000 Term Facility Agreement**  
**dated [            ] (the "Facility Agreement")**

1. We refer to the Facility Agreement. This agreement (the Agreement) shall take effect as a Transfer Certificate for the purpose of the Facility Agreement. Terms defined in the Facility Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to Clause 25.5 (*Procedure for transfer*) of the Facility Agreement:
  - (a) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation and in accordance with Clause 25.5 (*Procedure for transfer*) all of the Existing Lender's rights and obligations under the Facility Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment(s) and participations in Loans under the Facility 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 33.2 (*Addresses*) are set out in the Schedule.
3. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in Clause 25.4(c) (*Limitation of responsibility of Existing Lenders*).
4. 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.
5. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
6. This Agreement has been entered into on the date stated at the beginning of this Agreement.

**THE SCHEDULE**

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,]

[Existing Lender]

[New Lender]

By:

By:

This Agreement is accepted as a Transfer Certificate for the purposes of the Facility Agreement by the Agent and the Transfer Date is confirmed as [    ].

[Agent]

By:

**SCHEDULE 5**  
**FORM OF ASSIGNMENT AGREEMENT**

To: [ ] as Agent, Kansanshi Mining Plc, as Borrower and First Quantum Minerals Ltd., as Guarantor

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

Dated:

**US\$350,000,000 Term Facility Agreement**  
**dated [ ] (the "Facility Agreement")**

1. We refer to the Facility Agreement. This is an Assignment Agreement. This agreement (the Agreement) shall take effect as an Assignment Agreement for the purpose of the Facility Agreement. Terms defined in the Facility Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to Clause 25.6 (*Procedure for assignment*) of the Facility Agreement:
  - (a) The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Facility Agreement, the other Finance Documents which correspond to that portion of the Existing Lender's Commitment(s) and participations in Loans under the Facility Agreement as specified in the Schedule.
  - (b) The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender's Commitment(s) and participations in Loans under the Facility Agreement specified in the Schedule.
  - (c) The New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph (b) above.
3. The proposed Transfer Date is [ ].
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 33.2 (*Addresses*) are set out in the Schedule.
6. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in Clause 25.4 (c) (*Limitation of responsibility of Existing Lenders*).
7. This Agreement acts as notice to the Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 25.7 (*Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Borrower*), to the Borrower and the Guarantor of the assignment referred to in this Agreement.

8. 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.
9. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
10. This Agreement has been entered into on the date stated at the beginning of this Agreement.

**THE SCHEDULE**

**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 Facility Agreement by the Agent and the Transfer Date is confirmed as [ ].

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

[Agent]

By:

**SCHEDULE 6**  
**FORM OF COMPLIANCE CERTIFICATE**

To: [ ] as Agent

From: [Kansanshi Mining Plc] [First Quantum Minerals Ltd.]\*

Dated:

Dear Sirs

**US\$350,000,000 Facility Agreement**  
**dated [ ] (the "Facility Agreement")**

1. We refer to the Facility Agreement. This is a Compliance Certificate. Terms defined in the Facility Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
2. [We confirm that, in accordance with 22.2(a) (*Financial condition*):  
Debt to EBITDA Ratio is [ ]:1  
KMP Debt Service Cover Ratio (Historic) is [ ]:1  
KMP Debt to Equity Ratio is [ ]:1  
[details to be provided]]<sup>2</sup>
3. [We confirm that in accordance with 22.2(b) (*Financial condition*):  
Net Debt to EBITDA Ratio is [●]:1;  
Debt Service Cover Ratio (Historic) is [●]:1  
Debt to Equity Ratio is [●]:1;  
[Details to be provided]]<sup>3</sup>
4. [We confirm that no Default/Event of Default is continuing.]\*\*
5. We confirm that Repeating Representations are true and correct in all material respects.

Signed

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<sup>2</sup> To be given in Compliance Certificate supplied by Borrower.

<sup>3</sup> To be given in Compliance Certificate supply by Guarantor.

[Chief Financial Officer / Director / Treasurer]  
of [First Quantum Minerals Ltd.]/[Kansanshi Mining Plc]

**NOTES:**

\* Delete as appropriate.

\*\* If this statement cannot be made, the certificate should identify any Default/Event of Default that is continuing and the steps, if any, being taken to remedy it.

**SCHEDULE 7**  
**LMA FORM OF CONFIDENTIALITY UNDERTAKING**

[Letterhead of Seller]

Date: [        ]

To:            [insert name of Potential Purchaser]

Re:            The Agreement

Company:      (the Company) [insert name of Potential Purchaser]

Date:

Amount:

Agent:

Dear Sirs

We understand that you are considering acquiring an interest in the Agreement which, subject to the Agreement, may be by way of novation, assignment, the entering into, whether directly or indirectly, of a sub-participation or any other transaction under which payments are to be made or may be made by reference to one or more Finance Documents and/or one or more Obligors or by way of investing in or otherwise financing, directly or indirectly, any such novation, assignment, sub-participation or other transaction (the "**Acquisition**"). In consideration of us agreeing to make available to you certain information, by your signature of a copy of this letter you agree as follows:

**1. CONFIDENTIALITY UNDERTAKING**

You undertake (a) to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by paragraph 2 below and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to your own confidential information, and (b) until the Acquisition is completed to use the Confidential Information only for the Permitted Purpose.

**2. PERMITTED DISCLOSURE**

We agree that you may disclose:

- (a) to any of your Affiliates and any of your or their officers, directors, employees, professional advisers and auditors such Confidential Information as you shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (b) is informed in writing of its confidential nature and that some or all of such Confidential Information

may be price-sensitive information, except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;

- (b) subject to the requirements of the Agreement, to any person:
  - (i) to (or through) whom you assign or transfer (or may potentially assign or transfer) all or any of your rights and/or obligations which you may acquire under the Agreement such Confidential Information as you shall consider appropriate if the person to whom the Confidential Information is to be given pursuant to this sub-paragraph (i) of paragraph (b) has delivered a letter to you in equivalent form to this letter;
  - (ii) with (or through) whom you enter into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to the Agreement or any Obligor such Confidential Information as you shall consider appropriate if the person to whom the Confidential Information is to be given pursuant to this sub-paragraph (ii) of paragraph (b) has delivered a letter to you in equivalent form to this letter;
  - (iii) to whom information is required or requested to be disclosed by any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation such Confidential Information as you shall consider appropriate; and
- (c) notwithstanding paragraphs 2(a) and 2(b) above, Confidential Information to such persons to whom, and on the same terms as, a Finance Party is permitted to disclose Confidential Information under the Agreement, as if such permissions were set out in full in this letter and as if references in those permissions to Finance Party were references to you.

### 3. **NOTIFICATION OF DISCLOSURE**

You agree (to the extent permitted by law and regulation) to inform us:

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

#### **4. RETURN OF COPIES**

If you do not enter into the Acquisition and we so request in writing, you shall return or destroy all Confidential Information supplied to you by us and destroy or permanently erase (to the extent technically practicable) all copies of Confidential Information made by you and use your reasonable endeavours to ensure that anyone to whom you have supplied any Confidential Information destroys or permanently erases (to the extent technically practicable) such Confidential Information and any copies made by them, in each case save to the extent that you or the recipients are required to retain any such Confidential Information by any applicable law, rule or regulation or by any competent judicial, governmental, supervisory or regulatory body or in accordance with internal policy, or where the Confidential Information has been disclosed under sub-paragraph (iii) of paragraph (b) above.

#### **5. CONTINUING OBLIGATIONS**

The obligations in this letter are continuing and, in particular, shall survive and remain binding on you until (a) if you become a party to the Agreement as a lender of record, the date on which you become such a party to the Agreement; (b) if you enter into the Acquisition but it does not result in you becoming a party to the Agreement as a lender of record, the date falling [twelve] months after the date on which all of your rights and obligations contained in the documentation entered into to implement that Acquisition have terminated; or (c) in any other case the date falling [twelve] months after the date of your final receipt (in whatever manner) of any Confidential Information.

#### **6. NO REPRESENTATION; CONSEQUENCES OF BREACH, ETC**

You acknowledge and agree that:

- (a) neither we, nor any member of the Group nor any of our or their respective officers, employees or advisers (each a Relevant Person) (i) make any representation or warranty, express or implied, as to, or assume any responsibility for, the accuracy, reliability or completeness of any of the Confidential Information or any other information supplied by us or the assumptions on which it is based or (ii) shall be under any obligation to update or correct any inaccuracy in the Confidential Information or any other information supplied by us or be otherwise liable to you or any other person in respect of the Confidential Information or any such information; and
- (b) we or members of the Group may be irreparably harmed by the breach of the terms of this letter and damages may not be an adequate remedy; each Relevant Person may be granted an injunction or specific performance for any threatened or actual breach of the provisions of this letter by you.

#### **7. ENTIRE AGREEMENT: NO WAIVER; AMENDMENTS, ETC**

- (a) This letter constitutes the entire agreement between us in relation to your obligations regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

- (b) No failure to exercise, nor any delay in exercising, any right or remedy under this letter will operate as a waiver of any such right or remedy or constitute an election to affirm this letter. No election to affirm this letter will be effective unless it is in writing. No single or partial exercise of any right or remedy will prevent any further or other exercise or the exercise of any other right or remedy under this letter.
- (c) The terms of this letter and your obligations under this letter may only be amended or modified by written agreement between us.

## 8. **INSIDE INFORMATION**

You acknowledge that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and you undertake not to use any Confidential Information for any unlawful purpose.

## 9. **NATURE OF UNDERTAKINGS**

The undertakings given by you under this letter are given to us and are also given for the benefit of the Company and each other member of the Group.

## 10. **THIRD PARTY RIGHTS**

- (a) Subject to this paragraph 10 and to paragraphs 6 and 9, a person who is not a party to this letter has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce or to enjoy the benefit of any term of this letter.
- (b) The Relevant Persons may enjoy the benefit of the terms of paragraphs 6 and 9 subject to and in accordance with this paragraph 10 and the provisions of the Third Parties Act.
- (c) Notwithstanding any provisions of this letter, the parties to this letter do not require the consent of any Relevant Person to rescind or vary this letter at any time.

## 11. **GOVERNING LAW AND JURISDICTION**

- (a) This letter (including the agreement constituted by your acknowledgement of its terms) (the Letter) and any non-contractual obligations arising out of or in connection with it (including any non-contractual obligations arising out of the negotiation of the transaction contemplated by this Letter) are governed by English law.
- (b) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Letter (including a dispute relating to any non-contractual obligation arising out of or in connection with either this Letter or the negotiation of the transaction contemplated by this Letter).

## 12. DEFINITIONS

In this letter (including the acknowledgement set out below) terms defined in the Agreement shall, unless the context otherwise requires, have the same meaning and:

Confidential Information means all information relating to the Company any Obligor, the Group, the Finance Documents, [the/a] Facility and/or the Acquisition which is provided to you in relation to the Finance Documents or [the/a] Facility by us or any of our affiliates or advisers, in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

- (a) is or becomes public information other than as a direct or indirect result of any breach by you of this letter; or
- (b) is identified in writing at the time of delivery as non-confidential by us or our advisers; or
- (c) is known by you before the date the information is disclosed to you by us or any of our affiliates or advisers or is lawfully obtained by you after that date, from a source which is, as far as you are aware, unconnected with the Group and which, in either case, as far as you are aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

**"Group"** means the Company and its subsidiaries for the time being (as such term is defined in the Companies Act 2006).

**"Permitted Purpose"** means considering and evaluating whether to enter into the Acquisition.

Please acknowledge your agreement to the above by signing and returning the enclosed copy.

Yours faithfully

For and on behalf of

[Seller]

To: [Seller]

The Company and each other member of the Group

We acknowledge and agree to the above:

For and on behalf of

[Potential Purchaser]

## SCHEDULE 8 TIMETABLES

### Loans in US\$

Delivery of a duly completed Utilisation Request (Clause 5.1 ( <i>Delivery of a Utilisation Request</i> )) or a Selection Notice (Clause 11.1 ( <i>Selection of Interest Periods and Terms</i> ))	U-5 9.30 a.m.
Agent determines (in relation to a Loan) the Base Currency Amount of the Loan, if required under Clause 5.4 ( <i>Lenders' participation</i> ) and notifies the Lenders of the Loan in accordance with Clause 5.4 ( <i>Lenders' participation</i> )	U-5 4.00 p.m.
LIBOR is fixed	Quotation Day 11.00 a.m.

"U" = date of utilisation or, if applicable, in the case of a Loan that has already been borrowed, the first day of the relevant Interest Period for that Loan

"U - X" = X Business Days prior to date of utilisation or the first day of the relevant Interest Period for that Loan.

**SCHEDULE 9**  
**FORM OF INCREASE CONFIRMATION**

To: [ ] as Agent, Kansanshi Mining Plc, as Borrower and First Quantum Minerals Ltd.,  
as Guarantor

From: [*the Increase Lender*] (the "**Increase Lender**")

Dated:

**US\$350,000,000 Facility Agreement**  
**dated [ ] (the "Facility Agreement")**

1. We refer to the Facility Agreement. This agreement (the "**Agreement**") shall take effect as an Increase Confirmation for the purpose of the Facility Agreement. Terms defined in the Facility Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to Clause 2.2 (*Increase*) of the Facility Agreement.
3. The Increase Lender agrees to assume and will assume all of the obligations corresponding to the Commitment specified in the Schedule (the "**Relevant Commitment**") as if it was an Original Lender under the Facility Agreement.
4. 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 [ ].
5. On the Increase Date, the Increase Lender becomes party to the relevant Finance Documents as a Lender.
6. The Facility Office and address, fax number and attention details for notices to the Increase Lender for the purposes of Clause 33.2 (*Addresses*) are set out in the Schedule.
7. The Increase Lender expressly acknowledges the limitations on the Lenders' obligations referred to in Clause 2.2(g) (*Increase*).
8. 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.
9. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
10. This Agreement has been entered into on the date stated at the beginning of this Agreement.

**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 Facility Agreement by the Agent and the Increase Date is confirmed as [    ].

[Agent]

By:

**SIGNATORIES**

**THE BORROWER**

KANSANSHI MINING PLC  
by: )  
)



[Signature]  
SIGNATURE  
KWALELA M. LAMASWALA  
NAME PRINTED  
DIRECTOR  
TITLE

Before me: \_\_\_\_\_

Notary Public: \_\_\_\_\_

[Signature]  
SIGNATURE  
JOYCE MUWO-MWANSA  
NAME PRINTED  
COMPANY SECRETARY  
TITLE

Before me: \_\_\_\_\_

Notary Public: \_\_\_\_\_

Address for Notices: Choice Corporate Services Limited  
P.O. Box 240351  
Buteko Avenue  
Ndola  
Zambia

Facsimile No.: +44 207 291 6655

Attention: Christopher Lemon

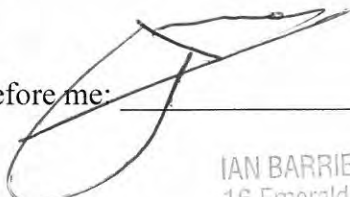
Electronic Mail: [Christopher.lemon@fqml.com](mailto:Christopher.lemon@fqml.com)

**THE GUARANTOR**

FIRST QUANTUM MINERALS LTD.  
by: )



\_\_\_\_\_  
SIGNATURE **Martin Ronald Rowley**  
\_\_\_\_\_  
NAME PRINTED **DIRECTOR**  
\_\_\_\_\_  
TITLE

Before me: \_\_\_\_\_  


IAN BARRIE MURIE  
16 Emerald Terrace  
Notary Public: West Perth Western Australia  
*General Public Notary*

Address for Notices: 8<sup>th</sup> Floor  
543 Granville Street  
Vancouver, BC  
V6C 1X8

Facsimile No.: +44 207 291 6655


Attention: Christopher Lemon

Electronic Mail: [Christopher.lemon@fqml.com](mailto:Christopher.lemon@fqml.com)




**THE INITIAL MANDATED LEAD ARRANGER**

STANDARD CHARTERED BANK )  
 )  
by:

  
\_\_\_\_\_  
SIGNATURE  
Raymond Smedley  
NAME PRINTED  
MANAGING DIRECTOR  
TITLE

Before me: 

Notary Public: EDWARD GARDINER,  
LONDON

  
\_\_\_\_\_  
SIGNATURE  
NIMRITA BEDI  
NAME PRINTED  
MANAGING DIRECTOR  
TITLE


Before me: 

Notary Public: EDWARD GARDINER,  
LONDON


Address for Notices: Standard Chartered Bank  
1 Basinghall Avenue  
  
London  
  
EC2V 5DD  
  
Facsimile No.: +44 (0) 20 7280 7897  
  
Attention: Nimrita Bedi  
  
Electronic Mail: [Nimrita.Bedi@sc.com](mailto:Nimrita.Bedi@sc.com)

**THE ORIGINAL LENDER**

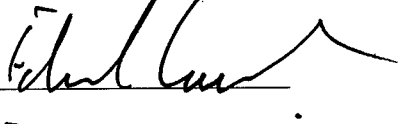
STANDARD CHARTERED BANK )  
by: )

  
SIGNATURE  
Raymond Smedy  
NAME PRINTED  
MANAGING DIRECTOR  
TITLE

Before me: 

Notary Public: FORWARD GARDING,  
LONDON  


SIGNATURE  
NIMRITA BEDI  
NAME PRINTED  
MANAGING DIRECTOR  
TITLE

Before me: 

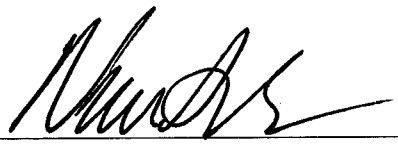
Notary Public: FORWARD GARDING,  
LONDON

Address for Notices: 1 Basinghall Avenue  
London  
EC2V 5DD  
Facsimile No.: +44 (0) 20 7 280 7897  
Attention: Nimrita Bedi  
Electronic Mail: Nimrita.Bedi@sc.com

**THE AGENT**

STANDARD CHARTERED BANK )

by: )

  
SIGNATURE  
NIMRA SEDI  
NAME PRINTED  
MANAGING DIRECTOR  
TITLE

Before me: Edel Carr

Notary Public: EDWARD GARRINER,  
LONDON

Address for Notices: Standard Chartered Bank  
1 Basinghall Avenue  
London  
EC2V 5DD  
Facsimile No.: +44 (0) 20 7885 3632  
Attention: Managing Asset Servicing  
Electronic Mail: [LoansAgencyUK@sc.com](mailto:LoansAgencyUK@sc.com)