

Date: ^{5th} 21 October 2013

AFRICAN DEVELOPMENT BANK

and

THE MAURITIUS COMMERCIAL BANK LIMITED

SUBORDINATED LOAN AGREEMENT

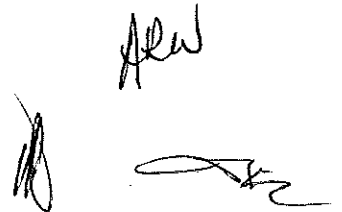
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APW
[Signature]

SUBORDINATED LOAN AGREEMENT

Project ID: P-MU-HAB-002

Loan No: 2000130010882

THIS AGREEMENT is dated ____ October 2013 and is made by and between:

- (1) **AFRICAN DEVELOPMENT BANK**, a multilateral development bank having its headquarters at Abidjan, Côte d'Ivoire, and its temporary relocation site in Tunis, Tunisia (the "Bank"); and
- (2) **THE MAURITIUS COMMERCIAL BANK LIMITED**, a public company incorporated by Royal Charter in 1838 and registered as a limited liability company in Mauritius on 18 August 1955 with file number CO7000934 and having its registered office at 9-15 Sir William Newton Street, Port-Louis, Mauritius (the "Borrower"),

collectively referred to as the "Parties" (or, individually, a "Party").

WHEREAS:

- (A) The Borrower has requested the Bank to provide to the Borrower a Subordinated Loan Facility in a maximum principal amount of thirty million United States Dollars (US\$30,000,000), to be constituted as Tier 2 Capital under the guidelines on eligible capital (dated 3 April 2008) and the guidance notes on risk weighted capital adequacy ratio (dated 13 September 2007) (as the same may have been amended or supplemented prior to the date of this Agreement) issued by the Central Bank;
- (B) The Borrower has satisfied itself of the technical feasibility and economic viability of the Subordinated Loan Facility and of the fact that the Subordinated Loan will be so classified as Tier 2 Capital, subject to the potential annual reduction of the amount so classified under amendments to the guidelines referred to in Recital (A) under consideration by the Central Bank at the date of this Agreement; and
- (C) The Bank has agreed, on the basis, *inter alia*, of the foregoing and in consideration of the promises and covenants in this Agreement to extend a Subordinated Loan Facility to the Borrower in accordance with the terms and conditions set out in this Agreement.

NOW, THEREFORE, the Parties agree as follows:

1 DEFINITIONS

1.1 Definitions.

In this Agreement, unless the context otherwise requires:

“Agreement” means this Subordinated Loan Agreement as well as any written amendments, modifications, revisions and schedules that are included herein or shall from time to time be made to this Subordinated Loan Agreement;

“Audited Financial Statements” means the Original Audited Financial Statements and all financial statements of the Borrower audited by the Auditors in respect of future Financial Years of the Borrower delivered to the Bank under this Agreement;

“Auditors” means such firm(s) of internationally (or nationally, if acceptable to the Bank) reputable independent chartered accountants as the Borrower may from time to time appoint as auditors of the Borrower;

“Authorised Representative” means any of the Borrower’s directors or officers designated in the Certificate of Incumbency and Authority;

“Availability End Date” shall mean the last Business Day prior to 1 February 2014, or such later date as the Bank and the Borrower may agree in writing as the date when the Bank’s obligation to disburse the Subordinated Loans to the Borrower shall terminate;

“Banking Regulations” means any and all the laws and regulations from time to time applicable to banking and financial institutions in Mauritius, including the capital adequacy requirements and ratios, supervision reporting requirements and prudential guidelines applicable to the Borrower made by the Central Bank pursuant (but not limited) to the Bank of Mauritius Act 2004 and the Banking Act 2004, as amended or any replacement thereof from time to time, and any rules, regulations and/or directives issued by the Central Bank or any Person exercising the functions of the Central Bank or that otherwise has authority to regulate the banking sector in Mauritius;

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

(a) the interest which the Bank should have received for the period from the date of receipt of all or any part of its participation in Subordinated Loans or Unpaid Sum to the last day of the current Interest Period in respect of those Subordinated Loans 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 the Bank would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the London interbank market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.

“Business Day” means a day (other than Saturday or Sunday) on which banks and foreign exchange markets are open in London, New York, Port-Louis and Tunis for such transactions as are required by this Agreement;



“Central Bank” means the Bank of Mauritius (as established under the Bank of Mauritius Act 2004) which is the entity having responsibility in Mauritius for the regulation and supervision of banks and other financial institutions;

“Certificate of Incumbency and Authority” means a certificate in the form of Schedule II to be provided to the Bank by the Borrower;

“Charter” means, in respect of any company, corporation, partnership, enterprise, governmental agency or other entity, its founding act, statute and regulations, articles of incorporation and by-laws, memorandum and articles of association, statutes or similar instrument and all amendments to the foregoing;

“Commitment Fee” means the commitment fee referred to in Clause 3.6 (*Commitment Fee*);

“Contingent Liability” means any direct or indirect liability, contingent or otherwise, of the Borrower with respect to any indebtedness or contractual obligation of another Person, if the purpose or intent of the Borrower in incurring the Contingent Liability is to provide assurance to the obligee of such indebtedness or contractual obligation that such indebtedness or contractual obligation will be paid or discharged, or that any agreement relating thereto will be complied with, or that any holder of such indebtedness or contractual obligation will be protected (in whole or in part) against loss or in respect thereof;

“Conversion Request Notice” means a notice in the form set out in Schedule VI;

“Conversion Effective Date” shall have the meaning assigned to it in Clause 3.2(b);

“Date of Signature” means the date on which the Bank and the Borrower sign this Agreement;

“Disbursed Amount” means the sum of (i) all amounts actually disbursed to the Borrower under this Agreement and (ii) the amounts requested by the Borrower to be disbursed under a Disbursement Request that has been delivered to the Bank;

“Disbursement Request” means a disbursement request in the form set out at Schedule V to this Agreement;

“Disclosure Letter” means the letter from the Borrower’s legal adviser dated 15 October 2013 containing the details of all material litigation, arbitration or administrative action, proceeding or investigation, to the best of the Borrower’s knowledge and belief, pending or threatened against or involving the Borrower;

“Environmental and Social Policies and Guidelines” means the relevant policies, procedures, and guidelines of the Bank that concern environmental

and social matters, all of which have been provided to the Borrower and include the following policies:

- (a) Bank Policy on Environment (June 2004 version);
- (b) the Bank Environmental Review Procedures for Private Sector Operations (2001 version);
- (c) the Bank Involuntary Resettlement Policy (2003 version);
- (d) Policy on Poverty Reduction (2004);
- (e) The Gender Policy (2001); and
- (f) any other policies, procedures and guidelines of the Bank that concern environmental and social matters, which may from time to time be adopted by the Bank and timely communicated and provided to the Borrower;

“Environmental Laws of Mauritius” means all applicable legislation (including, but not limited to, international treaty obligations), regulations, policies, licences or obligations imposed by any Governmental Authority in Mauritius as well as by the National Environment Commission of Mauritius (established pursuant to section 6 of the Environmental Protection Act 2002) and any other environmental agency in Mauritius, concerning the conservation and protection of the natural or man-made environment or the protection of living organisms, in particular human welfare, health or safety including any statutory modification thereof and/or amendments thereto and any other relevant legislation affecting the environment of Mauritius;

“Event of Default” means any of the events specified in Clause 8 of this Agreement;

“Financial Year” means the accounting period of the Borrower, commencing each year on 1st July and ending on 30th June of the following calendar year or such other accounting period of the Borrower as the Borrower may, with due notification to the Bank, duly designate as its accounting period;

“Fixed Base Rate” means with respect to:

- (a) each of the Fixed Rate Portions, (i) the fixed rate swap equivalent (i.e. the fixed interest rate payable in the swap market against receipt of interest at LIBOR, as such swap market fixed interest rate is determined by the Bank on the applicable Fixed Base Rate Setting Date) corresponding to the remaining term and Repayment Schedule (based on Clause 3.9 (*Repayment of Principal*)) applicable to such Fixed Rate Portion, or (ii) if the Fixed Base Rate Setting Date is less than twelve (12) months prior to the end of the remaining term set out in such Clause 3.9 (*Repayment of Principal*) applicable to such Fixed Rate Portion, LIBOR (determined on the Fixed Base Rate Setting

Date) for a period comparable (or as close thereto as possible) to such remaining term; and

- (b) the calculation of Swap Unwinding Costs, (i) the fixed rate swap equivalent (i.e. the fixed interest rate payable in the swap market against receipt of interest at LIBOR, as such swap market fixed interest rate is determined by the Bank on the applicable Fixed Base Rate Setting Date) corresponding to the remaining term and Repayment Schedule (based on Clause 3.9 (*Repayment of Principal*)), or (ii) if the Fixed Base Rate Setting Date is less than twelve (12) months prior to the end of the term which would have been remaining as set out in Clause 3.9 (*Repayment of Principal*), LIBOR (determined on the Fixed Base Rate Setting Date) for a period comparable (or as close thereto as possible) to such remaining term;

“Fixed Base Rate Date” means the date on which the Borrower has applied for a Fixed Interest Rate pursuant to Clause 3.2(a) or (b), which, when applied for in the Disbursement Request Form, shall be the disbursement date, and when elected in the Conversion Request Form, shall be the Conversion Effective Date;

“Fixed Base Rate Setting Date” means with respect to:

- (a) any Fixed Rate Loan Disbursement, and (as applicable) the corresponding Then Existing Floating Rate Loan, the date which is two (2) Business Days prior to the date of such Fixed Rate Loan Disbursement;
- (b) those portions of the Subordinated Loan Facility for which the Borrower requests that a fixed interest rate be set pursuant to Clause 3 (**“Fixed Rate Portions”**), the date which is two (2) Business Days prior to the disbursement date or Conversion Effective Date, as the case may be; and
- (c) the calculation of Swap Unwinding Costs, the date which is two (2) Business Days prior to the Prepayment Date as defined in the definition of Swap Unwinding Costs;

“Fixed Rate Loan” means the disbursed or outstanding amount of the Subordinated Loans that the Borrower elects to subject to a Fixed Interest Rate determined according to the terms of Clause 3.2 (*Fixed Rate Loan*);

“Fixed Rate Loan Disbursement” has the meaning assigned to it in Clause 7;

“Fixed Rate Portions” has the meaning assigned to that term in the definition of **“Fixed Base Rate Setting Date”**;

“Fixed Interest Rate” means, for each Interest Period, the rate at which interest is payable on the Fixed Rate Loan during that Interest Period pursuant to Clause 3.2 (*Fixed Rate Loan*);

“Floating Interest Rate” means for any Interest Period and for such part of the Subordinated Loans which are not Fixed Rate Loans or Fixed Rate Portions, the rate at which interest is payable during that Interest Period in accordance with Clause 3.1(a);

“General Accepted Accounting Principles” or **“GAAP”** means accounting principles generally accepted in Mauritius and consistently applied, including IFRS;

“Grace Period” means a period of sixty (60) months following the Date of Signature;

“Governmental Authority” means the government of any country, or of any political subdivision thereof, whether state, regional or local, and any agency, authority, branch, department, regulatory body, court, central bank (including the Central Bank) or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government or any subdivision thereof (including any supra-national bodies), and all officials, agents and representatives of each of the foregoing;

“IFRS” means International Financial Reporting Standards issued or adopted by the International Accounting Standards Board and consistently applied;

“Indebtedness” means, for any Person, any indebtedness of such Person for or in respect of:

- (a) borrowed money;
- (b) any amount raised by acceptance under any acceptance credit facility;
- (c) any amount raised pursuant to any note purchase facility or any issue of bonds, notes, debentures, loan stock or other similar instruments;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP, be treated as a finance or capital lease;
- (e) receivables sold or discounted (other than to the extent that they are sold or discounted on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (g) any credit to the Borrower from a supplier of goods or services or under any instalment purchase or other similar arrangement in respect of goods or services (except trade accounts payable in the ordinary course of business);

- (h) the aggregate amount then outstanding of liabilities and obligations of third parties to the extent that they are guaranteed by the Borrower;
- (i) any derivative transaction (entered into in connection with protection against or benefit from fluctuation in any rate or price (and when calculating the value of any derivative transaction, only the market to market value shall be taken into account)); and
- (j) any counter-indemnity obligation in respect of any guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;

“**Interest Payment Date**” means 1 February and 1 August;

“**Interest Period**” shall mean each period determined in accordance with Clause 3.8 (*Interest Periods*);

“**LIBOR**” means in relation to each Interest Period, the offered rate per annum in the London Interbank Market (or its successor rate) for deposits in US Dollars for the relevant Interest Period as indicated on the appropriate page of the Reuters screen, as of 11:00 a.m. (London Time) two (2) London Business Days prior to the beginning of the relevant Interest Period, and, if that rate is less than zero, LIBOR shall be deemed to be zero. If the agreed page is replaced or service ceases to be available, the Bank may specify another page or service displaying the appropriate rate after consultation with the Borrower in accordance with Clause 3.3 (*Interest Rate Substitution*);

“**Material Adverse Change**” means an event, fact or circumstance which:

- (a) has or could be likely to have a Material Adverse Effect; or
- (b) constitutes a change in the international or domestic money, debt, bank or capital market which would materially prejudice the Bank’s ability to arrange, structure or raise the Subordinated Loan Facility ;

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

- (a) the business, operations, performance, assets or prospects or financial condition of the Borrower; or
- (b) the ability of the Borrower to perform its payment or other obligations under this Agreement; or
- (c) the validity or enforceability of this Agreement; or
- (d) any material right or remedy of the Bank in respect of the Borrower under this Agreement ;

“**Mauritius**” means the Republic of Mauritius;

“**New Regulation Date**” has the meaning given in Clause 3.10 (*Prepayment*);

“Original Audited Financial Statements” means the audited financial statements of the Borrower for the Financial Year ending on 30 June 2013;

“Other Bank Finance Document” means the line of credit facility agreement entered into or to be entered into between the Bank and the Borrower in a maximum principal amount of one hundred and twenty million United States Dollars (US\$120,000,000);

“Payment Date” means 1 February and 1 August;

“Person” means any natural or artificial person;

“Potential Event of Default” means any event or circumstance, which would (with the lapse of time, the giving of notice, the making of any determination under the Agreement or any combination of any of the foregoing) become an Event of Default;

“Purpose and Use of Proceeds” means the purpose for which Subordinated Loans are granted and the restrictions on use of the proceeds of the Subordinated Loans as set out in Schedule I;

“Regional Member Countries” mean the Regional Member Countries of the Bank whose current list (which may be subject to subsequent updates) is provided in Schedule VII;

“Registration Duty” means registration or transfer duty payable pursuant to any applicable legislation or regulation in Mauritius;


“Repayment Schedule” means the schedule of repayments established in Clause 3.9 (*Repayment of Principal*) and set out in Schedule XIII;

“Rules and Procedures on Disbursements” means the rules and procedures on disbursements as set forth in the Bank’s disbursement handbook from time to time;

“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;

“Shareholders’ Equity” means the aggregate (as of the relevant date for calculation) of:

- (a) the amount paid up or credited as paid up on the share capital of the Borrower;
- (b) the amount standing to the credit of the reserves of the Borrower (including: any share premium account, capital redemption reserve funds and any credit balance on profit and loss account); and
- (c) any other sum which, pursuant to GAAP, is treated as part of equity; but after deducting from such aggregate:



- (i) any amounts set aside for dividends or corporate income taxation (including deferred corporate income taxation) or attributable to goodwill or other intangible assets; and
- (ii) any debit balance on the profit and loss account or any impairment of the issued share capital of the Borrower (except to the extent that deduction in respect of such debit balance or impairment has already been made);

“Social and Environmental Management System” or “SEMS” means the Borrower’s social and environmental system enabling it to identify, assess and manage risks on an ongoing basis by establishing the requisite policies, practices, procedure, monitoring and reporting capabilities and resources available;

“Social Laws of Mauritius” means all applicable legislation (including, but not limited to, international treaty obligations), regulations, policies, licences or obligations imposed by any Governmental Authority in Mauritius concerning labour rights and conditions, social protection rights, public consultation, the health and safety interests of citizens, land ownership rights, and resettlement including any statutory modification thereof and/or amendments thereto and any other relevant legislation of Mauritius;

“Spread” means:

- (a) unless: (i) an Event of Default has occurred and is continuing for a period of less than 30 consecutive Business Days; or (ii) an Event of Default described in Clause 8.2(i) has occurred and is continuing, three hundred and fifteen basis points (3.15%); or
- (b) if: (i) an Event of Default has occurred and is continuing for a period of 30 consecutive Business Days or more; or (ii) an Event of Default described in Clause 8.2(i) has occurred and is continuing, five hundred and fifteen basis points (5.15%);

“Stamp Duty” means stamp duty payable pursuant to any applicable legislation or regulation in Mauritius;

“Structure Paper” means the document describing the restructuring plan of the Borrower dated 16 October 2013 to be delivered by the Borrower to the Bank pursuant to Clause 4.1(a)(xviii);

“Subordinated Loan” means a loan made or to be made under the Subordinated Loan Facility or the principal amount of a loan outstanding from time to time as the context requires;

“Subordinated Loan Facility” means the maximum amount of funds granted by the Bank by virtue of this Agreement;

“Swap Unwinding Costs” with respect to any Fixed Rate Portions which is paid otherwise than in accordance with Clause 3.9 (*Repayment of Principal*) (any such portion referred to in this definition as the **“Prepaid Fixed Rate**

Portion” and the date such prepaid Fixed Rate Portion is paid referred in this definition as the **“Prepayment Date”**), the present value of the difference (but not less than zero) between (i) the aggregate interest the Bank would receive from and after such Prepayment Date if the Prepaid Fixed Rate Portion had been paid in accordance with such Clause 3.9 (*Repayment of Principal*), and (ii) the aggregate interest which the Bank would be entitled to receive if the Bank were to lend the Prepaid Fixed Rate Portion for the remaining term (i.e., beginning from such Prepayment Date) set forth in Clause 3.9 (*Repayment of Principal*) (with repayment dates and amounts to coincide with those in Clause 3.9 (*Repayment of Principal*)) at a fixed interest rate equal to (A) the applicable Fixed Base Rate; plus (B) the Spread. For purposes hereof, “present value” shall be computed based on an interest rate equal to the Fixed Base Rate as determined pursuant to subsection (ii) above. The Bank shall determine the applicable Swap Unwinding Costs, and any such determination by the Bank shall be conclusive absent manifest error;

“Then Existing Floating Rate Loan” has the meaning ascribed to it in Clause 3.2(a);

“Tier 1 Capital” means the Borrower's Tier 1 Capital as such term is defined in and/or calculated in accordance with the Banking Regulations or other laws, regulations and rules applicable to banking and financial institutions in Mauritius, issued by any competent authority, including the Central Bank, which, as of the Date of Signature, may consist of: (i) the aggregate of the paid-in share capital, disclosed reserves (which are made up of capital surplus and retained earnings) and certain innovative instruments; after deducting from that aggregate (ii) intangible assets and equity investments in unconsolidated banking and financial institutions, as calculated on the basis of the most recently delivered Financial Statements pursuant to Clause 6.5 and determined in accordance with the Generally Accepted Accounting Principles;

“Tier 2 Capital” means the Borrower's Supplementary (Tier 2) Capital as such term is defined in and/or calculated in accordance with the Banking Regulations or other laws, regulations and rules applicable to banking and financial institutions in Mauritius, issued by any competent authority, including the Central Bank, which, as of the Date of Signature, may consist of: undisclosed reserves, asset revaluation reserves, general provisions and general loan loss reserves up to a maximum of one and one quarter of one per cent (1.25%) of risk weighted assets, hybrid (quasi-equity) capital instruments and certain subordinated indebtedness, as calculated on the basis of the most recently delivered Financial Statements delivered pursuant to Clause 6.5 and determined in accordance with the Generally Accepted Accounting Principles;

“Unaudited Financial Statements” means the unaudited financial statements of the Borrower for the period commencing on 1 July 2013 and ending on 30 September 2013 and any other unaudited financial statements in respect of future Financial Years of the Borrower delivered to the Bank under this Agreement;

“Unpaid Sum” means any sum due and payable but unpaid by the Borrower under this Agreement;

“US Dollars” and the abbreviation “USD” or “US\$” each means the lawful currency of the United States of America.

1.2 Financial Definitions and Accounting Terms

All financial calculations to be made under, or for the purposes of, this Agreement shall be determined in accordance with IFRS and GAAP and, except as otherwise required to conform to the provisions of this Agreement, shall be calculated from the most recent semi-annual financial statements which the Borrower is obligated to furnish to the Bank from time to time, as provided in Clause 6.5; provided, however, that:

- (a) if the relevant semi-annual financial statements are in respect of the last half of a Financial Year, then at the Bank’s option, such calculations may instead be made from the Audited Financial Statements for the relevant Financial Year; and
- (b) if there should occur any Material Adverse Change in the financial condition of the Borrower after the end of the period covered by the relevant financial statements, then such Material Adverse Change shall also be taken into account in calculating the relevant figures.

1.3 Interpretation

- (a) The headings and the Table of Contents are inserted in this Agreement for convenience only and shall not affect the interpretation of this Agreement.
- (b) Unless the context otherwise requires, words denoting the singular shall include the plural and vice versa and persons shall include corporations and partnerships.
- (c) Except as otherwise stated herein, references to Clauses and Schedules are to be construed as references to Clauses and Schedules of this Agreement.
- (d) References to any document or agreement shall be deemed to include references to such document or agreement as amended, supplemented, replaced, waived or restate from time to time in accordance with its terms and (where applicable) subject to compliance with this Agreement.
- (e) A provision of law (including an act or regulation under Mauritius law) is a reference to that provision as amended or re-enacted from time to time.

2 THE SUBORDINATED LOAN

2.1 Amount

The Bank agrees to lend to the Borrower, on the terms and conditions set forth in this Agreement, a principal amount not exceeding thirty million United States Dollars (US\$30,000,000).

2.2 Purpose

The purpose of the Subordinated Loans is to assist in strengthening the Borrower's capital base by way of being classified as Tier 2 Capital by the Central Bank as further described in Schedule I of this Agreement.

2.3 Liability

The Borrower agrees that it shall be liable for the full repayment of the Subordinated Loans, including, principal, interest, fees, charges, costs and expenses, subject to the terms of this Agreement.

3 INTEREST, FEES AND PAYMENTS

3.1 Interest

- (a) Subject to paragraph (b), interest shall accrue on the amount of the Subordinated Loans which are not Fixed Rate Loans or Fixed Rate Portions disbursed and outstanding from day to day at the Floating Interest Rate equal to LIBOR, for each Interest Period, plus the Spread.
- (b) The Fixed Interest Rate, as applicable, for any outstanding or disbursed amount of the Subordinated Loan Facility which the Borrower has elected to be a Fixed Rate Loan pursuant to Clause 3.2 (*Fixed Rate Loan*), shall be determined by the Bank pursuant to the terms of Clause 3.2 (*Fixed Rate Loan*) and shall be notified to the Borrower. It shall apply as from the applicable Fixed Base Rate Date.
- (c) The Borrower shall pay accrued interest on each Interest Payment Date to the Bank. For each Interest Period, interest shall be calculated up to the last day of such Interest Period. If an Interest Period should end on a day which is not a Business Day, payment of interest shall occur on the next succeeding Business Day.
- (d) For the avoidance of doubt, interest shall accrue and be payable during the Grace Period.

3.2 Fixed Rate Loan

- (a) The Borrower may elect to have any disbursement of the Subordinated Loan Facility made as a Fixed Rate Loan Disbursement, which election shall be made in accordance with Clause 7.1(b), provided that the minimum amount of the Subordinated Loan Facility to be fixed under this Clause 3.1(a) is ten million United States Dollars (USD 10,000,000). If the Borrower elects to have any disbursement of the Subordinated Loan Facility made as a Fixed Rate Loan Disbursement, the Bank shall also convert and apply the same Fixed Interest Rate to

the outstanding principal amount of the Subordinated Loan Facility (if any) which then bears interest at a Floating Interest Rate (the “**Then Existing Floating Interest Rate**”), and the Then Existing Floating Interest Rate shall be converted to the same Fixed Interest Rate, and at the same time and manner, as applies to applicable Fixed Rate Loan Disbursement.

- (b) Additionally, the Borrower may elect at any other time that the interest rate applicable to the outstanding principal amount of the Subordinated Loans which then bears interest at the Floating Interest Rate be converted to a Fixed Interest Rate by providing to the Bank a duly completed Conversion Request Notice at least five (5) Business Days prior to the requested date of conversion, which date of conversion for such portion of the Subordinated Loans specified in such Conversion Request Notice must occur on the first day of the immediately succeeding Interest Period (the “**Conversion Effective Date**”).
- (c) If the Borrower requests that the interest rate applicable to the Subordinated Loans or any portion thereof shall be fixed in accordance with Clause 3.2(a) or 3.2(b), interest on the disbursed and outstanding balance of the Subordinated Loans or, as the case may be, such portion thereof shall be a fixed rate, for each Interest Period thereafter, equal to the sum of the Fixed Base Rate determined by the Bank plus the Spread.
- (d) For the avoidance of doubt, any reference to “portion of the Subordinated Loans” (or words to such effect) in the context of the applicability of a Fixed Interest Rate is not intended to mean a portion of any particular disbursement (but rather, a portion of the entire Subordinated Loan), and it is not intended that the Floating Interest Rate may apply to one portion of any disbursement while a Fixed Interest Rate applies to another portion of the same disbursement.
- (e) The determination by the Bank, from time to time, of the applicable interest rate shall be final and conclusive and bind the Borrower (unless the Borrower shows to the Bank’s satisfaction that the determination involves manifest error).

3.3 Interest Rate Substitution

If, for any reason, it shall become impossible for the Bank to determine for any Interest Period for which the Floating Interest Rate is applicable, LIBOR or LIBOR shall become unavailable to the Bank either because of market dysfunction or suspension of the market or the Bank determines that the interest rate cannot be calculated in accordance with the terms of Clause 3.1 (*Interest*) above:

- (a) The Bank shall immediately notify the Borrower;
- (b) The Bank and the Borrower shall then consult each other to determine a substitute formula which shall permit the Bank to maintain the same

position with respect to interest payment as it should have been if the terms of Clause 3.1 (*Interest*) had been applied relative to the Subordinated Loans or, as the case may be, those portions thereof to which the Floating Interest Rate applies. The formula so determined shall apply retroactively from the first day of the Interest Period for which the notification in (a) above was made to the date of repayment of the principal, interest, commission and other charges due as a result of the Subordinated Loans, or up to the date when the Bank notifies the Borrower that LIBOR has been re-established in accordance with the terms of Clause 3.1 (*Interest*);

- (c) If the parties shall be unable to agree to such a substitute formula within fifteen (15) calendar days beginning from the date of notification specified in (a) above (hereinafter "**Consultation Period**") the Borrower shall (1) use best efforts to obtain as quickly as possible any approval then required (for so long as any portion of any of the Subordinated Loans qualifies as Tier 2 Capital under the Banking Regulations) from the Central Bank or other Government Authority; and (2) as quickly as possible and in any event within 10 Business Days following receipt of any such required approval, prepay the total of the Subordinated Loans outstanding at the Floating Interest Rate to the Bank within thirty (30) calendar days following the date of expiry of the Consultation Period (as defined in this paragraph) and shall also pay interest already accrued and unpaid on the principal amount of the Subordinated Loans thus repaid at a rate equal to the cost of borrowing actually borne by the Bank, as determined by the Bank, to fund such amounts of the Subordinated Loans during the period from the first day of the Interest Period for which the notification in (a) above was made to the date of repayment or prepayment, as the case may be, plus, a margin of three hundred and fifteen basis points (3.15%).

3.4 Appraisal Fee

The Parties hereby acknowledge that, prior to the earlier of: (i) the Date of Signature; and (ii) the date on which the Bank and the Borrower sign the Other Bank Finance Document, the Borrower has paid to the Bank a non-reimbursable appraisal fee of US\$ 100,000 (which covers this Agreement and the Other Finance Document).

3.5 Front-end Fee

Prior to, or on the Date of Signature, the Borrower shall pay to the Bank a non-reimbursable front-end fee of one hundred (100) basis points (1%) on the maximum amount of the Bank's commitment under Clause 2.1.

3.6 Commitment Fee

The Borrower shall pay a commitment fee (the "**Commitment Fee**") at the rate of fifty (50) basis points (0.5%) per annum on the undisbursed portion of the Subordinated Loan, which shall begin to accrue on the date that is sixty (60) days following the Date of Signature and shall be payable during the

Grace Period up to the Availability End Date. The Borrower shall pay accrued Commitment Fees on each Payment Date to the Bank.

3.7 Computation of Interest and Fees

Interest on and fees for the Subordinated Loans shall be computed on a daily basis, and for this purpose each year shall be considered to be made up of three hundred and sixty (360) days. The Bank shall notify the Borrower of the interest rate applicable for each Interest Period as soon as it determines such interest rate.

3.8 Interest Periods

Each Interest Period shall be of six months duration, provided that the first Interest Period shall begin to run on the date of the first disbursement of the Subordinated Loan Facility to the first Interest Payment Date, whichever immediately follows such first disbursement. Each Interest Period thereafter shall begin to run on the date of expiry of the preceding Interest Period to the next Interest Payment Date, even if the first day of this Interest Period is not a Business Day. Notwithstanding the foregoing, any period less than six (6) months running from the date of a disbursement to the first Interest Payment Date immediately following such disbursement shall be deemed an Interest Period.

3.9 Repayment of Principal

The Borrower shall repay the Subordinated Loans in ten consecutive semi-annual instalments on each Payment Date, and with the first such instalment being payable on the first Payment Date immediately following the expiration of the Grace Period in accordance with Schedule XIII (*Repayment Schedule*). The Borrower may not re-borrow from the Bank any amounts repaid under this Agreement. Any remaining unpaid amount of the Subordinated Loans, interest, fees and costs under this Agreement shall be due and payable on the earlier of: (a) the last instalment Payment Date in accordance with Schedule XIII (*Repayment Schedule*); and (b) the date falling ten (10) years after the Date of Signature.

3.10 Prepayment

- (a) If any portion of any of the Subordinated Loans no longer qualifies as Tier 2 Capital under the Banking Regulations (the date on which this occurs, the "**New Regulation Date**"):
 - (i) notwithstanding any provision to the contrary in Clause 11, such portion of the relevant Subordinated Loans shall be treated as Senior Liabilities (as defined in Clause 11 below) of the Borrower in priority to any Subordinated Liabilities, on and after the New Regulation Date; and
 - (ii) following the New Regulation Date, the Borrower may at its option (without any prepayment penalty), upon giving the Bank

fifteen (15) Business Days' notice, the computation of which notice period shall begin to run the day following the date of receipt by the Bank of such notice, and subject to the receipt of the written approval of the Central Bank (or other Government Authority pursuant to the Banking Regulations) (if required), on the next Payment Date, prepay that portion of the principal amount of the Subordinated Loans that no longer qualifies as Tier 2 Capital under the Banking Regulations, together with all accrued interest and other amounts payable thereon.

- (b) Subject to having paid all interest, the commitment fee and other charges if any due on the Subordinated Loans, and upon giving the Bank forty-five (45) Business Days' notice, the computation of which notice period shall begin to run the day following the date of receipt by the Bank of such notice, the Borrower may, without any prepayment penalty, provided it shall have obtained the approval of the Central Bank (if required) on the next Interest Payment Date following the expiration of the notice period, prepay all or part of the principal amount of the Subordinated Loans, provided that, in case of partial prepayment, such partial prepayment shall be in an amount that is not less than, and is a multiple of, three million United States Dollars (US\$3,000,000.00), or the remaining amount outstanding under the Subordinated Loans (whichever is lower).
- (c) Each request for prepayment notified to the Bank by the Borrower in accordance with this Clause shall be irrevocable and the amount to be prepaid shall automatically become due at the date specified in the request.
- (d) In the event of prepayment and in addition to the prepayment of any of the Subordinated Loans, the Borrower shall pay the Bank the following amounts:
 - (i) all accrued interest, fees and other amounts outstanding in relation to the amount prepaid; and
 - (ii) any Break Costs and Swap Unwinding Costs payable in relation to the amount prepaid.
- (e) The Bank shall determine the applicable Break Costs and Swap Unwinding Costs, and any such determination by the Bank shall be conclusive absent manifest error.
- (f) The Borrower may not re-borrow from the Bank any amounts prepaid under this Agreement.

3.11 Late Payment

Without prejudice to the remedies available to the Bank under this Agreement or otherwise, if the Borrower fails to make any repayment of principal or payment of interest or any other amount due hereunder on its due date as

specified in this Agreement or, if not so specified, as notified by the Bank to the Borrower, the Borrower shall pay default interest at the rate of two per cent (2.0%) per annum in respect of such amount due and unpaid over and above the interest rate specified in Clause 3.1(a) (*Interest*). Such default interest shall accrue from the date any such amount became due until the date of actual payment (as well after as before judgment) and shall be payable on the first Interest Payment Date following such failure to pay, unless demanded or paid beforehand.

3.12 Notwithstanding anything in this Agreement, if it is or becomes unlawful in any jurisdiction for the Bank to make, maintain or fund any of the Subordinated Loans or perform any of its obligations as contemplated by this Agreement, or if required pursuant to Clause 3.15(c), then:

- (a) upon request by the Bank, the Borrower shall (1) use best efforts to obtain as quickly as possible any approval then required (for so long as any portion of any of the Subordinated Loans qualifies as Tier 2 Capital under the Banking Regulations) from the Central Bank or other Government Authority; and (2) following receipt of any such required approval, on the next Payment Date or such earlier date as the Bank may specify, prepay that portion of the principal amount of the Subordinated Loans which the Bank notifies to the Borrower as being affected by such unlawfulness or inability to access or procure US Dollars, as applicable, together with all accrued interest and other amounts payable thereon; and
- (b) upon notice from the Bank, any portion of the Subordinated Loans which the Bank notifies to the Borrower as being affected by such unlawfulness or inability to access or procure US Dollars, as applicable, and which has not theretofore been disbursed shall be cancelled in accordance with Clause 7.5(h).

3.13 Allocation

If the Borrower at any time shall make a payment to the Bank which is less than the full amount of all sums due and payable to the Bank under this Agreement, the Bank shall be entitled to allocate and apply the amount so paid to or towards the outstanding sums in such order as the Bank in its sole discretion shall determine, notwithstanding any instruction that the Borrower may give to the contrary.

3.14 Currency, Place and Mode of Payment

- (a) Every sum falling due to the Bank hereunder shall be paid in US Dollars, in immediately available funds, free and clear, and without deduction in respect of any exchange commissions, transmission charges and other costs of transfer into an account in the name of the Bank at such bank or banks and in such place or places as the Bank shall from time to time designate in writing and no obligation of the Borrower to pay any such sum to the Bank in the aforesaid currency and place shall be deemed to have been discharged or satisfied by any

tender made in any other currency, place or places (whether by recovery under judgment or otherwise).

- (b) Every payment falling due to the Bank under this Agreement shall be made in sufficient time to ensure that the full amount thereof shall be effectively at the disposal of the Bank on the due date or, if the due date falls on a date which is not a Business Day, then such payment shall be made so that the full amount thereof shall be effectively at the disposal of the Bank on the next succeeding Business Day and interest and/or commitment fee shall continue to accrue for the period from such due date to the next succeeding Business Day.
- (c) All amounts payable by the Borrower under this Agreement shall be paid without set-off or counterclaim, free from any taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any nature (collectively referred to as "Taxes"), and without notice, demand or protest of any kind.
- (d) In the event that the Borrower is compelled by law or regulation to make any deduction or withholding for Taxes from any payment to the Bank, then the Borrower shall be liable for the amount of such deduction or withholding and pay to the Bank such additional amount as will result in the receipt by the Bank of a net amount equal to the full amount to which the Bank would have been entitled if such deduction or withholding had not been required to be made.

3.15 Currency of Disbursements

- (a) All disbursements made by the Bank to the Borrower shall be in United States Dollars.
- (b) Notwithstanding the provisions of Clause 3.15(a), in any case where the Bank shall be unable to procure US Dollars for purposes of any of the Subordinated Loans, the Bank may at its option make disbursements in any other available currency until such a time when it shall have access to United States Dollars.
- (c) The Bank shall promptly notify the Borrower of its inability to access or procure US Dollars immediately after becoming aware of such inability. If within thirty (30) Business Days following such notification the Bank and the Borrower cannot agree on a substitute currency, the Borrower and/or the Bank may cancel the un-disbursed portion of the Bank's commitments for which agreement has not been reached as to a substitute currency. In such case, the Borrower shall repay the Subordinated Loans amount in accordance with Clause 3.12.
- (d) The date of conversion between the United States Dollars and the substitute currency shall be the date of disbursement of the substitute currency.

- (e) The interest rate applicable to Subordinated Loan amounts disbursed in the substitute currency shall be LIBOR (save for the purposes for such definition reference to US Dollars shall be substituted by a reference to such substitute currency) for each applicable Interest Period plus a margin of three hundred and fifteen basis points (3.15%). The Bank shall duly notify the Borrower of such interest rate.
- (f) The parties expressly agree that the provisions of this Clause relating to the substitute currency shall equally apply where the Bank is unable to access or procure the substitute currency.
- (g) Notwithstanding the provisions of Clause 3.14, all funds disbursed in a substitute currency shall also be repaid in such substitute currency.

4 CONDITIONS PRECEDENT TO DISBURSEMENTS

4.1 Conditions Precedent to First Disbursement

The Subordinated Loan Facility may be made available in up to two disbursements. The obligation of the Bank to make the first disbursement shall be subject to the fulfilment of the conditions set forth in paragraphs (a) to (e) (inclusive) below:

- (a) The receipt by the Bank of the following documents and evidence in form and substance satisfactory to it:
 - (i) an executed original of this Agreement registered with the Registrar General of Mauritius;
 - (ii) a copy of the Borrower's Charter certified by the Company Secretary of the Borrower as being a true and complete copy of the original and in full force and effect;
 - (iii) a copy of the banking licence of the Borrower certified by the Company Secretary of the Borrower as being a true and complete copy of the original and in full force and effect;
 - (iv) an original of the certificate of current standing of the Borrower issued by the Registrar of Companies in Mauritius;
 - (v) a copy, certified by the Company Secretary of the Borrower as being a true and complete copy of the originals and in full force and effect, of all of the resolutions of the Board of Directors of the Borrower required to unconditionally approve the execution, delivery and performance of this Agreement and authorising specified persons to sign this Agreement and all documents and notices (including, if relevant, any Disbursement Request) in connection with this Agreement on behalf of the Borrower and to take any action contemplated thereby;

- (vi) the Original Audited Financial Statements (which shall include an unqualified report issued by the Borrower's Auditors confirming the compliance of the Borrower with the Borrower's Charter and with the Banking Regulations including any prudential guidelines promulgated by the Central Bank applicable to the Borrower) and the Unaudited Financial Statements;
- (vii) a copy certified by the Company Secretary of the Borrower as being a true and complete copy of the original, of the unconditional approval of the Central Bank to the Borrower's entry into this Agreement and to borrow and perform its obligations under this Agreement; and to the categorisation, as at the date of such approval, of 100% of the Subordinated Loans disbursed under this Agreement as Tier 2 Capital in accordance with the applicable Banking Regulations (which may include reference to the potential annual reduction of the amount so classified under amendments to the guidelines referred to in Recital (A) under consideration by the Central Bank at the date of this Agreement);
- (viii) copies of the latest capital adequacy returns of the Borrower submitted to the Central Bank evidencing a capital adequacy risk asset ratio expressed as a percentage of at least the higher of: (i) the ratio as prescribed by the Central Bank from time to time; and (ii) ten per cent (10%);
- (ix) an original of an opinion of the Bank's international legal counsel in England & Wales in the form set out in Schedule IIIA;
- (x) an original of an opinion of the Bank's Mauritius legal adviser in Mauritius in the form set out in Schedule IIIB;
- (xi) an original of an opinion of the Borrower's legal adviser confirming the validity and enforceability of this Agreement against the Borrower, the capacity of the Borrower to enter into this Agreement and to perform the transactions contemplated thereby, to sue and to be sued, to incur debt obligations on its own account, and that the Borrower is not protected by any immunities from service of process, seizure, attachment or execution of judgment and that any and all procedures for the waiver of immunities, if any, enjoyed by the Borrower under the laws of Mauritius or any other relevant law has been satisfied with respect to this Agreement;
- (xii) a copy of a letter from the Borrower to its Auditors authorising and requesting them to give the Bank what information it may require, including copies of audited accounts in the form set out in Schedule X;


- (xiii) a copy of a letter from the Borrower to the Central Bank authorising and requesting the Central Bank to give the Bank what information it may require in respect of the Borrower in the form set out in Schedule XI;
 - (xiv) a comfort letter from the Central Bank confirming its approval to the terms of this Agreement and its satisfaction in relation to the Borrower's capital adequacy risk asset ratio in the form set out in Schedule XII;
 - (xv) a copy, certified by the Company Secretary of the Borrower as being a true and complete copy of the original and in full force and effect, of a duly executed Certificate of Incumbency and Authority of the Borrower and specimen signatures in the form set out in Schedule II, certifying such copy to be true and complete and in full force and effect;
 - (xvi) a certification by the Borrower that all consents, licenses, approvals, authorisations and exemptions required under applicable law as of the date of the first Disbursement Request have been obtained by the Borrower, including in relation to it entering into and performing each of its obligations under this Agreement (whether under applicable exchange control regulations or otherwise) and are in full force and effect;
 - (xvii) a copy of the confirmation of the appointment of, and the acceptance by, Blake Laphorn of Seacourt Tower, West Way, Oxford, OX2 0FB, United Kingdom as the Borrower's agent for service of process under this Agreement; and
 - (xviii) a copy, certified by the Company Secretary of the Borrower as being a true and complete copy of the original and in full force and effect, of the Structure Paper.
- (b) Evidence (to the satisfaction of the Bank) of the irrevocable payment in full of the Front-end Fee in accordance with Clause 3.5 (*Front-end Fee*);
 - (c) Evidence (to the satisfaction of the Bank) of the opening by the Borrower of a special USD account for the purposes of receipt of the proceeds of the Subordinated Loans and notice by the Borrower of the account details to the Bank;
 - (d) Written confirmation by the Borrower of its intent to comply with the Environmental Laws of Mauritius, the Social Laws of Mauritius and the Environmental and Social Policies and Guidelines of the Bank; and
 - (e) Fulfilment of the additional conditions precedent set out by Clause 4.3 (*"Conditions Precedent Relating to all Disbursements"*).

4.2 Conditions Precedent to each Subsequent Disbursement

Without prejudice to Clause 4.3, the obligation of the Bank to make all disbursements after the first disbursement shall be subject to the fulfilment of the conditions set forth in paragraphs (a) to (d) (inclusive) below:

- (a) Receipt by the Bank of a certificate issued by the Borrower, in form and substance satisfactory to the Bank, certifying that the proceeds of all previous disbursements of Subordinated Loans have been properly utilised in accordance with the terms of this Agreement;
- (b) Completion by the Bank of verification through a supervision mission to confirm, in the sole opinion of the Bank, that the proceeds of all previous disbursements of Subordinated Loans have been properly utilised in accordance with the terms of this Agreement;
- (c) Receipt by the Bank (in form and substance satisfactory to it) of the Unaudited Financial Statements relating to the period between the previous and the current Disbursement Request; and
- (d) Fulfilment of the additional conditions precedent set out by Clause 4.3 ("*Conditions Precedent Relating to all Disbursements*").

4.3 Conditions Precedent Relating to all Disbursements

Without prejudice to Clause 4.1 or 4.2, the obligation of the Bank to make all disbursements shall also be subject to the fulfilment of the conditions set forth in paragraphs (a) to (j) (inclusive) below:

- (a) The Bank, pursuant to the Banks' Rules and Procedures on Disbursements, shall have received in respect of each disbursement a duly completed original and irrevocable and binding Disbursement Request from the Borrower at least fifteen (15) Business Days prior to the proposed date of disbursement, in the form as set out in Schedule V;
- (b) If not signed by an Authorised Representative, the Bank shall have received evidence of the authority given to persons authorised to sign Disbursement Requests on behalf of the Borrower, together with the specimen of their respective signatures;
- (c) Evidence (to the satisfaction of the Bank) of the irrevocable payment in full of any outstanding fees, expenses and costs (including but not limited to attorneys' fees) in connection with this Agreement;
- (d) The Borrower shall have provided written evidence that as at the date of the delivery of the Disbursement Request:
 - (i) the ratio of the Disbursed Amount to Shareholders' Equity does not exceed 1:2; and
 - (ii) the capital adequacy risk asset ratio, expressed as a percentage, is at least the higher of: (i) the ratio as prescribed by the Central Bank from time to time; and (ii) ten per cent (10%);

- (e) The representations and warranties contained in Clause 5 shall be true and accurate on the date of each Disbursement Request with the same effect as though such representations and warranties had been made on each such date;
- (f) No Event of Default or no Potential Event of Default under this Agreement has occurred and/or is continuing or, in the opinion of the Bank, is likely to occur as a result of the proposed disbursement;
- (g) Since the date of the Original Audited Financial Statements with respect to the first disbursement and since the date of all other disbursements (if any): (i) nothing shall have occurred which might have a Material Adverse Effect; or (ii) the Borrower shall not have incurred any material loss or liability (except any such liability as may be incurred by the Borrower in fulfilment of its obligations under this Agreement);
- (h) In the opinion of the Bank, as a result of giving effect to such disbursement the Borrower shall not be in violation of its Charter, any provision contained in any document to which the Borrower is a party (including this Agreement) or by which the Borrower is bound or any law, rule or regulation directly or indirectly limiting or otherwise restricting the Borrower's borrowing power or authority or the Borrower's ability to borrow;
- (i) The total amount of Subordinated Loans already disbursed and the amount requested under the most recent Disbursement Request does not exceed the amount of the maximum amount of the Subordinated Loan Facility as stated in Clause 2.1; and
- (j) The Bank shall have received from the Borrower, in form and substance satisfactory to it, such other statements, certificates, documents, information and legal opinions with respect to matters contemplated by this Agreement as the Bank may reasonably request, including as the Bank may require under the provisions of the Bank's Rules and Procedures on Disbursement.

5 BORROWER'S REPRESENTATIONS AND WARRANTIES

5.1 Representations

The Borrower hereby represents and warrants to the Bank as follows:

- (a) Organisation and Qualification That the Borrower is a public company duly established, validly existing under the laws of Mauritius and has the corporate power, and has obtained all required authorisations to conduct its business as presently conducted, own its assets, grant security interests in its assets, sue and be sued, and to enter into and perform its obligations under this Agreement and any other related document to which it is or will be a party;

- (b) Authorisation; No Conflict The execution, delivery and performance by the Borrower of this Agreement and all Disbursement Requests, are duly authorised, including by all relevant statutes of Mauritius and by necessary corporate action on the part of the Borrower, as applicable, and does not and will not: (i) require any consent or approval of any shareholder of the Borrower which has not been obtained on the Date of Signature; (ii) contravene the Borrower's constitutional documents, including any borrowing limits; (iii) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award currently in effect and applicable to the Borrower; (iv) result in a breach of or constitute a default under or require the consent of any party to any agreement, lease or instrument to which the Borrower is a party or to the Borrower or its properties may be bound or affected; (v) result in, or require, the creation or imposition of any lien or other encumbrance (other than any liens or encumbrances which may arise pursuant to this Agreement) upon or with respect to any of the properties of the Borrower; or (vi) violate or impair any permit or license, and, the Borrower is not in default under any such law, rule, regulation, order, writ, judgment, injunction, decree, determination or award or any indenture, agreement, lease or instrument, in each case, except as otherwise disclosed to the Bank in writing prior to the Date of Signature;
- (c) Governmental Consents; Permits and Authorisation
- (i) No authorisation or approval or other action by, and no notice or filing with, any Governmental Authority (other than with the Registrar General of Mauritius) is required: (i) for the due execution and delivery of, and due performance of the financial obligations of the Borrower under this Agreement; or (ii) for the due performance of all other obligations of the Borrower under this Agreement; or (iii) to make this Agreement admissible in evidence in Mauritius; in each case, except for the approval of the Central Bank referred to in Clause 4.1(a)(vii) and such authorisations, approvals or other actions as have been obtained or notices or filings as have been made as at the Date of Signature;
- (ii) The only authorisation or approval from any Governmental Authority required for the Subordinated Loan to meet the requirements of Tier 2 Capital is the approval of the Central Bank referred to in Clause 4.1(a)(vii);
- (d) Binding Obligations This Agreement is, when fully executed, the legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms;
- (e) Litigation There is no material litigation, arbitration or administrative action, proceeding or investigation, to the best of the Borrower's knowledge and belief, pending or threatened against or involving the Borrower other than those detailed in the Disclosure Letter. For the

purposes of this sub-clause and the Disclosure Letter, the term "material" refers to the circumstance where any of the foregoing litigation, arbitration or administrative action, proceeding or investigation has or may have an adverse financial impact on the Borrower in excess of US\$3,000,000;

(f) Financial Statements; No Material Adverse Effect

- (i) The Original Audited Financial Statements fairly present the financial condition of the Borrower as at such date and the results of the operations of the Borrower for the period ended on such date, all in accordance with GAAP;
- (ii) The Borrower has no material liability for taxes, long-term lease or unusual forward or long-term commitment which is not reflected in the Original Audited Financial Statements;
- (iii) Since the date of the Original Audited Financial Statements, none of the business, operations or prospects of the Borrower nor any of its properties or assets have been affected by any event, occurrence or development (whether or not insured against) which would, either in any case or in the aggregate, have a Material Adverse Effect on the Borrower and nothing has occurred which might materially and adversely affect the implementation of the Purpose and the Use of Proceeds;

(g) Other Agreements Other than the Other Bank Finance Document, the Borrower is not a party to any indenture, loan or credit agreement or any lease or other agreement or instrument or subject to any Charter or other corporate restriction which would, in the absence of a default thereunder, result in a Material Adverse Effect on the Borrower, or materially impair the ability of the Borrower to carry out its obligations under this Agreement;

(h) Information Accurate

- (i) None of the information delivered to the Bank by the Borrower contains any material misstatement of fact or omits to state a material fact;
- (ii) All written information provided to the Bank by the Borrower (or on its behalf) was true, complete and correct, and all calculations contained in such information are accurate, in each case, as at the date it was provided and as at the date (if any) at which it is stated or repeated;
- (iii) All budgets and financial projections provided by the Borrower to the Bank presented the Borrower's current estimate of its future business, operations and affairs as of the date thereof and were prepared in good faith on the basis of recent historical information and on the basis of reasonable assumptions; and

- (iv) Nothing has occurred or been omitted and no information has been given to the Bank or withheld that results in any information previously given to the Bank being untrue, incomplete or misleading in any material respect;
- (i) Solvency
- (i) The Borrower is not entering into the arrangements contemplated by this Agreement with actual intent to hinder, delay or defraud either present or future creditors;
- (ii) At all times when this representation is made or deemed to be repeated: (i) the Borrower's assets at fair valuation are, and will be, greater than its Indebtedness at fair value (including its Contingent Liabilities); (ii) the present fair saleable value of the Borrower's assets exceed, and will exceed, the probable liability of the Borrower on its Indebtedness (including its Contingent Liabilities) as they become absolute and mature; (iii) the Borrower has not, and will not have, incurred, and does not intend to, or believe that it will, incur Indebtedness (including its Contingent Liabilities) beyond its ability to pay such Indebtedness as such Indebtedness mature and, (iv) the Borrower has sufficient capital with which to conduct business;
- (iii) No corporate action, legal proceeding or other procured or step in respect of the commencement of insolvency, bankruptcy, liquidation, dissolution or other analogous proceedings (whether voluntary or involuntary) relating to the Borrower has been taken or, to the knowledge of the Borrower, threatened in relation to the Borrower or any member of the group of companies of which the Borrower is a part;
- (j) Taxes and Other Payments
- (i) The Borrower has filed all tax returns and reports required by law to have been filed by it and has paid all taxes and governmental charges owing and all claims for sums due for labour, material, supplies, personal property and services of every kind and character provided with respect to, or used in connection with its business, undertaking or otherwise and no claim for the same exists (other than as permitted hereunder), except any such taxes, charges or amounts which have been disclosed in writing to the Bank and which are being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP have been set aside on the books of the Borrower;
- (ii) Other than Registration Duty and Stamp Duty payable to the Registrar General of Mauritius, there is no tax of any Governmental Authority of Mauritius to be imposed on or by virtue of the execution, delivery or performance of this

Agreement or necessary to ensure the legality, validity, enforceability or admissibility in evidence hereof in Mauritius; and

- (iii) The Borrower is not required to make any deduction for or on account of tax from any payment it may make under this Agreement;
- (k) No Cross-Default Neither the entering into of this Agreement nor the compliance with its terms will conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default or require any consent under, any indenture, mortgage, agreement or other instrument or arrangement to which the Borrower is a party or by which the Borrower is bound, or violate any of the terms or provisions of the Borrower's Charter or any judgment, decree or order or any statute, rule or regulation applicable to the Borrower;
- (l) Environmental Compliance The Borrower is in full compliance with the Environmental Laws of Mauritius and the Social Laws of Mauritius, is taking appropriate steps to fully comply with the Environmental and Social Policies and Guidelines of the Bank, and has obtained all required licenses, permits and authorisations;
- (m) Good Governance
 - (i) The Borrower is not in violation of any law applicable to it and presently in effect, except for such violations which will not or could not reasonably be expected to result in a Material Adverse Effect;
 - (ii) The Borrower has not committed nor is it engaged in: money laundering, any coercive, collusive, corrupt or fraudulent practice nor the provision of financial or related facilities in support of terrorist persons (artificial or natural);
 - (iii) The Borrower has complied with all applicable international standards with respect to combating money laundering and corruption practices;
 - (iv) The Borrower has complied with all applicable international labour standards, including in respect of child labour or other forms of forced labour; and
 - (v) The proceeds of Subordinated Loans shall not have been or be used or provided by the Borrower for any of the foregoing matters described above;
- (n) Banking Regulations The Borrower is in good standing and in full compliance with the Banking Regulations including any prudential guidelines promulgated by the Central Bank including the express requirement that the Borrower's Tier 2 Capital will not at any time

exceed 50% of the Borrower's Tier 1 Capital for testing of compliance of regulatory capital requirements under Banking Regulations (the "Tier 2 Capital Test");

(o) No immunity

- (i) The Borrower is subject to civil and commercial law with respect to its obligations under this Agreement and neither the Borrower nor any of its assets will be entitled to claim any right of immunity from set-off, suit, execution, attachment or other legal process in respect of any of its obligations under this Agreement;
- (ii) The entry into and performance of this Agreement constitutes private and commercial acts of the Borrower (rather than governmental or public acts).

5.2 Representations for Each Disbursement

- (a) The following representations shall be deemed to be made or repeated, as applicable, and given by the Borrower to the Bank on and as of the date of submission by the Borrower of the Disbursement Request and on the disbursement date, in each case, by reference to the facts and circumstances then existing:
 - (i) the representations and warranties in Clause 5.1 above;
 - (ii) no Event of Default nor any Potential Event of Default has occurred or is continuing or might in the reasonable opinion of the Bank be expected to result from making a disbursement;
 - (iii) the proceeds of the Subordinated Loans are being used exclusively for the procurement of goods produced in and services supplied from the Regional Member Countries;
 - (iv) the proceeds of the Subordinated Loans are not being used to finance any sectors not eligible for proceeds as provided in Schedule VIII and are being used pursuant to the Purpose and the Use of Proceeds;
 - (v) the Borrower is implementing the Social and Environmental Management System and with respect to each project and operations financed (or proposed to be financed) by the Borrower out of the proceeds of the Subordinated Loans the Borrower and its relevant customer are in compliance with the Environmental Laws of Mauritius, the Social Laws of Mauritius, the Environmental and Social Policies and Guidelines of the Bank and, as applicable, the regulations and requirements of the Regional Member Countries within which such project and operations are located.

5.3 Warranty

- (a) The Borrower acknowledges that it has made the representations and warranties referred to in this Clause 5 with the intention of inducing the Bank to enter into this Agreement and to grant the Subordinated Loans to the Borrower and that the Bank has entered into this Agreement on the basis of, and in full reliance on, each of such representations.
- (b) The Borrower warrants to the Bank that each such representation is complete, true, and correct as of the Date of Signature and that none of the representations contains an untrue statement or omits to state a fact required to be stated therein, or necessary to make the representations, not false or misleading. The representations and warranties set forth by the Borrower in this Agreement are continuing in nature and shall survive the execution of this Agreement.
- (c) If any of the representations and warranties referred to in this Clause 5 was not true and correct as of the date it was made or deemed to be repeated, the Borrower shall immediately notify the Bank and use best efforts to obtain as quickly as possible any approval then required (for so long as any portion of any of the Subordinated Loans qualifies as Tier 2 Capital under the Banking Regulations) from the Central Bank or other Government Authority to, and following receipt of any such required approval to, repay the upon demand by the Bank such Subordinated Loan(s) made at any time any of the same were not true or incorrect.

6 BORROWER'S COVENANTS

From the date of this Agreement and until such time as all amounts due hereunder are repaid or, as the case may be, paid in full, the Borrower hereby covenants and agrees that it shall comply with the following covenants:

6.1 Covenants with respect to the Borrower's Operations

- (a) perform the obligations, carry out the business and implement the Purpose and the Use of Proceeds with due diligence and efficiency and in accordance with sound administrative, financial, banking, technical, environmental and social policies and practices under the supervision of qualified and experienced management and in accordance with all applicable laws, regulations and orders of all relevant governmental or regulatory authorities, including all regulations promulgated by the Central Bank;
- (b) obtain, comply with the terms of, and do all that is necessary to maintain in full force and effect (or, where appropriate, renew), all authorisations, approvals, licenses and consents required to maintain the Borrower's corporate existence, to implement the Purpose and the Use of Proceeds or otherwise required by applicable law or Banking Regulations and carry out the Borrower's business and operations and

to ensure the legality, validity and enforceability of this Agreement and perform and observe all the conditions and restrictions contained in, or imposed on the Borrower by, any such authorisations, approvals, licenses and consents;

- (c) maintain in full force and effect, insurance against loss, damage and liability in respect of all such risks as should prudently be insured by banks and financial institutions of a comparable size and nature to the Borrower or as the Bank may reasonably require and in a manner and with insurers satisfactory to the Bank; and perform any obligations with regard to insurance required by the Bank and not do anything (or fail to do anything within its control) whereby any of the insurances are rendered void or voidable or impaired or suspended in whole or in part, or any claims or insurance proceeds become uncollectible in full;
- (d) ensure that all transactions with any subsidiary or other affiliate are entered into in the ordinary course of business as commercial arms-length transactions;
- (e) conduct its business in such a manner that maintains its good standing with the Central Bank;
- (f) conduct its own business with due regard to the occupational health and safety of its employees and to the social, ecological and environmental impact of the same, in full compliance with the Environmental Laws of Mauritius, the Social Laws of Mauritius, the Environmental and Social Policies and Guidelines of the Bank and, where relevant, the regulations and requirements of the Regional Member Countries within which such business activities will be carried out;
- (g) at all times maintain in full force and effect an Environmental Impact Assessment Policy (including with respect to each project and operations financed by the Borrower out of the proceeds of the Subordinated Loans) that is satisfactory to the Bank and submit annually environmental performance reports to the Bank;
- (h) maintain internal procedures satisfactory to the Bank for the purpose of preventing the Borrower from becoming an instrument for money laundering, terrorism financing, fraud or other corrupt or illegal purposes and comply with all applicable laws relating to such matters, including all laws in Mauritius and all regulations and guidelines issued by the Central Bank relating to such matters.

6.2 Covenants with respect to the Purpose and the Use of Proceeds

- (a) not be, and not provide the proceeds of Subordinated Loans to any customer which is, involved in any activity, or for the purpose of financing any activity, in any of the sub-sectors contained in the negative list attached hereto as Schedule VIII;

- (b) ensure that (i) the proceeds of the Subordinated Loans shall be used exclusively for the procurement of goods produced in and services supplied from the Regional Member Countries as set out in Schedule VII and is not made available for borrowing outside the Regional Member Countries, and that (ii) procurement shall be undertaken in accordance with the principles of economy and efficiency as well as in accordance with appropriate procedures and established commercial practices.

6.3 Negative Covenants

From the date of this Agreement and until such time as all amounts due hereunder are repaid or, as the case may be, paid in full, the Borrower agrees with the Bank that, except as the Bank may from time to time otherwise agree in writing, the Borrower shall not:

- (a) other than as expressly contemplated in the Structure Paper, declare or distribute any dividend, purchase, redeem or otherwise acquire any shares in its capital or effect any other kind of profit distribution whether directly or indirectly, except: (i) out of the Borrower's net income earned in the preceding Financial Year; and (ii) only if no Event of Default nor Potential Event of Default has occurred and is continuing, or is likely to occur as a result of such declaration or distribution;
- (b) other than in the ordinary course of business or as expressly contemplated in the Structure Paper, and in any event in accordance with and full compliance with the then requirements of the Central Bank and applicable laws and whether in a single transaction or in a series of transactions related or otherwise, sell, lease, lend, assign or transfer or otherwise dispose of or part with possession of any of its assets or the whole or any substantial part of its revenues, or undertaking, provided that the Borrower may sell, lease, transfer or assign revenues and assets not exceeding an aggregate value of US\$3,000,000 during the term of this Agreement;
- (c) change or cause to be changed the nature or scope of its business, the Purpose and the Use of Proceeds, its Charter, its other constitutive documents or its policies, including its credit policy and its environmental and social policies as amended from time to time, other than:
 - (i) any such changes as may be expressly required by the mandatory provisions of laws generally applicable to banks and financial institutions such as the Borrower at such time; and
 - (ii) those changes expressly contemplated in the Structure Paper;
- (d) enter into any transactions, including but not limited to the use of derivatives for speculative purposes, which could result in a Material Adverse Effect;

- (e) enter into any agreement whereby its income and profits are shared with any third party, except for any such agreement which is entered into in the ordinary course of business and in accordance with and full compliance with the then requirements of the Central Bank and applicable laws;
- (f) other than as expressly contemplated in the Structure Paper, undergo a change of control or other reorganisation, merger or other transaction that would result in any person (i) holding (whether directly or indirectly) at least 50% of any class of equity securities or other ownership interest of the Borrower, or (ii) having the right to appoint a majority of the board of directors (or other governing body) of the Borrower or otherwise have the ability to control the affairs of the Borrower;
- (g) engage in any action that might result in a Material Adverse Effect;
- (h) create or permit to exist any Security on any of its property, revenues or other assets, present or future, except:
 - (i) any tax or other non-consensual Security arising by operation of law (including regulations promulgated by the Central Bank) or other statutory Security arising in the ordinary course of business, provided that such Security (other than Security for a sum which is not yet delinquent) is discharged within 30 days after the date it is created or, if the validity or amount of such Security or the sum secured by such Security is being contested in good faith and by proper proceedings and adequate reserves have been set aside for the payment of such sum, within 30 days after final adjudication;
 - (ii) any Security arising in the course of ordinary banking transactions and securing a debt maturing not more than one year after the date on which it was originally incurred;
 - (iii) any Security arising as a result of treasury transactions (including, for the avoidance of doubt, repo and derivative transactions);
 - (iv) any Security arising as a result of the reserve and liquidity maintenance requirements of the Borrower, as required by the Central Bank or any other competent Governmental Authority;
 - (v) any Security created by the Borrower over its future payment rights or receivables under any securitisation of any of its assets in the ordinary course of its business and in compliance with the requirements of the Central Bank or any other competent Governmental Authority;
 - (vi) any Security granted over government bonds or treasury bills arising from or in connection with any indebtedness of the

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Borrower from a multilateral or supra-national financial institution in favour of such multilateral or supra-national financial institution, as applicable;

- (vii) any Security arising out of the refinancing, extension or renewal of any indebtedness secured by any Security permitted under paragraphs (i) to (vi) inclusive above; provided that no such Security is extended to cover any asset not previously subject to that Security and does not secure amount greater than the relevant indebtedness; and
- (viii) any Security not otherwise permitted under this Clause 6.3(h), securing indebtedness of the Borrower in the aggregate outstanding principal amount not exceeding US\$10,000,000 (or its equivalent in another currency at the then applicable rate of exchange).

6.4 Financial and Related Covenants

- (a) The Borrower shall ensure that any claims and rights arising under the Subordinated Loan shall rank *pari passu* with all other subordinated Indebtedness of the Borrower;
- (b) The Borrower shall maintain a capital adequacy ratio which is at least the higher of: (i) the ratio as prescribed by the Central Bank from time to time; and (ii) ten per cent (10%);
- (c) The Borrower shall ensure that at any time the ratio of the Disbursed Amounts to Shareholders' Equity shall not exceed 1:2 at any time;
- (d) The Borrower shall not create or agree to create or permit to exist any unsecured long-term liabilities in excess of 50% of its total liabilities nor breach the Tier 2 Capital Test;
- (e) Without prejudice to the foregoing, the Borrower shall conform to all financial ratios and regulatory capital requirements as applicable to the Borrower by the Central Bank or any other institution with responsibility for regulation of banks and financial institutions in Mauritius, except in so far as the Borrower has obtained an exemption from any such ratios or requirements;
- (f) The Borrower covenants and agrees that:
 - (i) it shall operate a proper and efficient accounting, cost control, and management information system satisfactory to the Bank and maintain books of account and other records adequate to reflect the true and fair financial conditions and the result of its operations in accordance with IFRS and GAAP;
 - (ii) it shall ensure that its accounts are audited at least once in every calendar year by Auditors acceptable to the Bank;

- (iii) it shall permit duly authorised representatives and agents of the Bank at any time and from time to time on reasonable written notice and during business hours to have full access to and inspect (i) any premises where the business of the Borrower is conducted, (ii) its accounting and other records, and (iii) data and information relating to sub-projects financed by way of the proceeds of the Subordinated Loans, and permit such representatives and agents to take copies of, or extracts from, any such accounting, records, data and information. Such inspection shall be carried out for the purpose of monitoring the implementation of the Purpose and the Use of Proceeds and the Bank undertakes that any information or records gathered shall be kept confidential and can be utilised solely for the purpose of enforcing the Bank's rights under this Agreement;
- (iv) the Bank shall be entitled to receive notice of, and to attend, shareholder meetings of the Borrower as an observer and the Borrower shall send notice of the same to the Bank in accordance with Clause 6.5(b)(iv); and
- (v) it shall make timely filing of all tax returns and governmental reports required to be filed or submitted under any applicable law.

6.5 Information Covenants

- (a) The Borrower hereby agrees as from the Date of Signature to furnish to the Bank (in electronic format unless otherwise agreed between the Parties):
 - (i) Within 60 days after the end of each quarter of each Financial Year, certifications by the Borrower of: (i) its compliance with the financial covenants and related covenants set forth in Clause 6.4, or as the case may be, detailing any non-compliance, in each case as at the last day of the relevant quarter; and (ii) its compliance as at the last day of the relevant reporting period with all prudential mandatory ratios, promulgated by the Central Bank and applicable to the Borrower from time to time, except in so far as the Borrower has obtained an exemption from any such ratio or requirement;
 - (ii) A copy of the Borrower's Unaudited Financial Statements for each semi-annual period of each Financial Year as soon as available, but in any event within 90 days following the close of such accounting period, which obligation may be satisfied by posting on the Borrower's website (which as at the date of this Agreement is www.mcb.mu), provided that: (A) the Bank is promptly notified of such posting; and (B) the Bank (using reasonable efforts) has access at all times to such posting on the Borrower's website;

- (iii) As soon as available and in any event within four (4) months after the end of each Financial Year, a copy of the Borrower's complete Audited Financial Statements for such Financial Year, together with an Auditor's report on such accounts, and any document referred to therein, which obligation may be satisfied by posting on the Borrower's website (which as at the date of this Agreement is www.mcb.mu), provided that: (A) the Bank is promptly notified of such posting; and (B) the Bank (using reasonable efforts) has access at all times to such posting on the Borrower's website);
- (iv) As soon as possible and in any event within 30 days after its issuance to the Borrower, each management letter provided by an Auditor which refers in whole or in part to any inadequacy, defect, problem, qualification, or other lack of fully satisfactory accounting controls utilised by the Borrower;
- (v) Written reports on any alteration or amendment to the Borrower's Charter or other basic documents and of any material change in its respective ownership or senior management arrangements and of any "unbundling" of any subsidiary, associate or other asset or any other restructuring transactions, including as contemplated in the Structure Paper;
- (vi) Within 30 days after the end of each quarter of each Financial Year, a list of any reports, information, forms, or records submitted by the Borrower during the relevant reporting period to any party, including the Central Bank, as may be required under Banking Regulations, and upon reasonable request from the Bank, a copy of any such report, information, form or record;
- (vii) As soon as available, the annual supervision report prepared by the Central Bank concerning the Borrower, if any, which, only if the Borrower is prevented under Mauritius law from providing a copy of such report to the Bank, such obligation may be satisfied by the Borrower by promptly making the said annual supervision report available for on-site review by the Bank provided that the Bank is promptly notified of the availability of such report for on-site review;
- (viii) Within 90 days after the end of each Financial Year, a report on the compliance of the Borrower with the Environmental Laws of Mauritius, the Social Laws of Mauritius, the Environmental and Social Policies and Guidelines of the Bank and, where relevant, the regulations and requirements of the Regional Member Countries within which their operations are located;
- (ix) Within 90 days after the end of each Financial Year, a report substantially in the form set out in Schedule IX on activities financed by the Borrower and supported by the proceeds of the

Subordinated Loans substantially indicating, inter alia, the number of jobs created, effects on gender, estimates of tax revenue generated at the Borrower's level, as well as any other quantifiable economic benefits to the local community;

- (x) Copies of such further reports and information concerning the Borrower's operations and affairs as the Bank may from time to time reasonably request on reasonable notice;
- (b) Promptly upon the Borrower becoming aware, the Borrower shall provide notice (and if applicable, copies of relevant documentation) to the Bank of any of the following:
 - (i) save as otherwise expressly disclosed in the Structure Paper, any change or the occurrence of unforeseen changes in the nature, structure or scope of the Purpose and the Use of Proceeds, the Borrower or any of its businesses or operations, including changes related to its principal shareholders, Board of Directors or the Chief Executive Officer, and any proposed change or event which might materially or adversely affect the Purpose and the Use of Proceeds or any of the businesses or operations of the Borrower;
 - (ii) the occurrence of: (i) any Event of Default; (ii) any Potential Event of Default; or (iii) any other act or event which (in the case of (iii) only) has or might have a Material Adverse Effect (including, but not limited to, litigation, arbitration or action with a value of in excess of three million United States Dollars (US\$ 3,000,000) which has begun or is threatened against the Borrower);
 - (iii) save as expressly disclosed in the Structure Paper, any likely or proposed merger, amalgamation, take-over, arrangement, acquisition, consolidation affecting or likely to involve or affect the Borrower or any of its businesses or operations together information on such merger, amalgamation, take-over, arrangement, acquisition or consolidation or any information which will enable the Bank to determine the likely effect of such merger, amalgamation, take-over, arrangement, acquisition or consolidation on the Purpose and the Use of Proceeds, the Subordinated Loans or the performance of the obligations of the Borrower contained in this Agreement; or
 - (iv) any notice relating to meetings of the shareholders of the Borrower and such other related documents as the Bank may require.

6.6 Taxes

The Borrower shall pay or cause to be paid, or, upon notice from the Bank, reimburse the Bank or its assigns for:

- (a) all taxes (including Stamp Duty and Registration Duty), duties, fees or other charges payable on or in connection with the execution, issue, delivery, registration or notarisation of this Agreement or, any documents related hereto (including any extensions or renewals); and
- (b) all present and future taxes, duties, fees or other charges (whatever the nature), now or at any time hereafter levied or imposed by the government of Mauritius or by any department, agency, political subdivision or taxing or other authority thereof or therein or by any organisation of which Mauritius is a member, on or in connection with the payment of any and all amounts due under this Agreement, including all repayments of principal, or payments of interest and other amounts due, shall be made without deduction for or on account of any such taxes, duties, fees or other charges.

6.7 Fees and Expenses

The Borrower shall pay or cause to be paid to the Bank as the Bank may direct the reasonable fees and expenses incurred by the Bank (including, without limitation, fees and expenses for services rendered by external counsel retained by the Bank) in connection with the preparation, execution and, where appropriate, registration, delivery, carrying into effect and disbursements of this Agreement (and any renewal, extension, amendment, waiver or consent thereto), including taxes, fees, charges, registration and stamp duties (including Registration Duty and Stamp Duty) and any future intercreditor arrangements in respect of this Agreement. Furthermore, the Borrower shall upon request by the Bank, directly commit to professional advisors and/or consultants to be retained by the Bank in connection with this Agreement so to ensure direct payment of their invoices with express exclusion of any liability on the part of the Bank as to the payment of any fees, disbursements, costs and expenses connected therewith.

6.8 Costs Incurred in Preservation of Rights

The Borrower shall from time to time on demand reimburse the Bank any reasonable and justified expenses (including legal fees) incurred by the Bank in the preservation or enforcement of any of the Bank's rights under this Agreement.

6.9 Payments Other than in Accordance with this Agreement

If any payment or repayment due under this Agreement is made otherwise than in accordance with the terms hereof, the Borrower shall pay to the Bank on demand, such additional amount as the Bank may certify (such certification to be conclusive) as necessary to compensate the Bank for any loss (including loss of profit), cost or expense on account of funds borrowed, contracted for or utilised to fund the amount so paid or repaid.

6.10 Execution of Further Documents

The Borrower shall execute all such other documents and instruments and do all such other acts and things as the Bank may determine are necessary or desirable to give effect to the provisions of this Agreement and to cause this Agreement to be duly registered, notarised and stamped in Mauritius, if necessary.

7 DISBURSEMENTS, SUSPENSION AND CANCELLATION

7.1 Disbursements

- (a) The Subordinated Loan Facility shall be made available by the Bank from time to time to the Borrower in no more than two disbursements, which in each case shall be not less than US\$10,000,000.
- (b) Each Disbursement Request submitted by the Borrower to the Bank shall specify whether the disbursement of the Subordinated Loan Facility is to be made as (i) a Fixed Rate Loan (a "**Fixed Rate Loan Disbursement**") and in the case of such election, the interest rate applicable to such disbursement shall be the interest rate determined in accordance with Clause 3.2(c); or (ii) at a Floating Interest Rate (a "**Floating Rate Loan Disbursement**") and in the case of such election, the interest rate applicable to such disbursement shall be the interest rate determined in accordance with Clause 3.1(a), subject to the option for a later conversion to a Fixed Rate Loan pursuant to Clause 3.2(b).
- (c) Promptly following the first disbursement, provided that the date of first disbursement was prior to 1 February 2014, the Bank shall issue a letter to the Borrower certifying that the period between the date of first disbursement and the first instalment Payment Date in accordance with Clause 3.9 is more than five years.

7.2 Availability End Date

Notwithstanding anything contained herein, the obligation of the Bank to make disbursements pursuant to this Agreement shall cease on the Availability End Date.

7.3 Suspension by the Bank

Notwithstanding anything herein contained the Bank shall at any time be at liberty by notice in writing served on the Borrower to suspend in whole or in part the Bank's obligations hereunder to make any disbursement or further disbursement to the Borrower after the occurrence of any of the following events:

- (a) The happening of any event mentioned in Clause 7.5; or
- (b) If at any time, in the reasonable opinion of the Bank, there shall exist any situation which indicates that performance by the Borrower of any obligation under this Agreement cannot be expected.

7.4 Effective Date of Suspension

The suspension shall take effect from the time the notice is dispatched by the Bank pursuant to Clause 7.3 and shall remain in force until cancelled in writing by the Bank. The notice may specify the terms or conditions upon which the notice will be cancelled.

7.5 Cancellation by the Bank

The Bank may by notice in writing to the Borrower, cancel its obligations hereunder to make disbursements or, as the case may be, further disbursements:

- (a) if all the conditions precedent to the first disbursement, as set forth in Clauses 4.1 and 4.3, shall not have been fulfilled on or prior to the Availability End Date;
- (b) if, after the Availability End Date, an amount of the Subordinated Loan Facility shall not have been disbursed;
- (c) if, at any time in the reasonable opinion of the Bank, there shall exist any situation which indicates that performance by the Borrower of any obligation under this Agreement cannot be expected;
- (d) if an extraordinary and unforeseen situation or an intervening illegality arises after the Date of Signature, which could compromise the implementation of the Purpose and the Use of Proceeds, or the Borrower's performance of any of its obligations under this Agreement;
- (e) if the Borrower shall have modified the nature of the objective of the Purpose and the Use of Proceeds financed from the resources of any of the Subordinated Loans without the written consent of the Bank;
- (f) if any Event of Default or Potential Event of Default shall have occurred and be continuing;
- (g) if any obligation on the part of the Bank to make any disbursement shall remain suspended for a continued period of ninety (90) days;
- (h) if it is or becomes unlawful in any jurisdiction for the Bank to make available, disburse, maintain or fund any of the Subordinated Loans or perform any of its obligations as contemplated by this Agreement; or
- (i) on and at any time following the New Regulation Date.

7.6 Effective Date of Cancellation

The cancellation by the Bank shall take effect on the date of the Bank's decision to cancel. The Bank shall promptly notify that date to the Borrower.

7.7 Cancellation by the Borrower

The Borrower shall be entitled, by notice in writing to the Bank, to cancel all or any part of the undisbursed amount of the Subordinated Loan Facility committed by the Bank under Clause 2.1. The cancellation by the Borrower shall take effect on the date of receipt by the Bank of such cancellation notice, provided, however, that such cancellation shall not absolve the Borrower of or limit its obligations to the Bank in relation to the disbursed Subordinated Loans and any rights under this Agreement pertaining thereto. Any notice of cancellation given by the Borrower under this Agreement shall be unconditional and irrevocable.

8 EVENTS OF DEFAULT

8.1 General Acceleration Provisions

Subject as follows, as long as any portion of any of the Subordinated Loans qualifies as Tier 2 Capital under the Banking Regulations, that portion of that Subordinated Loan cannot be repaid prior to its originally scheduled maturity other than at the option of the Borrower and with the prior approval of the Central Bank. Subject to the foregoing, if an Event of Default shall occur and be continuing or there shall have been entered against the Borrower a decree or order by a court or other competent authority declaring the Borrower insolvent or bankrupt, or any resolution has been passed for the liquidation of the Borrower, or a court or other competent authority has made a decision to commence bankruptcy proceedings against the Borrower or liquidation or similar proceedings to wind-up the Borrower, then the principal of, and all accrued interest on, the Subordinated Loans (together with any other amounts accrued or payable under this Agreement) shall thereupon become, immediately due and payable by the Borrower (subject in any event to the provisions of Clause 11 (*Subordination*)) without any further notice and without any presentment, demand or protest of any kind, all of which are hereby expressly waived by the Borrower. For the avoidance of doubt, as long as any portion of any of the Subordinated Loans qualifies as Tier 2 Capital under the Banking Regulations, in any such bankruptcy, liquidation or similar proceedings of the Borrower, the payment of any amounts payable hereunder shall be subordinated to the payment of all Senior Liabilities in accordance with Clause 11 (*Subordination*).

8.2 Events of Default

The following events shall constitute "Events of Default" under this Agreement:

- (a) the Borrower does not pay on the due date any amount payable pursuant to this Agreement at the place and in the currency in which it is expressed to be payable, unless: (i) the Borrower's failure to pay is an administrative or technical error; and (ii) payment is made within a period of five (5) Business Days of its due date;
- (b) default shall have occurred in the performance of any obligation of the Borrower under this Agreement (other than as provided in (a) above or (c) below), the Other Bank Finance Document or other agreement

between the Borrower and the Bank, and/or to which the Bank is party in connection with the Purpose and the Use of Proceeds (including any agreement pursuant to which the Borrower agrees to on-lend any of the proceeds of the Subordinated Loans), and, if capable of remedy, any such default shall have continued for a period of twenty (20) Business Days after the later of the date on which: (i) the Borrower first becomes aware of such default; and (ii) notice of such default shall have been given to the Borrower by the Bank;

- (c) breach by the Borrower of the Tier 2 Capital Test or of a Banking Regulation where such breach is continuing for a period of twenty (20) Business Days after the later of the date on which: (i) the Borrower first becomes aware of such default; and (ii) notice of such default shall have been given to the Borrower by the Bank and in respect of a breach of a Banking Regulation where such breach is likely to have a Material Adverse Effect;
- (d) any representation or warranty confirmed, repeated or made in the provisions of this Agreement or in connection with the execution and delivery of this Agreement, or in connection with any Disbursement Request under this Agreement, or any other document delivered by or on behalf of the Borrower under or in connection with this Agreement, shall be found to have been incorrect in any material respect;
- (e) any government or Governmental Authority shall have condemned, or otherwise seized direct management control of all or any substantial part of the property or other assets of either of the Borrower or of its capital or shall have assumed custody or control of such property or other assets or of the business or operations of the Borrower or of its capital, or shall have taken any action for the dissolution or disestablishment of the Borrower or action that would prevent the Borrower or its officers from carrying on its business or operations, or a substantial part thereof;
- (f) a default shall have occurred with respect to any Indebtedness of the Borrower or under any agreement pursuant to which there is outstanding any Indebtedness of the Borrower and such default shall have continued for more than any applicable period of grace. For purposes of this sub-paragraph, it shall not be considered a default if the Indebtedness is being defended by the Borrower in a court of law or is undergoing arbitration or if any award or any decision by a court of law relating to the Indebtedness has been successfully appealed or during such period in which an appeal of the same is being actively pursued by the Borrower by appropriate legal proceedings;
- (g) if the Bank determines that it is likely that any merger, amalgamation, take-over, arrangement, acquisition or consolidation or any proposed merger, take-over, arrangement, acquisition or consolidation of the Borrower (other than those expressly contemplated in the Structure Paper), would have a Material Adverse Effect;

- (h) there shall occur any circumstances of a national or international financial, political, military or economic nature, which may in the reasonable opinion of the Bank, materially adversely affect the Borrower's ability to fulfil its obligations hereunder or contemplated hereby;
- (i) there shall have been entered against the Borrower a decree or order by a court or other competent authority declaring the Borrower insolvent or bankrupt, or any resolution has been passed for the liquidation of the Borrower, or a court or other competent authority has made a decision to commence bankruptcy proceedings against the Borrower or liquidation or similar proceedings to wind-up the Borrower; or
- (j) Any (other) event or circumstance or series of events of circumstances occurs which has or is reasonably likely to have a Material Adverse Effect.

9 GOVERNING LAW AND ENFORCEMENT

9.1 Governing Law



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

9.2 Consultation

The Parties agree to enter into consultations in respect of any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement) or any non-contractual obligation arising out of or in connection with this Agreement (a "**Dispute**") for a period of no more than 21 calendar days from the date of written notice from one Party to the other requesting such consultations, or such longer period as may be agreed between the parties (the "**Consultation Period**"). If the Dispute is not resolved to the satisfaction of all Parties before the end of the Consultation Period, then proceedings may be commenced by any Party in accordance with Clause 9.3 (*Arbitration*) or by the Bank in accordance with Clause 9.4 (*Jurisdiction*).

9.3 Arbitration

- (a) It is agreed that any Dispute may be referred by any Party to and finally resolved by arbitration. Disputes submitted to arbitration shall be resolved in accordance with the Rules of Conciliation and Arbitration of the London Court of International Arbitration, which rules are deemed to be incorporated by reference into this Clause. The tribunal shall consist of one arbitrator who shall in the absence of agreement of the parties be appointed by the London Court of International Arbitration. The place of arbitration shall be London. The language of arbitration shall be English. The tribunal shall give a written record of the award and reasons therefor.

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- (b) The agreement by the Parties to refer all Disputes to arbitration in accordance with Clause 9.3(a) above is exclusive such that the Borrower shall not be permitted to bring proceedings in any other court or tribunal other than by way of counterclaim in respect of proceedings brought by the Bank in such other court or tribunal in accordance with this Clause 9 (*Governing Law and Enforcement*).

9.4 Jurisdiction

- (a) Notwithstanding Clause 9.3 (*Arbitration*), the Borrower hereby agrees that the Bank shall have the exclusive right at its sole option and for its benefit to submit any Dispute to the courts of England, to the jurisdiction of which for the purpose of such Dispute the Borrower irrevocably submits, or to such other court or courts which have jurisdiction to determine such dispute or claim.
- (b) For the avoidance of doubt, the right of the Bank to operate its election under Clause 9.4(a) shall be exercisable even if the Borrower has or has purported to commence arbitration proceedings under Clause 9.3 (*Arbitration*) save where the Bank has consented to such commencement or has participated in those proceedings so as to render it inequitable to cause those proceedings to be stopped.
- (c) For the avoidance of doubt, the right of the Bank to exercise its option under Clause 9.4(a) arises each time there is a Dispute that is covered by this Clause 9 (*Governing Law and Enforcement*) and shall not be fettered by any previous election made under that clause.

9.5 No Objection to Governing Law and Enforcement

The Borrower:

- (a) waives its right to object to the jurisdiction of the courts of England or any other court elected by the Bank pursuant to Clause 9.4(a) to determine any Dispute falling within Clause 9.4 (*Jurisdiction*) above on the grounds of forum non conveniens, related claims (“connexité”) with any Dispute falling within Clause 9.3 (*Arbitration*), public policy or otherwise;
- (b) waives its right to object to the jurisdiction of the arbitration tribunal to determine any Dispute falling within Clause 9.3 (*Arbitration*) above on the ground of related claims (“connexité”) with any Dispute falling within Clause 9.4 (*Jurisdiction*), public policy or otherwise;
- (c) agrees that a judgment or order of a court of England or any other court elected by the Bank pursuant to Clause 9.4(a) in a Dispute falling within Clause 9.4 (*Jurisdiction*) above is conclusive and binding on the Borrower (subject to any rights of appeal) and may be enforced against it in the courts of any other jurisdiction;

- (d) agrees that an arbitral award in respect of a Dispute falling within Clause 9.3 (*Arbitration*) above is conclusive and binding on the Borrower (subject to any rights of appeal) and may be enforced against it in the courts of any other jurisdiction (subject to the provisions of Clause 11 and is not otherwise contrary to this Agreement); and
- (e) waives its rights generally to raise any objections with regard to the validity of this Clause 9 (*Governing Law and Enforcement*), whether on grounds of public policy or otherwise.

9.6 Service of Process

- (a) Without prejudice to any other mode of service allowed under any relevant law, the Borrower:
 - (i) irrevocably appoints Blake Laphorn of Seacourt Tower, West Way, Oxford, OX2 0FB, United Kingdom as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement; and
 - (ii) agrees that failure by an agent for service of process to notify the Borrower 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 must immediately (and in any event within ten (10) Business Days of such event taking place) appoint another agent on terms acceptable to the Bank. Failing this, the Bank may appoint another agent for this purpose.

10 NO SHARING; IMMUNITIES

10.1 No Sharing Clause

Notwithstanding Clause 11 and any provision contained herein to the contrary, the Bank shall not be obliged to share with (nor hold in trust for) Senior Lenders (as defined below) or any other creditors or Persons:

- (a) any payment received by it from the Borrower in respect of the Subordinated Loans (or any part thereof) on account of the preferred creditor status which the Bank enjoys as a result of the Agreement Establishing the African Development Bank, international conventions or any other applicable law; and/or
- (b) any payment received by it from the Borrower in respect of the Subordinated Loans (or any part thereof) under circumstances in which the Central Bank, or any other governmental entity having a power to regulate foreign exchange in Mauritius, or any government, national or international body of any jurisdiction which is relevant hereto, is not generally permitting the conversion of the lawful currency of Mauritius

(or any other jurisdiction relevant hereto) into freely convertible and transferable currencies or the remittance thereof in order to pay obligations denominated in freely convertible and transferable currencies, but the Bank is afforded preferential treatment by foreign exchange being made available to it or them for the purpose of paying obligations owed to them in a freely convertible and transferable currency.

10.2 No Waiver of Bank's Privileges and Immunities

The Parties acknowledge that nothing in this Agreement shall constitute or imply, in any way, a waiver by the Bank of any immunities or privileges provided in:

- (a) its statutes or articles of agreement;
- (b) any applicable international treaties or customs; or
- (c) any applicable law,

which includes without limitation:

- (i) the immunity of the Bank from all forms of legal process, immunity of all assets of the Bank, wherever located from all forms of seizure, attachment or execution before the delivery of final judgement against the Bank;
- (ii) the immunity of all assets of the Bank from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action;
- (iii) the inviolability to the Bank's archives;
- (iv) the Bank's preferred creditor status;
- (v) the freedom of the Bank's assets from restrictions, regulations, controls and moratoria of any nature; and
- (vi) the exemption of the Bank's property, other assets, income and operations from taxation.

10.3 Waiver of Borrower's Immunities

To the extent that the Borrower may now or hereafter be entitled, in any jurisdiction in which proceedings may at any time be commenced with respect to this Agreement, to claim for itself or any of its undertaking, properties, assets or revenues present or future any immunity (sovereign or otherwise) from suit, jurisdiction of any court, attachment prior to judgment, attachment in aid of execution of a judgement, execution of a judgment or from set-off, banker's lien, counterclaim or any other legal process or remedy with respect to its obligations under this Agreement and/or to the extent that in any such jurisdiction there may be attributed to the Borrower, any such immunity

(whether or not claimed), the Borrower hereby to the fullest extent permitted by applicable law irrevocably agrees not to claim, and hereby to the fullest extent permitted by applicable law waives, any such immunity.

11 SUBORDINATION

11.1 In this Clause:

“**Floating Rate Subordinated Notes due 2023**” means the notes issued by the Borrower by virtue of a listing particulars dated 26 June 2013;

“**Insolvency Event**” has the meaning assigned in Clause 11.3;

“**Liabilities**” means all present and future obligations and liabilities (whether actual or contingent, whether owed jointly, severally or in any other capacity whatsoever) incurred or assumed by the Borrower;

“**Senior Lenders**” means all present and future creditors of the Borrower in respect of any Senior Liabilities owed to that creditor, which for the avoidance of doubt includes for these purposes the Borrower’s depositors;

“**Senior Liabilities**” means all Liabilities owed to any Senior Lenders incurred or assumed by the Borrower to repay the principal, interest and other amounts of Indebtedness borrowed or assumed by the Borrower, to the extent the same are not subordinated by law, contract or by reason of a trust arrangement to other unsecured and unsubordinated Liabilities of the Borrower and on an Insolvency Event, Senior Liabilities mean only those Liabilities owed to any Senior Lenders which will have been admitted in the relevant insolvency, bankruptcy, liquidation, dissolution or other similar proceedings. For the avoidance of doubt all Liabilities owed to the Bank shall be Senior Liabilities to the extent that they are not Subordinated Liabilities;

“**Subordinated Liabilities**” means all Liabilities to repay the principal, interest and other amounts under the Subordinated Loans owed to the Bank under this Agreement to the extent the same constitutes Tier 2 Capital under the Banking Regulations at the relevant time;

“**Subordinated Party**” means the Bank.

- 11.2 The obligation of the Borrower to repay the Subordinated Loans constitutes Subordinated Liabilities to the extent provided in this Clause 11.
- 11.3 Notwithstanding the terms of Clause 11.1, the subordination in Clause 11.1 shall not affect the Borrower’s absolute obligation to effect repayment and other payments on due dates provided for in this Agreement.
- 11.4 Without prejudice to the Bank’s rights to retain amounts already paid to it in accordance with this Agreement, in the event of insolvency, bankruptcy, liquidation, dissolution or other analogous proceedings relating to the Borrower (whether voluntary or involuntary) (an “**Insolvency Event**”):

- (a) The payment of Subordinated Liabilities shall be subordinated to the payment of all Senior Liabilities, so that no amount shall be payable to the Bank in respect of the Subordinated Liabilities in such proceedings until all claims in respect of Senior Liabilities admitted in such proceedings have been satisfied; and
- (b) Following the satisfaction of all claims in respect of Senior Indebtedness admitted in such proceedings, the Bank shall be entitled to receive and retain any payment or distribution in respect of the Subordinated Liabilities, before any other amount of any other subordinated obligations other than: (i) the Floating Rate Subordinated Notes due 2023 (which such Floating Rate Subordinated Notes due 2023 shall rank pari passu with the Subordinated Liabilities); (ii) to the extent the Bank has expressly agreed that those other subordinated obligations rank pari passu or senior to the Subordinated Liabilities outstanding to the Bank; (iii) those other subordinated obligations that are mandatorily preferred by law; or (iv) those other subordinated obligations that are required to be senior to the Subordinated Liabilities outstanding to the Bank to ensure that the Subordinated Loans qualify as Tier 2 Capital under the Banking Regulations.

11.5 Continuation

The ranking and priority provided for in this Clause shall apply regardless of:

- (a) the date upon which any Senior Liabilities arose;
- (b) whether a person is obliged to advance any such Senior Liabilities;
- (c) the date or order of execution, registration, filing or giving of notice of any document relating to Senior Liabilities; or
- (d) any fluctuations in the amount of, or any intermediate discharge in whole or in part of, any Senior Liabilities.

11.6 Remain Owing

Notwithstanding any provision of this Agreement postponing, subordinating or preventing the payment of any of the Subordinated Liabilities and/or preventing the commencement of any enforcement action, as between the Borrower and the Bank, the Subordinated Liabilities shall remain owing or due and payable in accordance with the terms of this Agreement and interest and default interest (if applicable) will continue to accrue in accordance with the terms of this Agreement.

12 GENERAL PROVISIONS

12.1 Environmental and Social Policies and Guidelines

For the avoidance of doubt, for purposes of the Borrower's compliance with the Environmental and Social Policies and Guidelines of the Bank, including

pursuant to Clauses 4.1(d), 5.1(l), 5.2(a)(v), 6.1(f), and 6.1(g), in applying its internal environmental and social policies and guidelines, the Borrower shall not, in the utilisation of the proceeds of the Subordinated Loans, impose any threshold relating to size or quantum of any financing applied for.

12.2 Assignments and transfers by the Bank

The Bank may assign any of its rights or transfer by novation any of its rights and obligations under this Agreement to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets, consent to which future transfer, assignment or novation of the Borrower hereby consents.

12.3 Notices and Requests

Any notice, request or other communication to be given or made under this Agreement to the Bank or to the Borrower shall be in writing and shall be given by sending the same by prepaid post by courier or by facsimile addressed to the relevant party at its address as given below or at such other address for this purpose as such party may have notified in writing to the party giving the notice or by delivering the same by hand to the addressee at such address and any notice so given shall be deemed to have been served fourteen (14) days after it was posted as aforesaid or on the day on which it was delivered by courier or sent by facsimile as aforesaid provided, in the case of a notice sent by facsimile, a printed confirmation of transmission is received and a hard copy of such notice is forthwith sent by courier as above.

For the Borrower:

Attention:

Mail Address:

14th Floor, MCB Center
Sir William Newton Street
Port-Louis
Mauritius

Fax No:

Tel No:

For the Bank: Temporary Address (address currently in use)

Attention:

Director

Mail Address:

Private Sector Department
African Development Bank
Temporary Relocation Agency
13-15 avenue du Ghana, Tunis
B.P. 323-1002 Tunis- Belvedere
Tunisia

Fax No:

(216) 71.83.41.78

Tel No:

(216) 71.10.22.85

For the Bank: Permanent Address

Attention:

Director

Mail Address Private Sector Department
African Development Bank
01 B.P. 1387 - Abidjan 01
Côte d'Ivoire
Fax No: (225) 20.20.49.02
Tel No: (225) 20.20.40.47

12.4 Authorised Representative

The Borrower shall submit to the Bank a Certificate of Incumbency and Authority, substantially in the form of Schedule II and in substance satisfactory to the Bank, designating the person(s) who will, on behalf of the Borrower, sign the requests and certifications provided for in this Agreement, and including the authenticated specimen signature of each such person. Each such person designated in the certificate shall be an Authorised Representative of the Borrower, and any action required or permitted to be taken, and any documents required or permitted to be executed on behalf of the Borrower, pursuant to this Agreement and any document related thereto may be taken or executed by the said Authorised Representative(s).

12.5 Successors and Assigns

This Agreement shall bind and inure to the benefit of the respective successors and assigns of the parties hereto, except that the Borrower may not assign or otherwise transfer all or any part of its rights or obligations under this Agreement without the prior written consent of the Bank.

12.6 Amendments and Waivers.

Any term of the Agreement may be amended or waived only with the consent of all the Parties and any such amendment or waiver will be binding on all Parties.

12.7 Delay in Exercising any Rights

No delay in exercising or failure to exercise any right, power or remedy available to the Bank under this Agreement shall impair any such right, power or remedy or be construed to constitute a waiver thereof or as acquiescence in default, nor shall any action of the Bank in respect of any default, or any acquiescence in any default, affect or impair any right, power or remedy of the Bank in respect of any other default. The rights and remedies provided for herein are additional to, and not in substitution for, any rights or remedies provided by law.

12.8 The Obligations of the Borrower

The obligation of the Borrower to pay punctually all monies from time to time as they become due in accordance with the provisions of this Agreement is absolute and shall not be impaired in any way or affected by reason of any failure or delay on the part of the Bank to assert or enforce any of its rights nor

shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof.

12.9 Saving of Rights

- (a) The rights and remedies of the Bank in relation to any misrepresentations or breach of warranty on the part of the Borrower shall not be prejudiced by any investigation by or on behalf of the Bank into the affairs of the Borrower, by the execution or the performance of this Agreement or by any other act or thing which may be done by or on behalf of the Bank in connection with this Agreement and which might, apart from this Clause, prejudice such rights or remedies;
- (b) No course of dealing or waiver by the Bank in connection with any condition of disbursement of the Agreement shall impair any right, power or remedy of the Bank, or be construed to be a waiver thereof; and
- (c) No course of dealing and no delay in exercising, or omission to exercise, any right, power or remedy accruing to the Bank upon any default under this Agreement or any other agreement shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence therein; nor shall the action of the Bank in respect of any such default, or any acquiescence by it therein, affect or impair any right, power, or remedy of the Bank in respect of any other default.

12.10 Invalid Provisions

Any provision in this Agreement that is or may become prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

12.11 Survival

The obligations of the Borrower to be performed or observed hereunder shall continue from the Date of Signature so long as any monies remain owing to the Bank hereunder. When the Subordinated Loans together with all interest and other monies payable hereunder shall have been repaid or, as the case may be, paid in full, this Agreement and all obligations of the parties hereunder then subsisting shall terminate.

12.12 Confidential Information

The Bank, for the purpose of exercising any power, remedy, right, authority, or discretion relevant to this Agreement or any other financing document, may disclose to any person relevant to the protection, preservation, and enforcement of the Bank's rights under this Agreement any documents or records of, or information about, any financing document, or the assets,

business or affairs of the Borrower. The Borrower acknowledges and agrees that, notwithstanding the terms of any other possible agreement between the Borrower and the Bank, a disclosure of information by the Bank in the circumstances contemplated by this Clause does not violate any duty possibly owed to the Borrower and/or any other possible agreement between the Bank and the Borrower.

12.13 Counterparts

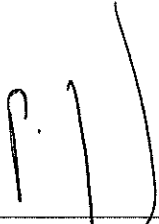
This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

12.14 English Language

All documents to be furnished or communications to be given or made under this Agreement shall be in the English language.

IN WITNESS WHEREOF the Borrower and the Bank, each acting through its duly authorised representatives, have caused this Agreement to be signed in their respective names as of the day and year first above written.

FOR THE BORROWER



THE MAURITIUS COMMERCIAL BANK LIMITED

Name.....JEROME GUY NOEL.....

Title.....Chief Executive (Group).....

Name.....A. R. Withers.....

Title.....ANTHONY R. WITHERS
Chief Executive, Banking.....

FOR THE BANK

Mohamed Kalif

AFRICAN DEVELOPMENT BANK

Name.....M. Kalif.....

Title.....Division Manager.....