

# Standard Chartered

## Master Credit Terms (Uncommitted) (Zambia)

These are the **Master Credit Terms (Uncommitted)** referred to and incorporated in the Agreement between the Bank and each Borrower.

IT IS AGREED:

### 1. DEFINITIONS AND INTERPRETATIONS

#### 1.1 Definitions:

Terms defined in the Facility Letter (and not otherwise defined herein) will have the same meaning when used in these Master Credit Terms (Uncommitted):

**"Affiliate"** means, in relation to a person:

- (a) any of its Subsidiaries;
- (b) any of its Holding Companies; or
- (c) any other Subsidiary of any such Holding Company, including head offices and branches of the above.

**"Authority"** means any government, quasi-government, administrative, regulatory or supervisory body or authority, court or tribunal.

**"Banking Day"** means a day (other than a Saturday or Sunday) on which banks are open for general business in Lusaka and:

- (a) (in relation to any date for payment or purchase of a currency other than euro) the principal financial centre of the country of that currency; or
- (b) (in relation to any date for payment or purchase of euro) any TARGET Day.

**"Break Costs"** means a net loss of interest revenue the Bank incurs when all or any part of any utilisation is repaid on a day which is not the last day of a Term for that utilisation.

**"Control"** and **"Controlled"** means:

- (a) the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to direct its management and policies or to control the composition of its board of directors or equivalent body; or
- (b) ownership of more than 50% of the voting share capital or equivalent right of ownership of that person.

**"Designated Combined Facility Limits"** means (if specified) the amount designated as the combined facility limit for the Facilities specified opposite those Facilities in column (2) of the table in Clause 2.1(b) (*Designated Combined Facility Limits*) of the Facility Letter.

**"Designated Facility Limits"** means the amount designated as the facility limit against a Facility specified opposite that Facility in column (2) of the table in Clause 2.1(a) (*Designated Facility Limits and Designated Sub-limits*) of the Facility Letter.

**"Designated Sub-limits"** means (if specified) the amount as designated as the sub-limit against a Borrower in column (3) of the table set out in Clause 2.1(a) (*Designated Facility Limits and Designated Sub-limits*) of the Facility Letter.

**"Facility"** means each facility set out in Clause 2 (*Facilities*) of the Facility Letter.

**"Finance Document"** means the Agreement, any Security Documents, any document identified as such in the Facility Letter and any other document designated as such by the Bank and any Group member from time to time.

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

- (a) monies borrowed;

- (b) any amount raised under any other transaction (however structured) having the commercial effect of a borrowing; and
- (c) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) and (b) above.

**"Financial Statements"** means:

- (a) for the Parent, the audited consolidated financial statements of the Group for each of its financial years; and
- (b) for each Obligor other than the Parent, its audited financial statements for each of its financial years.

**"Group"** means the Parent and its Subsidiaries.

**"Holding Company"** means, in relation to a person, any other person in respect of which the first named person is a Subsidiary.

**"Increased Cost"** means:

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

which is incurred or suffered by the Bank or any of its Affiliates but only to the extent attributable to the Bank having entered into any Finance Document or funding or performing its obligations under any Finance Document.

**"Local Currency"** means for each Facility, the currency in which the Designated Facility Limits of that Facility is denominated as specified in Clause 2 (*Facilities*) of the Facility Letter.

**"Local Currency Amount"** means the amount specified in the utilisation request (or, if the amount requested is not denominated in the Local Currency for the relevant Facility), that amount converted into that Local Currency at the Spot Rate adjusted to reflect any repayment, prepayment, consolidation or division of the utilisation.

**"Obligor"** means each Borrower and any person providing a guarantee of and/or Security Interest for the obligations of any Borrower and/or any other Obligor under the Finance Documents.

**"Party"** means a party to the Agreement.

**"Personal Information"** includes each Obligor's name, address, taxpayer identification number, other form of identification and that of each Obligor's direct or indirect beneficial owners, beneficiaries, controlling persons or their respective Relevant see Data Subjects.

**"Prime Rate"** means the interest rate, however it is called, published by the Bank from time to time as the minimum rate of interest at which it will lend money to prime borrowers.

**"Relevant Data Subject"** means any person:

- (a) named in or who executes any Finance Document or any other forms submitted by a Borrower to the Bank;
- (b) who is a director or officer of an Obligor; or
- (c) as specified by the Bank.

**"Restricted Party"** means a person with whom a national of the United States or Member State of the European Union would be prohibited or restricted by law from transacting.

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**"Sanctions"** means the economic sanctions laws, regulations, embargoes or restrictive measures imposed by the governments of the United States, the European Union or any of its Member States.

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

**"Subsidiary"** means in relation to a person, any other person:

- (a) which is Controlled, directly or indirectly, by the first named person;
- (b) more than half the issued share capital of which is beneficially owned, directly or indirectly, by the first named person; or
- (c) which is a Subsidiary of another Subsidiary of the first named person.

**"TARGET 2"** means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilises a single shared platform and which was launched on 19 November 2007.

**"TARGET Day"** means any day on which TARGET 2 is open for the settlement of payments in euro.

**"Tax"** means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any associated penalty or interest payable) required by law.

## 1.2 Interpretation

- (a) Any reference in the Agreement to:
  - (i) an **"amendment"** includes a supplement, variation, novation, restatement or re-enactment and **"amended"** will be construed accordingly;
  - (ii) a **"disposal"** means a sale, transfer, grant, lease or other disposal, whether voluntary or involuntary and **"dispose"** will be construed accordingly;
  - (iii) an **"authorisation"** includes an authorisation, consent, approval, resolution, licence, exemption, filing, registration or notarisation;
  - (iv) **"indebtedness"** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money;
  - (v) a **"law"** includes (A) any agreement with any Authority; and (B) any law, regulation, rule, official directive, request, guideline, sanction, embargo or restrictive measure (whether or not having the force of law) of any Authority and any interpretation, application or enforcement of such law;
  - (vi) any statute or any section of any statute will be deemed to include reference to any statutory modification or re-enactment of it for the time being in force;
  - (vii) a **"Finance Document"** or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, including any increase in the amount of a facility or for an additional facility;
  - (viii) a currency is to the lawful currency for the time being of the relevant country;
  - (ix) a **"month"** is to a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month. If there is no numerically corresponding day in the following month, that period will end on the last Banking Day in that calendar month;
  - (x) a **"person"** includes any individual, company, corporation, unincorporated association or body (including a partnership, trust, joint venture or consortium), government, state, agency,

organisation or other entity whether or not having separate legal personality; and

- (xi) **"information"** includes Personal Information.
- (b) Words denoting the singular will include the plural and vice versa.
- (c) A reference to a party or a person will be construed as including its and any subsequent successors in title, permitted transferees and permitted assigns, in each case in accordance with their respective interests.
- (d) A Borrower providing **"cash cover"** for a Facility means that Borrower paying an amount in the currency of that Facility to an interest-bearing account in the name of that Borrower and:
  - (i) the account is with the Bank;
  - (ii) withdrawals from the account may only be made to pay the Bank amounts due and payable to it under that Facility until no amount is or may be outstanding under that Facility; and
  - (iii) that Borrower has executed a Security Document, in form and substance satisfactory to the Bank, creating a first ranking Security Interest over that account.
- (e) If there is any inconsistency between:
  - (i) the Facility Letter and the Master Credit Terms (Uncommitted), the former will prevail.
  - (ii) the Facility Letter or the Master Credit Terms (Uncommitted) and the Standard Terms, the General Trade Terms, the Trade Service Supplements or the Corporate Card Agreement, the Facility Letter or the Master Credit Terms (Uncommitted) will prevail.

## 1.3 The Facilities

- (a) **Limits:** The Bank will offer each Facility to each designated Borrower specified opposite that Facility in column (3) of the table set out in Clause 2.1(a) (*Designated Facility Limits and Designated Sub-limits*) subject to the Designated Facility Limits, Designated Combined Facility Limits and Designated Sub-limits (whichever is the lower). The Bank may:
  - (i) at its sole discretion, allow each designated Borrower excesses above the stated limits and such excesses shall be deemed given at the Borrower's request; or
  - (ii) where an Obligor breaches any provision of a Finance Document, convert any Facility amount outstanding or otherwise due, to an unauthorised overdraft.
- (b) **Currency:** If a Facility is made available in more than one currency, the Designated Facility Limits, Designated Combined Facility Limits and Designated Sub-limits will be calculated in the Local Currency for the relevant Facility and any utilisation and any proposed utilisation in other currencies will be converted into the relevant Local Currency at the Spot Rate.
- (c) **Uncommitted:** Regardless of any other provision of the Agreement, each Facility is uncommitted and is made available to each designated Borrower at the Bank's sole discretion. The Bank will have no obligation to make any utilisation under, or make available any part of, any Facility.
- (d) **On demand:** Regardless of any other provision of the Agreement, each Facility is made available on an on-demand basis. The Bank may at its sole discretion at any time on written notice to any Borrower:
  - (i) cancel or call for cash cover for all or any part of any Facility; or
  - (ii) demand repayment/payment of any amount outstanding or otherwise due under or in relation to any Facility (whether principal, interest or other

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sum), whereupon each Borrower must within two Banking Days pay the relevant amount to the Bank.

## 1.4 Borrowers' Agent

- (a) Each Borrower (other than the Designated Borrower) irrevocably appoints the Designated Borrower to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:
  - (i) the Designated Borrower on its behalf to supply all information concerning itself contemplated by the Agreement to the Bank and to give all notices and instructions to make such agreements and to effect the relevant amendments capable of being given, made or effected by any Borrower notwithstanding that they may affect that Borrower, without further reference to or the consent of that Borrower; and
  - (ii) the Bank to give any notice, demand or other communication to any Borrower pursuant to the Finance Documents to the Designated Borrower,
 and in each case each Borrower will be bound as though that Borrower itself had given the notices and instructions (including, without limitation, any utilisation notices) or executed or made the agreements or effected the amendments or received the relevant notice, demand or other communication.
- (b) Every act, omission, agreement, undertaking, settlement, waiver, amendment, notice or other communication given or made by the Designated Borrower or given to the Designated Borrower on behalf of another Borrower will be binding on that Borrower. Any conflict between any notices or other communications of the Designated Borrower and any other Borrower, those of the Designated Borrower will prevail.

## 2. CONDITIONS PRECEDENT

### 2.1 Initial Conditions Precedent

Each Borrower must provide all of the Conditions Precedents in form and substance satisfactory to the Bank before any utilisation of a Facility is permitted.

### 2.2 Further conditions precedent

The Bank's obligations in respect of each utilisation are subject to the further conditions precedent that on both the date of each utilisation notice and the relevant utilisation date:

- (a) the representations and warranties made or given under the Finance Documents are true and accurate in all material respects; and
- (b) the Bank has received all of the documents and other evidence listed in, and appearing to comply with, the list of Utilisation-Specific Conditions Precedent.

## 3. FOREIGN CURRENCY

- 3.1 The Bank may at any time recalculate the Local Currency Amount of any utilisation denominated in a Foreign Currency using the Bank's Spot Rate on the Banking Day prior to the date of recalculation.
- 3.2 If at any time the total Local Currency Amount of all utilisations due by a Borrower exceeds that Borrower's Designated Sub-Limit, that Borrower must repay an amount of principal (in relation to any utilisation(s) which the Bank may identify) equal to such excess (together with all accrued but unpaid interest on that amount and any Break Costs) within two Banking Days after receiving a demand from the Bank.

## 4. VOLUNTARY PREPAYMENT

If voluntary prepayment is permitted in the Facility Letter, all prepayments received by the Bank will be applied in or towards repayment and satisfaction of the obligations of the Borrower under the relevant Facility in inverse chronological order.

## 5. DEFAULT INTEREST

- 5.1 If a Borrower fails to pay any amount payable by it under a Finance Document on its due date, interest ("Default Interest") will accrue daily on the entire overdue amount from the due date up to the date of actual payment (both before and after judgment) at the Default Rate and will be immediately payable on demand to the Bank.
- 5.2 Default Interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount on any basis that the Bank may select.

## 6. TAXES

- 6.1 Each Borrower must make all payments to be made by it under the Finance Documents without any set-off or counterclaim and free from any deduction or withholding for or on account of any Tax.
- 6.2 If a Borrower makes any such deduction or withholding for or on account of any Tax, that Borrower must:
  - (a) pay to the Bank any additional amount as may be necessary to ensure that the Bank receives the full amount of the relevant payment as if that deduction or withholding had not been made; and
  - (b) supply promptly to the Bank evidence satisfactory to the Bank that it has accounted to the relevant Authority for the withholding or deduction.
- 6.3 Where required by domestic or overseas regulators or tax authorities, each Borrower consents and agrees that the Bank may withhold, and pay out, from the Borrower's account(s) such amounts as may be required according to applicable laws, regulations, agreements with regulators or authorities and directives.

## 7. INCREASED COSTS

Each Borrower must on demand by the Bank, pay the amount of any Increased Costs incurred by the Bank or any of its Affiliates as a result of:

- (a) the introduction of or any change in (or in the interpretation, administration or application of) any law; or
- (b) compliance with any law made after the date of the Agreement.

## 8. PAYMENTS

### 8.1 Banking Days

If any date for payment of any sum due under the Finance Documents is not a Banking Day then that payment must be made on the next Banking Day in the same calendar month or the preceding Banking Day if there is not.

### 8.2 Place, currency and funds

- (a) On each date on which a Borrower is required to make a payment under a Finance Document that Borrower must pay the Bank for value on the due date at the time, in the currency in which the Facility is denominated or the cost, expense etc is incurred or as otherwise as specified by the Bank and in such funds as are specified by the Bank.

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(b) Payment must be made to the account the Bank specifies.

### 8.3 Partial payments

If the Bank receives insufficient payment to discharge all the amounts then due and payable under the Finance Documents, the Bank may apply that payment towards the obligations under the Finance Documents in any manner the Bank decides, irrespective of any appropriation made by any Borrower.

### 8.4 Timing of payments

If a Finance Document does not provide for when a particular payment is due, that payment is due within three Banking Days of demand by the Bank.

## 9. REPRESENTATIONS AND WARRANTIES

Each Borrower makes the following representations and warranties to the Bank from and after the date of the Agreement which are deemed to be repeated at all times (having regard to the circumstances existing at the time of repetition) so long as any sums are actually or contingently owing under the Agreement.

### 9.1 Status

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

### 9.2 Binding obligations

The obligations expressed to be assumed by it and each other Obligor in each Finance Document are legal, valid, binding and enforceable obligations.

### 9.3 Non-conflict

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

- (a) any law or any official or judicial order applicable to it or any other Obligor; or
- (b) its or any of its Subsidiaries' or any other Obligor's constitutional documents; or
- (c) any agreement or instrument binding upon it or any other Obligor or any of its Subsidiaries or any of its or any other Obligor's or any of its Subsidiaries' assets.

### 9.4 Powers and authority

It and each other Obligor has the power to enter into and perform, and has taken all necessary action to authorise the entry into, performance and delivery of the Finance Documents and the transactions contemplated by the Finance Documents.

### 9.5 Validity

All authorisations required or desirable to enable it and each other Obligor to lawfully enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party have been obtained or effected and are in full force and effect.

### 9.6 No filing or stamp taxes

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

### 9.7 Security Interests

Any Security Interest created under the Finance Documents is, subject to completion of all registrations required by law, a legal, valid, binding and enforceable first ranking fixed charge over the assets to which such Security Interest relates.

### 9.8 Immunity

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

### 9.9 Environmental claims

It has complied with all environmental law which it is subject to and is not aware of any basis for any environmental claim against it which may have material adverse effect on its business, operations, assets, financial condition or prospects or its ability to perform its obligations under the Finance Documents or the business, operations, assets, financial condition or prospects of the Group (taken as a whole).

### 9.10 Additional representations

Such additional representations as may be specified in the Facility Letter.

## 10. GENERAL UNDERTAKINGS

### 10.1 Authorisations and compliance with laws

- (a) Each Borrower must obtain, maintain and comply with any authorisation required by any law to enable it to perform its obligations under, or for the validity or enforceability of, any Finance Document.
- (b) Each Borrower must comply in all respects with all laws to which it is subject where failure to do so might in the Bank's opinion have a material adverse effect on its business, assets, financial condition or prospects or its ability to perform its obligations under the Finance Documents.

### 10.2 Pari passu ranking

Each Borrower undertakes that its obligations and liabilities under each Finance Document will at all times rank (except in respect of statutory preferential debts) at least pari passu with all its present and future unsecured indebtedness.

### 10.3 Negative pledge

- (a) No Borrower will (and must ensure that no other Group member will) create or permit to subsist any Security Interest over any of its assets other than under the Security Documents.
- (b) No Borrower will (and must ensure that no other Group member will):
  - (i) sell, transfer or otherwise dispose of any of its assets on terms by which they are or may be leased to or re-acquired by it or any Group member;
  - (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 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.

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("Quasi-Security" means any transaction described in paragraph (b) above)

- (c) Paragraphs (a) and (b) above do not apply to:
- (i) any netting or set-off arrangement entered into by any Group member in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;
  - (ii) any lien arising by operation of law and in the ordinary course of trading or retention of title arrangement in the ordinary course of trading on standard terms and conditions of any supplier;
  - (iii) any Security Interest or Quasi-Security over goods and/or documents of title to goods arising in the ordinary course of letter of credit transactions in the ordinary course of trade;
  - (iv) any Security Interest or Quasi-Security created by any Finance Document;
  - (v) any Approved Security except to the extent that the principal amount secured by any Approved Security exceeds the relevant maximum principal amount specified against that Approved Security in the Facility Letter; and
  - (vi) any Security Interest or Quasi-Security created with the prior written consent of the Bank provided that the principal amount is not increased at any time.

#### 10.4 Disposals and acquisitions

No Borrower will (and must ensure that no other Group member will) dispose of all or any part of their assets or make any acquisition or investment except where made in the ordinary course of trading or, in relation to a disposal of assets only, of assets in exchange for other assets comparable or superior as to type and value.

#### 10.5 Financial Indebtedness

Each Borrower must ensure that its aggregate Financial Indebtedness and that of any Group member does not exceed the Permitted Financial Indebtedness Threshold (or its equivalent in any other currency).

#### 10.6 Change of business

Each Borrower must procure that no substantial change is made which will have an effect on the general nature of its business or that of its Group from that carried on at the date of the Agreement.

#### 10.7 Financial statements and other information

- (a) Each Borrower must ensure that the Bank receives:
- (i) the Financial Statements as soon as they become available;
  - (ii) accurate and up to date information necessary to enable the Bank to comply with applicable law, "know your customer" or similar identification procedures as the Bank may request from time to time;
  - (iii) details of any litigation, arbitration or other proceedings pending or threatened; and
  - (iv) any further information the Bank may reasonably request from time to time in writing regarding the Group.
- (b) Each Borrower must ensure that the consent of Relevant Data Subjects to the Bank's collection, holding, storing, use, processing, transfer, disclosure, and reporting (directly or indirectly) to any Authority of their Personal Information is obtained.
- (c) Each Borrower agrees and undertakes to notify the Bank within 30 calendar days if there is a change in any information which it has provided to the Bank.

#### 10.8 Notification

Each Borrower must notify the Bank promptly upon becoming aware of the occurrence of the following:

- (a) Any representation, warranty, information or statement made or deemed to be made by an Obligor to the Bank is or is reasonably likely to be incorrect or misleading.
- (b) Any Group member defaults under any arrangement binding upon it in circumstances where such default could reasonably be expected to have a material and adverse effect on any Obligor's business, operations or financial condition or the ability of any Obligor to perform any of its obligations owed to the Bank.
- (c) Any Group member suffers an impairment in its business, operations, assets, financial condition or prospects which is material and of a nature which a bank creditor, making available credit facilities of a kind similar to the Facilities, would reasonably wish to receive notice.
- (d) Any Borrower ceases to be Controlled by the Parent.
- (e) Any event or series of events occurs (including the commencement of any legal proceedings or other analogous process in any jurisdiction) which has or is reasonably likely to have a material adverse effect on (i) the financial condition, results or operations or business of an Obligor or the Group as a whole or (ii) the validity, binding effect or enforceability of any Finance Document.
- (f) Any Group member is or is presumed or deemed to be 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.
- (g) The value of the assets of any Group member is less than its liabilities (taking into account contingent and prospective liabilities).
- (h) A moratorium is declared in respect of any indebtedness of any Group member.
- (i) Any corporate action, legal proceedings or other procedure or step is taken in relation to:
  - (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration, judicial management, provisional supervision or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Group member, other than a solvent liquidation or reorganisation of any Group member (other than an Obligor); or
  - (ii) enforcement of any Security Interest over any assets of any Group member;
 or any analogous procedure or step is taken in any jurisdiction.

#### 10.9 Right of First Refusal

As long as any sum remains owing under any Facility, if a Borrower wishes to engage any person to provide (i) currency, commodity price or interest rate hedging, transaction banking products and services including cash management services, trade services, trade finance, custodial services, fund administration and escrow services, (ii) any refinancing or replacement of the Facilities or (iii) any other similar transactions in the financial markets (collectively the "Services"), the relevant Borrower shall give the Bank or its Affiliate the right of first refusal to provide such Services, such right to be subject to terms and conditions to be agreed.

#### 10.10 Sanctions

- (a) No Obligor, nor any of their Affiliates or persons associated directly or indirectly with the Obligor:
- (i) is a Restricted Party; or

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(ii) has received notice of or is aware of any action or investigation against it with respect to any Sanctions.

(b) The proceeds of any utilisation, monies or services or other transaction contemplated by or provided under this Agreement shall not be used: (i) either directly or indirectly for the benefit of any Restricted Party; or (ii) in any manner that would result in any Obligor or the Bank or any Affiliate or agent thereof being in breach of any Sanctions (if and to the extent applicable to them) or becoming a Restricted Party.

### 10.11 Additional undertakings

Each Borrower must comply with any additional undertakings that may be specified in the Facility Letter.

## 11. EVIDENCE AND CALCULATIONS

### 11.1 Accounts

Accounts maintained by the Bank in connection with the Agreement are prima facie evidence of the matters to which they relate for the purpose of any litigation or arbitration proceedings.

### 11.2 Certificates and determinations

Any certification or determination by the Bank of a rate or amount under the Finance Documents will be, in the absence of manifest error, conclusive evidence of the matters to which it relates.

### 11.3 Calculations

Any interest or fee accruing under the Agreement accrues daily and is calculated on the basis of the actual number of days elapsed and a year of 360 or 365 days or otherwise, depending on what the Bank determines is market practice.

## 12. INDEMNITIES

### 12.1 Currency indemnity

Each Borrower agrees to indemnify the Bank against any loss incurred by the Bank as a result of any judgment, award or order being given or made for the payment of any amount due under any Finance Document and that judgment, award or order being expressed in a currency other than that in which the payment was due.

### 12.2 General indemnity

Each Borrower must immediately on demand indemnify the Bank against any cost, loss, Tax (excluding any Tax on the net income of the Bank in jurisdictions in which it is resident) or liability incurred by the Bank consequent upon entering into and undertaking the transactions contemplated by the Finance Documents.

### 12.3 Email or fax indemnity

Instructions must be given in writing. However, the Bank may accept instructions by telephone, fax or through our electronic banking service. Each Borrower is responsible for ensuring the accuracy and completeness of instructions.

Each Borrower acknowledges that all instructions given (and the Bank's records of those instructions) in electronic form are original documents in writing. The Borrower agrees not to challenge their validity, admissibility or enforceability on the basis they are in electronic form.

Each Borrower undertakes to indemnify the Bank and keep it indemnified in full from and against all or any liability for any loss, claims, demands, costs, damages and expenses arising out of any delay, loss in transit, errors in translation, the coding or decoding of the communication or omissions, variations, mutilations or other errors in the transmission of the

form of communication or which the Bank may incur as a result of accepting and acting on your telephone, fax and email instructions

### 12.4 Break Costs

Each Borrower must, on demand by the Bank, pay to the Bank any Break Costs it incurs at any time in relation to any utilisation.

## 13. COSTS AND EXPENSES

Each Borrower must on demand pay the Bank all costs and expenses (including legal fees and any Tax) the Bank incurs in connection with:

- (a) the preparation, negotiation, execution or perfection of;
- (b) any amendment to, or waiver of or consent under (or any evaluation of a request for the same); or
- (c) enforcement of, or the preservation of any rights under, any Finance Document.

## 14. AMENDMENTS AND WAIVERS

### 14.1 Procedure

Any provision of the Agreement may be varied or amended by the Bank at its sole and absolute discretion by notice to the relevant Borrower, and any such variation or amendment will be binding on all Parties.

### 14.2 Waivers and remedies cumulative

The Bank's failure to exercise or delay in exercising any right or remedy under the Finance Documents will not operate as a waiver, nor will any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in any Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

### 14.3 Deletions, new terms and changes

Any additional provision specified in Clause 9 (*Additional Conditions*) of the Facility Letter will be incorporated in the Agreement and any provision specified in Clause 9 (*Additional Conditions*) of the Facility Letter as a provision which should be amended or deleted in the Master Credit Terms (Uncommitted) will be amended or deleted accordingly.

These terms may be amended by the Bank without requiring the Client's consent. The Bank shall notify the Client of such amendment through notices in its branches in Zambia or posting on its website or through letter sent to the Client's last known address and such amendment shall be effective 14 days after notification.

## 15. CHANGES TO THE PARTIES

### 15.1 Assignments and transfers by any Borrower

No Borrower is entitled to assign or transfer any of its rights and obligations under the Finance Documents without the Bank's prior consent.

### 15.2 Assignments and transfers by the Bank

The Bank may at any time assign or transfer any of its rights and obligations under any Finance Document to any other person or change its lending office without the prior consent of the Obligors.

## 16. DISCLOSURE OF INFORMATION

16.1 The Bank will keep information provided by, or relating to, any Borrower confidential except that the Bank may disclose such information:

- (a) to any of the Bank's Affiliates;

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- (b) to any of the Bank's or the Bank's Affiliates' service providers, insurers or insurance brokers or professional advisers, who are under a duty of confidentiality to the discloser to keep such information confidential;
- (c) to any actual or potential participant, sub-participant or transferee of the Bank's rights or obligations under any transaction between the parties (or any of its agents or professional advisers) and any other person in connection with a transaction or potential transaction between the parties;
- (d) to any rating agency, or direct or indirect provider of credit protection; or
- (e) as required by law or any Authority.

16.2 Subject to applicable local laws, each Borrower hereby consent for the Bank or any of its affiliates (including branches) to share its information with domestic or overseas regulators or tax authorities where necessary to establish its tax liability in any jurisdiction.

## 17. SET-OFF

The Bank may set off any obligation due from a Borrower or the Borrower's Affiliates under the Finance Documents against any obligation owed by the Bank or the Bank's Affiliates to that Borrower or the Borrower's Affiliates, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Bank may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off. For the purposes of this Clause, "obligation" includes any obligation whether matured or unmatured, actual or contingent, present or future. If the amount of any such obligation is unascertained, the Bank may estimate the amount for the purposes of the set-off.

## 18. NOTICE

### 18.1 In writing

Any communication made in connection with the Finance Documents, including any demand made under the Agreement, must be in English and in writing and may be made by email, fax or letter.

### 18.2 Contact details

Contact details are as otherwise notified to the other Party by not less than five Banking Days' notice.

### 18.3 Effectiveness

- (a) Any communication or document made or delivered to an Obligor in connection with the Finance Documents will only be effective:
  - (i) if by way of fax, at the time shown on the transmission report as being successfully sent;
  - (ii) if delivered personally, at the time of delivery;
  - (iii) if sent by post, six (6) Banking Days after posting; and
  - (iv) if sent by email, at the time sent by the Bank.
- (b) Any communication or document given to the Bank will be effective only when actually received by the Bank.
- (c) Any communication or document given under paragraph (a) above but received on a non Banking Day or after business hours in the place of receipt, will only be deemed to be given on the next Banking Day in that place.

## 19. PARTIAL INVALIDITY

If 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.

## 20. ENTIRE AGREEMENT

The Finance Documents constitute the entire agreement between the Parties about its subject matter and replace all previous agreements between the Parties on that subject matter. None of the Borrowers have relied on any oral or written representation or warranty made, or purportedly made, by or on the Bank's behalf except as set out in the Finance Documents.

## 21. RIGHTS OF THIRD PARTIES

Unless stated otherwise in a Finance Document:

- (a) a person not a party has no right to enjoy or enforce any benefit under it; and
- (b) the consent of any person not a party is not required to amend the relevant Finance Document.

## 22. 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 that Finance Document.

## 23. GOVERNING LAW AND JURISDICTION

- (a) The Agreement and all non-contractual obligations arising in any way out of or in connection with the Agreement are governed by Zambian law and each Borrower irrevocably submits to the non-exclusive jurisdiction of the Zambian courts.
- (b) Each Borrower irrevocably appoints the Process Agent as its process agent under the Finance Documents for service of process in any proceedings before the Zambian courts in connection with any Finance Document. The Borrower must notify the Bank of any new process agent's name and address. The Bank may appoint a new process agent if any Borrower fails to comply and the Bank will notify that Borrower of the name and address of the new process agent.

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## APPENDIX 1

### TRADE FINANCE FACILITY

#### Trade Finance Group All

- Negotiation of export credit documents with discrepancies on a with recourse basis

#### Trade Finance Group 1

- Purchase of documents against payment bills with title documents on parties acceptable to the Bank on a with recourse basis
- Purchase of documents against acceptance bills with ECA/approved insurance cover on a with recourse basis
- Issuance of back-to-back letters of credit
- Issuance of import letters of credit
  - sight and usance
  - with title documents
- Loan against import

#### Trade Finance Group 2

- Purchase of documents against acceptance bills without ECA/approved insurance cover on a with recourse basis
- Purchase of documents against payment bills without title documents on parties acceptable to the Bank on a with recourse basis
- Issuance of quasi back-to-back letters of credit - without title documents (i.e. Import letter of credit supported by export letter of credit acceptable to the Bank)
- Issuance of import letters of credit
  - sight and usance
  - without title documents
- Shipping guarantees

#### Trade Finance Group 3

- Pre-shipment loan - i.e. packing credit
- Purchase of clean (non-documentary) bills of exchange on a with recourse basis
- Purchase of clean (non-documentary) promissory notes on a with recourse basis
- Acceptance of drafts under import letters of credit
- Release of documents against acceptance supported by trust receipts
- Loans against trust receipts
- Import loans
- Import invoice financing ] unless specified in
- Export invoice discounting ] the Facility Letter.
- Red clause letters of credit ]

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