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EXECUTION VERSION

US$659,000,000

SINOSURE COVERED FACILITY AGREEMENT

Dated _____, 2017

among

NATIONAL PORT DEVELOPMENT (SL) LTD.
as the Borrower

THE REPUBLIC OF SIERRA LEONE
REPRESENTED BY
THE MINISTRY OF FINANCE AND ECONOMIC DEVELOPMENT
OF THE REPUBLIC OF SIERRA LEONE
as the Guarantor

THE BANKS AND FINANCIAL INSITUTIONS
from time to time party to this Agreement as Lenders under the Facility

INDUSTRIAL AND COMMERCIAL BANK OF CHINA LIMITED
as the Mandated Lead Arranger and the Facility Agent

and

ICBC (LONDON) PLC
as the Security Agent

MILBANK, TWEED, HADLEY & McCLOY LLP

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THIS AGREEMENT is dated _____, 2017 and made between:

(1) **NATIONAL PORT DEVELOPMENT (SL) LTD.**, a limited liability company incorporated under the laws of the Republic of Sierra Leone (**"NPD"** or the **"Borrower"**);

(2) **THE REPUBLIC OF SIERRA LEONE, REPRESENTED BY THE MINISTRY OF FINANCE AND ECONOMIC DEVELOPMENT OF THE REPUBLIC OF SIERRA LEONE** (the **"Guarantor"**);

(3) **THE FINANCIAL INSTITUTION** listed in Schedule 1 (*Original Lender*) as the Original Lender (the **"Original Lender"**);

(4) **INDUSTRIAL AND COMMERCIAL BANK OF CHINA LIMITED** (**"ICBC"**), as the mandated lead arranger (the **"Mandated Lead Arranger"**);

(5) **ICBC**, as the facility agent for and on behalf of the Finance Parties (the **"Facility Agent"**); and

(6) **ICBC (LONDON) PLC**, as the *security* agent for and on behalf of the Finance Parties (**"ICBC London"** or the **"Security Agent"**)

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"Accounts Agreement" means the accounts control and management agreement entered into by, inter alia, the Borrower, the Facility Agent, the Security Agent and the Account Bank in relation to the management and control mechanism of the Bank Accounts, in form and substance satisfactory to the Facility Agent.

"Account Bank" means ICBC London or a bank which is established in a jurisdiction other than Sierra Leone and is designated by the Facility Agent as the account bank which the Bank Accounts are opened and maintained with in accordance with the Finance Documents.

"Accrued Amounts" has the meaning given to that term in Clause 23.9 (*Pro Rata Interest Settlement*).

"Actual Completion Date" means the date on which each of the following conditions have been met in form and substance satisfactory to the Facility Agent or waived by the Facility Agent:

(a) the Project Works have been completed in accordance with the EPC Contract;

(b) all Transaction Authorizations necessary as of such date for operating the Project have been issued on an unconditional basis (or issued subject to conditions which have been satisfied or waived) and remain in full force and effect; and

(c) the taking-over certificate for the Project Works has been issued by the Borrower to the EPC Contractor.

"**Advance Payment**" means the advance payment under the EPC Contract to be paid by the Borrower to the EPC Contractor, which is an amount equal to 15% of the total contract amount of the EPC Contract and will be paid in two instalments.

"**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.

"**Anti-Money Laundering, Economic or Trade Sanctions and Anti-Terrorism Laws**" means any laws relating to economic or trade sanctions, terrorism or anti money laundering, including the Executive Order 13224, the Anti-Money Laundry and Combating of Terrorism Act of Sierra Leone 2012, the Patriot Act, the Bribery Act 2010, the United States Foreign Corrupt Practices Act of 1977 or other similar legislation in other jurisdictions, the regulations administered by OFAC, the Trading with the Enemy Act (12 U.S.C. §95), and the International Emergency Economic Powers Act (50 U.S.C. §1701 1707).

"**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.

"**Availability Period**" means the period from Initial CP Satisfaction until (but excluding) the date falling forty-eight (48) months thereafter.

"**Available Commitment**" means a Lender's Commitment minus:

(a) the amount of its participation in any outstanding Loans; and

(b) in relation to any proposed Utilisation, the amount of its participation in any Loans that are due to be made on or before the proposed Utilisation Date.

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

"**Bank Accounts**" has the meaning given to that term under the Accounts Agreement.

"**Borrower Collection Account**" has the meaning given to that term in the Accounts Agreement.

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

(a) the interest which a Lender should have received for the period from the date of receipt of all or any part of its participation in 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.

"Budget" means the itemised budgeted costs and expenses relating to the development of the Project, including the Project Costs, financing costs, profit and loss, balance sheet and cashflow projections relating to the Project, together with the written business plan, prepared by the Borrower and in form and substance satisfactory to the Facility Agent.

"Business Day" means

(a) in respect of any day on which LIBOR is to be determined, a day (other than a Saturday or Sunday) on which banks are generally open for business in London;

(b) in respect of any day on which any utilisation or payment is to be made under the Finance Documents, a day (other than a Saturday or Sunday) on which banks are generally open for business in Beijing, London and New York; and

(c) in respect of any other matter or determination, a day (other than a Saturday or Sunday) on which banks are generally open for business in Beijing and Freetown.

"Calculation Date" means, for the purpose of calculating the DSCR, each Interest Payment Date from and after eighteen (18) months subsequent to the Actual Completion Date of the Project.

"Calculation Period" means

(a) with respect to any calculation of DSCR to be made on the first Calculation Date after the Actual Completion Date, the six (6) month period ending on and including such Calculation Date; and

(b) subject to paragraph (a) above, with respect to any calculation of DSCR to be made on a Calculation Date, the twelve (12) month period ending on and including such Calculation Date.

"Cash Available for Debt Service" means, for a Calculation Period with respect to the calculation of DSCR, (a) the aggregate of all Development Levy Fees received by the Borrower in relation to the Existing Port and the New Port; and (b) all revenues received by the Borrower in relation to the operation of the New Port pursuant to the Concession Agreement; less (c) US Dollar equivalent of all operating costs payable by the Borrower, during that Calculation Period.

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

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

"Commitment" means:

(a) in relation to the Original Lender, the amount in US Dollars set opposite its name under the heading "Commitment" in Schedule 1 (*Original Lender*) and the amount of any other Commitment transferred to it under this Agreement; and

(b) in relation to any other Lender, the amount in US Dollars of any Commitment transferred to it under this Agreement,

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

"Compensation Proceeds" means any payments in respect of damages or breach of warranties under the Project Documents.

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

"Concession Agreement" means the concession agreement to be entered into between, among others, the Government represented by MOTA, the National Commission for Privatization of the Republic of Sierra Leone, the Sky Rock and the Borrower, in connection with the Existing Port and the New Port.

"Confidential Information" means all information relating to a Security Provider, 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 Security Provider or any of its advisers; or

(b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any Security Provider 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 36 (*Confidentiality*);

(ii) is identified in writing at the time of delivery as non–confidential by any Security Provider or any of its advisers;

(iii) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraph (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Security Provider 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; or

(iv) any Funding Rate or Reference Bank Quotation.

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

"Corrupt Practices Laws" means:

(a) the Foreign Corrupt Practices Act of 1977 (Pub. L. No. 95-213, §§101-104);

(b) the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; and

(c) any other PRC, Sierra Leone, US, the United Kingdom, European Union or United Nations law, regulation, order, decree or directive having the force of law and relating to bribery, kick-backs or similar business practices which is applicable to the Security Providers, including any regulations issued by OFAC.

"Debt Service Coverage Ratio" or **"DSCR"** means, for each Calculation Period, the ratio of (a) Cash Available for Debt Service to (b) Scheduled Debt Service during such Calculation Period.

"Deed of Charge" means the accounts charge entered into by the Borrower in favour of the Security Agent with respect to the Bank Accounts of the Borrower, in form and substance satisfactory to the Facility Agent.

"Debt:Equity Ratio" means the ratio of (a) all Financial Indebtedness of the Borrower outstanding at the time of testing (including under the Facility, any hedging, letter of credit, but excluding any shareholders loans made by the Shareholder to the Borrower) to (b) the Equity contributed to the Project (and not reimbursed or repaid to the Shareholder) at that time.

"Default" means an Event of Default or any event or circumstance specified in Clause 22 (*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.

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

"Designated Website" has the meaning given to that term in Clause 19.9 (*Use of Websites*).

"Direct Agreement" means a direct agreement, notice and acknowledgement, acknowledgement and consent or other similar agreement entered into or to be entered into by, among others, the Security Agent and each counterparty to the following documents: the Concession Agreement, the EPC Contract, any agreement supplementing or amending the above-mentioned Project Documents, or any other agreement with respect of which the Borrower and the Facility Agent agree that a direct agreement shall be entered into substantially in the form set out in Schedule 8 (*Form of Direct Agreement*) or to the satisfactory of the Facility Agent .

"Discharged Rights and Obligations" has the meaning given to that term in Clause 23.5 (*Procedure for Transfer*).

"Dispute" has the meaning give to that term in Clause 39.1 (*Jurisdiction*).

"Disruption Event" means either or both of:

(a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or

(b) the occurrence of any other event which results in a disruption (of a technical or systems–related nature) to the treasury or payments operations of a Party preventing that, or any other Party:

    (i) from performing its payment obligations under the Finance Documents; or

    (ii) from communicating with other Parties in accordance with the terms of the Finance Documents,

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

"Distribution" means any dividends or repayment of subordinated debt and reimbursement by the Borrower to any direct or indirect shareholder of the Borrower.

"DSRA" has the meaning given to that term in the Accounts Agreement.

"Environmental and Social Laws" means all laws, regulations or directions having the force of law that are applicable to the Borrower at the relevant time in any jurisdiction in which the Borrower conducts its business which:

(a) have as a purpose or effect the protection of and/or prevention of pollution, degradation, harm or damage to the environment;

(b) provide remedies or compensation for harm or damage to the environment;

(c) relate to the harming of or the protection of human health (including laws relating to the quality of life and legal rights of communities) or the health of animals or plants;

(d) relate to the harming of or the protection of cultural heritage or archaeological artefacts;

(e) relate to the protection of indigenous people;

(f) relate to occupational health and safety laws or labour and working conditions;

(g) relate to resettlement or economic displacement of persons; or

(h) relate to hazardous substances or health, security and safety matters.

"Environmental and Social Standards" means:

(a) the OECD Revised Council Recommendation on Common Approaches on the Environment and Officially Supported Export Credits; and

(b) the set of principles so entitled and described in "the 'Equator Principles - June 2013 - a financial industry benchmark for determining, assessing and managing environmental and social risk in Projects, and available at http://www.equatorprinciples.com/resources/equator_principles_III.pdf, as adopted in such form by certain financial institutions,

as each are interpreted at the date of this Agreement.

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

"EPC Contract" means the engineering, procurement and construction contract dated March 8, 2017 entered into by and between the Borrower as the employer and the EPC Contractor as the contractor in connection with the Project Works.

"EPC Contractor" means the consortium jointly established by Tidfore, China Integrity International Oceaneering Co., Ltd., Tidfore (Tianjin) Oceaneering Equipment Co., Ltd., and Tianjin Jinhao International Co., Ltd.

"EPC Contractor Declaration" means each declaration signed by the EPC Contractor substantively in the form set out at Schedule 9 (*Form of EPC Contractor Declaration*) or any other form agreed to by the Facility Agent.

"Equity" means:

(a) any subscription for share capital of the Borrower fully paid up in cash; and

(b) the proceeds of any shareholder loan made to the Borrower by any shareholder.

"Event of Default" means any event or circumstance specified as such in Clause 22 (*Events of Default*).

"Excess Cash Account" has the meaning given to that term in the Accounts Agreement.

"Existing Lender" has the meaning given to that term in Clause 23.1 (*Assignment and Transfers by the Lenders*).

"Existing Port" means the port facilities existing as of the date of this Agreement located at Queen Elizabeth II Quay, Freetown, Sierra Leone and operated by the Sierra Leone Ports Authority, which is as indicated in red in Appendix I of the Concession Agreement.

"External Indebtedness" means any Financial Indebtedness owed to a person domiciled, resident or having its head office or principal place of business outside of Sierra Leone.

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

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

"FATCA" means:

(a) sections 1471 to 1474 of the Code or any associated regulations;

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

(c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

"FATCA Application Date" means:

(a) in relation to a "withholdable payment" described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014;

(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 any letter or letters dated on or about the date of this Agreement between the relevant Finance Parties and the Borrower, setting out any of the fees referred to in Clause 11 (*Fees*).

"Final Maturity Date" means the date which is the 15th anniversary of the date of the Initial CP Satisfaction.

"Finance Document" means:

(a) this Agreement;

(b) the Accounts Agreement;

(c) each Security Document;

(d) the Sinosure Insurance Policy;

(e) each Utilisation Request;

(f) each Fee Letter;

(g) each Hedging Agreement, if any;

(h) each Transfer Certificate;

(i) each Assignment Agreement, if any; and

(j) any other document designated as such by the Facility Agent and the Borrower (each acting reasonably),

in each case with effect from the date that each such Finance Document has been entered into by the parties thereto.

"Finance Parties" means the Facility Agent, the Security Agent, the Account Bank, the Mandated Lead Arranger, and the Lenders.

"Financial Close Date" means the date upon which each of the conditions precedent listed in Schedule 2 (*Conditions Precedent*) have been satisfied or waived.

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

(a) moneys borrowed;

(b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with IFRS, be treated as a finance or capital lease;

(e) receivables sold or discounted (other than any receivables to the extent they are sold on a non–recourse basis);

(f) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;

(g) 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);

(h) any counter–indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and

(i) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above.

"Financial Statements" means statements of financial performance, financial position and cashflow together with any statements, reports (including director's and auditor's report) and notes attached to or intended to be read with any of them.

"First Currency" has the meaning given to that term in Clause 14.1 (*Currency Indemnity*).

"First Repayment Date" means the 20th June or 20th December that occurs first after the last day of the Availability Period.

"Good Industry Practice" means the exercise of the degree of skill, care and operating practice which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking as the Borrower under the same or similar circumstances.

"Government" means the government of the Republic of Sierra Leone.

"Government Entity" means:

(a) the government of Sierra Leone;

(b) any authority, agency or department established by the government of Sierra Leone;

(c) the central bank of Sierra Leone or any entity holding all or a substantial part of the foreign reserves or investments of Sierra Leone;

(d) any province, state or other political subdivision of Sierra Leone; and

(e) any public corporation or other entity of which any other Government Entity has direct or indirect control and control for this purpose means the power to direct the management and the policies of the entity whether through the ownership of share capital, contract or otherwise.

"Government Letter of Support" means the letter of support issued by the Ministry of Finance and Economic Development on behalf of the Government in favour of the

Finance Parties in connection with its support to the Borrower for the timely payment of the instalments of the Advance Payment.

"Hedging Agreement" means any master agreement, confirmation, schedule or other agreement entered into or to be entered into by the Borrower and a hedge counterparty for the purpose of hedging the types of liabilities and/or risks in relation to the Facility.

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

"ICBC Group" has the meaning given to that term in Clause 21.20(b) (*Treasury Transactions*).

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

"Initial Advance Payment" means 50% of the Advance Payment, which will be paid by the Borrower to the EPC Contractor before the Initial CP Satisfaction.

"Initial CP Satisfaction" means the notification given by the Facility Agent to the Borrower in accordance with Clause 4.1 (*Initial Conditions Precedent*).

"Interest Payment Date" means:

(a) each June 20th and December 20th after the date of Initial CP Satisfaction; and

(b) the Final Maturity Date.

"Insurance Proceeds" means all proceeds and amounts payable to, or received by or on behalf of the Borrower under any insurances or re-insurances relating to damage to the Project but excluding any insurance proceeds (a) resulting from motor third party liability and worker's compensation policies and any other third party liability policy where such proceeds are directly applied in meeting the liability in respect of which they are to be paid and (b) resulting from any business interruption insurance policy

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

"Lender" means:

(a) the Original Lender; and

(b) any bank, financial institution, trust, fund or other entity which has become a Party in accordance with Clause 23 (*Changes to the Lenders*),

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

"LIBOR" means, in relation to any Loan:

(a) the applicable Screen Rate as of the Specified Time on the Quotation Day for US Dollars and for six (6) months; or

(b) if no Screen Rate is available for dollars the Reference Bank Rate.

"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 Commitment aggregate more than $66^2/_3$ per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than $66^2/_3$ per cent. of the Total Commitments immediately prior to the reduction).

"Mandated Lead Arranger" has the meaning given to that term in the preamble of this Agreement.

"Margin" means three point five (3.5) per cent. per annum.

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

(a) the business, assets, or financial condition of the Borrower;

(b) the assets or financial condition of the Guarantor;

(c) the implementation of the Project;

(d) the ability of the EPC Contractor to perform and comply with its obligations under any Project Document or Finance Document;

(e) the validity, legality or enforceability of any Transaction Document;

(f) the validity, legality or enforceability of, or the effectiveness or ranking of any Security granted or purported to be granted pursuant to, any Finance Document; or

(g) any right or remedy of a Finance Party in respect of a Finance Document.

"Material Licence" means the licenses, approvals or consent in connection with the Project listed in Appendix I (*List of Material Licence*).

"MOFED" means the Ministry of Finance and Economic Development of the Republic of Sierra Leone.

"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.

"Mortgage over Assets" means the mortgage agreement over equipment and other assets of the Borrower in relation to the Project entered into by the Borrower in favour of the Finance Parties, in form and substance satisfactory to the Facility Agent.

"MOTA" means the Ministry of Transport and Aviation of the Republic of Sierra Leone.

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

"New Port" means the port facilities to be constructed by the EPC Contractor in accordance with the EPC Contract.

"OFAC" means the United States Department of the Treasury Office of Foreign Asset Control.

"OFAC List" means the Specially Designated Nationals and Blocked Persons List, as published by the United States Department of the Treasury Office of Foreign Asset Control from time to time, and available on the internet at the following website: http://www.treas.gov/offices/enforcement/ofac/sdn/index.html or any official successor website.

"Original Lender" has the meaning given to that term in the preamble of this Agreement.

"Paper Form Lender" has the meaning given to that term in Clause 19.9 (*Use of Websites*).

"Party" means a party to this Agreement.

"PRC" means the People's Republic of China, excluding, for the purposes of this Agreement, the Hong Kong Special Administrative Region, the Macao Special Administrative Region and Taiwan.

"Prepayment Notice" has the meaning given to that term in Clause 7.2 (*Mandatory Prepayment*).

"Project" means the upgrading of the Queen Elizabeth II Quay at Freetown Port, the Republic of Sierra Leone undertaken by the Borrower including expansion of existing port facilities and construction of new port facilities.

"Project Costs" means:

(a) capital expenditure incurred by the Borrower in carrying out the Project Works, including each of the following:

(i) all sums payable under the EPC Contract;

(ii) fees and costs of any professional adviser engaged by the Borrower in respect of the design and construction of the Project Works; and

(iii) costs of any site investigation surveys and tests;

(b) the cost of any authorisations necessary, customary or desirable for the Project Works;

(c) the Sinosure Insurance Premium;

(d) any premium payable in respect of insurances (other than insurances to be effected and paid for by the EPC Contractor);

(e) any legal, accounting and other professional fees and costs incurred by the Borrower in connection with the negotiation and entry into of the Transaction Documents and any documents referred to in the Transaction Documents;

(f) any liabilities of the Borrower under the Project Documents;

(g) any administrative, management and employee costs;

(h) any value added or similar Tax in respect of any of the above; and

(i) any other costs and expenses agreed as such by the Facility Agent,

"Project Document" means:

(a) the EPC Contract;

(b) the Concession Agreement;

(c) any leases entered into by the Borrower as the lessor for the leasing the New Port; and

(d) any other material contract entered into by the Borrower relating to the Project designated as a "Project Document" by the Borrower and the Facility Agent,

in each case with effect from the date that each such Project Document has been entered into by the parties thereto.

"Project Works" means the design, development and construction of the Project and any other works contemplated by the EPC Contract, including the construction of the hydraulic main body of the quay, 3 container berths and 1 ro-ro berth, conducting harbor basin, berths and channel dredging, construction of necessary navigation and navaid facilities, formation of back land area corresponding to berths, foundation treatment and surface layer, purchase, installation and commissioning of relevant equipment, and other

ancillary and auxiliary works, including water supply, drainage, fire control, electricity and lighting.

"Quotation Day" means, in relation to any period for which an interest rate is to be determined two (2) Business Days before the first day of that period unless market practice differs in the Relevant Interbank Market, in which case the Quotation Day will be determined by the Facility 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).

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

"Recipient" has the meaning given to that term in Clause 12.6 (*VAT*).

"Recovered Amount" has the meaning given to that term in Clause 28.1 (*Payments to Finance Parties*).

"Recovering Finance Party" has the meaning given to that term in Clause 28.1 (*Payments to Finance Parties*).

"Redistributed Amount" has the meaning given to that term in Clause 28.4 (*Reversal of Redistribution*).

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

"Reference Bank Rate" means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Facility Agent at its request by the Reference Banks as the rate at which the relevant Reference Bank could borrow funds in the London interbank market in dollars for six (6) months, were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size in that currency and for that period.

"Reference Banks" means the principal London offices of ICBC, Bank of China, BNP Paribas and HSBC plc or such other banks as may be appointed by the Facility Agent in consultation with the Borrower.

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

"Relevant Interbank Market" means the London interbank market.

"Relevant Party" has the meaning given to that term in Clause 12.6 (*VAT*).

"Relevant Obligations" has the meaning given to that term in Clause 23.6 (*Procedure for Assignment*).

"Repayment Dates" means the First Repayment Date, each Interest Payment Date occurring thereafter and the Final Maturity Date.

"Repayment Instalment" means each instalment for repayment of the principal amount outstanding of a Loan as determined in accordance with the Repayment Schedule with respect to that Loan.

"Repayment Schedule" means the schedule of Repayment Dates and amounts in respect of repayment of the Loans determined or established in accordance with Clause 6 (*Repayment*).

"Repeating Representations" means each of the representations set out in Clause 18 (*Representations*) other than the representations made under Clauses 18.8 (*No Filing or Stamp Taxes*) and 18.20 (*Taxes*).

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

"Required DSRA Balance" means, at any time, an amount equal to the total amount of all principal scheduled to be paid and all interest expected to be payable under the Facility on the next Interest Payment Date.

"Sanctioned Person" means an entity (or equivalent) or individual which is the subject of Sanctions.

"Sanctions" means laws and regulations relating to economic sanctions or terrorism financing imposed, administered or enforced from time to time by any person or any entity representing the People's Republic of China, the United States of America (including by the U.S. Department of State and OFAC), the United Nations Security Council or the European Union each as amended, supplemented or substituted from time to time.

"Scheduled Completion Date" means the day which is forty-eight (48) months after the commencement of the construction under the EPC Contract.

"Scheduled Debt Service" means, without double-counting, for a Calculation Period,

(a) the sum of principal amount of the Loans due and payable by the Borrower to the Finance Parties under the Finance Documents; plus

(b) all financing costs and withholding Taxes which are due and payable by the Borrower to the Finance Parties under the Finance Documents; plus

(c) all net amounts falling due from the Borrower under a Hedging Agreement (other than hedging termination payments), if any.

"Screen Rate" means the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person that takes over the administration of that rate) for dollars for the relevant period displayed on page LIBOR01 of the Thomson Reuters Screen (or any replacement Thomson Reuters page which displays that rate), or on the appropriate page of such other information service which publishes that rate from

time to time in place of Thomson Reuters. If such page or service ceases to be available, the Facility Agent may specify another page or service displaying the relevant rate after consultation with the Borrower.

"Second Currency" has the meaning given to that term in Clause 14.1 (*Currency Indemnity*).

"Secured Obligations" means all obligations at any time due, owing or incurred by the Borrower or the Guarantor to any Secured Party under the Finance Documents, whether present or future, actual or contingent (and whether incurred solely or jointly and whether as principal or surety or in some other capacity).

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

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

"Second Advance Payment" means 50% of the Advance Payment, which will be paid by the Borrower to the EPC Contractor within twelve (12) months after the payment of the Initial Advance Payment.

"Security Agent" has the meaning given to that term in the preamble of this Agreement.

"Security Assignment" means the deed of security assignment entered into by the Borrower in favour of the Security Agent with respect to the following Project Documents: (i) the EPC Contract and any performance security thereunder, (ii) the Concession Agreement, (iii) any leases entered into by the Borrower as the lessor for the leasing of the New Port, and (iv) any service agreement entered into by the Borrower and the service providers in relation to certain services provided in connection with the operation of the New Port, in form and substance satisfactory to the Facility Agent.

"Security Documents" means:

(a) the Security Assignment;

(b) the Deed of Charge;

(c) the Mortgage over Assets;

(d) the Share Pledge;

(e) each Direct Agreement; and

(f) any other document evidencing or creating security over any asset of the Borrower to secure any obligation of the Borrower under the Finance Documents.

"Security Provider" means a party granting a Security Interest pursuant to any of the Security Documents.

"Service Agreement" means a service agreement to be entered into by the Borrower and the service provider(s) in relation to certain services provided in connection with the operation of the New Port.

"Shareholder" means Sky Rock.

"Share Pledge" means the share pledge agreement to be entered into by the Shareholder in respect of their shares in the Borrower in favour of the Security Agent, in form and substance satisfactory to the Facility Agent.

"Sharing Finance Parties" has the meaning given to that term in Clause 28.2 (*Redistribution of Payments*).

"Sharing Payment" has the meaning given to that term in Clause 28.1 (*Payments to Finance Parties*).

"Sierra Leone" means the Republic of Sierra Leone.

"Sinosure" means China Export & Credit Insurance Corporation (中国出口信用保险公司), an export credit agency incorporated under the laws of PRC.

"Sinosure Insurance Policy" means export buyer's credit insurance policy issued by Sinosure for the benefit of the Lenders (including any applicable general conditions, special conditions, particular conditions, policy endorsements and all other attachments thereto) providing for the coverage of at least 95% of the Facility plus accrued interest in respect of political and commercial risks, in each case, in connection with the Project, which shall be on the terms and conditions satisfactory to the Lenders and established by Sinosure.

"Sinosure Insurance Premium" means any premium payable in respect of the Sinosure Insurance Policy for the account of Sinosure.

"Site" has the meaning given to it in the EPC Contract.

"Sky Rock" means Sky Rock Management Limited, a limited liability company incorporated under the laws of the British Virgin Islands with the BVI company number of 1911926.

"Specified Time" means a time determined in accordance with Schedule 7 (*Timetables*).

"Subsidiary" means an entity of which a person has direct or indirect control or owns directly or indirectly more than fifty (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.

"Sum" has the meaning given to that term in Clause 14.1 (*Currency Indemnity*).

"Supplier" has the meaning given to that term in Clause 12.6 (*VAT*).

"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).

"Third Parties Act" has them meaning given to that term in Clause 1.4 (*Third Party Rights*).

"Tidfore" means Tidfore Heavy Equipment Group Co., Ltd., a limited liability company incorporated under the laws of PRC.

"Total Commitments" means the aggregate of the Commitments, being US$659,000,000 on the date of this Agreement.

"Transaction Authorisation" means any authorisation, permit, licence, consent or approval required by any person or customary for any person to hold in connection with the entry into, performance, validity and enforceability of, and the transactions contemplated by, the Transaction Documents or to otherwise implement the Project, including but not limited to the Material Licence.

"Transaction Documents" means the Finance Documents and the Project Documents.

"Transaction Security" means the Security created or expressed to be created in favour of the Security Agent (for and on behalf of the Finance Parties) pursuant to the Security Documents.

"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 Facility 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 Facility 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 a Security Provider under the Finance Documents.

"US" means the United States of America.

"US Tax Obligor" means:

(a) a person which is resident for tax purposes in the US; or

(b) a person some or all of whose payments under the Finance Documents are from sources within the US for US federal income tax purposes.

"Utilisation" means a utilisation of funds from the Facility.

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

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

"VAT" means any value added tax, or consumption or sales tax, and any other tax of a similar nature imposed in any relevant jurisdiction.

"Website Lenders" has the meaning given to that term in Clause 19.9 (*Use of Websites*).

1.2 Construction

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

(i) the **"Facility Agent"**, the **"Arranger"**, any **"Finance Party"**, any **"Lender"**, any **"Party"**, any **"Secured Party"**, the **"Security Agent"**, any **"Security Provider"** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agent in accordance with the Finance Documents;

(ii) a document in **"agreed form"** is a document which is previously agreed in writing by or on behalf of the Borrower and the Facility Agent or, if not so agreed, is in the form specified by the Facility Agent;

(iii) **"assets"** includes present and future properties, revenues and rights of every description;

(iv) a **"Finance Document"** or a **"Transaction Document"** or any other agreement or instrument is a reference to that Finance Document or Transaction Document or other agreement or instrument as amended, novated, supplemented, extended or restated;

(v) **"guarantee"** means (other than in Clause 17 (*Guarantee and Indemnity*)) any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;

(vi) **"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;

(vii) a **"person"** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership or other entity (whether or not having separate legal personality);

(viii) a **"regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency or department or of any regulatory, self–regulatory or other authority or organisation;

(ix) **"disposal"** means a sale, transfer, assignment, grant, lease, licence, declaration of trust or other disposal, whether voluntary or involuntary, and dispose will be construed accordingly;

(x) a provision of law is a reference to that provision as amended or re–enacted; and

(xi) 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 remedied or waived.

1.3 Currency Symbols and Definitions

"US$", **"US Dollars"** and **"dollars"** denote the lawful currency of the United States of America.

"SLL" and **"Sierra Leone Leonean Leone"** denote the lawful currency of the Republic of Sierra Leone.

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 to enjoy the benefit of any term of this Agreement.

(b) Notwithstanding any provision of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

1.5 Deed

This Agreement shall take effect as a deed even if it is signed underhand or on behalf of one or more Parties.

2. THE FACILITY

2.1 The Facility

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

2.2 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 the Borrower or the Guarantor 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.

2.3 Sinosure Override

(a) Notwithstanding anything to the contrary in any Finance Document other than paragraph (ii) below, nothing in any Finance Document will oblige any Finance Party to act (or omit to act) in a manner that is inconsistent with any requirement of Sinosure under or in connection with the Sinosure Insurance Policy or any Finance Document under which a Finance Party is an insured party, and, in particular:

(i) the Facility Agent is authorised to take all such actions as it may deem necessary to ensure that all requirements of Sinosure under or in connection with the Sinosure Insurance Policy are complied with (provided that such action is in accordance with the requirements of the Finance Documents other than such provisions of this Agreement which prevent it from complying with Sinosure's requirements under the Sinosure Insurance Policy); and

(ii) a Finance Party is not obliged to do anything if, in its opinion, to do so could result in a breach of any requirement of Sinosure under or in connection with the Sinosure Insurance Policy or affect the validity of the Sinosure Insurance Policy.

(b) Nothing in this Clause 2.3 (*Sinosure Override*) will affect the obligations of the Security Provider and the Guarantor under the Finance Documents.

(c) If, in the opinion of the Facility Agent, there are any terms of any Finance Document that contradict or conflict with any provision of the Sinosure Insurance

Policy such that compliance by a Finance Party with the terms of the Sinosure Insurance Policy may result in breach by a Finance Party of the terms of that Finance Document, the Facility Agent must, upon becoming aware of the contradiction or conflict, notify the other Finance Parties. The Parties agree that in such circumstances they will enter into good faith discussions with a view to agreeing amendments or supplements to the relevant terms of any Finance Document as necessary so that compliance by any Finance Party with the terms of the Sinosure Insurance Policy will not result in a breach of the terms of the relevant Finance Document.

(d) In the event of any conflict between the terms of any Finance Document and the Sinosure Insurance Policy, as amongst Sinosure and each Finance Party which is a beneficiary of the Sinosure Insurance Policy, the terms of the Sinosure Insurance Policy will prevail.

(e) Each of the Borrower and the Guarantor agrees and acknowledges, and the Borrower shall procure that the Shareholder agrees and acknowledges, that the Sinosure Insurance Policy is a separate arrangement between Sinosure and the Finance Parties and that neither the Security Provider nor the Guarantor will have any right or recourse against any Finance Party in relation to or arising by reason of any payment made by Sinosure to any Finance Party pursuant to the Sinosure Insurance Policy.

(f) Each of the Borrower and the Guarantor agrees and acknowledges, and the Borrower shall procure that the Shareholder agrees and acknowledges, that its payment obligations under the Finance Documents will in no way be relieved by the Sinosure Insurance Policy. In the case of any payment to any Finance Party pursuant to the Sinosure Insurance Policy, each of the Borrower and the Guarantor acknowledges, and the Borrower shall procure that the Shareholder acknowledges, that Sinosure will, in addition to any other rights which it may have under the Sinosure Insurance Policy or otherwise, have full rights of recourse against the Security Providers and Guarantor pursuant to its right of subrogation as referred below.

(g) Each of the Borrower and the Guarantor agrees and acknowledges, and the Borrower shall procure that the Shareholder agrees and acknowledges, that the rights of recourse of Sinosure will in no way be affected in a manner adverse to Sinosure by any dispute, claim or counterclaim whatsoever between the Borrower or the Guarantor (as the case may be) and the Finance Parties or any Finance Party, between the Borrower or the Guarantor (as the case may be) and Sinosure, or between any other parties.

2.4 Sinosure Subrogation

(a) Notwithstanding any other provision of this Agreement, each Party unconditionally agrees and acknowledges that, upon any payment by Sinosure to the relevant Lenders of amounts due and payable under any Finance Document in accordance with the provisions of the Sinosure Insurance Policy, Sinosure will (where applicable) have the right to be subrogated to the rights of the relevant Lenders under the Finance Documents against the Security Providers and the Guarantor in accordance with the Sinosure Insurance Policy and/or relevant law

provided that nothing in any Finance Document shall give Sinosure the right to double-recovery.

(b) Furthermore, each of the Borrower and the Guarantor consents to, and the Borrower shall procure that the Shareholder consents to, any assignment by any Lender or the Facility Agent of any or all of its rights under the Finance Documents to Sinosure as may be required by the provisions of the Sinosure Insurance Policy. Each of the Borrower and the Guarantor agrees, and the Borrower shall procure that the Shareholder agrees, to cooperate with the Facility Agent and the relevant Lender, as the case may be, in giving effect to any assignment and to take all actions requested by the Facility Agent or the relevant Lender to implement or give effect to such assignment.

(c) On the date of any subrogation to, or (as applicable) assignment of, rights referred to in this Clause 2.4:

(i) all further rights and benefits (including the right to receive interest in respect thereof but not any duty or other obligations) whatsoever of the relevant Lender in relation to the portion of the Utilisation or the rights and benefits to which such assignment or rights of subrogation relate under or arising out of this Agreement shall, to the extent of such assignment or rights of subrogation, be vested in and be for the benefit of Sinosure; and

(ii) references in this Agreement to the relevant Lenders shall, where relevant in the context, thereafter be construed so as to include Sinosure in relation to such rights and benefits as are assigned to, or to which Sinosure has rights of subrogation.

(d) Each Party acknowledges and agrees that:

(i) rights which Sinosure would be subrogated to (or may be assigned to Sinosure) following a payment by Sinosure under the Sinosure Insurance Policy may not be amended to limit, modify or eliminate any rights (or potential further rights) of Sinosure without its prior written consent; and

(ii) Sinosure may, following a payment by Sinosure under the Sinosure Insurance Policy, exercise or enforce the rights referred to in paragraph (c) above.

(e) The Finance Parties acknowledge that the Sinosure Insurance Policy requires the Finance Parties in certain circumstances to act in accordance with the instructions of Sinosure in relation to Finance Documents including, without limitation, in respect of amendments, waivers and consents and that there may be consequences (whether express or otherwise) under the Sinosure Insurance Policy for failure to act in accordance with those instructions.

(f) All agreements, representations and warranties made in this Agreement shall survive any assignment or transfer made pursuant to this Clause 2.4 and shall also inure to the benefit of Sinosure.

(g) Sinosure may enforce its rights under this Clause 2.4 under the Third Parties Act.

2.5 EPC Contract

(a) The Borrower's obligations under this Agreement are separate from and are not in any way conditional upon the performance of the EPC Contract by any party thereto and will not be affected or discharged by any matter affecting the EPC Contract or any contract or other arrangement between the EPC Contractor (or any member of the consortium that constitutes the EPC Contractor) and any other party to the EPC Contract including, without limitation, the performance, non-performance, frustration or invalidity or the destruction, non-completion, or non-functioning of any of the goods and services to be supplied under the EPC Contract, the revocation, repudiation or cancellation of the EPC Contract or the liquidation or bankruptcy of the EPC Contractor (or any member of the consortium that constitutes the EPC Contractor).

(b) The Borrower's obligations under this Agreement will not be affected in any way by reason of any claim which the Borrower or the Project Company may have or may consider that it has against the EPC Contractor or in connection with the Project.

3. PURPOSE

3.1 Purpose

The Borrower shall apply all amounts borrowed by it under the Facility to finance 85% of:

(a) the goods and/or services under the EPC Contract provided by the EPC Contractor in connection with the Project; and

(b) the Sinosure Insurance Premium under the Sinosure Insurance Policy in connection with the Project.

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 Borrower may not deliver the initial Utilisation Request unless the Facility Agent has received all of the documents and other evidence listed in Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Facility Agent, or, otherwise waived such requirement for receipt of any such documents or evidence by the Facility Agent. The Facility 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 Facility Agent in writing to the contrary before the Facility Agent gives the notification described

in paragraph (a) above, the Lenders authorise (but do not require) the Facility Agent to give that notification. The Facility Agent shall not be liable for any damages, costs or losses whatsoever as result of giving any such notification.

4.2 Further Conditions Precedent

The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participations*) 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;

(b) the Repeating Representations to be made by each of the Borrower and the Guarantor are true and correct;

(c) all Transaction Documents have been entered into, and are in full force and effect and have not been amended or superseded (other than with this prior written consent of the Facility Agent), and any conditions precedent thereunder have been obtained or effected and are in full force and effect;

(d) all Transaction Authorisations required as of that date have been obtained or effected, are in full force and effect and have not been suspended;

(e) all perfection steps in relation to the Transaction Security have been completed and are in full force and effect;

(f) the Sinosure Insurance Policy is in full force and effect and will apply to the requested Utilisation and interest thereon during the period in which such Utilisation remains outstanding;

(g) the Facility Agent has received a certificate signed by a director or duly authorised officer of the Borrower certifying that the proceeds of the proposed Utilisation are reasonably anticipated to be required to satisfy payment obligations in respect of invoices issued under and in accordance with the EPC Contract within thirty (30) days of the proposed Utilisation Date;

(h) the Facility Agent has not received written notice from Sinosure which,

    (i) terminates or repudiates the Sinosure Insurance Policy; or

    (ii) requires the Lenders to suspend or cancel any participation or proposed participation in a Utilisation;

(i) an original or certified copy of each relevant EPC Contractor Declaration duly signed by the authorised signatory of the EPC Contractor and addressed to the Facility Agent;

(j) in the sole opinion of the Finance Parties, no material breach or default (however so defined within those documents) has occurred in respect of any Project Documents;

(k) all fees, expenses and other charges then due and payable to legal advisers of the Finance Parties have been paid;

(l) unless the Facility Agent has received evidence that the Second Advance Payment has been received by the EPC Contractor in full, a certificate from the Borrower confirming that the percentage of the aggregate outstanding Loans (after taking into consideration of the proposed Loan) in the Total Commitments do not exceed 50%.

(m) an amount equal to at least the Required DSRA Balance is standing to the credit of the DSRA; and

(n) no events, conditions or circumstance affecting any of the Borrower and the Guarantor exist which have had, are continuing to have, or could reasonably be expected to have a Material Adverse Effect as a result from the making of the proposed Loan.

4.3 Maximum Number of Loans

No more than one (1) Loan shall be made in any one (1) calendar month.

5. UTILISATION

5.1 Delivery of a Utilisation Request

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

5.2 Completion of a Utilisation Request

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

(i) the proposed Utilisation Date is a Business Day within the Availability Period;

(ii) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*); and

(iii) the proposed Interest Period complies with Clause 9 (*Interest Periods*).

(b) Only one Loan may be requested in each Utilisation Request.

5.3 Currency and Amount

(a) The currency specified in a Utilisation Request must be dollars.

(b) The amount of the proposed Loan must be an amount which is not more than the Available Facility and which is a minimum of US$1,000,000 or, if less, the Available Facility.

5.4 Lenders' Participations

(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.

(c) The Facility Agent shall notify each Lender of the amount of each Loan and the amount of its participation in that Loan by the Specified Time.

5.5 Cancellation of Commitment

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

6. REPAYMENT

6.1 Repayment of Loans

(a) The Borrower shall repay the Loans in twenty-two (22) consecutive and equal instalment on each Repayment Date.

(b) The Borrower shall repay all of the outstanding principal amounts of the Loans (together with all other amounts owing under the Finance Documents) to the Finance Parties on the Final Maturity Date.

6.2 Repayment Schedule

The Facility Agent shall, as soon as practicable after the date of the First Repayment Date is established, prepare a Repayment Schedule setting out each Repayment Date and each Repayment Instalment, and distribute to the Lenders (with a copy to the Borrower).

6.3 Reborrowing

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

7. PREPAYMENT AND CANCELLATION

7.1 Illegality

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

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

(b) upon the Facility Agent notifying the Borrower, the 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 Facility Agent has notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Facility Agent(being no earlier than the last day of any applicable grace period permitted by law).

7.2 Mandatory Prepayment

(a) If:

(i) the Borrower receives any Compensation Proceeds which exceed US$1,000,000;

(ii) the Borrower receives any Insurance Proceeds (A) which exceed US$1,000,000, and to the extent that such Insurance Proceeds are not permitted by the Facility Agent to be applied for reinstatement purposes or (B) if there is a total loss;

(iii) the Sinosure Insurance Policy (A) ceases to be in full force and effect or ceases to be legal, valid, binding, enforceable or effective; (B) is repudiated, revoked, rescinded or terminated by any party; (C) becomes invalid or unavailable to any Lender for any reason whatsoever; or (D) becomes unlawful for any party to perform its material obligations thereunder;

(iv) any of the Project Documents is repudiated, revoked, rescinded, cancelled or terminated;

the Borrower shall notify the Facility Agent in writing within five (5) Business Days after (A) receipt of such amounts in its relevant bank account, with respect to paragraphs (i) and (ii) above; or (B) becoming aware the occurrence of such events referred to in paragraphs (iii) and (iv) above.

(b) The Borrower shall apply the full amount of the Compensation Proceeds and the Insurance Proceeds in accordance with paragraphs 7.2(a)(i) and 7.2(a)(ii) to repay the Loans on the next Interest Payment Date after receipt of such amounts by the Borrower (or on earlier date if otherwise notified by the Facility Agent).

(c) Upon the occurrence of any of the events listed in paragraph (a)(iii) and (iv) above, the Facility Agent may and shall if instructed to do so by the Majority Lenders, by a written notice (a "**Prepayment Notice**") to the Borrower, declare that (i) the Available Facility (if any) shall immediately be cancelled; and (ii) the Borrower is obliged to prepay the Loans and all interest accrued thereon and all other sums owing under this Agreement, on the first Interest Payment Date falling after the date of the Prepayment Notice or, if earlier, the date specified by the Facility Agent in the Prepayment Notice.

(d) The Borrower shall apply all sums standing to the credit of the Excess Cash Account in prepayment of the Loans on each Interest Payment Date.

(e) Any prepayment under this Clause 7.2 will be applied against the remaining Repayment Instalments in inverse order of maturity and applied pro rata to each Lender's participation in that Loan.

7.3 Voluntary Cancellation

(a) The Borrower may, if it gives the Facility Agent not less than thirty (30) days' (or such shorter period as the Majority Lenders may agree) prior written notice, cancel the whole or any part (being a minimum amount of US$1,000,000) of the Available Facility. Any cancellation under this Clause 7.3 shall reduce the Commitments of the Lenders rateably.

(b) The Borrower shall not cancel any part of the Available Commitments with respect to the Facility unless at the same time it cancels the Available Commitment under both the Facility such that the Available Commitments are reduced by an equal proportion.

7.4 Voluntary Prepayment of Loans

(a) The Borrower may, if it gives the Facility Agent not less than thirty (30) days' (or such shorter period as the Majority Lenders may agree) prior written notice, prepay the whole or any part of any Loan (but, if in part, being an amount that reduces the amount of the Loan by a minimum amount of US$1,000,000 and an integral multiple of US$10,000).

(b) With respect to any prepayment made pursuant to paragraph (a) above, (i) if such prepayment is made on any Interest Payment Date, no Break Costs shall be payable; or (ii) if such prepayment is made on a day other than an Interest Payment Date, the Borrower shall pay the Break Costs (if any). Any prepayment made pursuant to paragraph (a) above shall be subject to prepayment premium equal to 2% of the relevant amount of principal of the Loan so prepaid.

(c) A Loan may only be prepaid after the last day of the Availability Period (or, if earlier, the day on which the Available Facility is zero).

(d) Any prepayment under this Clause 7.4 will be applied against the remaining Repayment Instalments in inverse order of maturity and applied pro rata to each Lender's participation in that Loan.

7.5 Right of Replacement or Repayment and Cancellation in relation to a Single Lender

(a) If:

(i) any sum payable to any Lender by the Borrower or the Guarantor is required to be increased under paragraph (c) of Clause 12.2 (*Tax Gross Up*); or

(ii) any Lender claims indemnification from the Borrower under Clause 12.3 (*Tax Indemnity*) or Clause 13.1 (*Increased Costs*),

the Borrower may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Facility Agent notice of cancellation of the Commitment of that Lender and its intention to procure the repayment of that Lender's participation in the Loans or give the Facility Agent notice of its intention to replace that Lender in accordance with paragraph (d) below.

(b) On receipt of a notice of cancellation referred to in paragraph (a) above, the Commitment 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 of cancellation under paragraph (a) above (or, if earlier, the date specified by the Borrower in that notice), the Borrower shall repay that Lender's participation in that Loan.

(d) If:

(i) any of the circumstances set out in paragraph (a) above apply to a Lender; or

(ii) the Borrower or the Guarantor becomes obliged to pay any amount in accordance with Clause 7.1 (*Illegality*),

the Borrower may, in the circumstances set out in paragraph (a) above on ten (10) Business Days' prior notice to the Facility Agent and the relevant Lender, replace that Lender by requiring that Lender to (in which event, to the extent permitted by law, that Lender shall) transfer pursuant to Clause 23 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement to another Lender or to another bank, financial institution, trust, fund or other entity selected by the Borrower which confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with Clause 23 (*Changes to the Lenders*) for a purchase price in cash or other cash payment payable at the time of the transfer equal to the outstanding principal amount of such Lender's participation in the outstanding Loans and all accrued interest (to the extent that the Facility Agent has not given a notification under Clause 23.9 (*Pro rata interest settlement*)), Break Costs and other amounts payable in relation thereto under the Finance Documents.

(e) The replacement of a Lender pursuant to paragraph (d) above shall be subject to the following conditions:

(i) the Borrower shall have no right to replace the Facility Agent or the Security Agent;

(ii) neither the Facility Agent, the Security Agent nor any Lender shall have any obligation to find a replacement Lender;

(iii) in no event shall the Lender replaced under paragraph (d) above be required to pay or surrender any of the fees received by such Lender pursuant to the Finance Documents;

(iv) the Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (d) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer.

(f) A Lender shall perform the checks described in paragraph (e)(iv) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (d) above and shall notify the Facility Agent and the Borrower when it is satisfied that it has complied with those checks.

7.6 Restrictions

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

(b) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs and any prepayment fees, premium or penalty, as applicable.

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

(d) 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.

(e) No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.

(f) If the Facility Agent receives a notice under this Clause 7 it shall promptly forward a copy of that notice to either the Borrower or the affected Lender, as appropriate.

8. INTEREST

8.1 Calculation of Interest

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

(a) Margin; and

(b) LIBOR.

8.2 Payment of Interest

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

8.3 Default Interest

(a) If the Borrower or the Guarantor 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 two (2) per cent. higher than the rate which would have been payable if the overdue amount had, during the period of non–payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Facility Agent (acting reasonably). Any interest accruing under this Clause 8.3 shall be immediately payable by the Borrower and the Guarantor on demand by the Facility Agent.

(b) If any overdue amount consists of all or part of a Loan which became due on a day which was not the Interest Payment Date relating to that Loan:

(i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and

(ii) the rate of interest applying to the overdue amount during that first Interest Period shall be two (2) per cent. 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 on an Interest Payment Date applicable to that overdue amount but will remain immediately due and payable.

8.4 Notification of Rates of Interest

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

9. INTEREST PERIODS

9.1 Duration

(a) Each Loan shall have successive Interest Periods.

(b) Subject to the following provisions of this Clause 9:

(i) the initial Interest Period for a Loan will be the period from and including its Utilisation Date to (but excluding) the next Interest Payment Date;

(ii) each subsequent Interest Period for a Loan will start on the Interest Payment Date following the expiry of the preceding Interest Period and end on and include the day before the next Interest Payment Date.

(c) An Interest Period for a Loan shall not extend beyond the Final Maturity Date.

9.2 Non–Business Days

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

9.3 Consolidation of Loans

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

10. CHANGES TO THE CALCULATION OF INTEREST

10.1 Absence of Quotations

Subject to Clause 10.2 (*Market disruption*), if LIBOR is to be determined by reference to the Reference Banks but a 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 Reference Banks.

10.2 Market Disruption

(a) If a Market Disruption Event occurs in relation to a Loan for any Interest Period, 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 Facility Agent by that Lender as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum the cost to that Lender of funding its participation in that Loan from whatever source it may reasonably select.

(b) In this Agreement "**Market Disruption Event**" means an event or circumstance where:

(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 Reference Banks supplies a rate to the Facility Agent to determine LIBOR for dollars for the relevant Interest Period; or

(ii) before close of business in London on the Quotation Day for the relevant Interest Period, the Facility Agent receives notifications from a Lender or Lenders (whose participations in a Loan exceed twenty-five (25) per cent. of that Loan) that the cost to it or them of obtaining matching deposits in the Relevant Interbank Market would be in excess of LIBOR.

10.3 Alternative Basis of Interest or Funding

(a) If a Market Disruption Event occurs and the Facility Agent or the Borrower so requires, the Facility Agent and the Borrower shall enter into negotiations (for a

period of not more than thirty (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.

10.4 Break Costs

(a) The Borrower shall, within three (3) 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 Facility Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

11. FEES

11.1 Commitment Fee

(a) The Borrower shall pay to the Facility Agent (for the account of each Lender) a fee computed at the rate of zero point five per cent. (0.50%) per annum on that Lender's Available Commitment for the Availability Period.

(b) The accrued commitment fee is payable in arrears on the date of this Agreement, on each Interest Payment Date and, if cancelled in full, on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.

11.2 Management Fee

The Borrower shall pay to the Mandated Lead Arranger a management fee in the amount and at the times agreed in a Fee Letter.

11.3 Agency Fee

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

12. TAX GROSS UP AND INDEMNITIES

12.1 Definitions

(a) In this Agreement:

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

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

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

"**Tax Payment**" means either the increase in a payment made by the Borrower or the Guarantor to a Finance Party under Clause 12.2 (*Tax Gross-Up*) or a payment under Clause 12.3 (*Tax Indemnity*).

(b) Unless a contrary indication appears, in this Clause 12 (*Tax Gross Up and Indemnities*) a reference to "determines" or "determined" means a determination made in the absolute discretion of the person making the determination.

12.2 Tax Gross-Up

(a) Each of the Borrower and the Guarantor 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 the Borrower or the Guarantor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Facility Agent accordingly. Similarly, a Lender shall notify the Facility Agent on becoming so aware in respect of a payment payable to that Lender. If the Facility Agent receives such notification from a Lender it shall notify the Borrower and the Guarantor.

(c) If a Tax Deduction is required by law to be made by the Borrower or the Guarantor, the amount of the payment due from the Borrower or the Guarantor (as the case may be) 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 the Borrower or the Guarantor is required to make a Tax Deduction, the Borrower or the Guarantor (as the case may be) shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

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

(f) The Borrower or the Guarantor (as the case may be) and each relevant Finance Party shall co-operate in completing any procedural formalities reasonably necessary for the Borrower and the Guarantor (as the case may be) to obtain authorisation to make that payment without a Tax Deduction (or with a reduced Tax Deduction).

12.3 Tax Indemnity

(a) The Borrower shall (within three (3) Business Days of demand by the Facility Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.

(b) 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 12.2 (*Tax Gross-Up*); or

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

(c) A Protected Party making, or intending to make a claim under paragraph (a) above shall promptly notify the Facility Agent of the event which will give, or has given, rise to the claim, following which the Facility Agent shall notify the Borrower.

(d) A Protected Party shall, on receiving a payment from the Borrower or the Guarantor under this Clause 12.3 (*Tax Indemnity*), notify the Facility Agent.

12.4 Tax Credit

If the Borrower or the Guarantor makes a Tax Payment and the relevant Finance Party determines that:

(a) a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and

(b) that Finance Party has obtained and utilised that Tax Credit,

the Finance Party shall pay an amount to the Borrower or the Guarantor (as the case may be) which that Finance Party determines will leave it (after that payment) in the same

after-Tax position as it would have been in had the Tax Payment not been required to be made by the Borrower or the Guarantor (as the case may be).

12.5 Stamp Taxes

The Borrower shall pay and, within three Business Days of demand, indemnify each Secured Party against any cost, loss or liability that Secured Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

12.6 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) In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Finance Party's VAT reporting requirements in relation to such supply.

12.7 FATCA Information

(a) Subject to paragraph (c) below, each Party shall, within ten (10) Business Days of a reasonable request by another Party:

(i) confirm to that other Party whether it is:

(A) a FATCA Exempt Party; or

(B) not a FATCA Exempt Party;

(ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and

(iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.

(b) If a Party confirms to another Party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.

(c) Paragraph (a) above shall not oblige any Finance Party to do anything, and paragraph (a)(iii) above shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:

(i) any law or regulation;

(ii) any fiduciary duty; or

(iii) any duty of confidentiality.

(d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (a)(i) or (ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.

12.8 FATCA Deduction

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

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

13. INCREASED COSTS

13.1 Increased Costs

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

13.2 Increased Cost claims

(a) A Finance Party intending to make a claim pursuant to Clause 13.1 (*Increased Costs*) shall notify the Facility Agent of the event giving rise to the claim, following which the Facility Agent shall promptly notify the Borrower.

(b) Each Finance Party shall, as soon as practicable after a demand by the Facility Agent, provide a certificate confirming the amount of its Increased Costs.

13.3 Exceptions

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

(i) attributable to a Tax Deduction required by law to be made by the Borrower or the Guarantor;

(ii) attributable to a FATCA Deduction required to be made by a Party;

(iii) compensated for by Clause 12.3 (*Tax Indemnity*) (or would have been compensated for under Clause 12.3 (*Tax Indemnity*)) but was not so compensated solely because any of the exclusions in paragraph 12.3(b) of Clause 12.3 (*Tax Indemnity*)) applied); or

(iv) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.

(b) In this Clause 13.3, a reference to a "**Tax Deduction**" has the same meaning given to the term in Clause 12.1 (*Definitions*).

14. OTHER INDEMNITIES

14.1 Currency Indemnity

(a) If any sum due from the Borrower or the Guarantor 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 the Borrower or the Guarantor (as the case may be);

(ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the Borrower or the Guarantor (as the case may be) shall as an independent obligation, within three (3) Business Days of demand, indemnify each Finance Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

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

14.2 Other Indemnities

(a) The Borrower shall (or shall procure that the Guarantor will), within ten (10) Business Days of demand, indemnify each Finance Party against any cost, loss or liability incurred by that Finance Party as a result of:

(i) the occurrence of any Event of Default;

(ii) a failure by the Borrower or the Guarantor (as the case may be) to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 28 (*Sharing among the Finance Parties*);

(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.

(b) The Borrower shall promptly indemnify each Finance Party, each Affiliate of a Finance Party and each officer or employee of a Finance Party or its Affiliate, against any cost, loss or liability incurred by that Finance Party or its Affiliate (or officer or employee of that Finance Party or Affiliate) in connection with or arising out of the use of proceeds under the Facility or Transaction Security being taken over the Charged Property (including but not limited to those incurred in connection with any litigation, arbitration or administrative proceedings or regulatory enquiry concerning the use of proceeds under the Facility), unless such loss or liability is caused by the gross negligence or wilful misconduct of that Finance Party or its Affiliate (or employee or officer of that Finance Party or Affiliate). Any Affiliate or any officer or employee of a Finance Party or its Affiliate may rely on this Clause 14.2 subject to Clause 1.4 (*Third Party Rights*) and the provisions of the Third Parties Act.

14.3 Indemnity to the Facility Agent

The Borrower shall promptly indemnify the Facility Agent against any cost, loss or liability incurred by the Facility Agent(acting reasonably) as a result of:

(a) investigating any event which it reasonably believes is a Default;

(b) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or

(c) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement.

14.4 Indemnity to the Security Agent

(a) Each of the Borrower and the Guarantor jointly and severally shall promptly indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability incurred by any of them as a result of:

(i) any failure by the Borrower to comply with its obligations under Clause 16 (*Costs and Expenses*);

(ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;

(iii) the taking, holding, protection or enforcement of the Transaction Security;

(iv) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent and each Receiver and Delegate by the Finance Documents or by law;

(v) any default by the Borrower or the Guarantor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents; or

(vi) acting as Security Agent, Receiver or Delegate under the Finance Documents or which otherwise relates to any of the Charged Property (otherwise, in each case, than by reason of the relevant Security Agent', Receiver's or Delegate's gross negligence or wilful misconduct).

(b) Each of the Borrower and the Guarantor expressly acknowledges and agrees that the continuation of its indemnity obligations under this Clause 14.4 will not be prejudiced by any release under Clause 26.24 (*Releases*) or otherwise in accordance with the terms of this Agreement.

(c) The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 14.4 (*Indemnity to the Security Agent*) and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all moneys payable to it.

15. MITIGATION BY THE LENDERS

15.1 Mitigation

(a) Each Finance Party shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (*Illegality*), Clause 12 (*Tax Gross Up and Indemnities*) or Clause 13 (*Increased Costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.

(b) Paragraph (a) above does not in any way limit the obligations of the Borrower or the Guarantor under the Finance Documents.

15.2 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 15.1 (*Mitigation*).

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

16. COSTS AND EXPENSES

16.1 Transaction Expenses

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

(a) the Finance Documents and any other documents referred to in the Finance Documents; and

(b) any other Finance Documents executed after the date of this Agreement.

16.2 Security Agent's Management Time and Additional Remuneration

(a) Any amount payable to the Security Agent under Clause 14.4 (*Indemnity to the Security Agent*) and this Clause 16 (*Costs and Expenses*) shall include the cost of utilising the Security Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Security Agent may notify to the Borrower and the Lenders, and is in addition to any other fee paid or payable to the Security Agent.

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

(i) a Default;

(ii) the Security Agent being requested by a Security Provider or the Majority Lenders to undertake duties which the Security Agent and the Borrower agree to be of an exceptional nature or outside the scope of the normal duties of the Security Agent under the Finance Documents; or

(iii) the Security Agent and the Borrower agreeing that it is otherwise appropriate in the circumstances,

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

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

16.3 Enforcement Costs

The Borrower shall, within three (3) Business Days of demand, pay to the Finance Parties the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of, or the preservation of any rights under, any Finance Document and the Transaction Security and any proceedings instituted by or against the Security Agent as a consequence of taking or holding the Transaction Security or enforcing these rights.

17. GUARANTEE AND INDEMNITY

17.1 Guarantee and Indemnity

The Guarantor irrevocably and unconditionally:

(a) guarantees to each Finance Party punctual performance by the Borrower of all the Borrower's payment obligations under the Finance Documents;

(b) undertakes with each Finance Party that whenever the Borrower does not pay any amount when due under or in connection with any Finance Document, the Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and

(c) agrees with each Finance Party that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Finance Party immediately on demand against any cost, loss or liability it incurs as a result of the Borrower 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 17 if the amount claimed had been recoverable on the basis of a guarantee.

17.2 Continuing Guarantee

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

17.3 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Security Provider 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 17 (*Guarantee and Indemnity*) will continue or be reinstated as if the discharge, release or arrangement had not occurred.

17.4 Waiver of Defences

The obligations of the Guarantor under this Clause 17 (*Guarantee and Indemnity*) will not be affected by an act, omission, matter or thing which, but for this Clause 17 (*Guarantee and Indemnity*), would reduce, release or prejudice any of its obligations under this Clause 17 (*Guarantee and Indemnity*) (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 Security Provider or other person;

(b) the release of any other Security Provider or any other person under the terms of any composition or arrangement with any creditor of such Security Provider or person;

(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 Security Provider 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 a Security Provider or any other person;

(e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Transaction 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;

(g) any moratorium, debt rescheduling debt consolidation or similar measures; or

(h) any insolvency or similar proceedings.

17.5 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 17 (*Guarantee and Indemnity*). This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

17.6 Appropriations

Until all amounts which may be or become payable by the Security Providers 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 17 (*Guarantee and Indemnity*).

17.7 Deferral of Guarantors' Rights

Until all amounts which may be or become payable by the Security Providers under or in connection with the Finance Documents have been irrevocably paid in full and unless the Facility 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 17 (*Guarantee and Indemnity*):

(a) to be indemnified by a Security Provider;

(b) 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 security taken pursuant to, or in connection with, the Finance Documents by any Finance Party;

(c) to bring legal or other proceedings for an order requiring any Security Provider to make any payment, or perform any obligation, in respect of which the Guarantor has given a guarantee, undertaking or indemnity under Clause 17.1 (*Guarantee and Indemnity*);

(d) to exercise any right of set–off against any Security Provider; and/or

(e) to claim or prove as a creditor of any Security Provider 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 Security Providers 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 Facility Agent or as the Facility Agent may direct for application in accordance with Clause 29 (*Payment Mechanics*).

17.8 Additional Security

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

18. REPRESENTATIONS

The Borrower and/or the Guarantor (as indicated) makes the representations and warranties set out in this Clause 18 (*Representations*) to each Finance Party on the date of this Agreement.

18.1 Status

(a) The Borrower represents and warrants that it is a limited liability company, duly incorporated and validly existing under the laws of Sierra Leone.

(b) The Borrower and the Guarantor each represent and warrant that MOFED is the entity legally competent to enter into the transactions contemplated by the Finance Documents for and on behalf of the Republic of Sierra Leone.

(c) The Borrower and the Guarantor each represent and warrant that it has the power to own its assets and, in the case of the Borrower only, it has the power to carry out the Project and its business as it is being conducted.

(d) The Borrower and the Guarantor each represent and warrant that it has the power to sue and be sued in its own name.

(e) The Borrower represents and warrants that it is not a FATCA FFI or a US Tax Obligor.

18.2 Binding Obligations

(a) The Borrower represents and warrants that the obligations expressed to be assumed by it in each Transaction Document to which it is a party are, subject to any general principles of law limiting its obligations which are specifically referred to in any legal opinion delivered pursuant to Clause 4 (*Conditions of Utilisation*), legal, valid, binding and enforceable obligations.

(b) The Guarantor represents and warrants that the obligations expressed to be assumed by it in each Transaction Document to which it is a party are, subject to any general principles of law limiting its obligations which are specifically referred to in any legal opinion delivered pursuant to Clause 4 (*Conditions of Utilisation*), legal, valid, binding and enforceable obligations.

(c) The Borrower and the Guarantor each represent and warrant that without limiting the generality of paragraph (a) above, each Security Document to which it is a party creates the security interests which that Security Document purports to create and those security interests are valid and effective.

18.3 Non–Conflict with Other Obligations

(a) The Borrower represents and warrants that the entry into and performance by it and the transactions contemplated by, the Transaction Documents to which it is a party do not and will not conflict with:

(i) any treaty, law or regulation applicable to it;

(ii) with respect to the Borrower, its constitutional documents;

(iii) with respect to the Guarantor, the constitution of Sierra Leone; or

(iv) any agreement or instrument binding upon it or any of its assets.

(b) The Guarantor represents and warrants that the entry into and performance by the Guarantor, and the transactions contemplated by, the Transaction Documents to which it is a party do not and will not conflict with:

(i) any treaty, law or regulation applicable to it;

(ii) the constitution of Sierra Leone; or

(iii) any agreement or instrument binding upon it or any of its assets.

18.4 Power and Authority

(a) The Borrower represents and warrants that:

(i) 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 Transaction Documents to which it is a party and the transactions contemplated by those Transaction Documents.

(ii) No limit on its or the Guarantor's powers will be exceeded as a result of the borrowing, grant of security or giving of guarantees or indemnities contemplated by the Transaction Documents to which it is a party.

(b) The Guarantor represent and warrant that:

(i) 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 Transaction Documents to which it is a party and the transactions contemplated by those Transaction Documents.

(ii) No limit on its powers will be exceeded as a result of the borrowing, grant of security or giving of guarantees or indemnities contemplated by the Transaction Documents to which it is a party.

18.5 Legal Validity and Admissibility in Evidence

(a) The Borrower and the Guarantor each represent and warrant that this Agreement and each Transaction Document to which it is a party is in the proper form for its enforcement in Sierra Leone.

(b) The Borrower and the Guarantor each represent and warrant that:

(i) all Transaction Authorisations required or desirable:

(A) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party; and

(B) to make the Transaction Documents to which it is a party admissible in evidence in Sierra Leone,

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

(c) The Borrower and the Guarantor each represent and warrants that all Transaction Authorisations necessary for the conduct of the business, trade and ordinary activities of the Borrower have been obtained or effected and are in full force and effect.

(d) The Borrower and the Guarantor each represent and warrant that all the Material Licences have been obtained or effected and are in full force and effect.

18.6 Jurisdiction and Governing Law

The Borrower and the Guarantor each represent and warrant that:

(a) The choice of law specified in Clause 38 (*Governing Law*) as the governing law of the Finance Documents, and its waiver of the right to assert immunity in Clause 40 (*Waiver of Immunity*) shall be recognised and enforced in Sierra Leone.

(b) Any judgment obtained in relation to a Transaction Document in the jurisdiction of the stated governing law of that Transaction Document will be recognised and enforced in Sierra Leone.

18.7 Insolvency

The Borrower represents and warrants that no:

(a) corporate action, legal proceeding or other procedure or step described in paragraph 22.7(a) of Clause 22.7 (*Insolvency proceedings*); or

(b) creditors' process described in Clause 22.8 (*Creditor's Process*),

has been taken or, to the knowledge of the Borrower, threatened in relation to the Borrower; and none of the circumstances described in Clause 22.6 (*Insolvency*) applies to the Borrower.

18.8 No Filing or Stamp Taxes

The Borrower represents and warrants that under the laws of Sierra Leone and PRC, it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents except:

(a) the registration of the Security Documents governed by Sierra Leonean law with the Corporate Affairs Commission under the provisions of the Registration of Instruments Act, Cap. 256 of the Law of Sierra Leone 1960;

(b) the registration of this Agreement and the Security Documents governed by Sierra Leonean law at the Bank of Sierra Leone under the provisions of section 10(2) of the Investment Promotions Act No. 10 of 2001;

(c) the filing of the Borrower's resolution(s) approving the execution of this Agreement Corporate Affairs Commission, under section 204 of the Companies Act No. 5 of 2009 of Sierra Leone;

(d) the requisite stamp duties in PRC in respect of this Agreement at the rate of 0.005% on the Total Commitments; and

(e) the payment of stamp duty payable under the Stamp Duty Act Cap 274 of the laws of Sierra Leone 1960.

18.9 Deduction of Tax

The Borrower and the Guarantor each represent and warrant that it is not required to make any Tax Deduction (as defined in Clause 12.1 (*Definitions*)) from any payment it may make under any Finance Document.

18.10 No Default

(a) The Borrower represents and warrants that no Default is outstanding or will result from the entry into, or the performance of any transaction contemplated by, any Transaction Document.

(b) The Borrower represents and warrants that there is no outstanding breach of any term of any Transaction Document to which the Borrower or the Guarantor is a party and no person has disputed, repudiated or disclaimed liability under any Transaction Document to which the Borrower or the Guarantor is a party or evidenced an intention to do so.

(c) The Borrower represents and warrants that no other event or circumstance is outstanding which constitutes a default under any document which is binding on the Borrower or the Guarantor or any of its assets to an extent or in a manner which has or is reasonably likely to have a Material Adverse Effect.

18.11 Financial Statements

The Borrower represents and warrants that:

(a) Its Financial Statements most recently delivered to the Facility Agent:

(i) have been prepared in accordance with IFRS, consistently applied;

(ii) have been audited by a firm of international auditors acceptable to the Facility Agent; and

(iii) fairly represent its financial condition as at the date to which they were drawn up,

except, in each case, as disclosed to the contrary in those Financial Statements.

(b) 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.

(c) There has been no material adverse change in its business or financial condition of the Borrower, or in its financial condition of the Guarantor since November 30, 2016.

18.12 Transaction Authorisations

(a) The Borrower represents and warrants that, as at the date of this Agreement, all Transaction Authorisations have been obtained or effected and are in full force and effect or will be obtained or effected and will be in full force and effect on the date they are required.

(b) Neither the Borrower nor the Guarantor is aware of:

(i) any reason why any Transaction Authorisation will not be obtained or effected by the time it is required;

(ii) any steps to revoke or cancel any Transaction Authorisation; or

(iii) any reason why any Transaction Authorisation will not be renewed when it expires without the imposition of any new restriction or condition.

18.13 No Misleading Information

The Borrower represents that:

(a) all factual information furnished by or on behalf of the Borrower or the Guarantor to any Finance Party was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated;

(b) no agreements or other documents are in existence that have not been disclosed to the Finance Parties that are material in the context of the Transaction Documents or that have the effect of varying any provision of any Transaction Document or the Project;

(c) the factual information referred to in Clause 18.13(a) above did no omit as at its date any information which, if disclosed, could reasonably be likely to materially and adversely affect the decision of a person considering whether to enter into the Finance Documents;

(d) nothing has occurred since the date on which the information referred to in Clause 18.13(a) above was obtained or supplied which renders such information untrue or misleading in any material respect and no information has been given or withheld that results in the information referred to in Clause 18.13(a) above being untrue or misleading in any material respect; and

(e) all other written information provided by the Borrower or the Guarantor (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.

18.14 Pari Passu Ranking

The Borrower and the Guarantor each represent and warrant with respect to itself that its payment obligations under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

18.15 No Proceedings Pending or Threatened

The Borrower and the Guarantor each represent and warrant with respect to itself that no litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect have (to the best of its knowledge and belief) been started or threatened against the Borrower or the Guarantor.

18.16 No Material Adverse Change

The Borrower represents and warrants that there has been no material adverse change in its financial condition since the date to which the most recent Financial Statements were drawn up.

18.17 Ownership of Assets

The Borrower represents and warrants that:

(a) as at the date of this Agreement, the Borrower has:

(i) good title to, or freedom to use under any applicable laws, the Site and any other assets (including intellectual property rights) necessary, customary or desirable to implement the Project in accordance with the Transaction Documents;

(ii) good and marketable title to all the assets reflected in its latest audited financial statements; and

(iii) access to:

(A) the Site;

(B) any buildings or fixtures on the Site; and

(C) all easements, wayleaves and other rights necessary or desirable in order to implement the Project in accordance with the Transaction Documents,

in each case free from Security (other than any Security allowed under this Agreement), restrictions and onerous covenants.

(b) Each of the Borrower and the Guarantor represents and warrants that it is the sole legal and beneficial owner of the respective assets over which it purports to grant the Transaction Security free from any claims, third party rights or competing interest other than Security permitted under Clause 21.2(c) (*Negative Pledge*).

18.18 No Other Business

The Borrower represents and warrants that:

(a) except as expressly contemplated by the Transaction Documents, it has not traded or carried on any business since the date of its incorporation; and

(b) it does not have any Subsidiaries.

18.19 Environmental and Social Laws

The Borrower represents and warrants that:

(a) It is in compliance with Clause 21.9 (*Environmental and Social* Matters) 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 Claim has been commenced or (to the best of its knowledge and belief (having made due and careful enquiry)) is threatened against the Borrower where that claim has or is reasonably likely, if determined against the Borrower, to have a Material Adverse Effect. The Borrower has complied with the applicable Environmental and Social Standards.

18.20 Taxes

The Borrower represents and warrants that:

(a) No claims are being, nor, as far as it is aware, might reasonably be expected to be, asserted against the Borrower or the Guarantor with respect to Taxes which have or, if adversely determined to it, would be reasonably likely to have a Material Adverse Effect.

(b) All Tax reports and returns required to be filed by or on behalf of each of the Borrower and the Guarantor have been filed.

(c) All Taxes required to be paid by or on behalf of each of the Borrower and the Guarantor have been paid within the applicable time limit.

18.21 Project Documents

The Borrower represents and warrants that as at the date of this Agreement:

(a) each copy of a Project Document delivered to the Facility Agent under this Agreement is true and complete;

(b) there is no other agreement in connection with, or arrangements which amend, supplement or affect any Project Document;

(c) there is no dispute in connection with any Project Document;

(d) there has not been any undisclosed amendment, cancellation, suspension or waiver of any Project Document; and

(e) except as disclosed to the Facility Agent in writing before the date of this Agreement, the Borrower is not a party to any material agreement other than the Transaction Documents.

18.22 Ownership of the Borrower

The Borrower represents and warrants that:

(a) No person has any right to call for the issue or transfer of any share capital or loan stock in the Borrower other than in accordance with the Security Documents.

(b) The shares in the capital of the Borrower are fully paid.

(c) Subject to the Security Documents, the Shareholder is the legal and beneficial owner of all of the share capital of the Borrower and have obtained all necessary governmental approvals, consents or permits in all applicable jurisdictions for their equity contributions to the Borrower.

18.23 Ranking

(a) The Borrower represents and warrants that the Transaction Security has or will have the first ranking in priority which it is expressed to have in the Security Documents and it is not subject to any prior ranking or *pari passu* ranking Security.

(b) The Guarantor represents and warrants that the Transaction Security to which it is a party has or will have the first ranking in priority which it is expressed to have in the Security Documents and it is not subject to any prior ranking or *pari passu* ranking Security.

18.24 Immunity

(a) The Borrower represents and warrants that 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 Transaction Document.

(b) The Guarantor represents and warrants that 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 Transaction Document.

18.25 No Adverse Consequences

The Borrower represents and warrants that:

(a) It is not necessary for the Borrower or the Guarantor under the laws of Sierra Leone:

(i) in order to enable any Finance Party to enforce its rights under any Finance Document; or

(ii) by reason of the entry into of any Finance Document or the performance by it of its obligations under any Finance Document,

that any Finance Party should be licensed, qualified or otherwise entitled to carry on business in Sierra Leone.

(b) No Finance Party is or will be deemed to be resident, domiciled or carrying on business in Sierra Leone by reason only of the entry into, performance and/or enforcement of any Finance Document.

18.26 Anti-Corruption Law

(a) The Borrower represents and warrants that it has conducted its businesses in compliance with applicable Corruption Practice Laws and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

(b) The Guarantor represents and warrants that it has conducted its businesses in compliance with applicable Corruption Practice Laws and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

18.27 OFAC List and Sanctions

(a) The Borrower represents and warrants that:

(i) none of the Borrower's members of senior management, shareholders, ultimate beneficial owners or principal third parties with whom the Borrower is engaged in business, is a person included in the OFAC List.

(ii) the Borrower is not using and will not use the proceeds of the Facility for the purpose of financing or making funds available directly or indirectly to any Sanctioned Person, to the extent such financing or provision of funds would be prohibited by Sanctions or would otherwise, to the knowledge and belief of the Borrower, cause any Finance Party to be in breach of Sanctions.

(iii) to the best of its knowledge, none of the Borrower, the Guarantor nor any of their Affiliates is a Sanctioned Person or has, in the last five (5) years violated, or is presently violating, any Sanctions.

18.28 Security and Financial Indebtedness

The Borrower represents and warrants that:

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

(b) It does not have any Financial Indebtedness outstanding other than as permitted by this Agreement.

18.29 Acts of Commercial Credit

Each of the Borrower and the Guarantor represent and warrant that its execution of the Finance Documents to which it is a party constitutes, and its exercise of its rights and performance of its obligations thereunder will constitute, private and commercial acts done and performed for private and commercial purposes.

18.30 No IMF Approval

The Borrower and the Guarantor each represent and warrant that the execution and delivery by the Borrower and the Guarantor of the Finance Documents and the performance of its obligations under the Finance Documents:

(a) do not require any approval of the International Monetary Fund; and

(b) are not in breach of any agreement entered into between Sierra Leone and the International Monetary Fund.

18.31 Times for Making Representations and Warranties

(a) The representations and warranties set out in this Clause are made by the Borrower and the Guarantor, as applicable, on the date of this Agreement.

(b) The Repeating Representations are deemed to be made by each of the Borrower and the Guarantor (as applicable) by reference to the facts and circumstances then existing on the date of each Utilisation Request, each Utilisation Date and each Interest Payment Date.

19. INFORMATION UNDERTAKINGS

The undertakings in this Clause 19 (*Information Undertakings*) 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.

19.1 Financial Statements

(a) The Borrower and the Guarantor must supply to the Facility Agent in sufficient copies for all the Lenders:

(i) as soon as the same becomes available, but in any event within five (5) Business Days of publication, the published annual fiscal budget of the Republic of Sierra Leone;

(ii) the audited consolidated Financial Statements of the Borrower for each of its financial years; and

(iii) the Borrower interim Financial Statements for the first half-year of each of its financial years.

(b) All Financial Statements must be supplied as soon as they are available and:

(i) in the case of the audited Financial Statements of the Borrower, within one hundred and twenty (120) days;

(ii) in the case of the Borrower's quarterly or semi-annual interim Financial Statements, within sixty (60) days,

of the end of the relevant financial period.

19.2 Compliance Certificate

(a) The Borrower shall supply a Compliance Certificate to the Facility Agent with each set of its Financial Statements provided in accordance with Clause 19.1 (*Financial Statements*) above.

(b) The Compliance Certificate shall, amongst other things, set out (in reasonable detail) computations as to compliance with Clause 20 (*Financial Covenants*), include a certification that each Repeating Representation is true and correct and that no Event of Default has occurred as at the date of the Compliance Certificate.

(c) Each Compliance Certificate shall be signed by two directors of the Borrower and, if required to be delivered with the annual Financial Statements of the Borrower, shall be reported on by the Borrower's auditors in the form agreed to by the Borrower and the Majority Lenders.

19.3 Requirements as to Financial Statements

(a) Each set of Financial Statements delivered by the Borrower pursuant to Clause 19.1 (*Financial Statements*) shall be certified by a director of the relevant company as fairly representing its financial condition as at the date as at which those Financial Statements were drawn up.

(b) Each of the annual fiscal budget of Sierra Leone delivered by the Guarantor pursuant to Clause 19.1 (*Financial Statements*) shall be certified by an authorised signatory of the MOFED.

(c) The Borrower shall procure that each set of its Financial Statements delivered pursuant to Clause 19.1 (*Financial Statements*) is prepared using IFRS, accounting practices and financial reference periods consistently, unless, in relation to any set of Financial Statements, it notifies the Facility Agent that there has been a change in IFRS, the accounting practices or reference periods and its auditors (or, if appropriate, the auditors of the Borrower or the Guarantor) deliver to the Facility Agent:

(i) a description of any change necessary for those Financial Statements to reflect the IFRS, accounting practices and reference periods upon which the most recent Financial Statements were prepared; and

(ii) sufficient information, in form and substance as may be reasonably required by the Facility Agent, to enable the Lenders to determine whether Clause 20 (*Financial Covenants*) has been complied with and make an accurate comparison between the financial position indicated in those Financial Statements and the most recent Financial Statements.

Any reference in this Agreement to those Financial Statements shall be construed as a reference to those Financial Statements as adjusted to reflect the basis upon which the most recent Financial Statements were prepared.

19.4 Budget

(a) The Borrower shall supply to the Facility Agent in sufficient copies for all the Lenders the Budget in accordance with Schedule 2 (*Conditions Precedent*).

(b) The Borrower shall ensure that the Budget:

(i) is in a form reasonably acceptable to the Facility Agent and includes a projected consolidated profit and loss, balance sheet and cashflow statement for the Borrower;

(ii) is prepared in accordance with the IFRS and the accounting practices and financial reference periods applied to Financial Statements under Clause 19.1 (*Financial statements*); and

(iii) has been approved by the board of directors of the Borrower.

19.5 Information: Miscellaneous

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

(a) all documents dispatched by the Borrower to its Shareholder (or any class of them) or the creditors of each of the Borrower and the Guarantor generally at the same time as they are dispatched;

(b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against the Borrower or the Guarantor, and which might, if adversely determined, have a Material Adverse Effect;

(c) promptly, such information as the Security Agent may reasonably require about the Charged Property and compliance of the Borrower and the Guarantor with the terms of any Security Documents; and

(d) promptly, such further information regarding the financial condition, business and operations of the Borrower or the Guarantor as any Finance Party (through the Facility Agent) may reasonably request.

19.6 Notification of Default

(a) The Borrower and the Guarantor shall notify the Facility Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless the Borrower or the Guarantor (as the case may be) is aware that a notification has already been provided by the Guarantor or the Borrower (as the case may be)).

(b) Promptly upon a request by the Facility Agent, the Borrower shall supply to the Facility Agent a certificate signed by two of its directors or senior officers on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

19.7 Auditors

The Borrower shall not change its auditors from those retained by it as at the date of this Agreement except with the prior written consent of the Majority Lenders.

19.8 Year-end

The Borrower shall ensure that its financial year end falls on December 31 and shall not change its financial year-end unless with the prior written consent of the Majority Lenders.

19.9 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 Facility Agent(the "**Designated Website**") if:

(i) the Facility 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 Facility 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 Facility Agent.

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

(b) The Facility 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 Facility Agent.

(c) The Borrower shall promptly upon becoming aware of its occurrence notify the Facility 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 Facility 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 Facility 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 Facility Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Borrower shall comply with any such request within ten (10) Business Days.

19.10 "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 the Borrower or the Guarantor or any change in the composition of the Shareholder of the Borrower after the date of this Agreement; or

(iii) a proposed assignment or transfer by a Lender of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges the Facility Agent, Sinosure 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 of the Borrower and the Guarantor

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

20. FINANCIAL COVENANTS

20.1 Debt Service Coverage Ratios

(a) On each Interest Payment Date from and after the Actual Completion Date of the Project, the Borrower shall calculate and deliver to the Facility Agent a certificate in form and substance satisfactory to the Facility Agent signed by a director of the Borrower confirming the DSCR for such Calculation Date.

(b) The Borrower shall submit to the Facility Agent all data and calculations used to calculate the DSCR. The Facility Agent shall notify the Borrower in writing of any suggested corrections that should be made to such calculations within thirty (30) Business Days following receipt and the Borrower shall incorporate all such corrections as the Facility Agent deems reasonably appropriate. The Facility Agent's determinations with respect to these matters shall be final and binding on the Borrower absent manifest error.

(c) The Borrower shall ensure that the DSCR for each Calculation Period shall be no less than 1.1:1.

20.2 Debt:Equity Ratio

The Borrower shall at all times maintain a Debt:Equity Ratio of not more than 80:20.

21. GENERAL UNDERTAKINGS

The undertakings in this Clause 20.1 (*General Undertakings*) remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

21.1 Transaction Authorisations

Each of the Borrower and the Guarantor shall promptly:

(a) obtain, comply with and do all that is necessary to maintain in full force and effect; and

(b) supply certified copies to the Facility Agent of,

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

21.2 Negative Pledge

In this Clause 21.2 (*Negative Pledge*), **"Quasi–Security"** means an arrangement or transaction described in paragraphs (c)(i) to (c)(vii) (both inclusive) below.

(a) Subject to paragraph (c) below,

(i) the Borrower shall not create or permit to subsist any Security over any of its assets; and

(ii) the Guarantor shall not create or suffer to exist any Security upon any of its assets or revenues to secure the payment of any of its External Indebtedness unless, when such Security is created, the obligations of the Guarantor under this Agreement are secured equally and rateably with such External Indebtedness.

(b) Subject to paragraph (c) below, neither the Borrower nor the Guarantor shall:

(i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re–acquired by the Borrower or the Guarantor;

(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 listed below:

(i) 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;

(ii) any payment or close out netting or set–off arrangement pursuant to any Treasury Transaction entered into by the Borrower and the Guarantor which is permitted under the Finance Documents excluding any Security or Quasi–Security under a credit support arrangement in relation to a Treasury Transaction;

(iii) any lien arising by operation of law and in the ordinary course of trading;

(iv) any Security or Quasi-Security over or affecting any asset acquired by the Borrower or the Guarantor after the date of this Agreement if:

(A) the Security or Quasi-Security was not created in contemplation of the acquisition of that asset by the Borrower or the Guarantor;

(B) the principal amount secured has not been increased in contemplation of or since the acquisition of that asset by the Borrower or the Guarantor; and

(C) the Security or Quasi-Security is removed or discharged within three (3) months of the date of acquisition of such asset;

(v) any Security or Quasi-Security entered into pursuant to any Finance Document;

(vi) 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 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; or

(vii) any Security or Quasi-Security securing indebtedness the principal amount of which (when aggregated with the principal amount of any other indebtedness which has the benefit of Security or Quasi Security given by the Borrower other than any permitted under paragraphs (i) to (v) above does not exceed US$1,000,000 (or its equivalent in another currency or currencies).

(d) The Borrower shall not directly or indirectly, make or declare any Distribution (in cash, property or obligation) on, or other payment on account of any shares or other interests held by the shareholder of the Borrower directly or indirectly in the Borrower (including ownership, voting rights or powers, or direct or indirect economic interests in any such shares).

21.3 Disposals

(a) 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.

(b) Paragraph (a) above does not apply to any sale, lease, transfer or other disposal:

(i) made in the ordinary course of trading of the disposing entity;

(ii) of assets in exchange for other assets comparable or superior as to type, value and quality; or

(iii) where the higher of the market value or consideration receivable (when aggregated with the higher of the market value or consideration receivable for any other sale, lease, transfer or other disposal, other than any permitted under paragraphs (i) to (ii) above does not exceed US$5,000,000 (or its equivalent in another currency or currencies) in any financial year.

21.4 Pari Passu

Each of the Borrower and the Guarantor 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.

21.5 Merger

The Borrower shall not enter into any amalgamation, demerger, merger or corporate reconstruction.

21.6 Change of Business

The Borrower must not carry on any business other than the Project.

21.7 Financial Indebtedness

(a) Except as provided in paragraph (b) below, the Borrower must not incur or permit to be outstanding any Financial Indebtedness.

(b) Paragraph (a) does not apply to:

(i) any Financial Indebtedness incurred under the Finance Documents;

(ii) any Financial Indebtedness under finance or capital leases of equipment if the aggregate capital value of the equipment leased does not exceed US$40,000,000 or its equivalent at any time; and

(iii) any Financial Indebtedness approved by the Majority Lenders.

21.8 Acquisitions

(a) Except as provided below, the Borrower must not make any acquisition or investment.

(b) Paragraph (a) does not apply to any investments or acquisitions which:

(i) result from extensions of trade credit incurred in the ordinary course of business, so long as such trade credit is payable within ninety (90) days of the date the respective goods are delivered or the respective services are rendered and are not more than ninety (90) days overdue;

(ii) constitute commercial bank deposits in the ordinary course of business in the Bank Accounts; or

(iii) constitute money market funds held in any Bank Account which have a rating in the highest investment category granted by a recognised credit rating agency at the time of acquisition.

21.9 Environmental and Social Matters

(a) The Borrower must:

(i) comply with all Environmental and Social Laws as applicable to the Borrower;

(ii) obtain, maintain and ensure compliance with all requisite approvals under applicable Environmental and Social Laws;

(iii) implement procedures to monitor compliance with and to prevent liability under any Environmental and Social Laws, applicable to it; and

(iv) comply with the Environmental and Social Standards as each are applicable to the Borrower.

(b) The Borrower must indemnify each Finance Party against any loss or liability incurred by that Finance Party as a result of any actual or alleged breach of any Environmental and Social Laws or any Environmental and Social Standards by any person, and which would not have arisen if a Finance Document had not been entered into, unless it is caused by that Finance Party's gross negligence or wilful misconduct.

21.10 Loans

(a) Except as provided below, neither the Borrower nor the Guarantor shall be the creditor in respect of any Financial Indebtedness.

(b) Paragraph (a) does not apply to:

(i) any credit provided under a Project Document;

(ii) any credit approved by the Facility Agent; or

(iii) any investments or acquisitions which:

(A) result from extensions of trade credit incurred in the ordinary course of business, so long as such trade credit is payable within ninety (90) days of the date the respective goods are delivered or

the respective services are rendered and are not more than ninety (90) days overdue;

(B) constitute commercial bank deposits in the ordinary course of business in the Bank Accounts; or

(C) constitute money market funds held in any Bank Account which have a rating in the highest investment category granted by a recognised credit rating agency at the time of acquisition.

21.11 Third Party Guarantees

(a) In this Clause 21.11 (*Third Party Guarantees*), a guarantee includes an indemnity or other assurance against loss.

(b) No Borrower shall incur or allow to be outstanding any guarantee by it in respect of any person, unless with the prior written consent of the Facility Agent.

21.12 Capital Expenditures

The Borrower must not incur any capital expenditure, other than in accordance with the Budget.

21.13 Project Works

(a) The Borrower must use its best endeavours to ensure that:

(i) the Project Works are completed in accordance with the Project Documents and the appropriate Good Industry Practice; and

(ii) the Actual Completion Date occurs by, or as soon as practicable after, the Scheduled Completion Date.

(b) The Borrower must not, without the prior consent of the Facility Agent agree to the issue of, or the deferral of the issue of, any certificate of completion (or similar document) under the EPC Contract.

21.14 Operation and Maintenance

The Borrower must diligently operate and maintain, or ensure the diligent operation and maintenance of, the Project in a safe, efficient and business-like manner and in accordance with the Transaction Documents and the appropriate Good Industry Practice.

21.15 Project Documents

(a) The Borrower must:

(i) exercise its rights and comply with its obligations under each Project Document to which it is a party; and

(ii) ensure (so far as this is within its control) that each other party to a Project Document exercises its rights and complies with its obligations under that Project Document,

in a proper and timely manner consistent with the Borrower's obligations under the Finance Documents.

(b) The Borrower must not and must not agree to:

(i) amend or waive;

(ii) assign or transfer; or

(iii) terminate, suspend or abandon,

all or any part of a Project Document without the prior written consent of the Facility Agent.

21.16 Material Contracts

(a) Except with the prior consent of the Facility Agent, the Borrower must not enter into any material contract other than the documents specified in paragraphs (a) and (b) of the definition of Project Documents.

(b) The Borrower must ensure that each material contract it enters into after the date of this Agreement is capable of being made subject to a Security in favour of the Finance Parties.

21.17 Tax Affairs

The Borrower must:

(a) promptly file all Tax reports and returns required to be filed by it in any jurisdiction;

(b) promptly pay all Taxes or, if any Tax is being contested in good faith and by appropriate means, ensure an adequate reserve is set aside for payment of that Tax;

(c) arrange its Tax affairs in such a manner to maximise any relevant relief and allowance in respect of any Tax;

(d) apply all tax credits, losses, reliefs or allowances in the manner and to the extent taken into account in any forecast; and

(e) not surrender or dispose of any tax credit, loss, relief or allowance available to and usable by it.

21.18 Insurances

(a) The Borrower shall maintain insurances on and in relation to the Project and its assets against those risks and to the extent as is usual for companies carrying on

the construction and operation of projects the same or substantially similar to the Project.

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

21.19 Share Capital

Without the prior written consent of the Facility Agent, the Borrower must not:

(a) issue any shares or alter any rights attaching to its issued shares as at the date of this Agreement; or

(b) issue any voting capital.

21.20 Treasury Transactions

(a) The Borrower shall not enter into any Treasury Transaction, other than the hedging transactions documented by the Hedging Agreements.

(b) If the Borrower proposes to enter into any Hedging Agreements, the Borrower shall give Industrial and Commercial Bank of China Limited or its Affiliates (**"ICBC Group"**), a right of first refusal in respect of the execution of any hedging to be entered into by a hedging bank (other than a member of ICBC Group) regarding the Facility. Such right of first refusal shall prohibit the Borrower from entering into any hedging with a hedging bank (other than a member of ICBC Group) if a member of ICBC Group (a) provides the same or better pricing terms on the relevant hedging than that of the relevant hedging bank and (b) makes a binding offer to enter into such relevant hedging on such same or better pricing terms.

21.21 Compliance with Laws

The Borrower shall comply with:

(a) all applicable laws or regulations (including any Transaction Authorisations) to which it may be subject;

(b) all Anti-Money Laundering, Economic or Trade Sanctions and Anti-Terrorism Laws;

(c) all regulations issued by OFAC;

(d) all Corrupt Practices Laws; and

(e) all Sanctions,

to which it may be subject.

21.22 Sinosure Insurance Policy

Neither the Borrower nor the Guarantor shall knowingly act or omit to do anything which may adversely prejudice any rights of the Lenders under the Sinosure Insurance Policy.

21.23 Sinosure Requirements

The Borrower shall execute all such other documents and instruments and do or refrain from doing all such other acts and things as the Facility Agent may reasonable require following a request by Sinosure to the Facility Agent pursuant to the Sinosure Insurance Policy:

(a) in order to comply with, and carry out the transactions contemplated by, the Finance Documents and any documents required to be delivered under the Finance Documents; and

(b) in order for the beneficiaries under the Sinosure Insurance Policy to comply with and continue to benefit from the Sinosure Insurance Policy or to maintain the effectiveness of the Sinosure Insurance Policy.

21.24 Bank Accounts

(a) The Borrower shall open and maintain the Bank Accounts in accordance with the Accounts Agreement and other Finance Documents.

(b) The Borrower shall apply the amounts in the Borrower Collection Account in accordance with the Accounts Agreement and other Finance Documents.

(c) The Bank Accounts will be charged to the Security Agent (for the benefit of all Lenders) pursuant to the Deed of Charge.

21.25 Second Advance Payment

The Borrower undertakes that the Second Advance Payment shall be paid to the EPC Contractor by it within twelve (12) months after the date of payment of the Initial Advance Payment.

21.26 Budget

The Guarantor undertakes that it will include the annual principal and interest payments due under this Agreement in its relevant annual fiscal budgets for the Republic of Sierra Leone.

21.27 Application of FATCA

The Borrower must procure that, unless otherwise agreed by all Finance Parties, it shall not become a FATCA FFI or a US Tax Obligor.

21.28 Use of Proceeds

The Borrower shall ensure that the proceeds of each Utilisation will only be used for the purposes specified in Clause 3.1 (*Purpose*) of this Agreement.

21.29 Further Assurance

(a) Each of the Borrower and the Guarantor shall promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may reasonably specify (and in such form as the Security Agent may reasonably require in favour of the Security Agent or its nominee(s)):

(i) to perfect the Security created, or intended to be created, now or at any time hereafter, under or evidenced by the Security Documents (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Transaction Security) or for the exercise of any rights, powers and remedies of the Security Agent or the Finance Parties provided by or pursuant to the Finance Documents or by law;

(ii) to confer on the Security Agent or confer on the Finance Parties Security over any property and assets of that Security Provider located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to the Security Documents; and/or

(iii) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Transaction Security.

(b) Each of the Borrower and the Guarantor shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Finance Parties by or pursuant to the Finance Documents.

21.30 Conditions Subsequent

The Borrower shall, immediately upon signing any Service Agreements or any leases in connection with leasing the New Port which are duly executed by all partiers thereto, enter into an assignment in relation to the Service Agreements and leases for the benefits of the Lenders (in form and substance satisfactory to the Facility Agent) and take all such action as is available to it as may be necessary for the purpose of the creation, perfection, protection or maintenance of any such Security for the benefits of the Lenders.

22. EVENTS OF DEFAULT

Each of the events or circumstances set out in Clause 22 (*Events of Default*) (other than Clause 22.27 (*Acceleration*)) is an Event of Default.

22.1 Non–Payment

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

(a) its failure to pay is caused by:

(i) administrative or technical error; or

(ii) a Disruption Event; and

(b) payment is made within three (3) Business Days of its due date.

22.2 Financial Covenants

(a) The DSCR for any Calculation Period ending on a Calculation Date is less than 1.1:1.

(b) The Debt:Equity Ratio is more than 80:20.

22.3 Other Obligations

(a) A Security Provider or the Guarantor does not comply with any provision of the Finance Documents (other than those referred to in Clause 22.1 (*Non-Payment*) and Clause 22.2 (*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 (5) Business Days of the earlier of (i) the Facility Agent giving notice to the Borrower and (ii) the Borrower becoming aware of the failure to comply.

22.4 Misrepresentation

Any representation or statement made or deemed to be made by a Security Provider or the Guarantor in the Finance Documents or any other document delivered by or on behalf of any Security Provider or the Guarantor under or in connection with any Finance Document is or proves to have been incorrect or misleading when made or deemed to be made.

22.5 Cross Default

(a) Security Providers Cross Default

(i) Any Financial Indebtedness of a Security Provider is not paid when due nor within any originally applicable grace period.

(ii) Any Financial Indebtedness of a Security Provider 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).

(iii) Any commitment for any Financial Indebtedness of a Security Provider is cancelled or suspended by a creditor of such Security Provider as a result of an event of default (however described).

(iv) Any creditor of a Security Provider becomes entitled to declare any Financial Indebtedness of such Security Provider due and payable prior to its specified maturity as a result of an event of default (however described).

(v) No Event of Default will occur under this Clause 22.5(a) (*Cross Default*) if the aggregate amount of Financial Indebtedness of or the commitment for Financial Indebtedness of the relevant Security Provider falling within paragraphs (i) to (iv) is less than:

(A) with respect to the Borrower, US$10,000,000 (or its equivalent in other currencies);

(B) with respect to Tidfore, US$30,000,000 (or its equivalent in other currencies); and

(C) with respect to the Shareholder, where such event does not have or could not reasonably be expected to have, a Material Adverse Effect.

(b) Cross Default - Guarantor or MOTA

(i) Any External Indebtedness of the Guarantor or MOTA is not paid when due nor within any originally applicable grace period.

(ii) Any External Indebtedness of the Guarantor or MOTA 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).

(iii) Any commitment for any External Indebtedness of the Guarantor or MOTA is cancelled or suspended by a creditor of the Guarantor or MOTA as a result of an event of default (however described).

(iv) Any creditor of the Guarantor or MOTA becomes entitled to declare any External Indebtedness of the Guarantor or MOTA due and payable prior to its specified maturity as a result of an event of default (however described).

(v) Any Security securing the External Indebtedness of the Guarantor or MOTA becomes enforceable.

(vi) No Event of Default will occur under this Clause 22.5(b) (*Cross Default*) if the aggregate amount of Financial Indebtedness of the Guarantor or the commitment for Financial Indebtedness of the Guarantor or MOTA falling within paragraphs (i) to (v) is less than US$150,000,000 (or its equivalent in other currencies).

22.6 Insolvency

(a) The Borrower or Tidfore is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.

(b) The value of the assets of the Borrower or Tidfore is less than its liabilities (taking into account contingent and prospective liabilities).

(c) The Borrower or Tidfore is deemed to, or is declared to, be unable to pay its debts under applicable law.

(d) A moratorium is declared in respect of any indebtedness of the Borrower or Tidfore.

22.7 Insolvency Proceedings

Any corporate action, legal proceedings or other procedure or step is taken in relation to:

(a) the suspension of payments, a moratorium of any indebtedness, winding–up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Borrower or Tidfore;

(b) a composition, compromise, assignment or arrangement with any creditor of the Borrower or Tidfore;

(c) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Borrower or Tidfore or any of its assets; or

(d) enforcement of any Security over any assets of the Borrower or Tidfore,

or any analogous procedure or step is taken in any jurisdiction.

This Clause 22.7 (*Insolvency Proceedings*) shall not apply to any winding–up petition which is frivolous or vexatious and is discharged, stayed or dismissed within fourteen (14) days of commencement.

22.8 Creditors' Process

Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of the Borrower or Tidfore having an aggregate value of US$5,000,000 and is not discharged within ninety (90) days.

22.9 Cessation of Business

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

22.10 Change of Control

A change of control occurs in respect of the Borrower.

For the purposes of this Clause:

(a) a "**change of control**" occurs if the Guarantor ceases to control the Borrower; and

(b) "**control**" means the power to direct the management and policies of an entity, whether through the ownership of voting capital, by contract or otherwise.

22.11 Unlawfulness

(a) It is or becomes unlawful for a Security Provider or the Guarantor to perform any of its obligations under the Transaction Documents.

(b) Any obligation or obligations of a Security Provider or the Guarantor under any Finance Documents are not or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lenders under the Finance Documents.

(c) Any Finance Document ceases to be in full force and effect or any Transaction Security ceases to be legal, valid, binding, enforceable or effective or is alleged by a party to it (other than a Finance Party) to be ineffective.

22.12 Repudiation, Rescission or Modification

(a) A Security Provider or Guarantor (or any other relevant party) rescinds or purports to rescind or repudiates or purports to repudiate a Transaction Document or any of the Transaction Security or evidences an intention to rescind or repudiate a Transaction Document or any Transaction Security.

(b) A Project Document is modified, suspended or terminated without the prior written consent of the Facility Agent in many material respect.

22.13 Expropriation

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

22.14 Litigation

(a) Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened in relation to the Transaction Documents or the transactions contemplated in the Transaction Documents.

(b) No Event of Default will occur under paragraph (a) above where the amount of damages claimed against or rewarded against (i) the Borrower or the Guarantor in relation to any litigation, arbitration, proceedings or disputes relating to the EPC Contract does not, or is not reasonably likely to exceed US$5,000,000 and (ii) any other Security Provider, which does not have or could not be reasonably expected to have, a Material Adverse Effect .

22.15 Invalid Security

(a) Any of the Transaction Security fails to be perfected or in full force and effect, or ceases to be perfected or to be in full force and effect and is such lack of perfection is capable of being cured, it is not cured within ten (10) days of the occurrence thereof.

(b) Transaction Security created or purported to be created under a Security Document is not, or ceases to be, a first ranking security in favour of the Security Agent.

22.16 Abandonment

(a) The Borrower abandons all or part of the Project.

(b) Without limiting paragraph (a) above, the Borrower will be deemed to have abandoned the Project if it fails to perform a significant part of the operations or if no significant work or service is performed or provided (whether by it or by the EPC Contractor) for a continuous period of one hundred and twenty (120) days (excluding any time required for the carrying out of necessary maintenance).

22.17 Failure to Make Payments under the EPC Contract

The Borrower as the employer under the EPC Contract fails to pay on the due date any amount payable pursuant to the EPC Contract at the place and in the currency in which it is expressed to be payable.

22.18 Insurances

Any insurance required to be maintained in accordance with this Agreement:

(a) is not, ceases to be, in full force or effect; or

(b) is repudiated, avoided or suspended, in each case to any extent.

22.19 Failure to Achieve Actual Completion Date

The Actual Completion Date does not occur on the date which is six (6) months falling after the Scheduled Completion Date.

22.20 Failure to Comply with Court Judgment or Arbitral Award

(a) A Security Provider fails to comply with or pay by the required time any sum due from it under any final judgment or any final order made or given by a court or arbitral tribunal or other arbitral body, in each case of competent jurisdiction.

(b) No Event of Default under paragraph (a) above will occur if the aggregate liability under that judgment or order is less than:

(i) with respect to the Borrower, US$5,000,000 (or its equivalent in any other currency or currencies);

(ii) with respect to Tidfore, US$30,000,000 (or its equivalent in any other currency or currencies);

(iii) with respect to the Guarantor (or MOTA), US$50,000,000 (or its equivalent in any other currency or currencies); and

(iv) with respect to any other Security Provider, where such failure does not have or could not be reasonably expected to have, a Material Adverse Effect.

22.21 Material License

(a) Any Material Licence is terminated, cancelled, suspended or revoked (whether wholly or in part).

(b) Any restrictions or conditions are imposed on any Material Licence.

(c) Any Material Licence is modified or varied in a way that is adverse in any material respect to the interests of the relevant member or members of the Borrower.

(d) Any Material Licence expires and is not renewed on substantially the same terms.

22.22 Convertibility

Any foreign exchange law is amended, enacted or introduced or is reasonably likely to be amended, enacted or introduced in Sierra Leone that (in the opinion of the Majority Lenders):

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

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

22.23 Sinosure

(a) The Sinosure Insurance Policy ceases to be effective in accordance with its terms either in whole or in part.

(b) Sinosure refuses to accept a claim made or compensate the Lenders in accordance with the Sinosure Insurance Policy.

22.24 Moratorium

(a) The Borrower or Tidfore declares a moratorium, standstill or similar suspension of payments in respect of its Financial Indebtedness.

(b) The Guarantor declares a moratorium, standstill or similar suspension of payments in respect of the Financial Indebtedness of Sierra Leone.

22.25 Political and economic risk

A deterioration occurs in the political or economic situation generally in Sierra Leone, or an act of war or hostilities, invasion, armed conflict or act of foreign enemy, revolution, insurrection, insurgency or threat thereof occurs in or involving Sierra Leone, unless (in any such case) this does not and will not have a Material Adverse Effect.

22.26 Material Adverse Change

Any event or circumstance occurs which the Majority Lenders reasonably believe has or is likely to have a Material Adverse Effect.

22.27 Acceleration

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

(a) cancel the Total Commitments whereupon they shall immediately be cancelled;

(b) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable;

(c) declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand by the Facility Agent on the instructions of the Majority Lenders; and/or

exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

23. CHANGES TO THE LENDERS

23.1 Assignment and Transfers by the Lenders

Subject to this Clause 23 (*Changes to the Lenders*), a Lender (the "**Existing Lender**") may:

(a) assign any of its rights; or

(b) transfer by novation any of its rights and obligations,

to Sinosure, 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**").

23.2 Conditions of Assignment or Transfer

(a) An assignment will only be effective on:

(i) receipt by the Facility Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Facility Agent) that the New Lender will assume the same obligations to the other Finance Parties as it would have been under if it was the Original Lender; and

(ii) performance by the Facility Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the

Facility Agent shall promptly notify to the Existing Lender and the New Lender.

(b) A transfer will only be effective if the procedure set out in Clause 23.5 (*Procedure for Transfer*) is complied with.

(c) If:

(i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and

(ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, the Borrower or the Guarantor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 12 (*Tax Gross Up and Indemnities*) or Clause 13 (*Increased Costs*),

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

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

23.3 Assignment or Transfer fee

The New Lender shall pay to the Facility Agent (for the account of the Original Lender) an assignment or transfer fee pursuant to the relevant assignment or transfer fee letter entered between the Facility Agent and such New Lender.

23.4 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 Transaction Documents or any other documents;

(ii) the financial condition of any Security Provider or Guarantor;

(iii) the performance and observance by any Security Provider or Guarantor of its obligations under the Transaction Documents or any other documents; or

(iv) the accuracy of any statements (whether written or oral) made in or in connection with any Transaction Document or any other document,

and any representations or warranties implied by law are excluded.

(b) Each New Lender confirms to the Existing Lender and the other Finance Parties and the Secured Parties that it:

(i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Security Provider or the Guarantor 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 in connection with any Transaction Document or the Transaction Security; and

(ii) will continue to make its own independent appraisal of the creditworthiness of each Security Provider or the Guarantor 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 23 (*Changes to the Lenders*); or

(ii) support any losses directly or indirectly incurred by the New Lender by reason of the non–performance by any Security Provider or the Guarantor of its obligations under the Transaction Documents or otherwise.

23.5 Procedure for Transfer

(a) Subject to the conditions set out in Clause 23.2 (*Conditions of Assignment or Transfer*) a transfer is effected in accordance with paragraph (c) below when the Facility Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Facility Agent shall, subject to paragraph (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 Facility Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.

(c) Subject to Clause 23.9 (*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 and in respect of the Transaction Security each of the Security Providers or the Guarantor and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and in respect of the Transaction Security and their respective rights against one another under the Finance Documents and in respect of the Transaction Security shall be cancelled (being the **"Discharged Rights and Obligations"**);

(ii) each of the Security Providers or the Guarantor 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 Security Provider or the Guarantor and the New Lender have assumed and/or acquired the same in place of that Security Provider or the Guarantor and the Existing Lender;

(iii) the Facility Agent, the Security Agent, the Mandated Lead Arranger, the New Lender and other Lenders shall acquire the same rights and assume the same obligations between themselves and in respect of the Transaction Security as they would have acquired and assumed had the New Lender been the Original Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Facility Agent, the Security Agent, the Mandated Lead 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".

23.6 Procedure for Assignment

(a) Subject to the conditions set out in Clause 23.2 (*Conditions of Assignment or Transfer*) an assignment will be effected in accordance with paragraph (c) below when the Facility Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Facility Agent shall, subject to 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 Facility Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.

(c) Subject to Clause 23.9 (*Pro Rata Interest Settlement*), on the Transfer Date:

(i) the rights of the Existing Lender under the Finance Documents expressed to be the subject of the assignment in the Assignment Agreement will automatically be assigned absolutely by the Existing Lender to the New Lender;

(ii) the Existing Lender will automatically be released by each Security Provider and the Guarantor and the other Finance Parties from the obligations (the "**Relevant Obligations**") owed by it and 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.

A Lender may utilise procedures other than those set out in this Clause 23.6 (*Procedure for Assignment*) to assign its rights under the Finance Documents (but not, except with the consent of the relevant Security Provider and the Guarantor or in accordance with Clause 23.5 (*Procedure for Transfer*), to obtain a release by that Security Provider and the Guarantor from the obligations it owes to that Security Provider and the Guarantor or the assumption of equivalent obligations by a New Lender) so long as it complies with the conditions set out in Clause 23.2 (*Conditions of Assignment or Transfer*).

23.7 Copy of Transfer Certificate or Assignment Agreement to the Borrower

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

23.8 Security over Lenders' Rights

In addition to the other rights provided to Lenders under this Clause 23.8 (*Security over Lenders' Rights*), each Lender may at any time, and without consulting with or obtaining consent from any Security Provider and the Guarantor, 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 any trustee or representative of any holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities,

except that no such charge, assignment or Security shall:

(i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security for the Lender as a party to any of the Finance Documents; or

(ii) require any payments to be made by a Security Provider and the Guarantor other than or greater than those required to be made to the relevant Lender under the Finance Documents, or grant to any person any rights more extensive than those granted to the relevant Lender under the Finance Documents.

23.9 Pro Rata Interest Settlement

If the Facility Agent has notified the Lenders that it is able to distribute interest payments on a "pro rata basis" to Existing Lenders and New Lenders then (in respect of any transfer pursuant to Clause 23.5 (*Procedure for Transfer*) or any assignment pursuant to Clause 23.6 (*Procedure for Assignment*) the Transfer Date in relation to which is, in each case, after the date of such notification and is not on the last day of an Interest Period):

(a) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date (**"Accrued Amounts"**) and shall become due and payable to the Existing Lender (without 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

(b) the rights assigned or transferred by the Existing Lender will not include the right to the Accrued Amounts, so that, for the avoidance of doubt:

(i) when the Accrued Amounts become payable, those Accrued Amounts will be payable to the Existing Lender; and

(ii) the amount payable to the New Lender on that date will be the amount which, but for the application of this Clause 23.9 (*Pro Rata Interest Settlement*), would have been payable to it on that date, but after deduction of the Accrued Amounts.

24. CHANGES TO THE BORROWER AND THE GUARANTOR

24.1 Assignment and Transfers by the Borrower and the Guarantor

Neither the Borrower nor the Guarantor may assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

25. ROLE OF THE FACILITY AGENT AND THE MANDATED LEAD ARRANGER

25.1 Appointment of the Facility Agent

(a) Each of the Mandated Lead Arranger and the Lenders appoints the Facility Agent to act as its agent under and in connection with the Finance Documents.

(b) Each of the Mandated Lead Arranger and the Lenders authorises the Facility Agent to perform the duties, obligations and responsibilities and exercise the rights, powers, authorities and discretions specifically given to the Facility Agent

under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

25.2 Instructions

(a) The Facility Agent shall:

(i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by:

(A) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision; and

(B) in all other cases, the 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 Facility 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. The Facility Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.

(c) Save in the case of decisions stipulated to be a matter for any other Lender or group of Lenders under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Facility Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties save for the Security Agent.

(d) The Facility Agent may refrain from acting in accordance with any instructions of any Lender or group of Lenders until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability which it may incur in complying with those instructions.

(e) In the absence of instructions, the Facility Agent may act (or refrain from acting) as it considers to be in the best interest of the Lenders.

(f) The Facility Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document.

25.3 Duties of the Facility Agent

(a) The Facility Agent's duties under the Finance Documents are solely mechanical and administrative in nature.

(b) Subject to paragraph (c) below, the Facility Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Facility Agent for that Party by any other Party.

(c) Without prejudice to Clause 23.7 (*Copy of Transfer Certificate or Assignment Agreement to the Borrower*), paragraph (b) above shall not apply to any Transfer Certificate or to any Assignment Agreement.

(d) Except where a Finance Document specifically provides otherwise, the Facility Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.

(e) If the Facility Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.

(f) If the Facility Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Facility Agent, the Mandated Lead Arranger or the Security Agent) under this Agreement it shall promptly notify the other Finance Parties.

(g) The Facility Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

25.4 Role of the Mandated Lead Arranger

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

25.5 No Fiduciary Duties

(a) Nothing in any Finance Document constitutes the Facility Agent or the Mandated Lead Arranger as a trustee or fiduciary of any other person.

(b) Neither the Facility Agent nor the Mandated Lead 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.

25.6 Business with the Security Providers

The Facility Agent and the Mandated Lead Arranger may accept deposits from, lend money to and generally engage in any kind of banking or other business with any Security Provider.

25.7 Rights and Discretions

(a) The Facility Agent may:

(i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;

(ii) assume that:

(A) any instructions received by it from the 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

(iii) rely on a certificate from any person:

(A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or

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

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

(b) The Facility Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:

(i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 22.1 (*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) is made on behalf of and with the consent and knowledge of all Security Providers and the Guarantor.

(c) The Facility Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.

(d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Facility Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Facility Agent (and so separate from any lawyers instructed by the Lenders) if the Facility Agent in its reasonable opinion deems this to be necessary.

(e) The Facility Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Facility Agent or by any other Party) and shall not be

liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.

(f) The Facility Agent may act in relation to the Finance Documents through its officers, employees and agents.

(g) Unless a Finance Document expressly provides otherwise the Facility Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.

(h) Notwithstanding any other provision of any Finance Document to the contrary, neither the Facility Agent nor the Mandated Lead 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.

(i) Notwithstanding any provision of any Finance Document to the contrary, the Facility Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

25.8 Responsibility for Documentation

Neither the Facility Agent nor the Mandated Lead Arranger is responsible or liable for:

(a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Facility Agent, the Mandated Lead Arranger, a Security Provider or any other person in or in connection with any Transaction Document or the transactions contemplated in the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document; or

(b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document.

25.9 No Duty to Monitor

The Facility Agent shall not be bound to enquire:

(a) whether or not any Default has occurred;

(b) as to the performance, default or any breach by any Party of its obligations under any Transaction Document; or

(c) whether any other event specified in any Transaction Document has occurred.

25.10 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 Facility Agent), the Facility Agent will not be liable for:

(i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document or the Transaction Security, unless directly caused by its gross negligence or wilful misconduct;

(ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Finance Document or the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document or the Transaction Security, other than by reason of its gross negligence or wilful misconduct; 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 including, without limitation, for negligence or any other category of liability whatsoever, (but not including any claim based on the fraud of the Facility Agent) arising as a result of:

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

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

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

(b) No Party (other than the Facility Agent) may take any proceedings against any officer, employee or agent of the Facility Agent in respect of any claim it might have against the Facility Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or any Transaction Document and any officer, employee or agent of the Facility Agent may rely on this Clause subject to Clause 1.4 (*Third Party Rights*) and the provisions of the Third Parties Act.

(c) The Facility Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Facility Agent if the Facility Agent has taken all necessary steps as

soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Facility Agent for that purpose.

(d) Nothing in this Agreement shall oblige the Facility Agent or the Mandated Lead 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 Facility Agent and the Mandated Lead 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 Facility Agent or the Mandated Lead Arranger.

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

25.11 Lenders' Indemnity to the Facility Agent

Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Facility Agent, within three (3) Business Days of demand, against any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Facility Agent (otherwise than by reason of the Facility Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 29.10 (*Disruption to Payment Systems etc.*) notwithstanding the Facility Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent) in acting as Facility Agent under the Finance Documents (unless the Facility Agent has been reimbursed by the Borrower or the Guarantor or the Shareholder pursuant to a Finance Document).

25.12 Resignation of the Facility Agent

(a) The Facility Agent may resign and appoint one of its Affiliates as successor by giving notice to the Lenders and the Borrower.

(b) Alternatively the Facility 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 Facility Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Facility Agent (after consultation with the Borrower) may appoint a successor Facility Agent.

(d) If the Facility Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Facility Agent is entitled to appoint a successor Facility Agent under paragraph (c) above, the Facility Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Facility Agent to become a party to this Agreement as Facility Agent) agree with the proposed successor Agent amendments to this Clause 25 (*Role of the Facility Agent and the Mandated Lead Arranger*) and any other term of this Agreement dealing with the rights or obligations of the Facility 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 Facility Agent shall make available to the successor Facility Agent such documents and records and provide such assistance as the successor Facility Agent may reasonably request for the purposes of performing its functions as Facility Agent under the Finance Documents. The Borrower shall, within three Business Days of demand, reimburse the retiring Facility Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.

(f) The Facility Agent's resignation notice shall only take effect upon the appointment of a successor.

(g) Upon the appointment of a successor, the retiring Facility Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (e) above) but shall remain entitled to the benefit of Clause 14.3 (*Indemnity to the Facility Agent*) and this Clause 25 (*Role of the Facility Agent and the Mandated Lead Arranger*) (and any agency fees for the account of the retiring Facility Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

(h) After consultation with the Borrower, the Majority Lenders may, by notice to the Facility Agent, require it to resign in accordance with paragraph (b) above. In this event, the Facility Agent shall resign in accordance with paragraph (b) above.

25.13 Confidentiality

(a) In acting as agent for the Finance Parties, the Facility Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.

(b) If information is received by another division or department of the Facility Agent, it may be treated as confidential to that division or department and the Facility Agent shall not be deemed to have notice of it.

25.14 Relationship with the Lenders

(a) Subject to Clause 23.9 (*Pro Rata Interest Settlement*), the Facility Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Facility Agent's principal office as notified to the Finance Parties from time to time) as 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 Facility Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender under the Finance Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under Clause 31.5 (*Electronic Communication*)) electronic mail address and/or any other information required to enable the transmission of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address (or such other information), department and officer by that Lender for the purposes of Clause 31.2 (*Addresses*) and paragraph 31.5(a)(ii) of Clause 31.5 (*Electronic Communication*) and the Facility Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.

25.15 Credit Appraisal by the Lenders

Without affecting the responsibility of any Security Provider and the Guarantor for information supplied by it or on its behalf in connection with any Transaction Document, each Lender confirms to the Facility Agent and the Mandated Lead 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 Transaction Document including but not limited to:

(a) the financial condition, status and nature of each member of any Security Provider or he Guarantor;

(b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document, the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Transaction Security;

(c) whether that Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Transaction Document, the Transaction Security, the transactions contemplated by the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Transaction Security;

(d) the adequacy, accuracy or completeness of any information provided by the Facility Agent, any Party or by any other person under or in connection with any Transaction Document, the transactions contemplated by any Transaction Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document; and

(e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property.

25.16 Facility Agent's Management Time

Any amount payable to the Facility Agent under Clause 14.3 *(Indemnity to the Facility Agent)*, Clause 16 (*Costs and Expenses*) and Clause 25.11 (*Lenders' Indemnity to the Facility Agent*) shall include the cost of utilising the Facility Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Facility Agent may notify to the Borrower and the Lenders, and is in addition to any fee paid or payable to the Facility Agent under Clause 11 (*Fees*).

25.17 Role of Reference Banks

(a) No Reference Bank is under any obligation to provide a quotation or any other information to the Facility Agent.

(b) No Reference Bank will be liable for any action taken by it under or in connection with any Finance Document, or for any Reference Bank Quotation, unless directly caused by its gross negligence or wilful misconduct.

(c) No Party (other than the relevant Reference Bank) may take any proceedings against any officer, employee or agent of any Reference Bank in respect of any claim it might have against that Reference Bank or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document, or to any Reference Bank Quotation, and any officer, employee or agent of each Reference Bank may rely on this Clause 25.17 subject to Clause 1.4 (*Third Party Rights*) and the provisions of the Third Parties Act.

25.18 Deduction from Amounts Payable by the Facility Agent

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

26. THE SECURITY AGENT

26.1 Security Agent as Trustee

(a) The Security Agent declares that it holds the Transaction Security on trust for the Secured Parties on the terms contained in this Agreement.

(b) Each of the Facility Agent, the Mandated Lead Arranger and each Lender authorises the Security Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Security Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

26.2 Enforcement through Security Agent Only

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

26.3 Instructions

(a) The Security Agent shall:

(i) subject to paragraphs (d) and (e) below exercise or refrain from exercising any right, power, authority or discretion vested in it as the Security Agent in accordance with any instructions given to it by the Facility Agent;

(ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with sub-paragraph (i) above (or if the relevant Finance Document stipulates the matter is a decision for any Lender or group of Lenders in accordance with instructions given to it by that Lender or group of Lenders).

(b) The Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Facility Agent (or, if the relevant Finance Document stipulates the matter is a decision for any 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 Security Agent may refrain from acting unless and until it receives those instructions or that clarification that it has requested.

(c) Save in the case of decisions stipulated to be a matter for any other Lender or group of Lenders under the relevant Finance Document and unless a contrary intention appears in the relevant Finance Document, any instructions given to the Security Agent by the Facility Agent shall override any conflicting instructions given by any other Parties and will be binding on all Secured Parties.

(d) Paragraph (a) above shall not apply:

(i) where a contrary indication appears in this Agreement;

(ii) where a Finance Document requires the Security Agent to act in a specified manner or to take a specified action;

(iii) in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role of Security Agent for the Secured Parties including, without limitation, Clauses 26.6 (*No Duty to Account*) to Clause 26.11 (*Exclusion of Liability*), Clause 26.14 (*Confidentiality*) to Clause 26.20 (*Custodians and Nominees*) and Clause 26.23 (*Acceptance of Title*) to Clause 26.27 (*Disapplication of Trustee Acts*); or

(iv) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:

(A) Clause 26.28 (*Order of Application*); and

(B) Clause 26.31 (*Permitted Deductions*).

(e) If giving effect to instructions given by the Facility Agent on behalf of the Majority Lenders would (in the Security Agent's opinion) have an effect equivalent to an amendment or waiver which is subject to Clause 35.2 (*Exceptions*), the Security Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Security Agent) whose consent would have been required in respect of that amendment or waiver.

(f) In exercising any discretion to exercise a right, power or authority under the Finance Documents where either:

(i) it has not received any instructions as to the exercise of that discretion; or

(ii) the exercise of that discretion is subject to paragraph (d)(iv) above,

the Security Agent shall do so having regard to the interests of all the Secured Parties.

(g) The Security 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 (together with any applicable VAT) which it may incur in complying with those instructions.

(h) Without prejudice to the provisions of the remainder of this Clause 26.3 (*Instructions*), in the absence of instructions, the Security Agent may act (or refrain from acting) as it considers in its discretion to be appropriate.

26.4 Duties of the Security Agent

(a) The Security Agent' duties under the Finance Documents are solely mechanical and administrative in nature.

(b) The Security Agent shall promptly:

(i) forward to the Facility Agent a copy of any document received by the Security Agent from any Security Provider under any Finance Document; and

(ii) forward to a Party the original or a copy of any document which is delivered to the Security Agent for that Party by any other Party.

(c) Except where a Finance Document specifically provides otherwise, the Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forward to another Party.

(d) If the Security Agent receives notice from a Party referring to any Finance Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Facility Agent.

(e) The Security Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

26.5 No Fiduciary Duties to Security Providers

Nothing in any Finance Document constitutes the Security Agent as an agent, trustee or fiduciary of any Security Provider.

26.6 No Duty to Account

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

26.7 Business with the Security Providers

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

26.8 Rights and Discretions

(a) The Security Agent may:

(i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;

(ii) assume that:

(A) any instructions received by it from the Facility Agent, Majority Lenders, the Lenders or any group of Lenders are duly given in accordance with the terms of the Finance Documents;

(B) unless it has received notice of revocation, that those instructions have not been revoked; and

(C) if it receives any instructions to act in relation to the Transaction Security, that all applicable conditions under the Finance Documents for so acting have been satisfied; and

(iii) rely on a certificate from any person:

(A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or

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

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

(b) The Security Agent shall be entitled to carry out all dealings with the Lenders through the Facility Agent and may give to the Facility Agent any notice or other communication required to be given by the Security Agent to the Lenders.

(c) The Security Agent may assume (unless it has received notice to the contrary in its capacity as the Security Agent for the Secured Parties) that:

(i) no Default has occurred;

(ii) any right, power, authority or discretion vested in any Party or any group of Lenders has not been exercised; and

(iii) any notice made by the Borrower is made on behalf of and with the consent and knowledge of all Security Providers.

(d) The Security Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.

(e) Without prejudice to the generality of paragraph (d) above or paragraph (f) below, the Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Security Agent (and so separate from any lawyers instructed by the Lenders and/or the Facility Agent) if the Security Agent in its reasonable opinion deems this to be necessary.

(f) The Security Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Security Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.

(g) The Security Agent, any Receiver and any Delegate may act in relation to the Finance Documents and the Transaction Security through its officers, employees and agents and shall not:

(i) be liable for any error of judgment made by any such person; or

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

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

(h) Unless a Finance Document expressly specifies otherwise, the Security Agent may disclose to any other Party any information it reasonably believes it has received as security trustee under this Agreement.

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

(j) Notwithstanding any provision of any Finance Document to the contrary, the Security Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

26.9 Responsibility for Documentation

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

(a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Security Agent, a Security Provider or any other person in or in connection with any Finance Document or the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;

(b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security; or

(c) any determination as to whether any information provided or to be provided to any Secured Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

26.10 No Duty to Monitor

The Security Agent shall not be bound to enquire:

(a) whether or not any Default has occurred;

(b) as to the performance, default or any breach by any Party of its obligations under any Finance Document; or

(c) whether any other event specified in any Finance Document has occurred.

26.11 Exclusion of Liability

(a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate), none of the Security Agent, any Receiver nor any Delegate will be liable for:

(i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document or the Transaction Security unless directly caused by its gross negligence or wilful misconduct;

(ii) exercising or not exercising any right, power, authority or discretion given to it by, or in connection with, any Finance Document, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document or the Transaction Security, other than by reason of its gross negligence or wilful misconduct;

(iii) any shortfall which arises on the enforcement or realisation of the Transaction Security; or

(iv) without prejudice to the generality of paragraphs (i) to (iii) above, any damages, costs, losses, any diminution in value or any liability whatsoever (but not including any claim based on the fraud of the Security Agent) arising as a result of:

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

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

including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market

conditions affecting the execution or settlement of transactions or the value of assets; breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

(b) No Party (other than the Security Agent, that Receiver or that Delegate (as applicable)) may take any proceedings against any officer, employee or agent of the Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Security Agent, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or any Transaction Security and any officer, employee or agent of the Security Agent, a Receiver or a Delegate may rely on this Clause subject to Clause 1.4 (*Third Party Rights*) and the provisions of the Third Parties Act.

(c) Nothing in this Agreement shall oblige the Security Agent to carry out:

(i) any "know your customer" or other checks in relation to any person; or

(ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any other Secured Party,

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

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

26.12 Lenders' Indemnity to the Security Agent

(a) Each Lender shall (in the proportion that its Commitment bear to the Total Commitments for the time being (or, if the Total Commitments are zero, immediately prior to their being reduced to zero)), indemnify the Security Agent and every Receiver and every Delegate, within three Business Days of demand, against any cost, loss or liability incurred by any of them (otherwise than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence

or wilful misconduct) in acting as the Security Agent, Receiver or Delegate under, or exercising any authority conferred under, the Debt Documents (unless the relevant Security Agent, Receiver or Delegate has been reimbursed by a Security Provider 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 Security 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 Security Agent to a Security Provider.

26.13 Resignation of the Security Agent

(a) The Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the Lenders and the Borrower.

(b) Alternatively the Security Agent may resign by giving 30 days' notice to the Lenders and the Borrower, in which case the Majority Lenders may appoint a successor Security Agent.

(c) If the Majority Lenders have not appointed a successor Security Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Security Agent (after consultation with the Facility Agent) may appoint a successor Security Agent.

(d) If the Security Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as security agent and the Security Agent is entitled to appoint a successor under paragraph (c) above, the Security Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Security Agent to become a party to this Agreement as the Security Agent) agree with the proposed successor Agent amendments to this Clause 26 (*the Security Agent*) and any other term of this Agreement dealing with the rights or obligations of the Security Agent consistent with then current market practice for the appointment and protection of corporate trustees together with any reasonably amendments to the security agency fee payable under this Agreement which are consistent with the successor Security Agent's normal fee rates and those amendments will bind the Parties

(e) The retiring Security Agent shall, make available to the successor Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as the Security Agent under the Finance Documents. The Borrower shall, within three Business Days of demand, reimburse the retiring Security Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.

(f) The Security Agent's resignation notice shall only take effect upon:

(i) the appointment of a successor; and

(ii) the transfer of all the Transaction Security to that successor.

(g) Upon the appointment of a successor, the retiring Security Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) of Clause 26.25 (*Winding Up of Trust*) and paragraph (e) above) but shall remain entitled to the benefit of this Clause 26 (*The Security Agent*) and Clause 14.4 (*Indemnity to the Security Agent*) (and the Security Agent fees for the account of the retiring Security Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.

(h) The Majority Lenders may, by notice to the Security Agent, require it to resign in accordance with paragraph (b) above. In this event, the Security Agent shall resign in accordance with paragraph (b) above but the cost referred to in paragraph (d) above shall be for the account of the Borrower.

26.14 Confidentiality

(a) In acting as trustee for the Secured Parties, the Security Agent shall be regarded as acting through its trustee 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 Security Agent, it may be treated as confidential to that division or department and the Security Agent shall not be deemed to have notice of it.

(c) Notwithstanding any other provision of any Finance Document to the contrary, Security Agent is not obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty.

26.15 Information from the Lenders

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

26.16 Credit Appraisal by the Secured Parties

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

(a) the financial condition, status and nature of each member of any Security Provider;

(b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document, the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Transaction Security;

(c) whether that Secured Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Transaction Document, the Transaction Security, the transactions contemplated by the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Transaction Security;

(d) the adequacy, accuracy or completeness of any information provided by the Security Agent, any Party or by any other person under or in connection with any Transaction Document, the transactions contemplated by any Transaction Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document; and

(e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property.

26.17 Reliance and Engagement Letters

The Security Agent may obtain and rely on any certificate or report from any Security Provider's auditor and may enter into any reliance letter or engagement letter relating to that certificate or report on such terms as it may consider appropriate (including, without limitation, restrictions on the auditor's liability and the extent to which that certificate or report may be relied on or disclosed).

26.18 No Responsibility to Perfect Transaction Security

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

(a) require the deposit with it of any deed or document certifying, representing or constituting the title of any Security Provider to any of the Charged Property;

(b) obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any Transaction Document or the Transaction Security;

(c) register, file or record or otherwise protect any of the Transaction Security (or the priority of any of the Transaction Security) under any law or regulation or to give notice to any person of the execution of any Transaction Document or of the Transaction Security;

(d) take, or to require any Security Provider to take, any step to perfect its title to any of the Charged Property or to render the Transaction Security effective or to secure the creation of any ancillary Security under any law or regulation; or

(e) require any further assurance in relation to any Security Document.

26.19 Insurance by Security Agent

(a) The Security Agent shall not be obliged:

(i) to insure any of the Charged Property;

(ii) to require any other person to maintain any insurance; or

(iii) to verify any obligation to arrange or maintain insurance contained in any Finance Document.

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

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

26.20 Custodians and Nominees

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

26.21 Delegation by the Security Agent

(a) Each of the Security Agent, any Receiver and any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any right, power, authority or discretion vested in it in its capacity as such.

(b) That delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions that the Security Agent, that Receiver or that Delegate (as the case may be) may, in its discretion, think fit in the interests of the Secured Parties.

(c) No Security Agent, Receiver or Delegate shall be bound to supervise, or be in any way responsible for any damages, costs or losses incurred by reason of any misconduct, omission or default on the part of, any such delegate or sub-delegate.

26.22 Additional Security Agent

(a) The Security Agent may at any time appoint (and subsequently remove) any person to act as a separate trustee or as a co-trustee jointly with it:

(i) if it considers that appointment to be in the interests of the Secured Parties; or

(ii) for the purposes of conforming to any legal requirement, restriction or condition which the Security Agent deems to be relevant; or

(iii) for obtaining or enforcing any judgment in any jurisdiction,

and the Security Agent shall give prior notice to the Borrower and the Secured Parties of that appointment.

(b) Any person so appointed shall have the rights, powers, authorities and discretions (not exceeding those given to the Security Agent under or in connection with the Finance Documents) and the duties, obligations and responsibilities that are given or imposed by the instrument of appointment.

(c) The remuneration that the Security Agent may pay to that person, and any costs and expenses (together with any applicable VAT) incurred by that person in performing its functions pursuant to that appointment shall, for the purposes of this Agreement, be treated as costs and expenses incurred by the Security Agent.

26.23 Acceptance of Title

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

26.24 Releases

Upon a disposal of any of the Charged Property pursuant to the enforcement of the Transaction Security by a Receiver or the Security Agent, the Security Agent is irrevocably authorised (at the cost of the Security Providers and without any consent, sanction, authority or further confirmation from any other Secured Party) to release, without recourse or warranty, that property from the Transaction Security and to execute any release of the Transaction Security or other claim over that asset and to issue any certificates of non-crystallisation of floating charges that may be required or desirable.

26.25 Winding Up of Trust

If the Security Agent, with the approval of the Facility Agent, determines that:

(a) all of the Secured Obligations and all other obligations secured by the Security Documents have been fully and finally discharged; and

(b) no Secured Party is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Security Provider pursuant to the Finance Documents,

then:

(i) the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Security Documents; and

(ii) the Security Agent which has resigned pursuant to Clause 26.13 (*Resignation of the Security Agent*) shall release, without recourse or warranty, all of its rights under each Security Document.

26.26 Powers Supplemental to Trustee Acts

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

26.27 Disapplication of Trustee Acts

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

26.28 Order of Application

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

(a) in discharging any sums owing to the Security Agent (in its capacity as such), any Receiver or any Delegate;

(b) in payment or distribution to the Facility Agent, on its behalf and on behalf of the other Secured Parties, for application towards the discharge of all sums due and payable by any Security Provider under any of the Finance Documents in accordance with Clause 29.5 (*Partial Payments*);

(c) if none of the Security Providers is under any further actual or contingent liability under any Finance Document, in payment or distribution to any person to whom the Security Agent is obliged to pay or distribute in priority to any Security Provider; and

(d) the balance, if any, in payment or distribution to the relevant Security Provider.

26.29 Investment of Proceeds

Prior to the application of the proceeds of the Transaction Security in accordance with Clause 26.28 (*Order of Application*) the Security Agent may, at its discretion, hold all or part of those proceeds in one or more interest bearing suspense or impersonal accounts in the name of the Security Agent with any financial institution (including itself) and for so long as the Security Agent thinks fit (the interest being credited to the relevant account) pending the application from time to time of those monies at the Security Agent's discretion in accordance with the provisions of Clause 26.28 (*Order of Application*).

26.30 Currency Conversion

(a) For the purpose of, or pending the discharge of, any of the Secured Obligations the Security Agent may convert any moneys received or recovered by the Security Agent from one currency to another, at the spot rate at which the Security Agent is able to purchase the currency in which the Secured Obligations are due with the amount received.

(b) The obligations of any Security Provider to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

26.31 Permitted Deductions

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

26.32 Good Discharge

(a) Any distribution or payment to be made in respect of the Secured Obligations by the Security Agent may be made to the Facility Agent on behalf of the Lenders and any distribution or payment made in that way shall be a good discharge, to the extent of that payment or distribution, by the Security Agent.

(b) The Security Agent is not under obligation to make payment to the Facility Agent in the same currency as that in which any Unpaid Sum is denominated.

26.33 Amounts Received by Security Providers

If any of the Security Providers receives or recovers any amount which, under the terms of any of the Finance Documents, should have been paid to the Security Agent, that Security Provider will hold the amount received or recovered on trust for the Security Agent and promptly pay that amount to the Security Agent for application in accordance with the terms of this Agreement.

27. 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.

28. SHARING AMONG THE FINANCE PARTIES

28.1 Payments to Finance Parties

If a Finance Party (a "**Recovering Finance Party**") receives or recovers any amount from a Security Provider and the Guarantor other than in accordance with Clause 29 (*Payment Mechanics*) (a "**Recovered Amount**") and applies that amount to a payment due under the Finance Documents then:

(a) the Recovering Finance Party shall, within three (3) Business Days, notify details of the receipt or recovery to the Facility Agent;

(b) the Facility Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Facility Agent and distributed in accordance with Clause 29 (*Payment Mechanics*), without taking account of any Tax which would be imposed on the Facility Agent in relation to the receipt, recovery or distribution; and

(c) the Recovering Finance Party shall, within three (3) Business Days of demand by the Facility Agent, pay to the Facility Agent an amount (the "**Sharing Payment**") equal to the amount of such receipt or recovery less any amount which the Facility Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 29.5 (*Partial Payments*).

28.2 Redistribution of Payments

The Facility Agent shall treat the Sharing Payment as if it had been paid by the relevant Security Provider or the Guarantor and distribute it between the Finance Parties (other than the Recovering Finance Party) (the "**Sharing Finance Parties**") in accordance with Clause 29.5 (*Payment Mechanics*) for application against the obligations of that Security Provider or the Guarantor to the Sharing Finance Parties.

28.3 Recovering Finance Party's Rights

On a distribution by the Facility Agent under Clause 28.2 (*Redistribution of Payments*) of a payment received by a Recovering Finance Party from a Security Provider or the Guarantor, as between that Security Provider or the Guarantor 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 Security Provider or the Guarantor.

28.4 Reversal of Redistribution

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

(a) each Sharing Finance Party shall, upon request of the Facility Agent, pay to the Facility Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay) (the "**Redistributed Amount**"); and

(b) as between the relevant Security Provider or the Guarantor and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Security Provider or the Guarantor.

28.5 Exceptions

(a) This Clause 28 (*Sharing among the Finance Parties*) 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 Security Provider or the Guarantor.

(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 that other Finance Party of the legal or arbitration proceedings; and

(ii) that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

29. PAYMENT MECHANICS

29.1 Payments to the Facility Agent

(a) On each date on which the Guarantor or a Security Provider or a Lender is required to make a payment under a Finance Document, the Guarantor or the Security Provider or Lender shall make the same available to the Facility Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Facility Agendas 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 with such bank as the Facility Agent specifies.

29.2 Distributions by the Facility Agent

Each payment received by the Facility Agent under the Finance Documents for another Party shall, subject to Clause 29.3 (*Distributions to the Security Provider or the Guarantor*) and Clause 29.4 (*Clawback*), be made available by the Facility Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Facility Agent by not less than five (5) Business Days' notice with a bank in the principal financial centre of the country of that currency.

29.3 Distributions to the Security Provider or the Guarantor

The Facility Agent may (with the consent of the Security Provider or the Guarantor or in accordance with Clause 30 (*Set-off*)) apply any amount received by it for the Security Provider or the Guarantor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from the Security Provider or the Guarantor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

29.4 Clawback

(a) Where a sum is to be paid to the Facility Agent under the Finance Documents for another Party, the Facility Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.

(b) If the Facility Agent pays an amount to another Party and it proves to be the case that the Facility Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Facility Agent shall on demand refund the same to the Facility Agent together with interest on that amount from the date of payment to the date of receipt by the Facility Agent, calculated by the Facility Agent to reflect its cost of funds.

29.5 Partial Payments

(a) If the Facility Agent receives a payment that is insufficient to discharge all the amounts then due and payable by the Borrower or the Guarantor under the Finance Documents, the Facility Agent shall apply that payment towards the obligations of the Borrower or the Guarantor (as the case may be) under the Finance Documents in the following order:

(i) **first**, in or towards payment pro rata of any unpaid fees, costs and expenses of the Facility Agent, any Delegate or Receiver and the Security Agent under the Finance Documents;

(ii) **secondly**, in or towards payment pro rata of any accrued interest, fee or commission due but unpaid under this Agreement;

(iii) **thirdly**, in or towards payment pro rata of any principal due but unpaid under this Agreement; and

(iv) **fourthly**, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.

(b) The Facility Agent shall, if so directed by the Majority Lenders, vary the order set out in paragraphs (a)(ii) to (iv) above.

(c) Paragraphs (a) and (b) above will override any appropriation made by the Borrower or the Guarantor.

29.6 No Set–Off by the Borrower and the Guarantor

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

29.7 Business Days

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

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

29.8 Currency of Account

(a) Subject to paragraphs (b) and (c) below, dollars is the currency of account and payment for any sum due from the Borrower or the Guarantor under any Finance Document.

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

(c) Any amount expressed to be payable in a currency other than dollars shall be paid in that other currency.

29.9 Change of Currency

(a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:

(i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Facility Agent (after consultation with the 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 Facility Agent (acting reasonably).

(b) If a change in any currency of a country occurs, this Agreement will, to the extent the Facility Agent(acting reasonably and after consultation with the 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.

29.10 Disruption to Payment Systems etc.

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

(a) the Facility 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 Facility Agent may deem necessary in the circumstances;

(b) the Facility 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 Facility 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 Facility 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 35 (*Amendments and Waivers*);

(e) the Facility Agent shall not be liable for any damages, costs or losses whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 29.10 (*Disruption to Payment Systems etc.*); and

(f) the Facility Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

30. SET–OFF

A Finance Party may set off any matured obligation due from the Borrower or the Guarantor under the Finance Documents (to the extent beneficially owned by that Finance

Party) against any matured obligation owed by that Finance Party to the Borrower or the Guarantor (as the case may be), regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set–off.

31. NOTICES

31.1 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.

31.2 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 Borrower and the Guarantor, that identified with its name below:

To the Borrower:

National Port Development (SL) Limited
18 Charlotte Street, Freetown, Sierra Leone
Telephone: +232 88 711111 / 79 438573 / 76 601132
Email: davidp@afc.biz
Attention: The Chairman

To the Guarantor:

Ministry of Finance and Economic Development of the Republic of Sierra Leone
3rd Floor, Treasure Building, George Street, Freetown, Sierra Leone
Telephone: +232 (0) 30 209 350
Email: minister@mofed.gov.sl / mlkargbo@yahoo.com
Attention: Momodu L Kargbo

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

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

To the Facility Agent:

Industrial and Commercial Bank of China Limited
55 Fuxingmennei Avenue, Xicheng District, Beijing, China
Telephone: +86 10 6610 7713
Fax: +86 10 6610 8429
Email: xilinzhaoyi@icbc.com.cn
Attention: Ms. Zhao Yi

To the Security Agent:

ICBC (London) PLC
81 King William Street, London EC4N 7BG
Telephone: +44 (0) 20 7398 8888
Fax: +44 (0) 20 73978899
Email: Chenhu.Liu@icbclondon.com / chloe.lin@icbclondon.com
Attention: Chenhu Liu / Chloe Lin

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

31.3 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 (5) 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 31.2 (*Addresses*), if addressed to that department or officer.

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

(c) All notices from or to the Borrower and the Guarantor shall be sent through the Facility Agent.

(d) Any communication or document made or delivered to the Borrower in accordance with this Clause 31 (*Notices*) will be deemed to have been made or delivered to each of the Borrower and the Guarantor.

(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.

31.4 Notification of Address and Fax Number

Promptly upon receipt of notification of an address and fax number or change of address, fax number pursuant to Clause 31.2 (*Addresses*) or changing its own address or fax number, the Facility Agent shall notify the other Parties.

31.5 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:

(i) to the extent that those Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication; and

(ii) if those Parties:

(A) 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

(B) notify each other of any change to their address or any other such information supplied by them by not less than five (5) Business Days' notice.

(b) Any electronic communication made between any two such Parties as are mentioned in paragraph (a) above will be effective only when actually received in readable form and in the case of any electronic communication made by a Party to the Facility Agent or the Security Agent only if it is addressed in such a manner as the Facility Agent or Security 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.

31.6 English Language

(a) Any notice given under or in connection with any Finance Document must be in English.

(b) All other documents provided under or in connection with any Finance Document must be:

(i) in English; or

(ii) if not in English, and if so required by the Facility 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.

32. CALCULATIONS AND CERTIFICATES

32.1 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.

32.2 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.

32.3 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 three hundred and sixty (360) days or, in any case where the practice in the Relevant Interbank Market differs, in accordance with that market practice.

33. PARTIAL INVALIDITY

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

34. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under the Finance Documents shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents. No election to affirm any of the Finance Documents on the part of 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 this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

35. AMENDMENTS AND WAIVERS

35.1 Required Consents

(a) Subject to Clause 35.2 (*Exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the

Borrower and the Guarantor and any such amendment or waiver will be binding on all Parties.

(b) The Facility Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 35 (*Amendments and Waivers*).

35.2 Exceptions

(a) An amendment or waiver that has the effect of changing or which relates to:

(i) the definition of "Majority Lenders" in Clause 1.1 (*Definitions*);

(ii) an extension to the date of payment of any amount under the Finance Documents;

(iii) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;

(iv) an increase in any Commitment or the Total Commitments, an extension of the Availability Period or any requirement that a cancellation of Commitment reduces the Commitment of the Lenders rateably under the Facility;

(v) a change to the Borrower or Guarantor other than in accordance with Clause 24 (*Changes to the Borrower and Guarantor*);

(vi) any provision which expressly requires the consent of all the Lenders;

(vii) Clause 2.2 (*Finance Parties' Rights and Obligations*), Clause 22.10 (*Change of Control*), Clause 23 (*Changes to the Lenders*), Clause 28 (*Sharing among the Finance Parties*), this Clause 35, the governing law of any Finance Document, or Clause 39.1 (*Jurisdiction*);

(viii) the nature or scope of:

(A) the guarantee and indemnity granted under Clause 17 (*Guarantee and Indemnity*);

(B) the Charged Property; or

(C) the manner in which the proceeds of enforcement of the Transaction Security are distributed;

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

(b) An amendment or waiver which relates to the rights or obligations of the Facility Agent, the Security Agent or an Arranger (each in its capacity as such) may not be effected without the consent of the Facility Agent, the Security Agent or, as the case may be, the relevant Arranger.

36. CONFIDENTIALITY

36.1 Confidential Information

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 36.2 (*Disclosure of Confidential Information*) and Clause 36.3 (*Disclosure to Numbering Service Provider*), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

36.2 Disclosure of Confidential Information

Any Finance Party may disclose:

(a) to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price–sensitive information, except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;

(b) to any person:

(i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Facility Agent or Security Agent and, in each case, to any of that person's Affiliates, Related Funds, Representatives and professional advisers;

(ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub–participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Security Providers and/or the Guarantor 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 sub–paragraph (b)(i) or (b)(ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph 25.14(b) of Clause 25.14 (*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 sub–paragraph (b)(i) or (b)(ii) above;

(v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;

(vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;

(vii) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 23.8 (*Security over Lenders' Rights*);

(viii) who is a Party; or

(ix) with the consent of the Borrower,

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

(A) in relation to sub–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 sub–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; and

(C) in relation to sub–paragraphs (b)(v), (b)(vii) and (b)(vi) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price–sensitive information, except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;

(c) to any person appointed by that Finance Party or by a person to whom sub–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 as may be 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 Security Providers and/or the Guarantor 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.

36.3 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 Security Providers and the Guarantor the following information:

(i) the names of the Security Providers and the Guarantor;

(ii) the country of domicile of the Security Providers and the Guarantor;

(iii) the place of incorporation of the Security Providers and the Guarantor;

(iv) the date of this Agreement;

(v) the names of the Facility Agent, the Security Agent and Arranger;

(vi) the date of each amendment and restatement of this Agreement;

(vii) the amount of the Total Commitments;

(viii) the currencies of the Facility;

(ix) the type of the Facility;

(x) the ranking of the Facility;

(xi) the Final Maturity Date for the Facility;

(xii) any changes to any of the information previously supplied pursuant to paragraphs (i) to (xi) above; and

(xiii) 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 Security Providers and/or the Guarantor 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 the Borrower and the Guarantor represents, and the Borrower shall procure that the Shareholder represents, that none of the information set out in sub–paragraphs (i) to (xiii) of paragraph (a) above is, or will at any time be, unpublished price–sensitive information.

(d) The Facility Agent shall notify the Borrower and the other Finance Parties of:

(i) the name of any numbering service provider appointed by the Facility Agent in respect of this Agreement, the Facility and/or one or more Security Providers and/or the Guarantor; and

(ii) the number or, as the case may be, numbers assigned to this Agreement, the Facility and/or the Security Providers and/or the Guarantor by such numbering service provider.

36.4 Entire Agreement

This Clause 36 (*Confidentiality*) constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

36.5 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 laws relating to insider dealing and market abuse, and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

36.6 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 sub–paragraph (b)(v) of Clause 36.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and

(b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 36 (*Confidentiality*).

36.7 Continuing Obligations

The obligations in this Clause 36 (*Confidentiality*) are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of twelve (12) months from the earlier of:

(a) the date on which all amounts payable by the Borrower and the Guarantor under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise ceased to be available; and

(b) the date on which such Finance Party otherwise ceases to be a Finance Party.

37. 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.

38. GOVERNING LAW

This Agreement and all non–contractual obligations arising out of or in connection with it shall be governed by English law.

39. ENFORCEMENT

39.1 Jurisdiction of English courts

(a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to its existence, validity or termination of this Agreement or any non–contractual obligation arising out of or in connection with this Agreement) (a "**Dispute**").

(b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

(c) This Clause 39.1 (*Jurisdiction*) is for the benefit of the Finance Parties only. As a result, no Finance Party or Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties and Secured Parties may take concurrent proceedings in any number of jurisdictions.

39.2 Service of Process

(a) Without prejudice to any other mode of service allowed under any relevant law:

(i) the Borrower irrevocably appoints RBS Accountants Limited, with its address at 16 Beaufort Court, Admirals Way, Docklands, London, E14 9XL and attention to Steven Askari, as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document;

(ii) the Guarantor irrevocably appoints RBS Accountants Limited, with its address at 16 Beaufort Court, Admirals Way, Docklands, London, E14 9XL and attention to Steven Askari, as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and

(iii) each of the Borrower and the Guarantor agrees that failure by a process agent to notify the Borrower or the Guarantor (as the case may be) 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 the Borrower and the Guarantor) must immediately (and in any event within fifteen (15) days of such event taking place) appoint another agent on terms acceptable to the Facility Agent. Failing this, the Facility Agent may appoint another agent for this purpose.

40. WAIVER OF IMMUNITY

To the extent that the Borrower or the Guarantor has or hereafter may acquire any immunity (sovereign or otherwise) in respect of its obligations under the Transaction Documents to which it is a party from jurisdiction of any court or from any legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property,

(a) each of the Borrower and the Guarantor hereby agrees that, should any proceedings be brought or any expert determination be sought against it or its assets other than assets protected by the diplomatic and consular privileges in any jurisdiction in relation to any Finance Document to which it is a party or any transaction contemplated by the Finance Documents, no immunity from such proceedings shall be claimed by or on behalf of itself or with respect to its assets;

(b) each of the Borrower and the Guarantor hereby irrevocably waives any requirement under the State Proceedings Act, 2000 of Sierra Leone for a claimant under each Finance Document to which it is a party to give prior notice before bringing a claim against it;

(c) each of the Borrower and the Guarantor consents generally in respect of the enforcement of any expert determination or arbitral award (whether by judgment or otherwise) against it in any such proceedings in any jurisdiction and to the giving of any relief or the issue of any process in connection with such determination or proceedings (including the making, enforcement or execution against or in respect of any property whatsoever irrespective of its use or intended use;

(d) each of the Borrower and the Guarantor irrevocably waives any objection that it may now or hereafter have to the venue of any action or proceeding brought as consented to in the Finance Documents and specifically waives any objection that any such action or proceeding has been brought in an inconvenient forum and agrees not to plead or claim the same;

(e) each of the Borrower and the Guarantor agrees that service of process in any such action or proceeding may be effected in any manner permitted by the law applicable to the aforementioned court, or in the manner permitted under the Finance Documents; and

(f) each of the Borrower and the Guarantor waives any and all rights it may have to enforce any expert determination, judgment or claim in the courts of any jurisdiction.

This Agreement has been executed and delivered as a deed on behalf of each of the Parties hereto on the date first above written.

Schedule 1
ORIGINAL LENDER

Name of the Original Lender	Commitment
The Industrial and Commercial Bank of China Limited	US$529,000,000
The Export-Import Bank of China	US$130,000,000
Total Commitments	**US$659,000,000**

Schedule 2
CONDITIONS PRECEDENT

1. **Corporate Documents**

(a) A copy of the constitutional documents of each of the Security Provider.

(b) A copy of a resolution of the board of directors (or shareholder's resolution, if applicable) of each of the Security Provider:

(i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute such document;

(ii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and

(iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.

(c) Evidence that Guarantor has: (i) approved the terms of, and the transactions contemplated by the Transaction Documents and resolving that it execute the Transaction Documents to which it is a party; (ii) authorised a specified person or persons to execute the Transaction Documents to which it is a party on its behalf; and (iii) authorised a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under and in connection with the Transaction Documents to which it is a party.

(d) A specimen of the signature of each authorised person referred to in paragraphs (b) and (c) above.

(e) A certified copy of the register of members/shareholders of the Borrower.

(f) A certified copy of each Material Licence.

(g) A certificate of each of the Borrower and the Guarantor (signed by an authorised signatory) confirming that borrowing or guaranteeing, as appropriate, the Total Commitments would not cause any borrowing, guaranteeing or similar limit binding on the Borrower and the Guarantor to be exceeded.

(h) A certificate of an authorised signatory of the relevant Security Provider and the Guarantor certifying that each copy document relating to it specified in this Schedule 2 (*Conditions Precedent*) is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.

2. **Transaction Documents**

A certified copy of the following Transaction Documents which are duly executed by all original partiers thereto:

(a) the EPC Contract; and

(b) the Concession Agreement.

3. **Finance Documents**

(a) This Agreement duly executed by all original parties to it.

(b) Sinosure Insurance Policy duly issued by Sinosure.

(c) Executed copies (with originals to follow as soon as reasonably practicable thereafter) or originals of each of the following Finance Documents, duly executed by each party thereto:

(i) the Security Assignment;

(ii) the Accounts Agreement;

(iii) the Deed of Charge;

(iv) the Mortgage over Assets;

(v) the Share Pledge;

(vi) each Direct Agreement;

(vii) each Fee Letter; and

(viii) any other document evidencing or creating security over any asset of the Borrower to secure any obligation of the Borrower under the Finance Documents.

(d) Executed copies (with originals to follow as soon as reasonably practicable thereafter) or originals of any account agreements or guarantees in relation thereto as reasonably required and satisfactory to the relevant Original Lender (including (if applicable) all notices required to be sent thereunder) duly executed by each party thereto.

(e) A copy of all notices required to be sent under the Security Documents referred to in paragraph (c) above, executed by the relevant Security Provider, duly acknowledged by the addressee.

(f) A copy of all share certificates, transfers and stock transfer forms or equivalent duly executed by the relevant Security Provider in blank in relation to the assets subject to or expressed to be subject to the Transaction Security and other documents of title to be provided under the Transaction Security Documents referred to in paragraph (c) above.

(g) Evidence that the relevant registrations required by applicable laws have been made in respect of the Security Documents referred to in paragraph (c) above.

4. **Legal Opinions**

The Facility Agent has received legal opinions from the following legal counsel substantially in the form satisfactory to the Facility Agent:

(a) legal opinion from English law counsel to the Finance Parties in connection with the enforceability of the English law governed Finance Documents;

(b) legal opinion from Sierra Leone counsel to the Finance Parties in connection with the enforceability of the Sierra Leone law governed Finance Documents;

(c) legal opinion from PRC counsel to the Finance Parties in connection with the enforceability of the PRC law governed Finance Documents;

(d) legal opinion from the Sierra Leone counsel to the Borrower with respect to the capacity of the Borrower;

(e) capacity legal opinion from the counsel to the Shareholder in connection with the Share Pledge; and

(f) legal opinion from the Attorney General of Sierra Leone with respect to (i) the approval of the terms of the Transaction Documents to which the Government is a party and the transactions contemplated by such Transaction Documents; (ii) the capacity of the Government and the relevant departments/agencies for and on behalf of the Government; (iii) enforceability of the Concession Agreement and other Transaction Documents to which the Government is a party.

5. **Approvals**

The Facility Agent has received a certified true copy of all governmental approvals, consents or permits (including governmental approvals, consents or permits from PRC and Sierra Leone) necessary for the implementation of the transaction contemplated by the Transaction Documents and the Project and such approvals are in full force and effect, including but without limitation to:

(a) Approval under section 13(1) of the Public Debt Management Act 2011 and section 68 of the Public Financial Management Act 2016 of Sierra Leone;

(b) the registration of the Security Documents governed by Sierra Leonean law with the Corporate Affairs Commission under the provisions of the Registration of Instruments Act, Cap. 256 of the Law of Sierra Leone 1960;

(c) the registration of this Agreement and the Security Documents governed by Sierra Leonean law at the Bank of Sierra Leone under the provisions of section 10(2) of the Investment Promotions Act No. 10 of 2001; and

(d) the filing of the Borrower's resolution(s) approving the execution of this Agreement with the Corporate Affairs Commission, under section 204 of the Companies Act No. 5 of 2009 of Sierra Leone.

6. **Other Documents and Evidence**

(a) Executed copy (with original to follow as soon as reasonably practicable thereafter) or original of the Government Letter of Support to the satisfactory of the Facility Agent.

(b) Budget in form and substance satisfactory to the Facility Agent.

(c) Evidence that any process agent referred to in Clause 39.2 (*Service of Process*) has accepted its appointment.

(d) A copy of any other Transaction Authorisation or other document, opinion or assurance which the Facility 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.

(e) Evidence that at least fifteen per cent. (15%) of Sinosure Insurance Premium has been received by Sinosure in full.

(f) Evidence that the Initial Advance Payment has been received by the EPC Contractor in full.

(g) Evidence that the amount standing to the credit of the DSRA is not less than the Required DSRA Balance.

(h) Evidence that the fees, costs and expenses then due from the Borrower pursuant to Clause 11 (*Fees*) and Clause 16 (*Costs and Expenses*) have been paid or will be paid by the first Utilisation Date.

(i) A confirmation letter from legal counsel to the Finance Parties confirming that all governmental approvals, consents or permits (including governmental approvals, consents or permits from Sierra Leone) necessary for the implementation of the Transaction and the Project have been obtained and are in full force and effect.

(j) The Facility Agent has received any other documents, certificates or instruments in connection with the Transaction or any Transaction Documents as the Facility Agent shall have reasonably requested, in each case in form, scope and substance satisfactory to the Facility Agent.

7. **Bank Accounts**

Evidence satisfactory to the Finance Parties that each of the Bank Accounts required to be opened under and in accordance with the Finance Document have been opened and is properly maintained in accordance with the terms of the Finance Documents.

Schedule 3

UTILISATION REQUEST

From:[Borrower]

To: [*Agent*]

Dated:_____

Dear Sirs

[NATIONAL PORT DEVELOPMENT (SL) LTD.] – [ ] Facility Agreement dated [ ] (the "Agreement")

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

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

Proposed Utilisation Date:	[ ] (or, if that is not a Business Day, the next Business Day)
Amount of Facility to be utilised	[ ]
	or, if less, the Available Facility
Total proposed Amount to be utilised	[ ]

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*].

5. This Utilisation Request is irrevocable.

Yours faithfully

.....

authorised signatory for

[*name of relevant Borrower*]

Schedule 4
FORM OF TRANSFER CERTIFICATE

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

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

[*New Lender*] (the "**New Lender**")

Dated: _____

[NATIONAL PORT DEVELOPMENT (SL) LTD.] – [ ] Facility Agreement dated [ ] (the "Agreement")

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

2. We refer to Clause 23.5 (*Procedure for Transfer*) of the Agreement:

   (a) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation and, in accordance with Clause 23.5 (*Procedure for Transfer*) of the Agreement, all of the Existing Lender's rights and obligations under the Agreement and the other Finance Documents which relate to the portion of the Existing Lender's Commitment and participations in Loans under the Agreement that 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 31.2 (*Addresses*) of the Agreement are set out in the Schedule.

3. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 23.3 (*Limitation of Responsibility of Existing Lenders*) of the Agreement.

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

5. This Transfer Certificate and all non–contractual obligations arising out of or in connection with it shall be governed by English law.

6. This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.

THE SCHEDULE

Commitment/Rights and Obligations to be Transferred

[*insert relevant details*]
[*Facility Office address, fax number and attention details for notices and account details for payments,*]

[Existing Lender]

By: .....

[New Lender]

By: .....

This Transfer Certificate is accepted by the Facility Agent and the Security Agent and the Transfer Date is confirmed as [_____].

[Facility Agent]

By: .....

[*Security Agent*]

By: .....

Schedule 5

FORM OF ASSIGNMENT AGREEMENT

To: [_____] as Facility Agent and [ ] as Security Agent

[**NATIONAL PORT DEVELOPMENT (SL) LTD.**] as Borrower

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

[*New Lender*] (the "**New Lender**")

Dated:

[NATIONAL PORT DEVELOPMENT (SL) LTD.] – [ ] Facility Agreement dated [ ] (the "Agreement")

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

2. We refer to Clause 23.6 (*Procedure for Assignment*) of the Agreement. On the Transfer Date:

   (a) all the rights of the Existing Lender under the Agreement and the other Finance Documents which relate to the portion of the Existing Lender's Commitment(s) and participations in Loans under the Agreement as is specified in the Schedule will automatically be assigned absolutely by the Existing Lender to the New Lender;

   (b) the Existing Lender will automatically be released from the proportion of its obligations under the Finance Documents which correspond to the portion of the Existing Lender's Commitment(s) and participations in Loans under the Agreement that is specified in the Schedule; and

   (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 shall become party (as a Lender) to those Finance Documents to which the Existing Lender was a party (as a Lender) immediately before the Transfer Date.

5. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 31.2 (*Addresses*) of the Agreement are set out in the Schedule.

6. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 23.3 (*Limitation of Responsibility of Existing Lenders*) of the Agreement.

7. This Assignment Agreement acts as notice to the Facility Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 23.7 (*Copy of Transfer Certificate or Assignment Agreement to the Borrower*) of the Agreement, to the Borrower (on behalf of itself and the Guarantor) of the assignment referred to in this Assignment Agreement.

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

9. This Assignment Agreement and all non–contractual obligations arising out of or in connection with it shall be governed by English law.

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

THE SCHEDULE

Rights to be assigned and obligations to be released and undertaken

[*insert relevant details*]

[*Facility office address, fax number and attention details for notices and account details for payments*]

[Existing Lender]	**[New Lender]**
By:	By: .....

This Assignment Agreement is accepted by the Facility Agent and the Security Agent and the Transfer Date is confirmed as [_____].

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

[Facility Agent]

By: .....

[Security Agent]

By: .....

Schedule 6
FORM OF COMPLIANCE CERTIFICATE

To: [ ] as Facility Agent

From:[**NATIONAL PORT DEVELOPMENT (SL) LTD.**]

Dated:_____

Dear Sirs

[NATIONAL PORT DEVELOPMENT (SL) LTD.] – [ ] Facility Agreement dated [ ] (the "Agreement")

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

2. We confirm that: [Insert details of covenants to be certified].

3. [We confirm that no Default is continuing.] [*Note: If this statement cannot be made, the certificate should identify any Default that is continuing and the steps, if any, being taken to remedy it.*]

Yours faithfully

Signed: ....

Director of	Director of
[NATIONAL PORT DEVELOPMENT (SL) LTD.]	**[NATIONAL PORT DEVELOPMENT (SL) LTD.]**

[*insert applicable certification language once agreed by the Borrower, its auditor and the Agent*]

Schedule 7
TIMETABLES

Delivery of a duly completed Utilisation Request (Clause 5.1 (*Delivery of a Utilisation Request*))	11.00 a.m. Beijing time, ten (10) Business Days before the proposed Utilisation Date
Facility Agent notifies the Lenders of the Loan in accordance with Clause 5.4 (*Lenders' Participations*)	11.00 a.m. Beijing time, five (5) Business Days before the proposed Utilisation Date
LIBOR is fixed	Quotation Day as of 11:00 a.m. London time

Schedule 8
FORM OF DIRECT AGREEMENT

To: [NAME OF CONTRACT COUNTERPARTY]
[*ADDRESS*]

From: National Port Development (SL) LTD., as Borrower

ICBC (London) PLC, as Security Agent

[*DATE*]

Re. [Name of Project Document] dated [ ] between the Borrower and [Name of Contract Counterparty] (the "Agreement")

Dear Sirs:

We refer to the Agreement under which the Borrower entered into arrangement with you for [ ].

We hereby notify you that, by an assignment dated [ ] (the "**Assignment**"), the Borrower has assigned all of its rights, title, interest and benefit in and to the Agreement, to the Security Agent.

By signing and returning the enclosed copy of this letter, you confirm that:

(a) you consent to the assignment in favour of the Security Agent referred to above;

(b) you will give to the Security Agent written notice of any material breach (including any payment default) of the Agreement as soon as you become aware of it;

(c) you will not suspend (other than to the extent permitted as a result of force majeure as provided in the Agreement, if applicable) or terminate your performance of the Agreement without first notifying the Security Agent in writing (stating in the case of a payment default that such default has occurred and has been continuing for at least fifteen (15) days from the default date (the "**default notice**")) and giving to the Security Agent the opportunity to rectify the relevant default giving rise to the right of termination or suspension within one hundred and eighty (180) days after receipt by the Security Agent of such notification; if the relevant default is not rectified in such one hundred and eighty (180) days then immediately at the end of such period you may suspend or terminate your performance under the Agreement, provided, however, that (i) with respect to any default (other than a payment default), if such default cannot reasonably be cured during such one hundred and eighty (180) day period, you will not terminate or suspend performance under the Agreement (other than to the extent permitted as a result of force majeure as provided in the Agreement, if applicable) so long as the Security Agent (or any of its designees) has commenced action reasonably designed to cure such default and diligently continues to pursue such action until such default is cured; and (ii) if any party is prohibited from curing any such default (other

than a payment default) by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding or similar proceeding involving the Borrower, then the time period specified above for curing a default shall be extended for the period of such prohibition, but in no event shall the cure period referred to in (i) and (ii) terminate later than one hundred and eighty (180) days after the receipt by the Security Agent of the notice of default;

(d) you will not, without the prior written consent of the Security Agent (such consent not to be unreasonably withheld or delayed), enter into any material amendment, supplement, assignment, transfer, suspension, novation, extension, restatement or other material modification of the Agreement, or enter into any consensual cancellation or termination of the Agreement, or assign, transfer, novate or otherwise dispose of all or any material part of your obligations, rights, title and interest under the Agreement, or consent to any of the same by the Borrower;

(e) on your giving of a notice to the Security Agent under paragraph (c) above, the Security Agent is authorized by you to disclose the terms of the Agreement and any confidential information relating to or arising from the Agreement to a proposed transferee or novatee (permanent or temporary) and its advisers provided that proposed transferee or novatee and its advisers undertake in writing to keep those terms and that information confidential and not to disclose it to any other party;

(f) the Security Agent may transfer or novate (on a permanent or temporary basis) the rights and obligations of the Borrower under the Agreement to an entity (either jointly and severally with the Borrower or in its place) nominated by the Security Agent (or, following any such transfer or novation on a temporary basis, to another such entity on a permanent basis) in a written notice served by the Security Agent on you, as from the date specified therein and you, the Borrower, the Security Agent and the transferee shall do all that is reasonably necessary to effect that transfer or novation;

(g) you will ensure that all moneys payable by you under the Agreement will be credited to the account of the Borrower with [account bank] [bank account number] or such other account as is notified to you in writing by the Security Agent;

(h) all payments required to be made by you under the Agreement, if any, will be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, other than those offsets, recoupments, abatements, withholdings, reductions and defenses permitted under applicable law or expressly allowed by the terms of the Agreement;

(i) you have not received any other notice relating to the assignment of the Borrower's rights and interests under the Agreement;

(j) you regard the Borrower as being solely liable to perform all its obligations under the Agreement until the said obligation is transferred or novated to another party pursuant to paragraph (f) above;

(k) neither the Security Agent nor any other party to the Borrower's financing arrangements is or will be under any obligation whatsoever under the Agreement nor will any of them be under any such obligation in the event of failure by the Borrower to perform its obligations thereunder; and

(l) the terms of this letter apply notwithstanding any provision of the Agreement to the contrary.

The Borrower also confirms that you shall have no liabilities or obligations to the Borrower as a result of acting under the direction of the Security Agent or any other party to which any rights, title, benefit and interest in the Agreement may be validly assigned or transferred.

This letter agreement shall be governed by and construed in accordance with English law. Any dispute, legal action or proceeding by or against a party with respect to or arising out of this letter agreement may be brought in the courts of England. By execution and delivery of this letter agreement, the parties accept, for themselves and in respect of their property, generally and unconditionally, the jurisdiction of the English courts for legal proceedings arising out of or in connection with this letter agreement and irrevocably consents to the appointment of the following:

Parties	English Service Agent
[CONTRACT COUNTERPARTY]	[ ]

If for any reason any agent shall cease to be available to act as such, each party agrees to appoint a new agent satisfactory to the other parties in England on the terms and for the purposes of this provision. Nothing herein shall affect the right to serve process in any other manner permitted by law or any right to bring legal action or proceedings in any other competent jurisdiction. Each party hereby waives any right to stay or dismiss any action or proceeding under or in connection with this letter agreement brought before the foregoing courts on the basis of *forum non-conveniens* or improper venue.

A person who is not a party to this letter agreement shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 to enforce the provisions of this letter agreement.

Each of the parties to this letter agreement intend that this letter agreement shall take effect as a deed notwithstanding the fact that a party may only execute this document under hand.

Yours faithfully,

....

For and on behalf of
National Port Development (SL) LTD.
as Borrower
Authorised Signatory

For and on behalf of
ICBC (London) PLC
as Security Agent
Authorised Signatory

We hereby acknowledge and agree to the above.

EXECUTED AS A DEED by)
[*contract counterparty*] acting by [ ])
And by [ ])

Schedule 9
FORM OF EPC CONTRACTOR DECLARATION

[Name of EPC Contractor] (as EPC Contractor)

To: [Name of Facility Agent] (as Facility Agent)

Dated: [Date]

1. We refer to the Facility Agreement, the Construction Contract and the Utilisation Request dated [*insert date*] pursuant to which the Borrower wishes to borrow the Loan described therein to finance the following invoices: [*insert the relevant invoice numbers*] (each an "**Invoice**", and together the "**Invoices**"). This is an EPC Contractor Declaration. Terms defined in the Facility Agreement shall have the same meaning in this EPC Contractor Declaration.

2. We attach hereto a copy of each Invoice showing the total invoice amount and invoice due dates together with the following supporting documents in respect of each Invoice:

   Either

   (i) if such Invoice relates to a supply of [imported delivery] (as such term is defined in the EPC Contract):

      (a) complete set of bill of lading and airway bill;

      (b) copy of packing list;

      (c) copy of inspection certificate; and

      (d) certificate of origin;

   or

   (ii) [if such Invoice relates to installation of a [Section] (as such term is defined in the EPC Contract):

      (a) details of the [Section] which has been completed, tested and commissioned in the format of the Schedule of Prices (as such term is defined in the EPC Contract); and

      (b) taking-over certificate of the relevant [Section] issued by the [Owner's] representative confirming the payment due and specifying the amount.]

3. We hereby confirm that (a) the Borrower has paid to us all amounts under the EPC Contract which are currently due and payable to us in accordance with its terms (other than the Invoices detailed in this EPC Contractor Declaration); and (ii) we have received

(other than from the proceeds of the proposed Loan) the [Initial Advance Payment]/[the Initial Advance Payment and the Second Advance Payment][1].

4. We hereby confirm that:

   (i) the [imported delivery] in respect of the Invoices were supplied or provided [on [date]]/[during the period [date to [date]]; and

   (ii) not less than 15.0 per cent. of the [imported delivery] in respect of the fixed lump sum price of the EPC Contract is of Chinese origin,

   and, in support of this paragraph 4, we attach:

   (a) a list setting out the details of such [imported delivery] ; and

   (b) export documents duly presented to the Chinese customs authorities.

5. The amount requested under the Utilisation Request to which this EPC Contractor Declaration is attached relates to the [imported delivery] set out in paragraph 4 above with origin and source in accordance with our declaration to and as agreed to by Sinosure.

6. We hereby warrant that:

   (i) each EPC Contract is legal, valid and binding, has not been terminated or materially amended or waived to the extent it may have an impact on the Sinosure Insurance Policy issued or to be issued in connection with the deliveries under the EPC Contract and we have not taken any action intended to lead to a termination of [future deliveries under the EPC Contract];

   (ii) [the Imported Deliveries [supplied and/or provided] under the EPC Contract are [manufactured by and/or rendered by] [us];] and

   (iii) we have obtained in relation to each Invoice our authorisations, consents or approvals from the relevant authorities if and when required.

7. This EPC Contractor Declaration is irrevocable.

[Name of EPC Contractor]

_____

By:
Title:

[1] Note: choose when applicable.

Schedule 10
CONDITIONS PRECEDENT TO GUARANTOR STATUS

1. The provisions of this Schedule shall take precedence over anything else in the rest of this Agreement and to the extent there is any conflict between the provisions of this Schedule and the rest of this Agreement, the provisions of this Schedule shall apply.

2. The Borrower undertakes to the Guarantor that it shall at all times levy and collect the Port Development Levy Fees and take all such action as is reasonable to enforce payment of such fees.

3. The Borrower acknowledges and agrees that any breach of Paragraph 2 above will constitute a material breach for the purposes of Clause 29.3 of the Concession Agreement.

4. The Finance Parties and Sinosure agree with the Guarantor that they shall have no right to make a claim against the Guarantor under its guarantee until:

   (a) the later of (i) the date when all monies in the Accounts has been applied in payment or repayment of amounts due under this Agreement (ii) The 24 months residual balance has been completely utilised from the date of non-payment by the Borrower of any amount due under this Agreement;

   (b) enforcement action has been commenced against the Borrower for non-payment and reasonable steps taken to recover any amounts due from the Borrower;

   (c) the Security Agent has taken reasonable steps to enforce its rights against the Borrower under the Security Documents.

5. Subject to Paragraph 4 above, the Guarantor guarantees to ensure that if at any time after the balance in the Borrower Collection Account exceeds an amount equal to two years' Scheduled Debt Service, the balance of the Borrower Collection Account falls to an amount that is less than is required to meet the next Scheduled Debt Service payment (other than as a result of default by the Borrower, and after receipt of notice from a Finance Party requiring it to do so), the Guarantor shall pay, or procure to be paid, into that account, such amount as may be necessary to ensure that the balance of the account is equal to the amount of the next Scheduled Debt Service payment, provided that no account shall be taken of any amount of Scheduled Debt Service that arises as a result of acceleration of any Loan, any default by the Borrower or any event which causes any Loan to be payable earlier than its original scheduled repayment date. The Guarantor shall have no obligation to, and does not, guarantee any amount payable by the Borrower under this Agreement except as provided in Paragraph 4 above.

6. If the Guarantor pays any amount pursuant to Paragraph 5, it shall be repaid from any amount thereafter in the Excess Cash Account in priority to any other payment from that account.

7. The Finance Parties and Sinosure agree that they shall not be entitled to accelerate any Loan or otherwise call any Event of Default or enforce any Security unless and until the Guarantor has failed to pay an amount required to be paid by it pursuant to Paragraph 5 above and such failure continues for a period of 180 days from the date notice is given by the Finance Parties to the Guarantor of such failure to pay. In such event, the only liability of the Guarantor shall be to make payments pursuant to Paragraph 5 above

8. If at any time it appears to the Guarantor that it is likely that the Port Development Fees will be insufficient to meet Scheduled Debt Service, it shall request the parties to the Concession Agreement and the Finance Parties (and Sinosure) attend a meeting to discuss appropriate measures to avoid any such shortfall.

9. If any concerns are raised by any relevant organisation concerning the compliance by the Guarantor with requirements of Clause 18.30, the Parties shall meet to discuss what steps can be taken, including appropriate amendments to this Agreement, to deal with any such concerns.

10. Given the arm's length relationship between the Borrower and the Guarantor and the limited nature of the guarantee given by the Guarantor under this Agreement, Clauses 14.4, 21.2, 21.10, 21.26, 22 and 30 shall be read and construed as if all references to the Guarantor in those Clauses had been deleted.

11. The Facility Agent shall provide to the Guarantor and the Independent Engineer a copy of each Utilisation Request, within 7 days of its receipt by the Facility Agent, and it shall notify the Guarantor and the Independent Engineer of the amount of each Loan to be made by each Lender on or before cash Loan is advanced. The Independent Engineer shall verify that the Utilisation Request accurately depicts all Loans that have been disbursed, or to be disbursed, are fully utilised for the purposes intended as specified in the EPC Contract. It shall further verify all construction and equipment meets the specified construction designs and quality as specified and agreed in the EPC Contract and are in conformity with the standards of the International Association of Ports and Harbours and the Sierra Leone Institutes of Engineers.

APPENDIX I. LIST OF MATERIAL LICENCE

- **Development Application**
  - Statement of Environmental Impact Assessment
  - Engineer's Certificates
  - Site plans, elevations
  - Construction details
  - Relevant studies
  - Land Owner's Consent
  - Site inspection certification

- Ministry of Works, Transport and Lands Approvals
  - Application assessed against Ports and other relevant legislation.
  - Referral to other government agencies if required.

- Approvals for:
  - Designated Development
  - Integrated Development
  - Government Significant

- Recommendation by Department of Planning and/or Planning Assessment Commission.
- Complying Development Certificate
- Predetermined conditions as per SLPA Ports

- Construction commence certificate
- Critical Stage inspections certificate
- Complying Development Certificate, Development Consent and other relevant documentation (Works-as-Executed drawings, Environmental Management Plan) provided to SLPA Port.
- All Duty and Tax exemption certification for the construction stage
- Common-use area certification

SIGNATURES

SIGNED on behalf of
NATIONAL PORT DEVELOPMENT (SL) LTD.
(as the Borrower)

BY: _____

Name: DAVID BEN LULU

Title: CHAIRMAN

Signature of Witness:

_____

Name of Witness: Sahr H. William Ngegba

SIGNATURES cont'd

SIGNED on behalf of

THE REPUBLIC OF SIERRA LEONE, REPRESENTED BY THE MINISTRY OF FINANCE AND ECONOMIC DEVELOPMENT OF THE REPUBLIC OF SIERRA LEONE

(as the Guarantor)

BY: _____

Name: MOMODU L. KARGBO

Title: MINISTER OF FINANCE & ECONOMIC DEVELOPMENT

Signature of Witness:

_____

Name of Witness: ANSU S. TUCKER

Principal Deputy Financial Secretary

SIGNATURES cont'd

SIGNED on behalf of

INDUSTRIAL AND COMMERCIAL BANK OF CHINA LIMITED

(as the Original Lender)

By: _____

Name: Liu Jianchang

Title: Deputy General Manager of Global Banking Department

SIGNATURES cont'd

SIGNED on behalf of

THE EXPORT-IMPORT BANK OF CHINA

(as the Original Lender)

By: _____

Name:

Title:

SIGNATURES cont'd

SIGNED on behalf of

INDUSTRIAL AND COMMERCIAL BANK OF CHINA LIMITED

(as the Mandated Lead Arranger)

By: _____

Name: Liu Jianchang

Title: Deputy General Manager of Global Banking Department

SIGNATURES cont'd

SIGNED on behalf of

INDUSTRIAL AND COMMERCIAL BANK OF CHINA LIMITED

(as the Facility Agent)

By: _____

Name: Liu Jianchang

Title: Deputy General Manager of Global Banking Department

SIGNATURES cont'd

SIGNED on behalf of
ICBC (LONDON) PLC
(as the Security Agent)

By: _____

Name:

Title:

Signature of Witness:

_____

Name of Witness: