

US\$100,000,000  
FACILITY AGREEMENT  
DATED 20 DECEMBER 2006

for

JSC BANK TURANALEM  
AS BORROWER

WITH

STANDARD BANK PLC  
AS LENDER

---

TERM FACILITY AGREEMENT

---

## CONTENTS

Clause	Page
1. Definitions And Interpretation.....	1
2. The Facility .....	9
3. Purpose.....	9
4. Conditions Of Utilisation.....	9
5. Utilisation.....	10
6. Repayment .....	11
7. Prepayment And Cancellation .....	11
8. Interest .....	14
9. Interest Periods.....	14
10. Changes To The Calculation Of Interest.....	15
11. Fees .....	16
12. Tax Gross Up And Indemnities .....	17
13. Increased Costs .....	19
14. Other Indemnities.....	20
15. Mitigation By The Lender .....	21
16. Costs And Expenses.....	22
17. Representations .....	23
18. Information Undertakings.....	26
19. Financial Covenants.....	29
20. General Undertakings .....	31
21. Events Of Default .....	33
22. Changes To The Lenders .....	37
23. Changes To The Borrower.....	40
24. Conduct Of Business By The Lender .....	40
25. Payment Mechanics .....	41
26. Set-Off .....	42
27. Notices .....	43
28. Calculations And Certificates .....	44
29. Partial Invalidity.....	44
30. Remedies And Waivers.....	44
31. Amendments And Waivers .....	44
32. Counterparts.....	44

33.	Governing Law .....	45
34.	Enforcement.....	45
35.	Arbitration.....	45
Schedule 1	CONDITIONS PRECEDENT .....	47
Schedule 2	UTILISATION REQUEST.....	49
Schedule 3	MANDATORY COST FORMULAE .....	50
Schedule 4	FORM OF TRANSFER CERTIFICATE .....	52
Schedule 5	FORM OF COMPLIANCE CERTIFICATE.....	54
Schedule 6	TIMETABLE .....	55

**THIS AGREEMENT** is dated 20 December 2006 and made between:

- (1) **JSC BANK TURANALEM** (the "**Borrower**"); and
- (2) **STANDARD BANK PLC** (the "**Lender**").

**IT IS AGREED** as follows:

## **SECTION 1 INTERPRETATION**

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

In this Agreement:

"**Affiliate**" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

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

"**Availability Period**" means the period from and including the date of this Agreement to and including 22 December 2006.

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

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

exceeds:

- (b) the amount which the Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the London interbank market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.

"**Business Day**" means a day (other than a Saturday or Sunday) on which banks are open for general business in London, Almaty or (in relation to any date of payment or purchase of dollars) New York City.

"**Compliance Certificate**" means a certificate substantially in the form set out in Schedule 5 (*Form of Compliance Certificate*).

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

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

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

**"Facility Office"** means the office or offices identified with the Lender's signature below or such other office as it may from time to time select by notice to the Borrower as the office or offices through which it will perform its obligations under this Agreement.

**"Fee Letter"** means any letter or letters dated on or about the date of this Agreement between the Lender and the Borrower setting out any of the fees referred to in Clause 11 (*Fees*).

**"Final Maturity Date"** means 19 December 2011.

**"Finance Document"** means this Agreement, any Fee Letter, any Transfer Certificate and any other document designated as such by the Lender and the Borrower.

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

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with IAS, be treated as a finance or capital lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;
- (i) any amount raised by the issue of redeemable shares;
- (j) any amount of any liability under an advance or deferred purchase agreement if one of the primary reasons behind the entry into this agreement is to raise finance; and

- (k) (without double counting) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (j) above.

"**Financial Year**" means the relevant financial year of the Borrower, in each case ending on 31 December.

"**Group**" means the Borrower and its Subsidiaries for the time being.

"**Holding Company**" means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.

"**IAS**" means international accounting standards as adopted by the International Accounting Standards Board.

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

"**Issuer**" means the TuranAlem Finance B.V. and/or OOO TuranAlem Finance Russia and/or BTA Finance Luxembourg S.A. (Subsidiaries of the Borrower).

"**Kazakhstan Accounting Standards**" means the generally accepted accounting principles in Kazakhstan.

"**Lender**" means:

- (a) the Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Lender in accordance with Clause 22 (*Changes to the Lenders*),

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

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

- (a) the applicable Screen Rate; or
- (b) (if no Screen Rate is available for dollars or for the Interest Period of the Loan) the rate quoted by the Lender to leading banks in the London interbank market,

as of the Specified Time on the Quotation Day for the offering of deposits in dollars and for a period comparable to the Interest Period for the Loan.

"**Loan**" means the loan made or to be made by the Lender under this Agreement or the principal amount outstanding for the time being of that loan.

"**London Business Day**" means a day (other than Saturday or Sunday) on which banks are open for business in London.

"**Mandatory Cost**" means the percentage rate per annum calculated by the Lender in accordance with Schedule 3 (*Mandatory Cost formulae*).

**"Margin"** means 2.5 per cent. per annum.

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

- (a) the business, operations, performance, condition (financial or otherwise) or prospects of the Borrower and/or the Group taken as a whole;
- (b) the ability of a Borrower to perform its obligations under the Finance Documents; or
- (c) the validity or enforceability of the Finance Documents or the rights or remedies of the Lender under the Finance Documents.

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

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

**"Notes"** means:

- (a) US\$100,000,000 10.000% notes due 2007 issued by the Issuer and subject to a trust deed by and between, amongst others, the Issuer, the Guarantor and the Trustee;
- (b) US\$600,000,000 7.875% notes due 2010 issued by the Issuer and subject to a trust deed by and between, amongst others, the Issuer, the Guarantor and the Trustee;
- (c) US\$400,000,000 8.000% notes due 2014 issued by the Issuer and subject to a trust deed by and between, amongst others, the Issuer, the Guarantor and the Trustee;
- (d) US\$350,000,000 8.500% notes due 2015 issued by the Issuer and subject to a trust deed by and between, amongst others, the Issuer, the Guarantor and the Trustee; and
- (e) any other notes issued by the Issuer from time to time provided (i) such notes are constituted by a trust deed by and between, amongst others, the Issuer, the Borrower and the Trustee and (ii) the Borrower has issued a guarantee in favour of the Trustee fully guaranteeing the obligations of the Issuer under such notes.

**"Original Financial Statements"** means the Borrower's audited consolidated financial statements for its Financial Year ended 2005.

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

**"Permitted Security"** means (a) any security interest granted in favour of the Issuer by the Borrower to secure any Financial Indebtedness owed by the Issuer to the Borrower and (b) any Security granted by the Issuer over any proceeds of any Notes deposited by the Issuer with the Borrower provided that (i) the Borrower has issued a guarantee in favour of a Trustee fully guaranteeing the obligations of the Issuer under such Notes, (ii) such Security is granted in favour of the Borrower and/or any Trustee (on behalf of themselves and/or the holders of any Notes) pursuant to any pledge agreement between the Issuer as pledgor and the Borrower as pledgee to secure any Financial Indebtedness owed by the Issuer to (A) the Borrower in connection with the issuance of such guarantee and/or (B) the holders of any Notes (and/or any Trustees on behalf of themselves and/or the holders of any Notes) pursuant to the issue of the Notes, and (iii) such Security is granted for the purposes of compliance with the applicable laws of Kazakhstan and the terms of any Notes.

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

**"Repayment Date"** means each of the dates specified in Clause 6.1 (*Repayment of Loan*) as Repayment Dates, but if any of those dates is not a Business Day, then that Repayment Date shall be deemed to be the immediately succeeding Business Day.

**"Repeating Representations"** means each of the representations set out in Clauses 17.1 (*Status*) to 17.6 (*Governing law and enforcement*), Clause 17.9 (*No default*), paragraph (b) of Clause 17.10 (*No misleading information*), Clause 17.12 (*Pari passu ranking*), Clause 17.13 (*Material adverse change*), Clause 17.14 (*No proceedings pending or threatened*), Clause 17.15 (*No Winding-Up*), Clause 17.16 (*Taxation*), Clause 17.17 (*No Immunity*), Clause 17.18 (*No undisclosed liabilities*) and Clause 17.19 (*Private and commercial acts*).

**"Screen Rate"** means the British Bankers' Association Interest Settlement Rate for dollars for the relevant period, displayed on the appropriate page of the Telerate or Reuters screen. If the agreed page is replaced or service ceases to be available, the Lender may specify another page or service displaying the appropriate rate after consultation with the Borrower.

**"Securitisation"** means a transaction or series of transactions involving both:

- (a) the disposal for cash of receivables the aggregate market value of which does not exceed an amount equal to 10% of the Group's Total Assets ("**transferred**



**assets**") by a member or members of the Group to a single purpose company (not being a member of the Group) on an arm's length basis and at fair market value; and

- (b) the incurrence of Financial Indebtedness (actual or contingent, by way of loans, the issuance of securities or otherwise) by that single purpose company against those transferred assets, where the recourse of the provider of the Financial Indebtedness is solely to the assets of that single purpose company.

**"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.

**"Specified Time"** means a time determined in accordance with Schedule 6 (*Timetables*).

**"Subsidiary"** means in relation to any company or corporation, a company or corporation:

- (a) which is controlled, directly or indirectly, by the first mentioned company or corporation;
- (b) more than half the issued share capital of which is beneficially owned, directly or indirectly by the first mentioned company or corporation; or
- (c) which is a Subsidiary of another Subsidiary of the first mentioned company or corporation,

and for this purpose, a company or corporation shall be treated as being controlled by another if that other company or corporation is able to direct its affairs and/or to control the composition of its board of directors or equivalent body.

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

**"Tax Treaty Jurisdiction"** means a jurisdiction which has in force a double taxation treaty with the Republic of Kazakhstan which provides for a reduction from Kazakh with-holding tax on interest and fees derived from a source with the Republic of Kazakhstan payable to a resident of such jurisdiction.

**"Total Assets"** means the total assets of the Group as determined by reference to the latest consolidated, audited financial statements delivered hereunder.

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

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

- (a) the proposed Transfer Date specified in the Transfer Certificate; and
- (b) the date on which the Lender executes the Transfer Certificate.

"**Trustee**" means the person or persons acting as trustee for the holders of the Notes.

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

"**Utilisation**" means the utilisation of the Loan.

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

"**Utilisation Request**" means a notice substantially in the form set out in Schedule 2 (*Utilisation Request*).

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

## 1.2 **Construction**

- (a) Unless a contrary indication appears any reference in this Agreement to:
- (i) the "**Lender**" or any "**Party**" shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
  - (ii) "**assets**" includes present and future properties, revenues and rights of every description;
  - (iii) a "**Finance Document**" or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended or novated;
  - (iv) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
  - (v) a "**person**" includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing;
  - (vi) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
  - (vii) a provision of law is a reference to that provision as amended or re-enacted; and
  - (viii) a time of day is a reference to London time.
- (b) Section, Clause and Schedule headings are for ease of reference only.
- (c) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance

Document has the same meaning in that Finance Document or notice as in this Agreement.

- (d) A Default (other than an Event of Default) is "**continuing**" if it has not been remedied or waived and an Event of Default is "**continuing**" if it has not been waived.

1.3 **Currency Symbols and Definitions**

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

1.4 **Third party rights**

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

## **SECTION 2 THE FACILITY**

### **2. THE FACILITY**

#### **2.1 The Facility**

Subject to the terms of this Agreement, the Lender makes available to the Borrower a dollar term loan facility in an aggregate amount of US\$100,000,000.

### **3. PURPOSE**

#### **3.1 Purpose**

The Borrower shall apply all amounts borrowed by it under the Facility towards general corporate purposes.

#### **3.2 Monitoring**

The Lender is not bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

### **4. CONDITIONS OF UTILISATION**

#### **4.1 Initial conditions precedent**

The Borrower may not deliver the Utilisation Request unless the Lender has received all of the documents and other evidence listed in Schedule 1 (*Conditions precedent*) in form and substance satisfactory to the Lender. The Lender shall notify the Borrower promptly upon being so satisfied.

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

The Lender will only be obliged to make the Loan available to the Borrower if on the date of the Utilisation Request and on the proposed Utilisation Date:

- (a) no Default is continuing or would result from the proposed Loan; and
- (b) the Repeating Representations to be made by the Borrower are true in all material respects.

### **SECTION 3 UTILISATION**

#### **5. UTILISATION**

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

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

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

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

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

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

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

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

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

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

(b) The amount of the proposed Loan must be US\$100,000,000.

**SECTION 4**  
**REPAYMENT, PREPAYMENT AND CANCELLATION**

6. **REPAYMENT**

6.1 **Repayment of Loans**

- (a) The Borrower shall repay the Loan in instalments by repaying on each Repayment Date the amount set out opposite each Repayment Date below:

<b>Repayment Date</b>	<b>Repayment Instalment</b>
19 June 2010	US\$25,000,000
19 December 2010	US\$25,000,000
19 June 2011	US\$25,000,000
19 December 2011	US\$25,000,000

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

7. **PREPAYMENT AND CANCELLATION**

7.1 **Illegality**

If, at any time, it is or will become unlawful in any applicable jurisdiction for the Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain the Loan:

- (a) the Lender shall promptly notify the Borrower upon becoming aware of that event whereupon the Facility will be immediately cancelled; and
- (b) the Borrower shall repay the Loan made to the Borrower on the last day of the Interest Period for the Loan occurring after the Lender has notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Borrower.

7.2 **Change of control**

- (a) If any person or group of persons acting in concert gains control of the Borrower:
- (i) the Borrower shall promptly notify the Lender upon becoming aware of that event;
  - (ii) the Lender shall not be obliged to fund any Utilisation;
  - (iii) the Lender may, by not less than 10 days notice to the Borrower, cancel the Facility and declare all outstanding Loans, together with accrued interest, and all other amounts accrued under the Finance Documents (the "**Outstanding Amounts**") immediately due and payable, whereupon the Facility will be cancelled and all such Outstanding Amounts will become immediately due and payable.
- (b) For the purpose of paragraph (a) above "**control**" means:

- (i) the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
  - (A) cast, or control the casting of 51% or more of the maximum number of votes that might be cast at a general meeting of the Borrower; or
  - (B) appoint or remove all, or the majority, of the directors or other equivalent officers of the Borrower; or
  - (C) give directions with respect to the operating and financial policies of the Borrower which the directors or other equivalent officers of the Borrower are obliged to comply with; or
- (ii) the holding of 51% or more of the issued share capital of the Borrower (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital);
- (iii) for the purpose of paragraph (a) above "**acting in concert**" means, a group of persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate, through the acquisition by any of them, either directly or indirectly, of shares in the Borrower to obtain or consolidate control of the Borrower.

### 7.3 **Voluntary cancellation**

The Borrower may, if it gives the Lender not less than five Business Days' (or such shorter period as the Lender may agree) prior notice, cancel the whole of the amount of the Facility. If the Borrower gives notice to cancel the whole of the amount of Facility under this Clause 7.3, the Borrower shall pay the Lender a cancellation fee of 1% on the amount of the Facility being US\$1,000,000.

### 7.4 **Voluntary prepayment of Loan**

The Borrower may not prepay the whole or any part of the Loan.

### 7.5 **Restrictions**

- (a) Any notice of cancellation or prepayment given by any Party under this Clause 7 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.
- (b) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.
- (c) The Borrower may not reborrow any part of the Facility which is prepaid.
- (d) The Borrower shall not repay or prepay all or any part of the Loans or cancel all or any part of the amount of Facility except at the times and in the manner expressly provided for in this Agreement.

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



**SECTION 5**  
**COSTS OF UTILISATION**

**8. INTEREST**

**8.1 Calculation of interest**

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

- (a) Margin;
- (b) LIBOR; and
- (c) Mandatory Cost, if any.

**8.2 Payment of interest**

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

**8.3 Default interest**

- (a) If the Borrower fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below is two per cent. higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Lender (acting reasonably). Any interest accruing under this Clause 8.3 shall be immediately payable by the Borrower on demand by the Lender.
- (b) If any overdue amount consists of all or part of the Loan which became due on a day which was not the last day of an Interest Period relating to the Loan:
  - (i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to the Loan; and
  - (ii) the rate of interest applying to the overdue amount during that first Interest Period shall be one per cent. higher than the rate which would have applied if the overdue amount had not become due.
- (c) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

**9. INTEREST PERIODS**

**9.1 Selection of Interest Periods**

- (a) Each Interest Period for the Loan shall be of six Months' duration.

- (b) An Interest Period for the Loan ending in 2010 or 2011 shall end on the relevant Repayment Date.
- (c) An Interest Period for the Loan shall not extend beyond the Final Maturity Date.
- (d) Each Interest Period for the Loan shall start on the Utilisation Date or (if already made) on the last day of its preceding Interest Period.

## 9.2 **Non-Business Days**

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

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

### 10.1 **Market disruption**

- (a) If a Market Disruption Event occurs in relation to the Loan for any Interest Period, then the rate of interest on the Loan for the Interest Period shall be the rate per annum which is the sum of:
  - (i) the Margin;
  - (ii) the rate notified to the Borrower by the Lender as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum the cost to the Lender of funding the Loan from whatever source it may reasonably select; and
  - (iii) the Mandatory Cost, if any.
- (b) In this Agreement "**Market Disruption Event**" means before close of business in London on the Quotation Day for the relevant Interest Period, the Lender determines that the cost to it of obtaining matching deposits in the London interbank market would be in excess of LIBOR.

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

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

### 10.3 **Break Costs**

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

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

11. **FEES**

11.1 **Upfront fee**

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

**SECTION 6**  
**ADDITIONAL PAYMENT OBLIGATIONS**

12. **TAX GROSS UP AND INDEMNITIES**

12.1 **Definitions**

- (a) In this Agreement:

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

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

"**Tax Payment**" means either the increase in a payment made by the Borrower to the Lender under Clause 12.2 (*Tax gross-up*) or a payment under Clause 12.3 (*Tax indemnity*).

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

12.2 **Tax gross-up**

- (a) The Borrower shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) The Borrower shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Lender accordingly.
- (c) If a Tax Deduction is required by law to be made by the Borrower, the amount of the payment due from the Borrower shall be increased, by way of additional payments to the Lender which shall be deemed to be additional interest payments, to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required and such an amount shall be treated as an integral part of the payment due from the Borrower.
- (d) If the Borrower is required to make a Tax Deduction, the Borrower shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (e) After the Borrower has made either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower shall, at the request of the Lender, deliver to the Lender within thirty days of such request evidence reasonably satisfactory to the Lender that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

### 12.3 **Tax indemnity**

- (a) The Borrower shall (within three Business Days of demand by the Lender) pay to the Lender an amount equal to the loss, liability or cost which the Lender determines will be or has been (directly or indirectly) suffered for or on account of Tax by the Lender in respect of a Finance Document.
- (b) Paragraph (a) above shall not apply:
  - (i) with respect to any Tax assessed on the Lender:
    - (A) under the law of the jurisdiction in which the Lender is incorporated or, if different, the jurisdiction (or jurisdictions) in which the Lender is treated as resident for tax purposes; or
    - (B) under the law of the jurisdiction in which the Lender's Facility Office is located in respect of amounts received or receivable in that jurisdiction,  
  
if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by the Lender; or
  - (ii) with respect to any loss, liability or cost arising as a result of repayment under Clause 7.1 (*Illegality*); or
  - (iii) to the extent a loss, liability or cost is compensated for by an increased payment under Clause 12.2 (*Tax gross-up*).
- (c) If the Lender makes, or intends to make a claim under paragraph (a) above, the Lender shall promptly notify the Borrower of the event which will give, or has given, rise to the claim.

### 12.4 **Tax Credit**

If the Borrower makes a Tax Payment and the Lender determines that:

- (a) a Tax Credit is attributable either to an increased payment of which that Tax Payment forms part, or to that Tax Payment; and
- (b) the Lender has obtained, utilised and retained that Tax Credit,

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

### 12.5 **Stamp taxes**

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

### 12.6 **Value added tax**

- (a) All amounts set out, or expressed to be payable under a Finance Document by the Borrower to the Lender which (in whole or in part) constitute the

consideration for VAT purposes shall be deemed to be exclusive of any VAT which is chargeable on such supply, and accordingly, subject to paragraph (c) below, if VAT is chargeable on any supply made by the Lender to the Borrower under a Finance Document, the Borrower shall pay to the Lender (in addition to and at the same time as paying the consideration) an amount equal to the amount of the VAT (and the Lender shall promptly provide an appropriate VAT invoice to the Borrower).

- (b) Where a Finance Document requires the Borrower to reimburse the Lender for any costs or expenses, the Borrower shall also at the same time pay and indemnify the Lender against all VAT incurred by the Lender in respect of the costs or expenses to the extent that the Lender reasonably determines that neither it nor any other member of any group of which it is a member for VAT purposes is entitled to credit or repayment from the relevant tax authority in respect of the VAT.

#### 12.7 **Certificate of residence**

For the purpose of this Clause 12, if, on the last day of an Interest Period, the Borrower fails to perform its obligations under this Agreement, the Lender shall deliver to the Borrower, as soon as reasonably practicable, but in any event no later than two Months after the date that such failure by the Borrower to perform its obligations is notified to the Lender, a residence certificate issued by the relevant authority of the country in which the Lender is resident (certified and apostilled or legalised by a consulate) confirming that the Lender is a resident in such country, **provided that**, no such residence certificate will be provided if the Lender has already provided a residence certificate to the Borrower. If the Lender which is resident on a Tax Treaty Jurisdiction has not delivered to the Borrower a residence certificate within the requested time period, the Borrower shall make any payment hereunder with Tax Deduction as required by law.

### 13. **INCREASED COSTS**

#### 13.1 **Increased costs**

- (a) Subject to Clause 13.3 (*Exceptions*) the Borrower shall, within three Business Days of a demand by the Lender, pay for the account of the Lender the amount of any Increased Costs incurred by the Lender or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (ii) compliance with any law or regulation made after the date of this Agreement.
- (b) In this Agreement "**Increased Costs**" means:
  - (i) an additional or increased cost incurred by the Lender or any Affiliate as a result of the Lender having entered into a commitment or performing, maintaining or funding its obligations under any Finance Document; or
  - (ii) a reduction in: (a) any amount payable to the Lender; or (b) the rate of return from the Facility to the Lender under any Finance Document; or (c) the rate of return on the Lender's or its Affiliates' overall capital which is

attributable to the funding under any Finance Document or the Lender having entered into a commitment; or

- (iii) the amount of any payment made by the Lender or its Affiliate, or the amount of any interest or other return foregone by the Lender or its Affiliate, in both cases calculated by reference to any amount received or receivable by or for the account of the Lender by any Party to any Finance Document.

### 13.2 **Increased cost claims**

If the Lender intends to make a claim pursuant to Clause 13.1 (*Increased costs*), the Lender shall notify the Borrower of the event giving rise to the claim.

### 13.3 **Exceptions**

- (a) Clause 13.1 (*Increased costs*) does not apply to the extent any Increased Cost is:
  - (i) attributable to a Tax Deduction required by law to be made by the Borrower or to a payment required to be made by the Borrower under Clause 12.3 (*Tax Indemnity*);
  - (ii) compensated for by the payment of the Mandatory Cost; or
  - (iii) attributable to any loss, liability or cost arising as a result of repayment under Clause 7.1 (*Illegality*); or
  - (iv) attributable to the wilful breach by the Lender or its Affiliates of any law or regulation.
- (b) In this Clause 13.3, a reference to a "**Tax Deduction**" has the same meaning given to the term in Clause 12.1 (*Definitions*).

## 14. **OTHER INDEMNITIES**

### 14.1 **Currency indemnity**

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

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

- (b) The Lender shall take all reasonable steps to mitigate any cost, loss or liability of the Borrower arising out of or as a result of the conversion.
- (c) The Borrower waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

#### 14.2 **Other indemnities**

The Borrower shall, within three Business Days of demand, indemnify the Lender against any cost, loss or liability incurred by the Lender as a result of:

- (a) the occurrence of any Event of Default;
- (b) a failure by the Borrower to pay any amount due under a Finance Document on its due date; or
- (c) funding, or making arrangements to fund, the Loan requested by the Borrower in the Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by the Lender alone),

save where such cost, loss or liability is recovered by the Lender under or pursuant to another Clause of this Agreement.

#### 14.3 **Indemnity to the Lender**

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

- (a) investigating any event which it reasonably believes is a Default; or
- (b) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised.

### 15. **MITIGATION BY THE LENDER**

#### 15.1 **Mitigation**

- (a) The Lender shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (*Illegality*), Clause 12 (*Tax gross-up and indemnities*), Clause 13 (*Increased costs*) or paragraph 2 of Schedule 3 (*Mandatory Cost formulae*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of the Borrower under the Finance Documents.

#### 15.2 **Limitation of liability**

- (a) The Borrower shall indemnify the Lender for all costs and expenses reasonably incurred by the Lender as a result of steps taken by it under Clause 15.1 (*Mitigation*).



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

16. **COSTS AND EXPENSES**

16.1 **Transaction expenses**

The Borrower shall promptly on demand pay the Lender the amount of all costs and expenses (including legal fees) reasonably incurred by it in connection with the negotiation, preparation, printing and execution of:

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

16.2 **Amendment costs**

If (a) the Borrower requests an amendment, waiver or consent or (b) an amendment is required pursuant to Clause 25.6 (*Change of currency*), the Borrower shall, within five Business Days of demand, reimburse the Lender for the amount of all costs and expenses (including legal fees) reasonably incurred by the Lender in responding to, evaluating, negotiating or complying with that request or requirement.

16.3 **Enforcement costs**

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

**SECTION 7**  
**REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT**

**17. REPRESENTATIONS**

The Borrower makes the representations and warranties set out in this Clause 17 to the Lender on the date of this Agreement.

**17.1 Status**

- (a) It is a bank and joint stock company, properly registered and validly existing under the law of its jurisdiction of incorporation.
- (b) It and each of its Subsidiaries has the power to own its assets and carry on its business as it is being conducted.

**17.2 Binding obligations**

The obligations expressed to be assumed by it in each Finance Document are, subject to any general principles of law as at the date of this Agreement limiting its obligations which are specifically referred to in any legal opinion delivered pursuant to Clause 4 (*Conditions of Utilisation*), legal, valid, binding and enforceable obligations.

**17.3 Non-conflict with other obligations**

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

- (a) any law or regulation applicable to it;
- (b) its or any of its Subsidiaries' constitutional documents; or
- (c) any agreement or instrument binding upon it or any of its Subsidiaries or any of its or any of its Subsidiaries' assets.

**17.4 Power and authority**

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

**17.5 Validity and admissibility in evidence**

All Authorisations required or desirable:

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

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

**17.6 Governing law and enforcement**

- (a) The choice of English law as the governing law of the Finance Documents will be recognised and enforced in its jurisdiction of incorporation.

- (b) Any ruling or other determination obtained from the London Court of International Arbitration in relation to a Finance Document will be recognised and enforced in its jurisdiction of incorporation.

**17.7 Deduction of Tax**

All amounts payable by the Borrower under the Finance Documents may be made free and clear of and without deduction for or on account of any tax except that, unless otherwise provided under the terms of a double taxation treaty between Kazakhstan and the country in which the beneficial owner of the right to receive interest is resident, any payment of interest to a non-resident of Kazakhstan will be subject to a withholding tax at the rate of 15 per cent. of the amount of that payment or any other current rate stipulated by the Tax Code of the Republic of Kazakhstan and any payment of fees to a non-resident of Kazakhstan will be subject to a withholding tax at the rate of 20 per cent. of the amount of that payment or any other current rate stipulated by the Tax Code of the Republic of Kazakhstan. For the avoidance of doubt, any deduction for or on account of tax, will be subject to Clause 12 (*Tax Gross Up and Indemnities*).

**17.8 No filing or stamp taxes**

Under the law of its jurisdiction of incorporation it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents save that to make this Agreement admissible in evidence in any legal proceedings in Kazakhstan, an authenticated Kazakh translation hereof is required to be made available to the relevant Kazakh court and any other procedures and formalities regarding the presentation of documents to a court of Kazakhstan should be complied with at the appropriate time therefor, including payment of state duty.

**17.9 No default**

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

**17.10 No misleading information**

- (a) Any factual information provided by any member of the Group was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.
- (b) All written information supplied by any member of the Group is true, complete and accurate in all material respects as at the date it was given and is not misleading in any respect.

**17.11 Financial statements**

- (a) Its Original Financial Statements were prepared in accordance with IAS consistently applied.
- (b) Its Original Financial Statements fairly represent its financial condition and operations during the relevant financial year.

**17.12 Pari passu ranking**

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

**17.13 Material adverse change**

There has been no material adverse change in its business, condition (financial or otherwise), operations or prospects (or the business, condition (financial or otherwise), operations or prospects of the Group, in the case of the Borrower) since 31 December 2005.

**17.14 No proceedings pending or threatened**

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

**17.15 No Winding-Up**

the Borrower has not taken any corporate action or had any other steps taken or legal proceedings started or (to the best of its knowledge and belief) threatened against it for its winding up, dissolution, administration or reorganisation or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer of it or of any or all of its assets or revenues.

**17.16 Taxation**

- (a) It has duly and punctually paid and discharged all Taxes imposed upon it or its assets within the time period allowed without incurring penalties (save to the extent that (i) payment is being contested in good faith, (ii) it has maintained adequate reserves for those Taxes and (iii) payment can be lawfully withheld).
- (b) It is not materially overdue in the filing of any Tax returns.
- (c) No claims are being or are reasonably likely to be asserted against it with respect to Taxes.

**17.17 No Immunity**

In any proceedings taken in its jurisdiction of incorporation in relation to this Agreement, it will not be entitled to claim for itself or any of its assets immunity from suit, execution, attachment or other legal process.

**17.18 No Undisclosed Liabilities**

Any liabilities (contingent or otherwise) which were not disclosed (by the notes or otherwise) or reserved against nor were there at that date any unrealised or anticipated

losses of any member of the Group arising from commitments entered into by it which were not so disclosed or reserved against.

**17.19 Private and commercial acts**

Its execution of the Finance Documents constitutes, and its exercise of its rights and performance of its obligations hereunder will constitute, private and commercial acts done and performed for private and commercial purposes.

**17.20 Repetition**

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

**18. INFORMATION UNDERTAKINGS**

The undertakings in this Clause 18 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any commitment is in force.

**18.1 Financial statements**

- (a) The Borrower shall supply to the Lender:
  - (i) as soon as the same become available, but in any event within 180 days after the end of each of its financial years
    - (A) its audited consolidated financial statements for that financial year; and
    - (B) the unaudited unconsolidated financial statements of the Borrower for that financial year,
  - (ii) as soon as the same become available, but in any event within 120 days after the end of each half of each of its financial years, its unaudited (auditors' review) consolidated and unconsolidated financial statements for that financial half year.
- (b) Subject to paragraph (b) of Clause 21.3 (*Other obligations*) if the Borrower is unable to supply the financial statements referred to in paragraph (a) above on the due date, the Borrower shall, before any such due date, notify the Lender in writing stating the reason (or reasons) for late delivery and the date on which it will supply such financial statements.

**18.2 Compliance Certificate**

- (a) The Borrower shall supply to the Lender, with each set of financial statements delivered pursuant to paragraph (a)(i) (A) or (a)(ii) of Clause 18.1 (*Financial statements*), a Compliance Certificate setting out (in reasonable detail) computations as to compliance with Clause 19 (*Financial covenants*) as at the date as at which those financial statements were drawn up; and
- (b) Each Compliance Certificate shall be signed by two directors of the Borrower.

### 18.3 Requirements as to financial statements

- (a) Each set of financial statements delivered by the Borrower pursuant to Clause 18.1 (*Financial statements*) shall be certified by a director of the relevant company as fairly representing its financial condition as at the date as at which those financial statements were drawn up.
  
- (b)
  - (i) The Borrower shall procure that each set of audited consolidated financial statements delivered pursuant to Clause 18.1 (*Financial statements*) is prepared using IAS and the set of unaudited unconsolidated financial statements is prepared using Kazakhstan Accounting Standards, and accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements, unless, in relation to any set of financial statements, it notifies the Lender that there has been a change in IAS or the accounting practices or reference periods and its auditors deliver to the Lender:
    - (A) a description of any change necessary for those financial statements to reflect the IAS, accounting practices and reference periods upon which the Original Financial Statements were prepared; and
    - (B) sufficient information, in form and substance as may be reasonably required by the Lender, to enable the Lender to determine whether Clause 19 (*Financial covenants*) has been complied with and make an accurate comparison between the financial position indicated in those financial statements the Original Financial Statements.
  
  - (ii) If the Borrower notifies the Lender of a change in accordance with paragraph (i) above then the Borrower and the Lender shall enter into negotiations in good faith with a view to agreeing:
    - (A) whether or not the change might result in any material alteration in the commercial effect of any of the terms of this Agreement; and
    - (B) if so, any amendments to this Agreement which may be necessary to ensure that the change does not result in any material alteration in the commercial effect of those terms

and if any amendments are agreed they shall take effect and be binding on each of the Parties in accordance with their terms.

Any reference in this Agreement to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.
  
  - (iii) The Borrower shall procure that each set of its unconsolidated financial statements delivered pursuant to Clause 18.1 (*Financial statements*) is prepared using Kazakhstan Accounting Standards.

### 18.4 Information: miscellaneous

The Borrower shall supply to the Lender:

- (a) all documents dispatched by the Borrower to its creditors generally at the same time as they are dispatched or all publicly available documents dispatched to shareholders (or any class of them);
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group, and which might, if adversely determined, have a Material Adverse Effect; and
- (c) promptly, such further information regarding the financial condition, business and operations of any member of the Group as the Lender may reasonably request.

18.5 **Notification of default**

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

18.6 **"Know your customer" checks**

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

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

19. **FINANCIAL COVENANTS**

19.1 **Financial definitions**

In this Clause 19:

"**Basel Accord**" means the accord on minimum capital requirements for internationally active banks promulgated in 1988 by the Bank for International Settlements.

"**Capital**" means core capital and supplementary capital as defined in the Basel Accord after the deductions specified in that Accord.

"**Tangible Net Worth**" means at any time the aggregate of:

- (a) the amount paid up or credited as paid up on the issued share capital of the Borrower; and
- (b) the aggregate amount standing to the credit of the capital and revenue reserves and share premium account of the Borrower,

based on the latest published balance sheet of the Borrower (whether audited in accordance with Clause 18.1(a)(i) or unaudited in accordance with Clause 18.1(a)(ii)) but adjusted by:

- (i) adding any amount standing to the credit of the profit and loss account of the Borrower for the period ending on the date of the latest balance sheet to the extent not included in paragraph (b) above;
- (ii) deducting any dividend or other distribution declared, recommended or made by the Borrower to the extent that such distribution is not provided for in the latest balance sheet;
- (iii) deducting any amount standing to the debit of the profit and loss account of the Borrower for the period ending on the date of the latest balance sheet;
- (iv) deducting any amount attributable to goodwill or any other intangible asset (including goodwill arising only on consolidation);
- (v) reflecting any variation in the amount of the issued share capital of the Borrower and the capital and revenue reserves of the Borrower after the date of the latest balance sheet;
- (vi) reflecting any variation in the interest of the Borrower in any other member of the Group since the date of the latest balance sheet;
- (vii) excluding any amount attributable to Taxes, deferred taxation or bad debts; and
- (viii) excluding any amount attributable to minority interests.

"**Tier 1 Capital**" has the meaning given to it in the Basel Accord and is subject to the deductions from capital specified in the Basel Accord.

"**Risk Weighted Assets**" means the risk-adjusted assets and off-balance sheet items calculated in accordance with the Basel Accord.



## 19.2 Interpretation

- (a) Except as provided to the contrary in this Agreement, an accounting term used in this Clause is to be construed in accordance with the principles applied in connection with the Original Financial Statements of the Borrower.
- (b) Any amount in a currency other than dollars is to be taken into account at its dollar equivalent calculated on the basis of:
  - (i) the Lender's spot rate of exchange for the purchase of the relevant currency in the London foreign exchange market with dollar at or about 11.00 a.m. on the day the relevant amount falls to be calculated; or
  - (ii) if the amount is to be calculated on the last day of a financial period of the Borrower, the relevant rates of exchange used by the Borrower in, or in connection with, its financial statements for that period.
- (c) No item must be credited or deducted more than once in any calculation under this Clause.
- (d) The financial covenants set out in Clauses 19.3 (*Tangible Net Worth*) and 19.4 (*Capital Adequacy Ratio*) shall be tested from time to time on the basis of the financial statements delivered pursuant to Clause 18.1 (*Financial statements*) and/or each Compliance Certificate delivered pursuant to Clause 18.2 (*Compliance Certificate*).

## 19.3 Tangible Net Worth

The Borrower must ensure that, on a consolidated basis, Tangible Net Worth is not at any time less than US\$500,000,000.

## 19.4 Capital Adequacy Ratio

The Borrower must at all times ensure that both on a consolidated and an unconsolidated basis:

- (a) its Capital expressed as a percentage of its Risk Weighted Assets is not less than the higher of 12 per cent. (12%) and the percentage required under the laws of the Republic of Kazakhstan from time to time; and
- (b) its Tier 1 Capital expressed as a percentage of its Risk Weighted Assets is not less than 6 per cent. (6%) according to the regulation of the Bank of International Settlements and the percentage required under the laws of the Republic of Kazakhstan from time to time.

## 19.5 Financial Indebtedness Ratio

The Borrower must at all times ensure that its Financial Indebtedness (excluding any short-term interbank borrowings and all customer deposits) expressed as a percentage of the aggregate amount of its total liabilities as determined by reference to the latest financial statements delivered under this Agreement is not more than seventy-five per cent. (75%).

20. **GENERAL UNDERTAKINGS**

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

20.1 **Authorisations**

The Borrower shall promptly:

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

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

20.2 **Compliance with laws**

The Borrower shall comply in all respects with all laws to which it may be subject, if failure so to comply would materially impair its ability to perform its obligations under the Finance Documents.

20.3 **Pari passu ranking**

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

20.4 **Negative pledge**

- (a) The Borrower shall not (and the Borrower shall ensure that no other member of the Group will) create or permit to subsist any Security over any of its assets.
- (b) Paragraph (a) above does not apply to:
  - (i) any Security arising in the ordinary course of business; or
  - (ii) the Permitted Security.

20.5 **Disposals**

- (a) The Borrower shall not (and the Borrower shall ensure that no other member of the Group will), enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset.
- (b) Paragraph (a) above does not apply to any sale, lease, transfer or other disposal:
  - (i) made in the ordinary course of business of the disposing entity;
  - (ii) of assets in exchange for assets of a similar or superior type, value and quality;

- (iii) where the higher of the market value or consideration receivable (when aggregated with the higher of the market value or consideration receivable for any other sale, lease, transfer or other disposal by the Group, other than any permitted under paragraphs (i) to (ii) above) does not exceed an amount equal to 20 per cent. (20%) of the value of the Total Assets from time to time in any financial year; or
- (iv) made pursuant to a Securitisation in relation to which the Lender has given its prior written consent.

**20.6 Corporate Existence**

The Borrower shall maintain its corporate existence and shall ensure that no material changes are made to its constitutional documents.

**20.7 Merger**

- (a) Without the prior consent of the Lender, the Borrower shall not (and the Borrower shall ensure that no other member of the Group will) enter into any amalgamation, demerger, merger or corporate reconstruction.
- (b) Paragraph (a) above shall not apply to any amalgamation or merger of the Borrower to the extent that the aggregate value of the entity with which the Borrower is amalgamating or merging is less than 30% of the total consolidated assets of the Borrower immediately after the date on which such amalgamation or merger takes place.

**20.8 Change of business**

The Borrower shall procure that no substantial change is made to the general nature of the business of the Borrower or the Group from that carried on at the date of this Agreement.

**20.9 Insurance**

The Borrower shall (and the Borrower shall ensure that each member of the Group will) maintain insurances on and in relation to its business and assets with reputable underwriters or insurance companies against those risks and to the extent as is usual for companies carrying on the same or substantially similar business.

**20.10 Access**

The Borrower shall (and the Borrower shall ensure that each member of the Group will) permit the Lender and/or accountants or other professional advisers and contractors of the Lender free access at all reasonable times and on reasonable notice at the risk and cost of the Borrower to the premises, books, accounts and records of each member of the Group.

**20.11 Translation**

The Borrower shall deliver a Kazakh translation of this Agreement, certified by the Borrower to be correct and complete, within thirty Business Days of the date of execution hereof.

## 21. EVENTS OF DEFAULT

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

### 21.1 Non-payment

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

- (a) its failure to pay is caused by administrative or technical error; and
- (b) payment is made within three (3) Business Days of its due date.

### 21.2 Covenants

- (a) Any requirement of Clause 19 (*Financial covenants*) is not satisfied; or
- (b) The Borrower does not comply with Clause 20.3 (*Pari passu ranking*), Clause 20.4 (*Negative pledge*), Clause 20.5 (*Disposals*), Clause 20.6 (*Corporate Existence*) or Clause 20.7 (*Merger*) and Clause 20.8 (*Change of business*).

### 21.3 Other obligations

- (a) The Borrower does not comply with any provision of the Finance Documents (other than those referred to in Clause 21.1 (*Non-payment*) and Clause 21.2 (*Covenants*)).
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within fifteen (15) days of the earlier of the Lender giving notice to the Borrower and the Borrower becoming aware of the failure to comply.

### 21.4 Misrepresentation

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

### 21.5 Cross default

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

- (e) No Event of Default will occur under this Clause 21.5 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than US\$8,000,000 (or its equivalent in any other currency or currencies).

**21.6 Insolvency**

- (a) A member of the Group is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.
- (b) The value of the assets of any member of the Group is less than its liabilities (taking into account contingent and prospective liabilities).
- (c) A moratorium is declared in respect of any indebtedness of any member of the Group.

**21.7 Insolvency proceedings**

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

- (a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any member of the Group other than a solvent liquidation or reorganisation of any member of the Group;
- (b) a composition, compromise, assignment or arrangement with any creditor of any member of the Group;
- (c) the appointment of a liquidator (other than in respect of a solvent liquidation of a member of the Group), receiver, administrative receiver, administrator, compulsory or interim manager or other similar officer in respect of any member of the Group or any of its assets; or
- (d) enforcement of any Security over any assets of any member of the Group,

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

**21.8 Creditors' process**

Any expropriation, attachment, sequestration, distress or execution affects any material asset or assets of a member of the Group.

**21.9 Unlawfulness**

It is or becomes unlawful for the Borrower to perform any of its obligations under the Finance Documents.

**21.10 Repudiation**

The Borrower repudiates a Finance Document or evidences an intention to repudiate a Finance Document.

**21.11 Litigation**

Any litigation, arbitration or administrative proceedings are commenced against any member of the Group which may have a Material Adverse Effect.

**21.12 Final Judgment**

Any member of the Group fails to comply with any final judgment in an amount exceeding US\$3,000,000 (or its equivalent in any other currency or currencies) which is not capable of being appealed by it.

**21.13 Revocation of Bank Licence**

The bank licence of the Borrower is revoked, terminated or expires.

**21.14 Change of Business**

The Borrower either ceases to carry on the business it carries on at the date hereof or makes a substantial change to the general nature of its business from that carried on at the date of this Agreement.

**21.15 Governmental Intervention**

By or under the authority of any government:

- (a) the management of any member of the Group is wholly or partially displaced or the authority of any member of the Group in the conduct of its business is wholly or partially curtailed; or
- (b) all or a majority of the issued shares of any member of the Group or the whole or any part (the book value of which is 51 per cent. or more of the book value of the whole) of its revenues or assets is seized, nationalised, expropriated or compulsorily acquired.

**21.16 Moratorium**

Any moratorium or other similar arrangement or circumstances occurs which has the purpose or effect of altering the terms on which, or the manner in which, any external indebtedness of the government of Kazakhstan or any relevant agency of the government of Kazakhstan is to be repaid or paid.

**21.17 Immunity**

The Borrower at any time claims or threatens to claim immunity from process, execution, attachment or other legal process, whether in Kazakhstan or in any other jurisdiction.

**21.18 Material adverse change**

Any event or circumstance occurs which the Lender reasonably believes is likely to have a material adverse effect on:

- (a) the business, operations, performance, condition (financial or otherwise) or prospects of the Borrower;
- (b) the ability of the Borrower to perform its obligations under the Finance Documents; or

- (c) the validity or enforceability of the Finance Documents or the rights or remedies of the Lender under the Finance Documents.

**21.19 Acceleration**

On and at any time after the occurrence of an Event of Default which is continuing the Lender may by notice to the Borrower:

- (a) cancel the Facility whereupon the Facility shall immediately be cancelled;
- (b) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable; and/or
- (c) declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand by the Lender.

**SECTION 9**  
**CHANGES TO PARTIES**

**22. CHANGES TO THE LENDERS**

**22.1 Assignments and transfers by the Lender**

Subject to this Clause 22, the Lender may:

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

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

**22.2 Conditions of assignment or transfer**

- (a) Without any liability on the Lender, from and including the date of this Agreement to and including the date falling two years after the date of this Agreement, the Lender may not assign or transfer any of its rights or obligations under Clause 22.1 (*Assignments and transfers by the Lender*) to another bank if such prospective transferee bank intends to book its participation in the Loan through a department which regularly engages in syndicated lending or trade finance.
- (b) Notwithstanding paragraph (a) above, the Lender:
  - (i) may rely on any representation and all other information provided to the Lender by the prospective transferee bank in connection with any proposed assignment or transfer, without any obligation to verify its accuracy;
  - (ii) shall not be under any obligation to monitor or verify or be held responsible for the internal affairs, organisation or any other action of any prospective transferee bank;
  - (iii) may at any time assign or transfer any of its rights or obligations to another 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 which is not a bank; and
  - (iv) may at any time after the occurrence of an Event of Default assign or transfer any of its rights 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.
- (c) An assignment will only be effective on receipt by the Borrower of written confirmation from the New Lender (in form and substance satisfactory to the



Borrower (acting reasonably)) that the New Lender will assume the same obligations to the other Parties as it would have been under if it was the Lender.

- (d) A transfer will only be effective if the procedure set out in Clause 22.4 (*Procedure for transfer*) is complied with.
- (e) If:
  - (i) the Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
  - (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, the Borrower would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 12 (*Tax gross-up and indemnities*) or Clause 13 (*Increased costs*),

then the Borrower shall not be obliged to make any payment to the New Lender or the Lender acting through its new Facility Office under those Clauses to the extent that such payment is in excess of the payment which the Borrower would have been obliged to make to the Lender or the Lender acting through its previous Facility Office if the assignment, transfer or change had not occurred.

### 22.3 **Limitation of responsibility of the Lender**

- (a) Unless expressly agreed to the contrary, the Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
  - (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;
  - (ii) the financial condition of the Borrower;
  - (iii) the performance and observance by the Borrower of its obligations under the Finance Documents or any other documents; or
  - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,and any representations or warranties implied by law are excluded.
- (b) Each New Lender confirms to the Lender that it:
  - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of the Borrower and its related entities in connection with this Agreement and has not relied exclusively on any information provided to it by the Lender in connection with any Finance Document; and
  - (ii) will continue to make its own independent appraisal of the creditworthiness of the Borrower and its related entities whilst any amount is or may be outstanding under the Finance Documents or any commitment is in force.

- (c) Nothing in any Finance Document obliges the Lender to:
  - (i) accept a re-transfer from a New Lender of any of the rights and obligations assigned or transferred under this Clause 22; or
  - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by the Borrower of its obligations under the Finance Documents or otherwise.

#### 22.4 **Procedure for transfer**

- (a) Subject to the conditions set out in Clause 22.2 (*Conditions of assignment or transfer*) a transfer is effected in accordance with paragraph (c) below when the Lender executes an otherwise duly completed Transfer Certificate delivered to it by the New Lender. The Lender shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate.
- (b) On the Transfer Date:
  - (i) to the extent that in the Transfer Certificate the Lender seeks to transfer by novation its rights and obligations under the Finance Documents the Borrower and the Lender shall be released from further obligations towards one another under the Finance Documents and their respective rights against one another under the Finance Documents shall be cancelled (being the "**Discharged Rights and Obligations**");
  - (ii) the Borrower and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as the Borrower and the New Lender have assumed and/or acquired the same in place of the Borrower and the Lender;
  - (iii) to the extent the Lender retains a portion of the Loan, the Lender and the New Lender shall acquire the same rights and assume the same obligations between themselves as they would have acquired and assumed had the New Lender been the Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Lender shall each be released from further obligations to each other under the Finance Documents; and
  - (iv) the New Lender shall become a Party as a "**Lender**".

#### 22.5 **Copy of Transfer Certificate to Borrower**

The Lender shall, as soon as reasonably practicable after it has executed a Transfer Certificate, send to the Borrower a copy of that Transfer Certificate.

#### 22.6 **Disclosure of information**

Any Lender may disclose to any of its Affiliates and any other person:

- (a) to (or through) whom the Lender assigns or transfers (or may potentially assign or transfer) all or any of its rights and obligations under this Agreement;
- (b) with (or through) whom the Lender enters into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made by reference to, this Agreement or the Borrower; or
- (c) to whom, and to the extent that, information is required to be disclosed by any applicable law or regulation,

any information about the Borrower, the Group and the Finance Documents as the Lender shall consider appropriate.

**22.7 Further assurance**

The Borrower agrees at the expense of the relevant assignee or transferee to execute and deliver such documents and/or to accept such amendments to this Agreement and to the other Finance Documents as the Lender may reasonably request to give effect to such assignment or transfer.

**23. CHANGES TO THE BORROWER**

The Borrower may not assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

**24. CONDUCT OF BUSINESS BY THE LENDER**

No provision of this Agreement will:

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

## **SECTION 11 ADMINISTRATION**

### **25. PAYMENT MECHANICS**

#### **25.1 Payments to the Lender**

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

#### **25.2 Partial payments**

- (a) If the Lender receives a payment that is insufficient to discharge all the amounts then due and payable by a Borrower under the Finance Documents, the Lender shall apply that payment towards the obligations of the Borrower under the Finance Documents in the following order:
  - (i) first, in or towards payment pro rata of any unpaid fees, costs and expenses of the Lender under the Finance Documents;
  - (ii) secondly, in or towards payment pro rata of any accrued interest, fee or commission due but unpaid under this Agreement;
  - (iii) thirdly, in or towards payment pro rata of any principal due but unpaid under this Agreement; and
  - (iv) fourthly, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.
- (b) The Lender may vary the order set out in paragraphs (a)(ii) to (iv) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by the Borrower.

#### **25.3 No set-off by the Borrower**

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

#### **25.4 Business Days**

- (a) Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

- (b) During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

**25.5 Currency of account**

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

**25.6 Change of currency**

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

**26. SET-OFF**

- (a) The Lender may set off any matured obligation due from the Borrower under the Finance Documents (to the extent beneficially owned by the Lender) against any matured obligation owed by the Lender to the Borrower, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Lender may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.
- (b) The Lender shall take all reasonable steps to mitigate any cost, loss or liability of the Borrower arising out of or as a result of the set-off and conversion.

27. **NOTICES**

27.1 **Communications in writing**

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

27.2 **Addresses**

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

- (a) in the case of the Borrower, that identified with its name below; and
- (b) in the case of the Lender, that identified with its name below,

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

27.3 **Delivery**

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

and, if a particular department or officer is specified as part of its address details provided under Clause 27.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Lender will be effective only when actually received by the Lender and then only if it is expressly marked for the attention of the department or officer identified with the Lender's signature below (or any substitute department or officer as the Lender shall specify for this purpose).
- (c) Any communication or document made or delivered to the Borrower in accordance with this Clause will be deemed to have been made or delivered to the Borrower.

27.4 **English language**

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

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

## 28. **CALCULATIONS AND CERTIFICATES**

### 28.1 **Accounts**

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

### 28.2 **Certificates and Determinations**

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

### 28.3 **Day count convention**

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 days or, in any case where the practice in the London interbank market differs, in accordance with that market practice.

## 29. **PARTIAL INVALIDITY**

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

## 30. **REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of the Lender, any right or remedy under the Finance Documents shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

## 31. **AMENDMENTS AND WAIVERS**

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

## 32. **COUNTERPARTS**

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

**SECTION 12**  
**GOVERNING LAW AND ENFORCEMENT**

33. **GOVERNING LAW**

This Agreement is governed by English law.

34. **ENFORCEMENT**

34.1 **Jurisdiction**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement) (a "**Dispute**").
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This Clause 34.1 is for the benefit of the Lender only. As a result, the Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

34.2 **Service of process**

Without prejudice to any other mode of service allowed under any relevant law, the Borrower:

- (a) irrevocably appoints The Law Debenture Trust Corporation p.l.c. as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
- (b) agrees that failure by an agent for service of process to notify the Borrower of the process will not invalidate the proceedings concerned.

34.3 **Waiver of Immunity**

The Borrower waives generally all immunity it or its assets or revenues may otherwise have in any jurisdiction, including immunity in respect of:

- (a) the giving of any relief by way of injunction or order for specific performance or for the recovery of assets or revenues; and
- (b) the issue of any process against its assets or revenues for the enforcement of a judgment or, in an action in rem, for the arrest, detention or sale of any of its assets and revenues.

35. **ARBITRATION**

35.1 **Arbitration**

Subject to Clause 35.4 (*Lender's option*) any dispute (a "**Dispute**") arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement or the consequences of its nullity) shall be referred to and



finally resolved by arbitration under the Arbitration Rules (the "**Rules**") of the London Court of International Arbitration.

**35.2 Procedure for arbitration**

The arbitral tribunal shall consist of one arbitrator who shall be a Queen's Counsel of at least five years' standing. The seat of arbitration shall be London, England and the language of the arbitration shall be English.

**35.3 Recourse to courts**

Save as provided in Clause 35.4 (*Lender's option*), the parties exclude the jurisdiction of the courts under Sections 45 and 69 of the Arbitration Act 1996.

**35.4 Lender's option**

Before an arbitrator has been appointed to determine a Dispute, the Lender may require that all Disputes or a specific Dispute be heard by a court of law.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

**SCHEDULE 1**  
**CONDITIONS PRECEDENT**

**Conditions precedent to Utilisation**

**1. The Borrower**

- (a) A copy of the constitutional documents of the Borrower.
- (b) An extract from the Management Board of the Borrower:
  - (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute the Finance Documents to which it is a party;
  - (ii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
  - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request and any Selection Notice) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.
- (c) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above.
- (d) A certificate of the Borrower (signed by a director) confirming that borrowing or guaranteeing, as appropriate, the Facility would not cause any borrowing, guaranteeing or similar limit binding on the Borrower to be exceeded.
- (e) A certificate of an authorised signatory of the Borrower certifying that each copy document relating to it specified in this Schedule 1 is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.

**2. Legal opinions**

- (a) A legal opinion of Clifford Chance LLP, legal advisers to the Lender and the Lender in England, substantially in the form distributed to the Original Lenders prior to signing this Agreement.
- (b) A legal opinion of Bracewell Giuliani LLP, legal advisers to the Lender and the Lender in the Republic of Kazakhstan, substantially in the form distributed to the Original Lenders prior to signing this Agreement.
- (c) An in-house legal opinion of the Borrower in form and substance satisfactory to the Lender and substantially in the form distributed to the Original Lenders prior to signing this Agreement.

3. **Other documents and evidence**

- (a) Evidence that any agent for service of process referred to in Clause 34.2 (*Service of process*) has accepted its appointment.
- (b) A copy of any other Authorisation or other document, opinion or assurance which the Lender considers to be necessary or desirable (if it has notified the Borrower accordingly, giving the Borrower sufficient time, and it shall have regards to the costs involved and shall use reasonable endeavours to ensure that any such costs are reasonable) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.
- (c) The Original Financial Statements of the Borrower.
- (d) Evidence that the fees, costs and expenses then due from the Borrower pursuant to Clause 11 (*Fees*) and Clause 16.1 (*Transaction expenses*) have been paid or will be paid.

**SCHEDULE 2**  
**UTILISATION REQUEST**

From: JSC Bank TuranAlem

To: Standard Bank Plc as Lender

Dated:

Dear Sirs

**JSC Bank TuranAlem – US\$100,000,000 Facility Agreement**  
**dated 20 December 2006 (the "Agreement")**

1. We refer to the Agreement. This is the Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to borrow the Loan on the following terms:  

Proposed Utilisation Date:	[•] (or, if that is not a Business Day, the next Business Day)
Amount:	US\$100,000,000
Interest Period:	6 Months
3. We confirm that each condition specified in Clause 4.2 (*Further conditions precedent*) is satisfied on the date of this Utilisation Request.
4. The proceeds of this Loan should be credited to [account].
5. This Utilisation Request is irrevocable.

Yours faithfully

.....  
authorised signatory for  
JSC Bank TuranAlem

**SCHEDULE 3**  
**MANDATORY COST FORMULAE**

1. The Mandatory Cost is designed to compensate Lender for the cost of compliance with (a) the requirements of the Financial Services Authority (or any other authority which replaces all or any of its functions) or (b) the requirements of the European Central Bank.
2. On the first day of each Interest Period (or as soon as possible thereafter) the Lender shall calculate the relevant cash amount using a rate (the "**Additional Cost Rate**") computed in accordance with the paragraphs set out below.
3. The Additional Cost Rate for the Lender if lending from a Facility Office in a Participating Member State will be the percentage which is its reasonable determination of the cost of complying with the minimum reserve requirements of the European Central Bank.
4. The Additional Cost Rate for the Lender if lending from a Facility Office in the United Kingdom will be calculated by the Lender as follows:

$$\frac{E \times 0.01}{300} \text{ per cent. per annum.}$$

Where:

E is the rate of charge payable under the Fees Rules by the Lender to the Financial Services Authority and expressed in pounds per £1,000,000 of the Tariff Base of the Lender.

5. For the purposes of this Schedule:  
  
"**Fees Rules**" means the rules on periodic fees contained in the FSA Supervision Manual or such other law or regulation as may be in force from time to time in respect of the payments of fees for the acceptance of deposits; and  
  
"**Tariff Base**" has the meaning given to it in, and will be calculated in accordance with, the Fees Rules.
6. Any determination by the Lender pursuant to this Schedule in relation to a formula, the Mandatory Cost, an Additional Cost Rate or any amount payable to the Lender shall, in the absence of manifest error, be conclusive and binding on all Parties.
7. The Lender may from time to time, after consultation with the Borrower, determine and notify to all Parties any amendments which are required to be made to this Schedule in order to comply with any change in law, regulation or any requirements from time to time imposed by the Financial Services Authority or the European Central Bank (or, in either case, any other authority which replaces all or any of its functions) and any such determination shall, in the absence of manifest error, be conclusive and binding on all Parties. Any amount claimed by the Lender must be a minimum amount of US\$ 20 (or its equivalent in any other currency).



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

To: Standard Bank as Lender

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

Dated:

**JSC Bank TuranAlem – US\$100,000,000 Facility Agreement**  
**Dated 20 December 2006 (the "Agreement")**

8. We refer to the Agreement. This is a Transfer Certificate. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
9. We refer to Clause 22.4 (*Procedure for transfer*):
  - (e) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation all or part of the Existing Lender's Commitment, rights and obligations referred to in the Schedule in accordance with Clause 22.4 (*Procedure for transfer*).
  - (f) The proposed Transfer Date is [**•**].
  - (g) The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 27.2 (*Addresses*) are set out in the Schedule.
10. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 22.3 (*Limitation of responsibility of Existing Lenders*).
11. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
12. This Transfer Certificate is governed by English law.

**THE SCHEDULE**

**Commitment/rights and obligations to be transferred**

[*insert relevant details*]

[*Facility Office address, fax number and attention details for notices and account details for payments,*]

[Existing Lender]

[New Lender]

By:

By:

This Transfer Certificate is accepted by the Lender and the Transfer Date is confirmed as  
[•].

Standard Bank as Lender

By:



**SCHEDULE 5**  
**FORM OF COMPLIANCE CERTIFICATE**

To: Standard Bank Plc as Lender

From: JSC Bank TuranAlem

Dated:

Dear Sirs

**JSC Bank TuranAlem – US\$100,000,000 Facility Agreement**  
**dated 20 December 2006 (the "Agreement")**

1. We refer to the Agreement. This is a Compliance Certificate. Terms defined in the Agreement have the same meaning in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
2. We confirm that:  
  
*[Insert details of financial covenants and whether the Borrower is in compliance with those covenants.]*
3. We confirm that the Borrower is in compliance with Clauses 19.3 (*Tangible Net Worth*), 19.4 (*Capital Adequacy Ratio*) and 19.5 (*Financial Indebtedness Ratio*) of the Agreement.

Signed: .....	.....
Director	Director
of	of
JSC Bank TuranAlem	JSC Bank TuranAlem

## SCHEDULE 6

### TIMETABLE

Delivery of a duly completed Utilisation Request (Clause 5.1 (*Delivery of the Utilisation Request*))

LIBOR is fixed

U-2

10.00am London time

Quotation Day as of  
11.00am London time

"U" = date of utilisation

"U - X" = X Business Days prior to date of utilisation

## **SIGNATURES**

### **THE BORROWER**

#### **JSC BANK TURANALEM**

By: DINA ABDYKALYKOVA TIMUR SABYRBAYEV

Address: 97, Zholdasbekov Street, Samal - 2  
Almaty, 050051  
The Republic of Kazakhstan

Tel.: +7 3272 504093

Fax: +7 3272 500224

### **THE LENDER**

#### **STANDARD BANK PLC**

By: DAVID CHERNANKO JEANETTE JONES

Address: Canons Bridge House  
25 Dowgate Hill  
London EC4R 2SB

Fax No: +44 (20) 7815 4243

Attention: David Chernanko