

**QUANTUM TERMINALS PLC**  
(AS ISSUER)

AND

**UNIBANK GHANA LIMITED**  
(AS TRUSTEE)

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**TRUST AGREEMENT**

RELATING TO NOTE PROGRAMME OF QUANTUM TERMINALS PLC

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DATED 28 SEPTEMBER 2017



**BENTSI-ENCHILL**  
**LE TSA & ANKOMAH**

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GRA/235A/2017

THIS TRUST AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_ 2017

BETWEEN

- (1) **QUANTUM TERMINALS PLC**, a public limited liability company incorporated under the laws of Ghana with registration number PL000372016 and whose registered office is at H/No. E17/9 Ablade, Kanda, Accra (the "**Issuer**");

AND

- (2) **UNIBANK GHANA LIMITED**, a private limited liability company incorporated under the laws of Ghana with registration number CS032392016 and whose registered office is on the 13<sup>th</sup> Floor of the World Trade Centre Building, Accra, Ghana (the "**Trustee**").

WHEREAS:

- (A) The Issuer wishes to establish a note programme to raise GHS 140,000,000 (the "**Note Programme**") for the purpose of refinancing its existing indebtedness towards Standard Chartered Bank and Standard Chartered Bank Ghana Limited and funding its general corporate purposes on the terms and conditions set out in the Prospectus (as defined below).
- (B) The Issuer intends to apply for listing of the notes to be issued under the Notes Programme (the "**Notes**") on the Ghana Fixed Income Market (the "**GFIM**").
- (C) By resolutions dated September 20, 2016, the board of directors and the shareholders, respectively, of the Issuer have approved the establishment of the Note Programme and the listing of the Notes on the GFIM.
- (D) The Trustee has agreed to act as trustee for the Noteholders under the Note Programme and any related security or guarantee in accordance with the terms of this Agreement.

IT IS AGREED as follows:

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

Words and expressions defined in the Prospectus and the Conditions shall, unless expressly defined in this Agreement or the context otherwise requires, have the same meanings when used in this Agreement. In addition, the following definitions apply:

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

- (a) a subsidiary of that person;
- (b) a holding company of that person; or
- (c) any other subsidiary of that holding company;

"**Agency Agreement**" means the agency agreement dated on or around the date of the Agreement and made between the Issuer, the CSD and the Trustee, under which the Issuer appoints the CSD as transfer agent, calculation agent and registrar and the Trustee as paying agent and paying bank in relation to the Notes;

"**Agreement**" means this trust agreement and the schedules (as from time to time modified in accordance with the provisions contained herein) and (unless the context requires otherwise) includes any document executed in accordance with the provisions hereof (as from time to time modified as aforesaid) and expressed to be supplemental hereto;

"**Authorised Signatory**" means any Director or officer of the Issuer notified to the Trustee by

the Issuer as being an authorised signatory;

**“Business Day”** means, a day (other than a Saturday or Sunday or official public holiday) on which banking institutions are generally open for the conduct of business in Ghana;

**“Competent Authority”** means any national, city, town, municipal or other local governmental department, commission, board, bureau, agency, authority or instrumentality of a jurisdiction applicable to the relevant Party or its operations, as applicable, or any political subdivision thereof, and any person exercising executive, legislative, judicial, regulatory or central bank (or any person that exercises the functions of the central bank) or administrative functions of, or pertaining to, any of the foregoing entities, having jurisdiction over the relevant Party;

**“Conditions”** means the terms and conditions of the Notes (as amended, modified or supplemented from time to time), which are contained in the Prospectus, and which are set out in Schedule 2 (*Conditions of the Notes*);

**“CSD”** means the Central Securities Depository (Ghana) Limited, a company incorporated in Ghana and operating as a central securities depository;

**“Director”** means any director of the Issuer from time to time;

**“Global Note Certificate”** means a certificate evidencing title to the issued Notes under the Note Programme issued in respect of a series or tranche of Notes substantially in the form of the draft certificate, as set out in Schedule 1 (*Form of Global Note Certificate*);

**“Party”** means a party to this Agreement and **“Parties”** shall be construed accordingly;

**“Payment Date”** means each Interest Payment Date or Redemption Date;

**“Person”** means an individual, corporation (including a business trust), partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated association or government or any agency or political subdivision thereof;

**“Programme Documents”** means the Prospectus, any Applicable Pricing Supplement, this Agreement, the Agency Agreement and any documents specified as such by the Trustee, and **“Programme Document”** means any one of them, as evident from the context;

**“Prospectus”** means the prospectus prepared by the Issuer in connection with the Note Programme and dated on or about the date of this Agreement, as amended, modified or supplemented from time to time;

**“Register”** means the register of the Noteholders maintained by the CSD in electronic form;

**“Regulations”** means the regulations of the Issuer (as amended from time to time, in accordance with the Companies Act, 1963 (Act 179));

**“SEC”** means the Securities and Exchange Commission of Ghana;

**“Special Resolution”** has the meaning set out in Schedule 3 (*Provisions for meetings of the Noteholders*); and

**“Written Resolution”** means a resolution in writing signed by or on behalf of all Noteholders who for the time being are entitled to receive notice of a meeting in accordance with the provisions of this Agreement, whether contained in one document or several documents in like form, each signed by or on behalf of one or more such Noteholders.

## 1.2 Interpretation

In this Agreement:

- (a) **statutory modification:** references to any provision of any statute shall be deemed also to refer to any statutory modification or re-enactment thereof or any statutory instrument, order or regulation made thereunder or under such modification or re-enactment;
- (b) **tax:** references to costs, charges or expenses shall include any value added tax or similar tax charged or chargeable in respect thereof;
- (c) **replacements, etc.:** references to any party to any Programme Document shall include any replacement, additional or substitute Person acting in the relevant capacity pursuant to the terms of such Programme Document;
- (d) **headings:** the headings and sub-headings are for ease of reference only and shall not affect the construction of this Agreement; and
- (e) **general:** unless the context otherwise requires, words importing the singular, include the plural and *vice versa*, words importing the masculine gender include the feminine and words importing persons include corporate bodies.

## 2. APPOINTMENT OF TRUSTEE

The Issuer hereby appoints the Trustee as trustee for the Noteholders upon the terms and subject to the conditions set forth in this Agreement for the purposes of the Note Programme and any related security or guarantee, and the Trustee hereby accepts such appointment.

## 3. THE NOTES & COVENANT TO PAY IN TRUST

3.1 **The Notes:** Subject to satisfaction of the conditions precedent set forth in Schedule 4 (Conditions Precedent), the Notes shall be issued under each Applicable Pricing Supplement up to an aggregate principal amount of GHS 140,000,000 and subject to the Conditions.

3.2 **Covenant to pay in trust:** Subject to the Notes and the Programme Documents, the Issuer covenants with the Trustee that it will, as and when any sum becomes due and payable in respect of the Notes, whether by way of principal, interest or otherwise, on the Payment Date specified in the Notes and the Applicable Pricing Supplement, and until all such payments (after, as well as before any judgment or other order of any court of competent jurisdiction) are duly made, unconditionally pay or procure to be paid to or to the order of the Trustee, such amount on each such date, provided that:

3.2.1 if any payment in respect of the Notes is made after the Payment Date, payment shall be deemed not to have been made until the full sum is paid to the Noteholders; and

3.2.2 in any case where payment of the whole or any part of any sum due in respect of any Note is improperly withheld or refused by the Payment Date, interest shall accrue on the whole or such part of such principal and/or interest from the date of such withholding or refusal at a default rate of one percent (1%) above the Interest Rate until the date on which such sum due is paid to the Noteholders.

The Trustee will hold the benefit of this covenant and the covenant in Clause 5.1.1 (Compliance with documents) on trust for the Noteholders.

## 4. THE NOTES

4.1 **Form of the Notes:** Each Note will be in registered form and electronically maintained by the CSD.

4.2 **Signature:** The definitive Global Note Certificate issued in respect of each Series or Tranche of Notes will be signed by a duly authorised signatory designated by the Issuer.



4.3 **Entitlement to treat Noteholder as owner:** The Issuer, the Trustee, and the CSD may deem and treat the Noteholder whose name is entered in the Register as the absolute owner of such Note and, except as ordered by a court of competent jurisdiction or as required by Applicable Laws, the Issuer, the Trustee and the CSD shall not be affected by any notice to the contrary. All payments made to any such Noteholder shall be valid and, to the extent of the sums so paid, effective to satisfy and discharge the liability for the moneys payable upon the Notes.

4.4 **Transfers:** Any Noteholder may transfer its interest in a Note only pursuant to and in accordance with the relevant transfer provisions under the Conditions.

## 5. COVENANTS BY THE ISSUER

5.1 **Positive covenants:** The Issuer hereby covenants with the Trustee that, for so long as any of the Notes remains outstanding or any amount remains due and unpaid by it under the Programme Documents, it will:

5.1.1 **compliance with documents:** comply with those provisions of this Agreement, the Notes and the Programme Documents which are expressed to be binding on it, and to perform and observe the same and not make any amendment or modification thereto or agree to waive or authorise any breach thereof without the prior written consent of the Trustee (and any person so specified in an Applicable Pricing Supplement) and the approval of a Special Resolution of the Noteholders. The Notes are subject to the provisions contained in this Agreement, all of which shall be binding upon the Issuer, the Noteholders and all Persons claiming through or under them respectively;

5.1.2 **consents and approvals:** use its reasonable endeavours to obtain, comply with the terms of and do all that is necessary to maintain in full force and effect its corporate existence and all authorisations, approvals, permits, licenses and consents required in or by the laws and regulations of Ghana and any other Applicable Laws to enable it to enter lawfully into and perform its obligations under each Programme Document to which it is a party;

5.1.3 **books of account:** at all times keep and procure the keeping of books of account as may be necessary to comply with all Applicable Laws and to enable the financial statements of the Issuer to be prepared and furnish to the Trustee or the Trustee's agent copies of the books of account;

5.1.4 **financial statements and general information:** (i) deliver to the Trustee, audited financial statements for such financial year (audited in accordance with International Financial Reporting Standards as applicable in Ghana ("IFRS") and audited by an internationally recognised firm of independent auditors) within 90 clear days after the end of each financial year and (ii) give the Trustee or the Trustee's agent access to its premises, files and documents, and provide assistance in relation to any visit and inspection that the Trustee or the Trustee's agent shall decide to conduct, subject to receiving reasonable notice of such visit or inspection provided that it is not prohibited by law from disclosing the information. For the avoidance of doubt, the Trustee shall be entitled to conduct such visits and inspections only upon the occurrence of any Event of Default and only during business hours;

5.1.5 **insurance:** (i) insure and keep insured with reputable independent insurance companies or underwriters all its property and assets of an insurable nature and which property and assets are customarily insured against all material risks normally insured against by Persons carrying on the same class of business as that carried on by it; (ii) promptly pay all premiums and do all other things necessary to maintain the insurances required to be taken out and maintained by it pursuant to paragraph (i) above; and (iii) upon the Trustee's request, provide copies of each insurance policy required pursuant to this clause;

- 5.1.6 **notice of Event of Default:** deliver to the Trustee, upon the occurrence of an Event of Default (or an event, which, with the passage of time, would become an Event of Default), within fifteen (15) Business Days a certificate setting forth the details thereof;
- 5.1.7 **notices and circulars:** deliver to the Trustee, within five (5) Business Days of issue, copies of any notice, statement or circular issued to its shareholders and within five (5) Business Days of the date of the resolution, copies of resolutions passed by its shareholders;
- 5.1.8 **further assurances:** so far as permitted by Applicable Laws, use reasonable endeavours to execute all such further documents and do all such further acts and things as may be necessary at any time or times in the reasonable opinion of the Trustee to give effect to the provisions of this Agreement and the Programme Documents;
- 5.1.9 **payments:** pay all sums payable by it under this Agreement without set-off, counterclaim, deduction or withholding, unless otherwise compelled by law; and
- 5.1.10 **compliance with laws:** ensure that all transactions to be effected hereunder shall comply with all Applicable Laws and regulations for the purposes of any relevant Notes and the relevant Programme Documents and that all necessary consents and approvals of, and registrations and filing with, any such authority in connection therewith are obtained and maintained in full force and effect and copies thereof are supplied promptly to the Trustee.
- 5.2 **Negative Covenants:** The Issuer agrees that, without the prior written consent of the Trustee, which consent shall not be unreasonably withheld, it will:
- 5.2.1 **negative pledge:** so long as any Note remains outstanding, not create, incur, assume or permit to arise or subsist any Encumbrance other than a Permitted Encumbrance upon the whole or any part of its undertakings, assets or revenues, present or future, to secure any Financial Indebtedness unless, at the same time or prior thereto, the Issuer's obligations under the Notes:
- (a) are secured equally and rateably therewith, to the satisfaction of the Trustee;
- (b) have the benefit of such other arrangement as (i) the Note Trustee shall (in its absolute discretion) deem to be not materially less beneficial to the affected Noteholders or (ii) as shall be approved by a Special Resolution of the affected Noteholders,
- For the avoidance of doubt, the negative pledge shall not apply to any Encumbrance created in relation to the Early Power Loan, any guarantor under the first Series or Tranche or as indicated under an Applicable Pricing Supplement.
- 5.2.2 **no action to affect programme documents:** not take, or knowingly permit to be taken, any action that would terminate, or discharge or prejudice the validity or effectiveness of, any of the Programme Documents or the validity, effectiveness or priority of any Encumbrances created thereby; and/or
- 5.2.3 **no appointment of receiver, liquidator, trustee, etc.:** not take, or knowingly permit to be taken, any action to appoint a receiver, liquidator, trustee or similar official or otherwise to commence bankruptcy, liquidation or insolvency proceedings or take any dissolution or winding-up action.

## **6. REPRESENTATIONS BY THE ISSUER**

6.1 The Issuer makes the representations and warranties customary for transactions of this type and on which the Trustee, on behalf of itself and the Noteholders, may rely, including, without limitation, the following:

6.1.1 it is duly incorporated and in good standing under Ghanaian law and has full power and authority to enter into the transactions contemplated by the Programme Documents to which it is a party;

6.1.2 its execution and delivery of the Programme Documents to which it is a party are within its powers, have been duly authorised by all necessary action (including shareholder action) and require no action by or in respect of, or filing with, any governmental authority, except such as have been taken or made before the Issue Date;

6.1.3 each of the Programme Documents to which it is a party has been duly executed and delivered by it and constitutes legal, valid and binding obligations, which are enforceable (subject to customary bankruptcy exceptions) in accordance with their terms;

6.1.4 the execution and delivery of, and performance of, its obligations under the Programme Documents to which it is a party will not contravene, or constitute a default under, any Applicable Laws or any agreement, instrument or other undertaking to which it is a party or the provisions of its Regulations;

6.1.5 it is in compliance with all Applicable Laws except to the extent that the failure to comply therewith could not be reasonably likely to have a material adverse effect on the Noteholders or its ability to comply with its obligations under the Programme Documents;

6.1.6 to the best of its knowledge, other than as described in the Prospectus, there is no adverse material litigation or administrative proceeding before any court, tribunal or governmental body with respect to it or its operations or projects in Ghana;

6.1.7 it has no knowledge of any existing tax claim or labour claim which, if determined adversely to it, would have a material adverse effect on its ability to perform its obligations under the Programme Documents;

6.1.8 there exists no Event of Default as at the date of the Programme Documents;

6.1.9 it has paid all taxes relating to its business and under all applicable Programme Documents which it is required to have paid, except for any tax payment which is being contested by it or on its behalf in good faith and by appropriate means and for which adequate reserves have been established to the extent required by IFRS; and

6.1.10 it has all corporate power and all material governmental licenses, authorisations, consents, and approvals required to carry on its business as now conducted, except where failure to have such licences, authorisations, consents, and approvals would not have a material adverse effect on its business.

6.2 The Issuer makes the representations and warranties herein on the Agreement Date and on each Issue Date.

## **7. AMENDMENTS**

### **7.1 Waiver**

The Trustee may, without the approval of Noteholders and without prejudice to its rights in



respect of any subsequent breach, condition, event or act, from time to time and at any time, but only if and in so far as in its opinion the interests of the Noteholders shall not be materially prejudiced thereby, authorise or waive (on any terms and conditions as shall seem expedient to it) any proposed breach or breach of any of the covenants or provisions contained in the Notes, this Agreement or any Programme Document or determine that any Event of Default shall not be treated as such for the purposes of this Agreement; any such authorisation, waiver or determination shall be binding on the Noteholders and, unless the Trustee otherwise agrees, the Trustee shall cause such authorisation, waiver or determination to be notified to the Noteholders as soon as practicable thereafter in accordance with the Conditions.

## 7.2 Modifications

7.2.1 Subject to the prior approval of the SEC (and any person so specified in an Applicable Pricing Supplement), any proposal to:

- (a) amend the Maturity Dates or Redemption Dates of any of the Notes, or any Interest Payment Date on the Notes;
- (b) reduce or cancel the nominal amount of, or any premium payable on, redemption of the Notes;
- (c) reduce the Interest Rate/s in respect of the Notes or to vary the method or basis of calculating the Interest Rate/s or amount of interest or the basis for calculating any Interest in respect of the Notes;
- (d) reduce any minimum Interest Rate and/or maximum Interest Rate, if a minimum Interest Rate and/or a maximum Interest Rate is shown in the Applicable Pricing Supplement;
- (e) enforce any provision of the Notes or call the Notes;
- (f) vary any method of, or basis for, calculating the Final Redemption Amount, the Early Redemption Amount or the Optional Redemption Amount;
- (g) vary the Currency or Currencies of payment of the Notes; and/or
- (h) modify the provisions concerning the quorum required at any meeting of Noteholders or any adjournment of such meeting or the majority required to pass the Special Resolution,

shall be approved by a Special Resolution passed at a meeting convened by the Issuer or by the Trustee if so requested in writing by the Noteholders of, at least, fifty-one (51%) of the outstanding aggregate nominal amount of the Notes, or by a Written Resolution.

7.2.2 The Trustee may, from time to time and at any time without any consent or sanction of the Noteholders, agree with the Issuer in making any modification to this Agreement, the Notes or any Programme Documents if, in the opinion of the Trustee, such modification is of a minor nature or made to correct a manifest error and does not prejudice the interests of the Noteholders.

Any such modification shall be binding on the Noteholders and, unless the Trustee otherwise agrees, the Trustee shall cause such modification to be notified to the Noteholders within five (5) Business Days after modification and in accordance with the Conditions.

Moreover, the Trustee shall be entitled to take into account, among other things, any confirmation from any rating agencies that the ratings of the Notes under the Prospectus would not be adversely affected in considering whether any such

modification, waiver or authorisation would be materially prejudicial to the interests of the Noteholders. Any such modification, waiver or authorisation may be given or made on such terms and subject to such conditions as the Trustee may in its sole discretion determine, provided that the Trustee shall not exercise any powers conferred upon it hereunder in contravention of any express direction by a Special Resolution (provided that no such direction or request shall affect any authorisation, waiver or determination previously given or made).

7.2.3 The Trustee may, without the consent of the Noteholders, agree on such terms as it may specify to the substitution of the Issuer's successor in business where the substitution of the Issuer is as a result of a merger, an acquisition, or other form of business combination involving the Issuer.

7.2.4 Subject to obtaining the consent of Noteholders, the Trustee may agree on such terms as it may specify to the substitution of the Issuer with its Affiliate in its place as issuer under this Agreement.

## 8. TERMS OF APPOINTMENT

### 8.1 Reliance on Information:

8.1.1 **advice:** the Trustee may in relation to this Agreement act on the opinion or advice of or a certificate or any information obtained from any lawyer, banker, valuer, surveyor, broker, auctioneer, accountant or other expert (whether obtained by the Trustees, the Issuer or the CSD or otherwise) and shall not be responsible for any loss occasioned by so acting if such action is reasonable and not prejudicial to the interests of the Noteholders;

8.1.2 **certificate of Directors:** the Trustee may request and rely on any certificate signed by two Directors, or a Director and an Authorised Signatory of the Issuer: (i) as to any fact or matter *prima facie* within the knowledge of the Issuer; or (ii) that any particular dealing, transaction, step or other matter being certified as expedient, as conclusive evidence thereof and the Trustee shall not be bound in any such case to call for further evidence or be responsible for any loss that may be occasioned by its failing so to do;

8.1.3 **resolutions of Noteholders:** the Trustee may rely on any resolution of the Noteholders even though it may subsequently be found that there was some defect in the passing of the resolution or that for any reason the resolution was not valid or binding upon the Noteholders. For the avoidance of doubt, a Trustee shall not take any action (and shall not be liable for not so acting) in contravention of a resolution of the Noteholders;

8.1.4 **Noteholders as a class:** whenever in this Agreement, the Trustee is required in connection with any exercise of its powers, trusts, authorities or discretions to have regard to the interests of the Noteholders, it shall have regard to the interests of the Noteholders as a single class and in particular, but without prejudice to the generality of the foregoing, shall not be obliged to have regard to the consequences of such exercise for any individual Noteholder resulting from his being for any purpose domiciled or resident in, or otherwise connected with, or subject to the jurisdiction of, any particular territory;

8.1.5 **conflicts:** in connection with the exercise by it of any of its trusts, powers, authorities and discretions under this Agreement (including, without limitation, any modification, waiver, authorisation, determination or substitution), a Trustee shall always have regard to the interests of all Noteholders, provided that if, in the sole opinion of a Trustee, there is any conflict between the interests of one Noteholder and another Noteholder, the Trustee shall act in accordance with what it believes to be in the best interest of all Noteholders and shall not be liable to any Noteholder for so acting;

- 8.1.6 **Trustee not responsible for investigations:** the Trustee shall not be responsible for, or for investigating, any matter which is the subject of, any recital, statement, representation, warranty or covenant of any Person (other than a Trustee) contained in this Agreement, the Notes, the Programme Documents or any other agreement or document relating to the transactions herein or therein contemplated (and shall assume the accuracy and correctness thereof) or for the execution, legality, effectiveness, adequacy, genuineness, validity, enforceability or admissibility in evidence thereof nor shall the Trustee, by execution of this Agreement, be deemed to make any representation as to the validity, sufficiency or enforceability of the whole or any part of this Agreement;
- 8.1.7 **Obligation to monitor:** the Trustee shall, to the extent reasonably and commercially necessary, monitor or supervise the performance by the Issuer or the functions of any other Person under the Notes, the Programme Documents or any other agreement or document relating to the transactions herein or therein contemplated provided, however, that the Trustee's obligation to monitor the Issuer's compliance with its obligations under the Programme Documents or any other agreement shall not limit or reduce any liabilities of the Issuer under the Programme Documents or any other agreement;
- 8.1.8 **Events of Default:** the Trustee shall not be bound to give notice to any Person of the execution of this Agreement or any Programme Document or to take any steps to ascertain whether any Event of Default has occurred and, until it shall have actual knowledge or express notice to the contrary, the Trustee shall be entitled to assume that no such Event of Default has occurred and that the Issuer is observing and performing all its obligations under the Notes and this Agreement and no event has happened as a consequence of which any sum due under any of the Notes may become payable or repayable;
- 8.1.9 **Programme Documents:** the Trustee shall not be responsible for the execution, delivery, legality, effectiveness, adequacy, genuineness, validity, enforceability or admissibility in evidence of the Programme Documents and shall not be liable for any failure to obtain any license, consent or other authority for the execution, delivery, legality, effectiveness, adequacy, genuineness, validity, performance, enforceability or admissibility in evidence of this Agreement or any other document relating thereto; and
- 8.1.10 **omissions:** the Trustee shall not be liable or responsible for any loss, costs or damages which may result from anything done or omitted to be done by it in accordance with the provisions of this Agreement. Such loss, costs or damages shall be borne by the Issuer.
- 8.2 **Trustee's powers and duties:**
- 8.2.1 **Trustee's determination:** the Trustee may determine whether or not a default in the performance by the Issuer of any obligation under the provisions of this Agreement or contained in the Notes or Programme Documents is materially prejudicial or, as the context may require, prejudicial to the interests of, or would materially adversely affect or, as the context may require, would adversely affect, the Noteholders and if the Trustee shall certify that any such default is, in its opinion, so materially prejudicial or, as the context may require, prejudicial or would, in its opinion, have such effect, such certificate shall be conclusive and binding upon the Issuer and the Noteholders;
- 8.2.2 **determination of questions:** the Trustee, as between itself and the Noteholders, shall have full power to determine all questions and doubts arising in relation to any of the provisions of this Agreement and every such determination, whether made upon a question actually raised or implied in the acts or proceedings of the Trustee, shall be conclusive and shall bind the Trustee and each Noteholder;
- 8.2.3 **Trustee's discretion:** the Trustee shall (save as expressly otherwise provided

herein) as regards all the trusts, powers, authorities and discretions vested in it by this Agreement, have absolute and uncontrolled discretion as to the exercise or non-exercise thereof and the Trustee shall not be responsible for any loss, costs or damages that may result from the exercise or non-exercise thereof but whenever the Trustee is under the provisions of this Agreement bound to act at the request or direction of the Noteholders, the Trustee shall nevertheless not be so bound unless first indemnified and/or provided with security to its satisfaction against all actions, proceedings, claims and demands to which it may render itself liable and all costs, charges, damages, expenses and liabilities which it may incur by so doing;

- 8.2.4 **Trustee's consent:** any consent or approval given by the Trustee for the purposes of this Agreement, the Notes and the Programme Documents may be given on any terms and subject to any conditions (if any) as the Trustee may require and notwithstanding anything to the contrary in this Agreement may be given retrospectively;
- 8.2.5 **application of Notes proceeds:** the Trustee shall not be responsible for the receipt or application by the Issuer of the proceeds of the issue of the Notes;
- 8.2.6 **agents:** the Trustee may, in carrying out its duties under this Agreement, employ and pay an agent to transact or conduct any business and all other acts required to be done by the Trustee (including the receipt and payment of money) in the ordinary course of its duties;
- 8.2.7 **delegation:** the Trustee may, in the execution and exercise of all or any of the trusts, powers, authorities and discretions vested in it by this Agreement, act by any officer of the Trustee and the Trustee may also whenever it thinks fit, whether by power of attorney or otherwise, delegate to any Person all or any of the trusts, powers, authorities and discretions vested in it by this Agreement and any such delegation may be made upon such terms and conditions (including power to sub-delegate with the consent of the Trustee) as the Trustee may think fit in the interests of the Noteholders;
- 8.2.8 **deposit of documents:** the Trustee shall be at liberty to hold or to place this Agreement and all documents relating to this Agreement in any safe deposit, safe or other receptacle selected by the Trustee, or with any bank or banking company, lawyer or firm of lawyers believed by it to be of good repute, in any part of the world, and the Trustee, provided it exercised due care in respect of any such deposit, shall not be responsible for or required to insure against any loss incurred in connection with any such deposit and the Issuer shall pay all sums required to be paid on account of or in respect of any such deposit;
- 8.2.9 **confidential information:** the Trustee shall not (unless required by law or ordered so to do by a court of competent jurisdiction) be required to disclose to any Noteholder confidential information or other information made available to the Trustee by the Issuer in connection with this Agreement or the Programme Documents and no Noteholder shall be entitled to take any action to obtain from the Trustee any such information;
- 8.2.10 **illegality:** notwithstanding anything else contained in this Agreement or the Programme Documents, the Trustee may refrain from doing anything which would or might in its opinion be contrary to any law of any jurisdiction or any directive or regulation of any agency of any state or which would or might otherwise render it liable to any Person and may do anything which is, in its opinion, necessary to comply with any such law, directive or regulation;
- 8.2.11 **own investigation:** each Noteholder shall be solely responsible for making its own independent appraisal of, and investigation into, the financial condition, creditworthiness, affairs, status and nature of the Issuer and the Trustee shall not at any time have any responsibility for any Noteholder and no Noteholder shall rely on

the Trustee in respect thereof; and

8.2.12 **responsibility:** the Trustee shall not be responsible for the execution, legality, effectiveness, adequacy, genuineness, validity, enforceability or suitability of any of the Programme Documents or other documents entered into in connection therewith nor shall it be responsible or liable to any Person because of any invalidity of any provisions of such documents or the unenforceability thereof, whether arising from statute, law or decision of any court.

### 8.3 **Trustee liable for negligence:**

If the Trustee fails to show the degree of due care and diligence required from it as a Trustee, having regard to the provisions of this Agreement conferring on the Trustee any powers, authorities or discretions, no provision of this Agreement shall relieve or indemnify that Trustee against any liability for breach of trust or any liability which by virtue of any rule of law would otherwise attach to it in respect of any gross negligence or willful default of which it may be guilty in relation to its duties under any applicable Programme Documents and this Agreement.

## 9. **COSTS AND EXPENSES**

### 9.1 **Remuneration and Indemnification:**

9.1.1 **Trustee Fees:** The Issuer will pay the Trustee the fees as agreed between the Issuer and the Trustee; and

9.1.2 **indemnity:** The Issuer shall indemnify the Trustee: (i) in respect of all liabilities and expenses incurred by it or any of the Trustee's agents in the execution or purported execution of the trusts, powers, authorities or discretions vested in it by this Agreement; and (ii) against all liabilities, actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted in any way relating to this Agreement provided that it is expressly stated that Clause 8.3 (*Trustee liable for negligence*) shall apply in relation to these provisions.

9.2 **Stamp Duties:** The Issuer will pay all stamp duties payable in respect of the issuance of the Notes or required by law to be paid under any Programme Document.

9.3 **Expenses:** The Issuer shall also pay reasonable charges and out-of-pocket expenses which have been incurred by the Trustee in relation to the exercise of its powers under this Agreement and the administration of the trusts vested hereunder. Provided however that, the Trustee shall not incur any expense in excess of GHS 5,000 in respect of any action without the prior approval of the Issuer.

9.4 **Provisions survive discharge:** Unless otherwise specifically stated in any discharge of this Agreement, the provisions of this Clause 9 (*Costs and Expenses*) shall continue in full force and effect notwithstanding such discharge.

## 10. **APPOINTMENT AND RETIREMENT**

10.1 **Appointment of Trustee:** The power of appointing a new Trustee shall be vested in the Issuer but no Person shall be appointed who shall not previously have been approved by a Special Resolution.

10.2 **Retirement of Trustee:** A Trustee may retire at any time upon giving not less than 3 (three) calendar months' notice in writing to the Issuer without specifying any reason therefore.

10.3 **Removal of Trustee:** A meeting of the Noteholders, convened and held in accordance with Schedule 3 (*Provisions for meetings of the Noteholders*), may by a Special Resolution remove any Trustee from office and by a Special Resolution nominate a new Trustee to be appointed pursuant to Clause 10.1 (*Appointment of Trustee*). A Special Resolution to remove a Trustee

shall not take effect until a new Trustee has been appointed.

- 10.4 **Merger, etc.:** Any corporation into which any Trustee for the time being may be merged or converted, any corporation with which such Trustee may be consolidated, amalgamated or any corporation resulting from any merger, amalgamation, conversion or consolidation to which such Trustee shall be a party, any corporation to which such Trustee shall sell or otherwise transfer all or substantially all of its assets or any corporation to which such Trustee shall sell or otherwise transfer all or substantially all of its corporate trust business, shall, to the extent permitted by Applicable Laws, be the relevant successor Trustee under this Agreement without the execution or delivery of any papers or any further act on the part of the parties hereto whereupon the Issuer, the Trustee and such successor shall acquire and become subject to the same rights and obligations between themselves as if they had entered into an agreement in the form *mutatis mutandis* of this Agreement. Notice of any such merger, amalgamation, conversion, consolidation, sale or transfer shall forthwith be given by the Trustee to the Issuer and the Noteholders in accordance with Condition 11 (*Notices*) of the Conditions.

**11. NOTICES**

- 11.1 Any notice or other communication given or made under, or in connection with, the matters contemplated by this Agreement shall be in writing.

- 11.2 Any such notice or other communication shall be addressed as provided in Clause 11.3 below and, if so addressed, shall be deemed to have been duly given or made as follows:

11.2.1 if sent by post, 10 Business Days after the date of posting provided that proof is given that the notice was properly addressed and duly dispatched by post and, in the case of a notice sent to a Party in another country, that the notice was sent by first class airmail post; and

11.2.2 if sent by email, when despatched, provided that in the case of facsimile, the sender receives proof of transmission,

provided that if, in accordance with the above provisions, any such notice or other communication would otherwise be deemed to be given or made outside normal working hours in the place of service of the notice or other communication it shall be deemed to be given or made at the start of normal working hours on the next Business Day.

- 11.3 The relevant postal address and email address of each Party for the purposes of this Agreement, subject to Clause 11.4 below are:

The Issuer	<p><i>Address:</i> Quantum Terminals Plc H/No. E17/9 Ablade, Kanda Accra, Ghana</p> <p><i>Email:</i> emensah@quantumgroupgh.com / notes@quantumterminals.com</p> <p><i>Attention:</i> Emmanuel Egyei-Mensah</p>
The Trustee	<p><i>Address:</i> UniBank Ghana Limited 13<sup>th</sup> Floor, World Trade Centre Building Accra, Ghana</p> <p><i>Email:</i> custodianservices@unibankghana.com</p> <p><i>Attention:</i> Frederick Kwasi Dah</p>

- 11.4 A Party may notify each other Party of a change to its notice details for the purposes of Clause 11.3 provided that such notification shall only be effective on:

11.4.1 the date specified in the notification as the date on which the change is to take place;



or

11.4.2 if no date is specified or the date specified is less than 10 Business Days after the date on which notice is given, the date falling 15 Business Days after notice of any such change has been given.

## 12. NO WAIVER

Any failure on the part of any Party to exercise, and any delay in exercising, any of their respective rights under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of any right by any Party preclude any other or further exercise thereof or the exercise of any other right. The remedies of each of the parties to this Agreement are intended to be cumulative and not exclusive of any remedies provided by law.

## 13. EXECUTION IN COUNTERPARTS; SEVERABILITY

13.1 **Counterparts:** This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement.

13.2 **Severability:** If at any time, any one or more provisions of this Agreement shall be invalid, illegal or unenforceable in any respect under the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations under this Agreement, or of such provision or obligation in any other jurisdiction, shall not be affected or impaired thereby.

## 14. CONFIDENTIALITY

14.1 Each Party undertakes that it shall not use, or divulge or communicate to any third party, any information, document or knowledge concerning a Party and the terms of this Agreement which they have received by virtue of this Agreement and which was not previously available to them or is not in the public domain (or which is in the public domain but through a breach of any provision of this Agreement) (the “**Confidential Information**”), without the written consent of the Party to whom the Confidential Information pertains.

14.2 For the avoidance of doubt, this Clause 14 shall not apply to:

14.2.1 any disclosure of Confidential Information that is required, and to the extent required, by Applicable Law, a Competent Authority or for the enforcement of rights under this Agreement;

14.2.2 any disclosure of Confidential Information that is required for the filing of any tax returns, statements or other similar documents by a Party (or such Party's beneficial owners) with a Competent Authority;

14.2.3 any disclosure of Confidential Information to employees, professional advisers, auditors and bankers as is reasonably required in connection with the terms of this Agreement; or

14.2.4 any disclosure of Confidential Information which was already in the public domain other than by breach of this Agreement or which was previously known or already in the lawful possession of any of the Parties, prior to the disclosure.

14.3 In the event that this Agreement terminates (for any reason) and the transactions contemplated hereunder are not implemented, the receiving Party of any Confidential Information shall, on written demand of the disclosing Party, immediately destroy the Confidential Information (to the extent possible) of the disclosing Party in its possession, together with any copies thereof, and shall confirm compliance with this Clause 14.3 to such disclosing Party. The receiving Party is not required, however, to alter its normal record retention policies or to expunge from its records internally generated files, back-up drives or

similar electronic media, references, notes, analyses or memoranda related to this Agreement, *provided that* the receiving Party retains such files, media, references, notes, analyses or memoranda, subject to the terms of this Agreement. Furthermore, the receiving Party is not required to return, delete or destroy due diligence reports or legal opinions prepared for the recipient, or any internal working paper related to the foregoing documents. Notwithstanding the return or destruction of the Confidential Information, the receiving Party and its representatives shall continue to be bound by their obligations hereunder.

## 15. LAW AND JURISDICTION

- 15.1 **Governing Law:** This Agreement shall be governed by, and construed in accordance with, Ghanaian law.
- 15.2 **Jurisdiction:** The Parties agree that the courts of Ghana shall have exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with this Agreement or the Notes.

## 16. SIGNATURE

- 16.1 This Agreement is signed by the Parties on the Agreement Date.
- 16.2 The Persons signing this Agreement in a representative capacity warrant their authority to do so.
- 16.3 The Parties record that it is not required for this Agreement to be valid and enforceable that a Party shall initial the pages of this Agreement and/or have its signature of this Agreement verified by a witness.

SCHEDULE 1

FORM OF GLOBAL NOTE CERTIFICATE



*(Incorporated in Ghana on March 24, 2011 with registration number CA-87,037 as a private company limited by shares)  
(Converted to a public company limited by shares on October 31, 2016 with registration number PL000372016)*

CERTIFICATE NUMBER	SERIES NUMBER	TRANCHE NUMBER
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**GHS 140 MILLION NOTE PROGRAMME**

**Issue of [Senior][Subordinated][Unsecured][Secured][Guaranteed] (Floating/Fixed Rate) Notes Due.....**

This Note Certificate certifies that

**[insert name of trustee]** whose registered office is at [ ]

holds this certificate on behalf of Noteholders specified in the Register dated {xxx} (the **"Noteholder"**) are, as at the date hereof, registered as the holder of [principal amount] of [Senior][Subordinated][Unsecured][Secured][Guaranteed] [Floating/Fixed] Rate Notes referred to above (the **"Notes"**) of Quantum Terminals Plc (the **"Issuer"**). The Notes are subject to the terms and conditions (the **"Conditions"**) in the Prospectus dated [ ]. Expressions defined in the Conditions have the same meanings in this Note Certificate.

The Issuer, for value received, promises in accordance with the Conditions to pay to the Noteholders as the Registered holder hereof on the Redemption Date (or such earlier date as the amount payable upon prepayment in accordance with the Conditions), the Principal Amount of: [amount in figures] (amount in words)

(or so much thereof as may then be outstanding) and to pay interest on such Principal Amount from the Issue Date in arrears at the rates, in the amounts and on the dates for payment provided for in the Conditions and the Applicable Pricing Supplement together with such other sums and additional amounts (if any) as may be payable under the Conditions and the Applicable Pricing Supplement.

For the purposes of this Note Certificate, (a) the holder of the Note(s) represented by this Note Certificate is bound by the provisions of the Prospectus, the Trust Agreement, the Agency Agreement and the Applicable Pricing Supplement, (b) the Issuer certifies that the Noteholder is, at the date hereof, entered in the Register as the holder of the Note(s) represented by this Note Certificate, (c) this Note Certificate is evidence of entitlement only, (d) title to the Note(s) represented by this Note Certificate passes only on due registration on the Register, and (e) only the duly registered holder of the Note(s) represented by this Note Certificate is entitled to payments in respect of the Note(s) represented by this Note Certificate.

This Note Certificate shall not become valid for any purpose until authenticated by or on behalf of the CSD.

This Note shall be governed by, and constructed in accordance with, the laws of Ghana.

IN WITNESS whereof the Issuer has caused this Note Certificate to be executed on its behalf.

*EXECUTION COPY*

**QUANTUM TERMINALS PLC**

By:

Duly authorised signatory

By:

Duly authorised signatory

**CERTIFICATE OF AUTHENTICATION**

This Note is duly authenticated by or on behalf of Central Securities Depository (Ghana) Limited as Registrar (without recourse, warranty or liability)

By:

Duly authorised signatory

By:

Duly authorised signatory

## SCHEDULE 2

### CONDITIONS OF THE NOTES

The following are the Conditions of the Notes to be issued by the Issuer under the Note Programme. The Applicable Pricing Supplement in relation to any Series or Tranche of Notes may specify other terms and conditions, which shall, to the extent so specified or to the extent inconsistent with the Conditions, replace or modify the following Conditions for the purpose of such Series or Tranche of Notes. The Terms and Conditions, as replaced or modified by the Applicable Pricing Supplement, will be incorporated by reference in each Note.

The Notes are issued subject to this Agreement. The statements in these Conditions include summaries of, and are subject to, the detailed provisions of this Agreement.

Copies of this Agreement are available for inspection by the Noteholders, upon request, at the offices of the Note Trustee, being at the date hereof, 3<sup>rd</sup> Floor, Citizen Kofi House, Off Dankwa Circle to Labone Junction Road, Osu, Accra, Ghana and for so long as any Notes remain outstanding.

#### **1. AUTHORISATION, ISSUE AND SUBSCRIPTION**

##### **1.1 Authorisation**

1.1.1 The Notes are issued by the Issuer in accordance with, and subject to, these Conditions, which were approved by resolutions of the QTL Board passed on January 27, 2017 and the shareholders of the Issuer passed on January 27, 2017.

1.1.2 A total Principal Amount of GHS 140,000,000 is authorised for issue under this Programme. The Principal Amount of each Note issued by the Directors shall be as recorded in the Applicable Pricing Supplement.

##### **1.2 Issue and Subscription**

1.2.1 The Issuer may issue Notes to such applicants and on such dates as the Issuer deems fit. The Issuer reserves the right, in its sole discretion, to refuse any application in whole or in part, or to accept some applications for the Notes in full and others in part, or to refuse all applications for the Notes on any basis determined by it.

1.2.2 Each Note shall be held subject to the Conditions, which Conditions shall be binding on the Issuer and each Noteholder.

1.2.3 The Noteholders are (by virtue of their subscription for, or purchase of, the Notes) deemed to have notice of, entitled to the benefit of, and are subject to, all the provisions of the Trust Agreement.

#### **2. FORM, DENOMINATION, TITLE AND TRANSFER**

##### **2.1 Form of Notes**

2.1.1 The Notes are in dematerialised form and will be electronically maintained on the CSD with an identifying number that will be recorded in the Register.

2.1.2 All Noteholders will be required to open and maintain CSD accounts, which will be credited with the Notes upon issue.

## 2.2 Denomination of Notes

Notes shall be issued in the Currency specified in the Applicable Pricing Supplement.

## 2.3 Title to the Notes

2.3.1 Title to the Notes shall pass by registration in the Register, unless Applicable Laws provide otherwise or provide for additional formalities for transfer of title. In so far as Applicable Law requires notification to the debtor for a valid transfer of title to the Notes, the registration of the transfer in the Register shall constitute evidence of this notification. Except as ordered by a court of competent jurisdiction or as required by law, the Noteholder, as reflected in the Register, shall be deemed to be and may be treated as the absolute owner for all purposes, whether or not it is overdue and regardless of any notice of ownership, trust or an interest in it, any writing on it or its theft or loss and no person shall be liable for so treating the Noteholder.

2.3.2 The Issuer shall issue a single Global Note Certificate to the Note Trustee in respect of each series or tranche of Notes. The CSD shall maintain a record of Noteholders' respective electronic book entries in the Register showing the particulars of Noteholders and their respective holdings.

2.3.3 The Issuer, Note Trustee, and CSD shall recognise a Noteholder as the sole and absolute owner of the Notes registered in that Noteholder's name in the Register (notwithstanding any notice of change of ownership or writing thereon or notice of any previous loss or theft thereof) and the Note Trustee shall not be bound to request in writing the CSD to enter any trust in the Register or to take notice of or to accede to the execution of any trust (express, implied or constructive) to which the Notes may be subject.

## 2.4 Transfer of Notes

2.4.1 No transfer of Notes may be registered unless a form of transfer has been delivered to the CSD as per the rules of CSD relating to transfer of securities. Each form of transfer shall be in writing in the usual form or in any other form approved by the CSD. Each form shall be signed by the Noteholder or his duly authorised agent and be delivered to the CSD in respect of the Notes to be transferred and such evidence as to identity, title, authority and legal capacity of the transferor and transferee and their respective agents, if any, as the Issuer or the CSD, may reasonably require (the **Transfer Form**).

2.4.2 The Register shall contain the name, address and bank account details of the Noteholders. The Register shall set out the Principal Amount of the Notes issued to any Noteholder and shall show the date of such issue, the date upon which the Noteholder became registered as such and the unique serial numbers of all securities as pertains in the CSD system.

2.4.3 The CSD shall make information on Noteholders contained in the Register available to any Noteholder or any person authorised in writing by the Noteholder as they may reasonably request. The CSD shall not record any transfer other than on Business Days or while the Register is closed.

2.4.4 The Register shall be closed during the Book Closure Period. Noteholders entitled to participate in a distribution of Interest, or a Redemption Amount shall be those registered as such on the Last Day to Register.

2.4.5 The CSD shall alter the Register in respect of any change of name, address or bank account number of any of the Noteholders of which it is notified in accordance with these Conditions.



2.4.6 In the case of an exercise of the Issuer's right to Redemption by Instalment or an Early Redemption, the CSD will change the holdings in the Register to reflect the redemption and the balance of the holding not redeemed.

2.4.7 Exchange and transfer of Notes shall be effected according to the rules of the CSD and subject to charges by the CSD and brokers.

2.4.8 No Noteholder may require the transfer of a Note to be registered during a Book Closure Period, after any such Note has been called for Redemption, or (in the case of a Redemption by Instalment) during the period beginning on the 10<sup>th</sup> Business Day before the Instalment Date of and ending on the Instalment Date (both inclusive).

### **3. STATUS**

#### **3.1 Status of the Secured Notes**

The Secured Notes constitute direct and secured obligations of the Issuer and shall rank *pari passu* among themselves and shall not be diminished by any preferential claims under Applicable Law except for the floating charge interests under the Secured Notes.

#### **3.2 Status of the Unsecured Notes**

The Unsecured Notes constitute direct and unsecured obligations of the Issuer and shall rank *pari passu* among themselves and (save for certain obligations required to be preferred by Applicable Law) equally with all other present and future unsecured and unsubordinated obligations of the Issuer, from time to time outstanding.

#### **3.3 Status of the Guaranteed Notes**

The Guaranteed Notes constitute direct and unsecured obligations of the Issuer (and the relevant guarantor or co-guarantor, where applicable) and shall rank *pari passu* among themselves and (save for certain obligations required to be preferred by Applicable Law) equally with all other present and future unsecured and unsubordinated obligations of the Issuer (and the relevant guarantor or co-guarantor, where applicable), from time to time outstanding.

#### **3.4 Status of the Senior Notes**

The Senior Notes constitute direct, unconditional, unsecured and unsubordinated obligations of the Issuer and shall rank *pari passu* among themselves.

#### **3.5 Status of the Subordinated Notes**

The Subordinated Notes constitute direct, unconditional, subordinated and unsecured obligations of the Issuer and shall rank *pari passu* among themselves and equally with all other present and future unsecured and subordinated obligations of the Issuer, from time to time outstanding.

### **4. NEGATIVE PLEDGE**

4.1 So long as any Note remains outstanding, the Issuer shall not create, incur, assume or permit to arise or subsist any Encumbrance other than a Permitted Encumbrance upon the whole or any part of its undertakings, assets or revenues, present or future, to secure any Financial Indebtedness unless, at the same time or prior thereto, the Issuer's obligations under the Notes:

(a) are secured equally and rateably therewith, to the satisfaction of the Note Trustee; or

- (b) have the benefit of such other arrangement as (i) the Note Trustee shall (in its absolute discretion) deem to be not materially less beneficial to the affected Noteholders or (ii) shall be approved by a Special Resolution (as defined in the Trust Agreement) of the affected Noteholders.

4.2 For the avoidance of doubt, Condition 4.1 shall not apply to any Encumbrance created in relation to the QGTL Loan, any guarantor under the first Series or Tranche or as indicated under an Applicable Pricing Supplement.

## 5. INTEREST

### 5.1 Interest on Fixed Rate Notes

5.1.1 Each Fixed Rate Note bears Interest on its outstanding Principal Amount from the Interest Commencement Date at the rate *per annum* (expressed as a percentage) equal to the Interest Rate, such Interest being payable in arrears on each Interest Payment Date up to the Maturity Date or Redemption Date.

5.1.2 If a Fixed Coupon Amount or a Broken Amount is specified in an Applicable Pricing Supplement, the amount of Interest payable on each Interest Payment Date in respect of the Fixed Interest Period will amount to the Fixed Coupon Amount or, if applicable, the Broken Amount so specified and, in the case of the Broken Amount, will be payable on the particular Interest Payment Date(s) specified hereon.

### 5.2 Interest on Floating Rate Notes

#### 5.2.1 *Interest Payment Dates*

Each Floating Rate Note bears Interest on its outstanding Principal Amount from the Interest Commencement Date at the rate *per annum* (expressed as a percentage) equal to the Interest Rate, such Interest being payable in arrears on each Interest Payment Date up to the Maturity Date.

#### 5.2.2 *Business Day Convention*

5.2.2.1 If any date referred to in these Conditions would otherwise fall on a day that is not a Business Day then such date is subject to adjustment by:

- (a) the Floating Rate Business Day Convention, such date shall be postponed to the next day that is a Business Day unless it would thereby fall into the next calendar month, in which event (i) such date shall be brought forward to the immediately preceding Business Day and (ii) each subsequent such date shall be the last Business Day of the month in which such date would have fallen had it not been subject to adjustment;
- (b) the Following Business Day Convention, such date shall be postponed to the next day that is a Business Day;
- (c) the Modified Following Business Day Convention, such date shall be postponed to the next day that is a Business Day unless it would thereby fall into the next calendar month, in which event such date shall be brought forward to the immediately preceding Business Day; or
- (d) the Preceding Business Day Convention, such date shall be brought forward to the immediately preceding Business Day.

### 5.2.3 Interest Rate for Floating Rate Notes

5.2.3.1 The Interest Rate payable, from time to time, in respect of the Floating Rate Notes shall be determined in the manner specified in the Applicable Pricing Supplement.

5.2.3.2 The Interest Rate for each Interest Period shall be either

- (a) the offered quotation; or
- (b) the arithmetic mean (rounded if necessary to the second decimal place, with 0.002 being rounded upwards) of the offered quotation,

(expressed as a percentage rate *per annum*) for the Reference Rate (as specified in the Applicable Pricing Supplement), in the case of Government of Ghana treasury bill rate on the relevant Interest Determination Date (as specified in the Applicable Pricing Supplement) plus or minus the margin (if any), all as determined by the Calculation Agent.

### 5.3 Accrual of Interest

Interest shall cease to accrue on each Note on the Redemption Date, unless payment of the Principal Amount is improperly withheld or refused, in which event, Interest shall continue to accrue (before as well as after judgment) at the Interest Rate in the manner provided in this Condition 5 to the date of actual payment.

### 5.4 Minimum Interest Rate and/or Maximum Interest Rate

5.4.1 If the Applicable Pricing Supplement specifies a Minimum Interest Rate for any Interest Period, then, in the event that the Interest Rate in respect of such Interest Period (determined in accordance with this Condition 5) is less than such Minimum Interest Rate, the Interest Rate for such Interest Period shall be such Minimum Interest Rate.

5.4.2 If the Applicable Pricing Supplement specifies a Maximum Interest Rate for any Interest Period, then, in the event that the Interest Rate in respect of such Interest Period (determined in accordance with this Condition 5) is greater than such Maximum Interest Rate, the Interest Rate for such Interest Period shall be such Maximum Interest Rate.

### 5.5 Calculation of Interest

5.5.1 The Interest payable in respect of any Note for any Interest Period shall be calculated by multiplying the Interest Rate and the outstanding Principal Amount by the applicable Day Count Fraction, unless the amount of Interest (or a formula for its calculation) is specified in the Applicable Pricing Supplement in respect of such Interest Period (the **Applicable Pricing Supplement Interest Amount**), in which case the Interest payable in respect of such Note for such Interest Period shall equal the Applicable Pricing Supplement Interest Amount. Where any Interest Period comprises 2 or more Interest Periods, the amount of Interest payable in respect of such Interest Period shall be the sum of the amounts of interest payable in respect of each of those Interest Periods.

5.5.2 “**Day Count Fraction**” in this Condition 5 means:

- (a) if “Actual/365” or “Actual/Actual” is specified in the Applicable Pricing Supplement, the actual number of days in the Interest Period divided by 365 (or, if any portion of that Interest Period falls in a leap year, the sum of
  - (i) the actual number of days in that portion of the Interest Period falling in

a leap year divided by 366 and (ii) the actual number of days in that portion of the Interest Period falling in a non-leap year divided by 365);

- (b) if “Actual/365 (Fixed)” is specified in the Applicable Pricing Supplement, the actual number of days in the Interest Period divided by 365;
- (c) if “Actual/360” is specified in the Applicable Pricing Supplement, the actual number of days in the Interest Period divided by 360; and
- (d) if “30/360”, “360/360” or “Bond Basis” is specified in the Applicable Pricing Supplement, the number of days in the Interest Period divided by 360 (the number of days to be calculated on the basis of a year of 360 days with 12, 30-day months (unless (i) the last day of the Interest Period is the 31st day of a month but the first day of the Interest Period is a day other than the 30th or 31st day of a month, in which case the month that includes that last day shall not be considered to be shortened to a 30-day month, or (ii) the last day of the Interest Period is the last day of the month of February, in which case the month of February shall not be considered to be lengthened to a 30-day month)).

5.5.3 For the purposes of any calculations of Interest required pursuant to these Conditions (unless otherwise specified):

- (a) all percentages resulting from such calculations shall be rounded, if necessary, to the nearest one hundred-thousandth of a percentage point (with halves being rounded up);
- (b) all Interest and Interest Rate figures shall be rounded to 2 decimal places (with halves being rounded up); and
- (c) any Currency amount that falls due and payable shall be rounded to the nearest unit of the Currency (with halves being rounded up). For these purposes “unit” means the lowest amount of the Currency.

## 5.6 Determination and Notification of Interest Rate, Interest and Redemption Amount

### 5.6.1 Determination of Interest or Redemption Amount

The Calculation Agent shall (as soon as practicable after the Relevant Time or as it may be required to) determine any Interest Rate, obtain any quotation, or calculate any Interest or Redemption Amount or other amount, it shall determine such Interest Rate, obtain such quotation, or calculate such Interest or Redemption Amount or other amount (as the case may be) for review by the Note Trustee.

### 5.6.2 Notification of Interest

The Calculation Agent shall cause the determination of such Interest Rate, obtaining of such quotation, or calculation of such Interest or Redemption Amount or other amount and the Relevant Payment Date (as the case may be), to be notified to the Issuer, the Registrar and the Noteholders, no later than the 4th Business Day after such determination or calculation. Where any Interest Payment Date or Interest Period Date is subject to adjustment pursuant to Condition 5.2.2 (Business Day Convention), the Interest and the Interest Payment Date so published may subsequently be amended (or appropriate alternative arrangements made by way of adjustment) without notice in the event of an extension or shortening of the Interest Period.

### 5.6.3 *Finality of Determination*

The determination of any rate or amount, the obtaining of any quotation and the making of each determination or calculation by the Calculation Agent in accordance with these Conditions shall (in the absence of manifest error) be final and binding upon all parties.

## 6. REDEMPTION, PURCHASE AND CANCELLATION

### 6.1 **Redemption by Instalments**

Unless previously redeemed, purchased and cancelled as provided in this Condition 6, each Note which provides for Instalment Dates and Instalment Amounts shall be partially redeemed by instalments on each Instalment Date at the relevant Instalment Amount specified in the Applicable Pricing Supplement. The outstanding nominal amount of each such Note shall be reduced by the Instalment Amount (or, if such Instalment Amount is calculated by reference to a proportion of the nominal amount of such Note, such proportion) for all purposes with effect from the relevant Instalment Date, unless payment of the Instalment Amount is improperly withheld or refused, in which case, such amount shall remain outstanding until the date on which full payment of such Instalment Amount is made.

### 6.2 **Final Redemption**

Unless previously redeemed, purchased and cancelled as provided in this Condition 6, each Note shall be finally redeemed on the Maturity Date specified thereon at its Final Redemption Amount.

### 6.3 **Early Redemption**

The Early Redemption Amount payable in respect of any Note shall be the Final Redemption Amount unless otherwise specified in the Applicable Pricing Supplement.

### 6.4 **Optional Redemption**

6.4.1 The Notes may be redeemed at the option of the Issuer in whole (but not in part) at any time, on giving not less than 30 Business Days' but no more than 60 Business Days' notice to the Noteholders (which notice shall be irrevocable), at the Principal Amount, together with Interest accrued to the Redemption Date, if (immediately before giving such notice) the Issuer satisfies the Note Trustee that the Issuer has or will become obliged to pay any Additional Amounts. Prior to the publication of any notice of redemption pursuant to this Condition 6.4, the Issuer shall deliver or procure delivery to the Note Trustee of:

- (a) a certificate signed by 2 Directors of the Issuer stating that the obligation to pay an Additional Amount has occurred or will occur (irrespective of whether the obligation is then effective); and
- (b) an opinion in form and substance satisfactory to the Note Trustee of independent legal advisers of recognised standing, to whom the Note Trustee shall have no reasonable objection, to the effect that the Issuer:
  - (i) has or will become obliged to pay any Additional Amounts; or
  - (ii) has or will become obliged to make any additional withholding or deduction as a result of such change or amendment (irrespective of whether the obligation is then effective).

6.4.2 The Note Trustee shall accept such certificate and opinion as sufficient evidence of the satisfaction of the circumstances set out in Condition 6.4.1(a) and Condition

6.4.1(b) above. Upon expiry of any such notice as referred to in this Condition 6.4, the Issuer shall be bound to redeem the Notes in accordance with this Condition 6.4.

- 6.4.3 All Notes in respect of which an Exercise Notice is served shall be redeemed, on the date specified in such notice in accordance with this Condition 6.
- 6.4.4 The Issuer may at any time purchase or procure others to purchase for its account the Notes at any price in the open market or by tender or by private treaty. Notes so purchased may be held or resold or surrendered for cancellation, at the option of the Issuer. Any Notes so purchased, while held by or on behalf of the Issuer or any Affiliates, shall not entitle the Noteholder to vote at any meeting of Noteholders and shall not be deemed to be outstanding for the purposes of calculating quorums at meetings of Noteholders.
- 6.4.5 Notes purchased by or on behalf of the Issuer, or any Affiliates may be cancelled and if so, together with all Notes redeemed by the Issuer, may not be reissued or resold and the obligations of the Issuer in respect of any cancelled Notes shall be discharged. Notes that have been cancelled shall be notified to the CSD.
- 6.4.6 Notwithstanding any provision in this Condition 6, the Issuer shall not redeem any of the Notes within 12 months of the relevant Issue Date or any longer period indicated in an Applicable Pricing Supplement.

## **7. PAYMENTS**

### **7.1 General**

Payments of Interest, Principal Amounts and Redemption Amounts shall be made by the Issuer *via* electronic funds transfer to the account designated for the purpose by the Paying Bank (the **Trust Account**) by 9:00 am on the 10<sup>th</sup> Business Day before the Redemption Date or Interest Payment Date. Such payment into the Trust Account by the Issuer shall be a valid discharge by the Issuer of its obligation to pay Interest, the Principal Amount or the Redemption Amount on Redemption, as the case may be.

### **7.2 Payment Upon Redemption**

Interest and Principal Amounts or Instalment Amounts due on Redemption shall only be payable:

- 7.2.1 in respect of Interest, to Noteholders registered as such on the Last Day to Register immediately preceding the Interest Payment Date in question;
- 7.2.2 in respect of Instalment Amounts, to Noteholders registered as such on the Last Day to Register immediately preceding the Instalment Date in question; and
- 7.2.3 in respect of an Early Redemption Amount or a Final Redemption Amount, to Noteholders registered as such on the Last Day to Register prior to the relevant Redemption Date.

### **7.3 Methods of Payment**

Payments of Principal Amount, Interest or Redemption Amount in respect of the Notes shall be made in GHS when due and the amounts credited *via* bank transfer or cheque payment to Noteholders. All payments of n respect of the Notes are subject, in all cases, to any Applicable Laws, but without prejudice to the provisions of Condition 8 (Taxation). No commissions or expenses shall be charged to the Noteholders in respect of such payments.



### 7.3.1 *Electronic Transfers*

Where payment is to be made by electronic transfer to a designated account, payment instructions (for value on the due date or, Business Day Convention per the Applicable Pricing Supplement) will be initiated (i) on the due date for payment, and (ii) on the due date for payment (in the case of Interest due other than on Redemption).

### 7.3.2 *Payment by Cheque*

7.3.2.1 Payments may be made by cheque mailed to the Noteholder's address in the Register if it does not have a bank account, as indicated by the Noteholder on the application form.

7.3.2.2 Cheques shall be drawn on the Note Trustee and issued by the Note Trustee. Payment of cheques shall be a valid discharge by the Note Trustee of the obligation upon it to pay Interest, Principal Amounts and Redemption Amounts, as the case may be.

7.3.2.3 Cheques shall be made payable to the order of (i) the registered Noteholder or (ii) such other person as may have been notified in writing to the Note Trustee by the registered Noteholder (accompanied by the address of that person and such proof of authority as the Issuer or the Note Trustee may require) not later than the Last Day to Register in respect of the relevant Interest Payment Date or Redemption Date, as the case may be.

7.3.2.4 Cheques shall be dated with the relevant Interest Payment Date or Redemption Date, as the case may be, and shall therefore be payable on that date.

7.3.2.5 Cheques shall be posted to the Noteholder entitled thereto or such person notified by the Noteholder to the Note Trustee in terms of Condition 7.3.2.3:

- (a) in the case of Interest, a Business Day before the relevant Interest Payment Date;
- (b) in the case of Instalment Amount, a Business Day before the relevant Instalment Date; or
- (c) in the case of Early Redemption Amounts or Final Redemption Amounts, a Business Day before the relevant Redemption Date.

7.3.2.6 Cheques shall be posted by registered post, provided that neither the Issuer nor its agents shall be responsible for any loss in transmission and the postal authorities shall be deemed to be the agent of the Noteholders for the purposes of all cheques posted in terms of this Condition 7.

7.3.2.7 If written notice of the intention to collect a cheque is given to the Note Trustee at least 15 Business Days before the relevant Interest Payment Date or Redemption Date, the cheque shall be available for collection by the Noteholder or other person entitled pursuant to Condition 7.3.2.3 at the office of the Note Trustee:

- (a) in the case of Interest, on the relevant Interest Payment Date;

- (b) in the case of Instalment Amount, on the relevant Instalment Date; or
- (c) in the case of an Early Redemption or a Final Redemption, on the relevant Redemption Date.

7.3.2.8 If a cheque is not collected within 2 Business Days of the date for collection set forth in Condition 7.3.2.7 above, the cheque shall be posted to the Noteholder or other person entitled thereto at his/her/its address set out in the Register (or to such other address as may have been notified in writing to the Note Trustee not later than the relevant Last Day to Register).

#### 7.4 **Partial Payments**

If at any time a partial payment of Principal Amount, Interest or Instalment Amount is made in respect of any Note, the CSD shall endorse the Register with a statement indicating the amount and date of such payment.

#### 7.5 **Unclaimed Payments**

The Issuer shall submit a report of any unclaimed payments of Principal Amounts and Interest to the SEC on an annual basis.

### 8. **TAXATION**

All payments of Interest made by the Issuer to the Noteholders in respect of the Notes will be subject to withholding tax under the Income Tax Act except where the Noteholder is exempt under Applicable Laws. The Issuer shall not be required to gross up any interest payments on account of any reduction resulting from withholding tax.

### 9. **PRESCRIPTION**

Claims against the Issuer for payment of Principal Amount, Interest or Instalment Amount in respect of the Notes, shall become void unless presented for payment within 6 years from the date on which such payment first becomes due.

### 10. **MEETINGS OF NOTEHOLDERS, AMENDMENT, MODIFICATION, WAIVER AND SUBSTITUTION**

#### 10.1 **Meetings of Noteholders**

10.1.1 The Trust Agreement contains provisions for convening meetings of Noteholders to consider any matter affecting their interests, including the modification of these Conditions and the Trust Agreement. Noteholder meetings may be convened by the Issuer or by the Note Trustee and shall be convened by the Issuer or the Note Trustee if so requested in writing by the Noteholders holding not less than 51% in aggregate of the total Principal Amount of the Notes then outstanding.

10.1.2 The quorum at any such meeting for passing a Special Resolution shall be as stated in the Trust Agreement.

10.1.3 A decision to:

- (a) amend the Maturity Dates or Redemption of any of the Notes, any Interest Payment Date or Instalment Date on the Notes;

- (b) reduce or cancel the Instalment Amount or the Principal Amount of, or any premium payable on Redemption of, the Notes;
- (c) reduce the Interest Rate/s in respect of the Notes or to vary the method or basis of calculating the amount of Interest, Interest Rate/s or the basis for calculating any Interest in respect of the Notes;
- (d) if a Minimum Interest Rate and/or a Maximum Interest Rate is shown hereon, reduce any such Minimum and/or Maximum;
- (e) enforce any provision of the Notes or call the Notes;
- (f) vary any method of, or basis for, calculating the Redemption Amount;
- (g) vary the Currency or Currencies of payment of the Notes; or
- (h) modify the provisions concerning the quorum required at any meeting of Noteholders or any adjournment of such meeting or the majority required to pass the Special Resolution,

may only be taken following approval by a Special Resolution.

10.1.4 Any Special Resolution duly passed shall be binding on Noteholders (whether or not they were present at the meeting at which such resolution was passed).

## 10.2 Modifications & Waiver

10.2.1 The Note Trustee may agree, without the consent of the Noteholders, to effect:

- (a) any modification of any provision of the Trust Agreement or the Notes (including these Conditions) which is of a minor nature or is made to correct a manifest error in the opinion of the Note Trustee, provided that such modification is not prejudicial to the interests of the Noteholders; and
- (b) any other modification and any waiver or authorisation of any breach or proposed breach of any provision of these Conditions or the Trust Agreement which are in the opinion of the Note Trustee, not materially prejudicial to the interests of the Noteholders, provided that no such modification shall be permitted unless an opinion of legal counsel is delivered to the Note Trustee to the effect that the Noteholders will be subject to Ghana tax on the same amount and in the same manner and at the same times as would have been the case if such modification had not occurred.

10.2.2 The Note Trustee may take into account, among other things, any confirmation from the rating agencies that the then current ratings of the relevant Notes would not be adversely affected in considering whether any such modification, waiver or authorisation would be materially prejudicial to the interests of the Noteholders.

10.2.3 Any such modification, waiver or authorisation may be given or made on such terms and subject to such conditions as the Note Trustee may in its sole discretion determine and shall be binding on the Noteholders and, unless the Note Trustee otherwise agrees, the Note Trustee shall cause such modification to be notified to the Noteholders within 5 business days after modification, provided that the Note Trustee shall not exercise any powers conferred upon it by this Condition 10 in contravention of any express direction by a Special Resolution or a request in writing made by the Noteholders of not less than 51% in aggregate Principal Amount of the affected

Notes then outstanding (provided that no such direction or request shall affect any authorisation, waiver or determination previously given or made).

### 10.3 Substitutions

10.3.1 The Note Trustee may, without the consent of the Noteholders, agree on such terms as it may specify to the substitution of the Issuer's successor in business where the substitution of the Issuer is as a result of a merger, an acquisition, or other form of business combination involving the Issuer.

10.3.2 Subject to obtaining the prior consent of the Noteholders, the Note Trustee may agree on such terms as it may specify to the substitution of the Issuer where the Issuer is substituted with its Affiliate in its place as issuer under the Trust Agreement and the Notes.

## 11. NOTICES

11.1 Notices to Noteholders will be deemed to be validly given if: (i) sent by first-class mail (airmail if overseas) to them (or, in the case of joint holders, to the first-named in the Register) at their respective addresses as recorded in the Register; or (ii) published in a newspaper of general circulation in Ghana and approved by the Note Trustee. Each such notice shall be deemed to have been validly given on the 10<sup>th</sup> Business Day after the date of postage.

11.2 Notices to the Issuer will be deemed to be validly given if delivered to the Issuer at its registered address and clearly marked on their exterior "*Urgent - Attention: Managing Director*" (or at such other address and for such other attention as may have been notified to the holders in accordance with Condition 11.1). Such notices will be deemed to have been validly given at the opening of business on the next Business Day on which the Issuer's registered address is open for business.

11.3 Notices to the Note Trustee will be deemed to have been validly given if delivered to the registered office of the Note Trustee and clearly marked on their exterior "*Urgent - Attention: Head, Custody Services, Unibank (Ghana) Limited*"

## 12. FURTHER ISSUES

The Issuer may from time to time, without the consent of the Noteholders and in accordance with the Trust Agreement, create and issue further securities ranking *pari passu* with the Notes or a Series or Tranche in all respects (except for Interest, the first Interest Payment Date or the first Instalment Date and Issue Date) and so that such further issues shall be consolidated and form a single series with the outstanding Notes. References in these Conditions to the Notes include (unless the context requires otherwise) any other securities issued pursuant to this Condition 12. Any such other securities shall be constituted by an addendum to the Trust Agreement.

## 13. ENFORCEMENT

13.1 At any time after the Notes become due and payable, the Note Trustee may, at its discretion and without further notice, institute such proceedings against the Issuer as it may think fit to enforce the terms of the Trust Agreement and the Notes, but it need not take any such proceedings unless:

- (a) it shall have been so directed by a Special Resolution; and
- (b) it shall have been indemnified to its satisfaction.

- 13.2 No Noteholder may proceed directly against the Issuer unless the Note Trustee, having become bound so to proceed, fails to do so within a reasonable time and such failure is continuing.

#### 14. INDEMNIFICATION OF THE NOTE TRUSTEE

- 14.1 The Trust Agreement contains provisions for the indemnification of the Note Trustee and for its relief from responsibility in certain circumstances. Subject to the fiduciary obligations of the Note Trustee to the Noteholders, the Note Trustee may enter into business transactions with the Issuer and any entity related to the Issuer without accounting for any profit. The Note Trustee is not responsible for the validity, sufficiency or enforceability of the Trust Agreement or the Notes, nor is the Note Trustee obliged to take any action unless indemnified and/or secured to its satisfaction. The Note Trustee is also entitled to be paid its costs and expenses in priority to the claims of the Noteholders.
- 14.2 In the exercise of its powers and discretion under these Conditions and the Trust Agreement (including but not limited to those referred to in this Condition 14), the Note Trustee will have regard to the interests of the Noteholders as a class and will not be responsible for any consequence of such exercise for individual Noteholders of Notes as a result of such Noteholders being connected in any way with a particular territory or otherwise, and the Note Trustee shall not be entitled to require, nor shall any Noteholder be entitled to claim, from the Issuer, any indemnification or payment in respect of any tax consequence of any such exercise upon individual Noteholders.

#### 15. GOVERNING LAW AND JURISDICTION

- 15.1 The Notes and the Trust Agreement are governed by, and shall be construed in accordance with Ghanaian law.
- 15.2 The courts of Ghana shall have exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with the Notes or the Trust Agreement.

#### 16. EVENTS OF DEFAULT

The Note Trustee may (at its discretion) or shall (if so directed by a Special Resolution) (subject in each case to being indemnified and/or secured to its satisfaction) give notice to the Issuer specifying any affected Notes and that such Notes are immediately due and repayable in the Principal Amount together with accrued interest if, in the case of the Notes, any of the following Events of Default occurs:

- (a) **Non-payment:** the Issuer fails to pay the Principal Amount or the Instalment Amount of any of the Notes when the same becomes due and payable either at the Maturity Date, at the Instalment Date, upon Redemption, by declaration or otherwise, or the Issuer is in default with respect to the payment of Interest or Additional Amounts on any of such Notes and such default in respect of Principal Amount, Instalment Amount, Interest or Additional Amounts continues for a period of 5 Business Days;
- (b) **Breach of Other Obligations:** the Issuer is in default in the performance, or is otherwise in breach, of any warranty, covenant, obligation, undertaking or other agreement under the Notes or the Trust Agreement (other than a default or breach elsewhere specifically dealt with in this Condition 16(b)) and such default or breach (if capable of remedy) is not remedied within 60 calendar days (or such longer period as the Note Trustee may in its sole discretion determine) after notice thereof has been given to the Issuer and, if applicable, by the Note Trustee;

- (c) **Insolvency.**
- (i) any Person shall have instituted a proceeding or entered a decree or order for the appointment of a receiver, manager, administrator, liquidator or rehabilitation manager in any insolvency, rehabilitation, readjustment of debt, marshalling of assets and liabilities or similar arrangements involving the Issuer or all or substantially all of their respective assets and such proceeding, decree or order shall not have been vacated or shall have remained in force undischarged or unstayed for a period of 60 Business Days; or
  - (ii) the Issuer shall institute proceedings under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect to be placed into rehabilitation, adjudicated as bankrupt or shall consent to the filing of a bankruptcy, insolvency or similar proceeding against it or shall file a petition or answer or consent seeking reorganisation under any such law or shall consent to the filing of any such petition, or shall consent to the appointment of a receiver, manager, administrator, liquidator, rehabilitation manager or trustee or assignee in bankruptcy or liquidation of the Issuer or in respect of its property, or shall make an assignment for the benefit of its creditors or shall otherwise be unable or admit its inability to pay its debts generally as they become due or the Issuer commences proceedings with a view to the general adjustment of its Indebtedness, which event in any such case is (in the sole opinion of the Note Trustee), materially prejudicial to the interests of the Noteholders;
- (d) **Invalidity or Unenforceability:** the Note Trustee is of the opinion determined in its sole discretion that any of following occurrences in this Condition 16(d) is materially prejudicial to the interests of the Noteholders:
- (i) the validity of the Notes or the Trust Agreement is contested by the Issuer;
  - (ii) it is or becomes unlawful for the Issuer to perform or comply with all or any of its obligations set out in the Notes or the Trust Agreement; or
  - (iii) the Issuer shall deny all or any of its obligations set out in the Notes or the Trust Agreement (whether by a general suspension of payments or a moratorium on the payment of debt or otherwise); or
- (e) **Government Intervention:**
- (i) all or any substantial part of the undertaking, assets and revenues of the Issuer is condemned, seized or otherwise appropriated by any person acting under the authority of any national, regional or local government; or
  - (ii) the Issuer is prevented by any such person from exercising normal control over all or any substantial part of its undertaking, assets, revenues and, following the occurrence of any of the events specified in this Condition 16(e), the Note Trustee is of the opinion determined in its sole discretion that such occurrence is materially prejudicial to the interests of the Noteholders.

## SCHEDULE 3

### PROVISIONS FOR MEETINGS OF THE NOTEHOLDERS

#### 1. DEFINITIONS:

Words and expressions defined in the Conditions and this Agreement shall have the same meanings when used in this Schedule. In addition, the following expressions shall have the following meanings:

“**Chairman**” means, in relation to any Meeting, the individual who takes the chair in accordance with paragraph 7 (*Chairman*) below;

“**Meeting**” means a meeting of Noteholders;

“**Special Resolution**” means a resolution passed at a Meeting duly convened and held in accordance with this Schedule 3 by a majority consisting of not less than three quarters (i.e. seventy five percent) of the votes cast; and

“**24 hours**” means a period of twenty four hours including all or part of a day upon which banks are open for business in the place where the relevant Meeting is to be held (disregarding for this purpose the day upon which such Meeting is to be held) and such period shall be extended by one period or, to the extent necessary, more periods of twenty four hours until there is included as aforesaid all or part of a day upon which banks are open for business as aforesaid.

#### 2. CONVENING OF MEETINGS

- 2.1 The Issuer or the Trustee may at any time convene a Meeting.
- 2.2 The Issuer or the Trustee shall convene a Meeting upon the requisition in writing of the holders of, at least, fifty-one percent (51%) of the aggregate of the total Principal Amount of the Notes then outstanding (**Requisition Notice**).
- 2.3 Whenever the Issuer or the Trustee wishes or is required to convene a meeting, it shall forthwith give notice in writing to the Trustee or Issuer, and Noteholders (or their agents) of the place, day and hour of the meeting and of the nature of the business to be transacted at the meeting.
- 2.4 All Meetings shall be held at such place as may be determined by the Issuer or the Trustee.
- 2.5 Any director or duly authorised representative of the agents, Issuer, the Trustee and any other person authorised in writing by the Issuer or the Trustee, may attend and speak at a Meeting, but shall not be entitled to vote, other than as a proxy (as defined below) or duly authorised representative of a Noteholder.

#### 3. REQUISITION

- 3.1 A Requisition Notice shall state the nature of the business for which the Meeting is to be held and shall be deposited at the registered office of the Issuer.
- 3.2 A Requisition Notice may consist of several documents in like form, each signed by one or more requisitionists.



#### **4. CONVENING OF MEETINGS BY REQUISITIONISTS**

If the Issuer does not proceed to cause a Meeting to be held within twenty (20) Business Days of the deposit with the company secretary of the Issuer of a Requisition Notice, requisitionists who together hold not less than fifty-one (51%) of the outstanding aggregate nominal amount of the Notes, may instruct the Trustee to convene the Meeting, but the Meeting so convened shall be held within forty (40) Business Days from the date of such deposit and shall be convened as nearly as possible in the same manner as that in which Meetings may be convened by the Issuer. Notice of the Meeting shall be required to be given to the Issuer.

#### **5. NOTICE OF MEETING**

5.1 Unless the holders of, at least, seventy-five percent (75%) of the outstanding aggregate nominal amount of the Notes agree in writing to a shorter period, at least twenty-one (21) clear days' written notice (specifying the place, day and time of the Meeting and the nature of the business for which the Meeting is to be held) shall be given by the Issuer or the Trustee to the Issuer or the Trustee, and Noteholders (or their agents). Such notice is required to be given in accordance with Condition 11 (*Notices*).

5.2 The notice shall set out the full text of any resolutions to be proposed unless the Trustee agrees that the notice shall instead specify the nature of the resolutions without including the full text.

5.3 The accidental omission to give such notice to the Issuer or the Trustee or any Noteholder (or their agents) or the non-receipt of any such notice, shall not invalidate the proceedings at a Meeting.

#### **6. QUORUM**

6.1 A quorum at a Meeting shall, for the purposes of considering:

(a) an ordinary resolution generally, consist of Noteholders present in person or by proxy and holding in the aggregate not less than one-third of the outstanding aggregate nominal amount of the Notes; and

(b) Special Resolution, consist of Noteholders present in person or by proxy and holding in the aggregate not less than seventy-five percent (75%) of the outstanding aggregate nominal amount of the Notes.

6.2 No business shall be transacted at a Meeting unless a quorum is present at the time when the Meeting proceeds to business.

#### **7. CHAIRMAN**

7.1 The Chairman shall be appointed by the Issuer or the Trustee.

7.2 An individual (who may, but need not, be a Noteholder) nominated in writing by the Issuer or the Trustee may take the chair at any meeting but, if no such nomination is made or if the individual nominated is not present within fifteen (15) minutes after the time fixed for the Meeting, those present shall elect one of themselves to take the chair failing which, the Issuer or the Trustee may appoint a Chairman.

7.3 The Chairman of an adjourned Meeting need not be the same person as was the Chairman of the original Meeting.

## 8. ADJOURNMENT

- 8.1 Subject to this Schedule 3 (*Provisions for Meetings of the Noteholders*) the Chairman may, with the consent (which consent shall not be unreasonably withheld and/or delayed) of, and shall on the direction of the Issuer and the Trustee, adjourn the Meeting from time to time and from place to place.
- 8.2 No business shall be transacted at any adjourned Meeting other than the business left unfinished at the Meeting from which the adjournment took place.
- 8.3 At least fifteen (15) Business Days' written notice of the place, day and time of an adjourned Meeting shall be given by the Trustee or Issuer to the Issuer or the Trustee and each Noteholder (or their agents). In the case of a Meeting adjourned in terms of paragraph 9 below, the notice shall state that the Noteholders present in person or by proxy at the adjourned Meeting will constitute a quorum.

## 9. ADJOURNMENT FOR WANT OF QUORUM:

If within thirty (30) minutes after the time fixed for any Meeting a quorum is not present, then:

- (a) in the case of a Meeting requested by Noteholders, it shall be dissolved; and
- (b) in the case of any other Meeting (unless the Issuer and the Trustee otherwise agree), it shall be adjourned for such period (which shall be not less than fifteen (15) Business Days and not more than thirty (30) Business Days and to such place as the Chairman determines (with the approval of the Issuer or Trustee); provided that:
  - (i) the Meeting shall be dissolved if the Issuer and the Trustee so decide; and
  - (ii) no Meeting may be adjourned more than once for want of a quorum.

If at such adjourned Meeting a quorum is not present the Noteholders present in person or by proxy shall constitute a quorum for the purpose of considering any resolution, including a Special Resolution.

## 10. PARTICIPATION

The following may attend and speak at a Meeting:

- (a) Noteholders or the proxies or representatives of the Noteholders;
- (b) representatives of the Issuer, the Trustee and the CSD;
- (c) the financial advisers of the Issuer and the Trustee;
- (d) the legal counsel to the Issuer, the Trustee, the CSD and such advisers;
- (e) the representatives of any guarantor of any Guaranteed Notes; and
- (f) any other person approved by the Meeting or the Issuer or Trustee.

## 11. HOW QUESTIONS ARE DECIDED

- 11.1 At a Meeting, a resolution put to the vote shall be decided on a show of hands unless, before or on the declaration of the result of the show of hands, a poll is demanded by the Chairman, the Trustee, the Issuer or by any one of the Noteholders present in person or by proxy.

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- 11.2 Unless a poll is demanded, a declaration by the Chairman that on a show of hands a resolution has been carried, or carried by a particular majority, or lost, shall be conclusive evidence of that fact, without proof of the number or proportion of the votes cast in favour of or against such resolution.
- 11.3 A poll demanded on the election of a Chairman or on the question of the adjournment of a Meeting shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the Chairman of the Meeting directs and the result of such poll shall be deemed to be the resolution of the Meeting.
- 11.4 In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman shall not be entitled to a casting vote in addition to the vote, if any, to which he is entitled.

**12. VOTES**

On a show of hands every Noteholder present in person or by proxy shall have one vote. On a poll every Noteholder, present in person or by proxy, shall have one vote for each value of the minimum denomination (as stated in the Applicable Pricing Supplement) of the outstanding nominal amount of the Notes held by him. The joint holders of Notes shall have only one vote on a show of hands and one vote on a poll for each value of the minimum denomination (as stated in the Applicable Pricing Supplement) of the outstanding nominal amount of the Notes of which they are the registered holder and the vote may be exercised only by that holder present whose name appears first on the Register in the event that more than one of such joint holders is present in person or by proxy at the meeting.

**13. PROXIES AND REPRESENTATIVES**

- 13.1 Noteholders may:
- (a) present in person; or
  - (b) through any appointed person (a **Proxy**), by an instrument in writing (a **Form of Proxy**), signed by the holder or, in the case of a corporation, executed under its common seal or signed on its behalf by an attorney of a duly authorised officer of the corporation,  
  
vote on a poll or on a show of hands.
- 13.2 A person appointed to act as proxy need not be a Noteholder.
- 13.3 The Form of Proxy shall be deposited at the registered office of the Issuer or at the office where the Register is kept or at such other office as the Issuer may determine not less than twenty four (24) hours before the time appointed for holding the Meeting or adjourned Meeting at which the person named in such Form of Proxy proposes to vote, and in default, the Proxy shall be invalid.
- 13.4 No Form of Proxy shall be valid after the expiration of six (6) months from the date named in it as the date of its execution.
- 13.5 A Proxy shall have the right to demand or join in demanding a poll.
- 13.6 Notwithstanding paragraph 13.4 above, the Form of Proxy shall be valid for any adjourned Meeting, unless the contrary is stated thereon.

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13.7 A vote given in accordance with the terms of a proxy shall be valid notwithstanding the previous death or incapacity of the principal or revocation of the proxy or of the authority under which the Form of Proxy was executed or the transfer of Notes in respect of which the proxy was given, provided that no intimation in writing of such death, incapacity, or revocation shall have been received by the Issuer, or the CSD more than, and that the transfer has been given effect to less than, 12 (twelve) hours before the commencement of the Meeting or adjourned Meeting at which the proxy is to be used.

13.8 Any Noteholder which is a corporation may by resolution of its directors or other governing body authorise any person to act as its representative in connection with any Meeting or proposed Meeting. Any reference in this Schedule 3 to a Noteholder present in person includes such a duly authorised representative of a Noteholder.

**14. POWERS:**

14.1 Subject to the Conditions and the provisions of this Agreement, a Meeting shall have power (exercisable by Special Resolution), without prejudice to any other powers conferred on it or any other person:

- (a) to approve any proposal by the Issuer for any modification, abrogation, variation or compromise of any provisions of this Agreement or the Conditions or any arrangement in respect of the obligations of the Issuer under or in respect of the Notes;
- (b) to approve the exchange or substitution of the Notes for, or the conversion of the Notes into, shares, bonds or other obligations or securities of the Issuer or any other Person or body corporate formed or to be formed;
- (c) to waive any breach or authorise any proposed breach by the Issuer of its obligations under or in respect of this Agreement, the Notes or the Agency Agreement; or any act or omission which might otherwise constitute an Event of Default;
- (d) to remove any Trustee;
- (e) to approve the appointment of a new Trustee;
- (f) to authorise the Trustee (subject to its being indemnified and/or secured to its satisfaction) or any other person to execute all documents and do all things necessary to give effect to a Special Resolution;
- (g) to discharge or exonerate a Trustee from any liability in respect of any act or omission for which it may become responsible under this Agreement or the Notes;
- (h) to give any other authorisation or approval which, under this Agreement or the Notes, is required to be given by Special Resolution; and
- (i) to appoint any persons as a committee to represent the interests of the Noteholders and to confer upon such committee any powers which the Noteholders could themselves exercise by Special Resolution.

14.2 A decision to:

- (a) amend the Maturity Dates or redemption of any of the Notes, any Interest Payment Date or Instalment Date on the Notes;
- (b) reduce or cancel the Instalment Amount or the Principal Amount of, or any premium payable on Redemption of, the Notes;
- (c) reduce the Interest Rate/s in respect of the Notes or to vary the method or basis of calculating the amount of Interest, Interest Rate/s or the basis for calculating any Interest in respect of the Notes;
- (d) if a minimum Interest Rate and/or a maximum Interest Rate is specified, reduce any such minimum and/or maximum;
- (e) enforce any provision of the Notes or call the Notes;
- (f) vary any method of, or basis for, calculating the Redemption Amount;
- (g) vary the currency or currencies of payment of the Notes; or
- (h) modify the provisions concerning the quorum required at any Meeting or any adjournment of such Meeting or the majority required to pass the Special Resolution,

may only be taken following approval by a Special Resolution.

14.3 Any Special Resolution duly passed shall be binding on Noteholders (whether or not they were present at the Meeting at which such resolution was passed).

**15. RESOLUTION BINDS ALL NOTEHOLDERS:**

Subject to paragraph 16 (Written Resolution) below, a resolution of the Noteholders shall be binding upon the Noteholders whether or not present at such Meeting, and each of the Noteholders shall be bound to give effect to it accordingly. Notice of the result of every vote on a resolution shall be given to the Noteholders (with a copy to the Issuer when the meeting is convened by the Trustee or where the relevant Meeting was convened by the Issuer, the Trustee) within fifteen (15) Business Days of the conclusion of the Meeting.

**16. WRITTEN RESOLUTION**

A written resolution signed by the holders of, at least, three quarters of the outstanding aggregate nominal amount of the Notes taken together shall take effect as if it were a Special Resolution.

**17. MINUTES**

17.1 The Issuer shall cause minutes of all resolutions and proceedings of meetings to be duly entered in the minute books of the Issuer. A copy of the minutes shall be given to the Trustee.

17.2 Any such minutes as aforesaid, if purporting to be signed by the Chairman of the Meeting at which such resolutions were passed or proceedings held or by the Chairman of the next succeeding Meeting, shall be receivable in evidence without any further proof, and until the contrary is proved, a meeting of Noteholders in respect of the proceedings of which minutes have been so made shall be deemed to have been duly held and convened and all resolutions passed thereat, or proceedings held, to have been duly passed and held.

**18. MUTATIS MUTANDIS APPLICATION**

The provisions of this Schedule 3 shall apply *mutatis mutandis* to the calling and conduct of meetings on an individual Tranche, Series or Class of Noteholders, as the case may be.

SCHEDULE 4

**CONDITIONS PRECEDENT**

- (1) **Closing documents:** the delivery to the Trustee on or before the Issue Date of the following documents:
  - (a) **constitutional documents:** certified copies of the certificate of incorporation and the current Regulations of the Issuer and of all relevant resolutions of the board of directors and the shareholders of the Issuer authorising the creation and issue of the Notes and the execution, delivery and performance of this Agreement, each of the Programme Documents, and any other documents to be delivered by the Issuer hereunder or thereunder or incidental to the transactions contemplated hereby or thereby; and
  - (b) **legal opinions:** a legal opinion addressed to and satisfactory in form and substance to the Trustee and the Issuer as to the laws of the Republic of Ghana, from Bentsi-Enchill, Letsa & Ankomah.
- (2) **Issue documentation:** the execution and stamping of this Agreement, and the Agency Agreement (and the execution of the Prospectus and the Applicable Pricing Supplement) on or before the Issue Date, by or on behalf of all parties thereto in substantially the agreed forms and the due service and acknowledgement of any notices required to be given pursuant thereto each in such form as the parties thereto have agreed has been given.
- (3) **No material adverse change:** there has been no adverse change, or any development reasonably likely to involve an adverse change in the condition (financial or otherwise) or general affairs or business prospects of the Issuer that is material, in the opinion of the Trustee, in the context of the issue of the Notes.



