



# **SPV SHAREHOLDERS` AGREEMENT**

**SHAREHOLDER AGREEMENT**

## Contents

<b>Clause</b>		<b>Page</b>
1	Definitions and interpretation.....	5
2	Effective date.....	5
3	The business of the Company and SPV and details of the Company and SPV.....	5
4	Funding of the Company and the SPV and financial matters.....	5
5	The Boards of the Company and SPV.....	8
6	Management of Company and SPV affairs.....	13
7	Distributions.....	15
8	Budgeting, Business Planning and financial matters.....	15
9	Restrictions on share transfers.....	18
10	Warranties and undertakings.....	20
11	Disputes.....	23
12	Winding Up.....	23
13	Miscellaneous.....	24

### **Schedule**

1	Definitions and Interpretation.....	31
2	Details of the SPV.....	38
3	Agreed Form Business Plan.....	39
4	Deed of Adherence.....	41
5	Details of the Concessionaire.....	42
6	Reserved Matters.....	45

### **Annexure**

1	Data Sheet	
---	------------	--

**THIS SHAREHOLDERS' AGREEMENT** (the "Agreement") is made on this **15 day of March 2021**

## **AMONGST**

**AFUM QUALITY LIMITED**, a company incorporated in accordance with the Companies Act of Ghana and having its registered office at Ground Floor Flat 1, Provincial Court, UPSA, Accra (**hereinafter referred to as the "Concessionaire"** which expression shall include its successors, permitted substitutes and assigns) represented by the Chief Executive Officer, Mr Isaac Afum of House Number 15, Wachild Estate, Macedonia, Sapeiman near Amasaman in the Greater Accra Region of Ghana

**And**

**IIB DEVELOPMENT GROUP (IIB-DG)**, a District of Columbia limited liability company, file # L0006082701 and Id National EIN # 83 -4468308, having principal offices located at 1050 Connecticut Ave., N.W., 5th Floor, Washington D.C. 20036 (**hereinafter referred to as the "IIB-DG "**, which expression shall, unless it be repugnant or contrary to the subject or context thereof, be deemed to mean and include its legal representatives, successors and permitted assign) represented by BASHA WHITE BANCZYK, Vice President of IIB Development Group.

**And**

**SPV NAME** ..... whose registered office is at Number 16, Otinshie, East Legon, Accra the special purpose vehicle which executed the Concession Agreement for undertaking the Project, (**hereinafter referred to as the "SPV"**

IIB-DG , and the Concessionaire are hereinafter collectively referred to as the "Parties" and individually as "Party". IIB-DG and the Concessionaire are collectively referred to as the "Shareholders" and individually as "Shareholder"

## **BACKGROUND**

- a. The Ministry of Transport is the Sector Ministry with oversight responsibility for the formulation of policies for the transport sector, establishment of a regulatory framework for transport operations and the creation of an enabling environment for transport investment and development of an efficient transport system.
- b. The Government of Ghana acting through the Ministry of Transport in furtherance of a policy to develop port and port-related infrastructure, intends to develop the Boankra Integrated Logistics Terminal Project (**"the Project"**) with private financing by granting a Concession to the Concessionaire to design, engineer, finance, procure, construct, operate and maintain the Project for a concession period of 30 years.

- c. By a letter dated the 22<sup>nd</sup> day of September, 2020 and with Reference No. RL195/202/01 the Ministry of Transport awarded the Development of Boankra Integrated Logistics Terminal (BILT) on a Build Operate and Transfer (BOT) Basis to the Afum Quality Letter following an international public bid pursuant to the public procurement laws of Ghana.
- d. The Project will be carried out pursuant to the Concession granted to the Concessionaire in accordance with the terms and conditions of the Concession Agreement signed with the government on this date..... and attached to this present.
- e. The Concessionaire shall design, engineer, finance, procure, construct, operate, maintain the Project and transfer title to the Government of Ghana in accordance with the terms and conditions of the Concession Agreement.
- f. Pursuant to this Agreement the Concessionaire and the IIB-DG have agreed to subscribe for shares in the Company and to advance monies to SPV (as equity and debt and, on completion of the subscriptions and advances referred to *(Initial subscriptions of Shares and Shareholder Debt and Equity)*, the Shares held by each of the parties and the amount of Shareholder Debt advanced to the SPV by each of the parties will be as set out in the Data Sheet
- g. The Shareholders have agreed to establish the SPV as a jointly owned company which is intended to carry on the business of a holding company in the manner set out in this Agreement.
- h. The parties have agreed that the respective rights and obligations of Shareholders in the SPV shall be governed by the provisions of this Agreement and that the SPV and SPV businesses shall be conducted in accordance with the provisions of this Agreement.
- i. Parties are therefore desirous of setting forth in this Agreement, the terms and conditions to govern the relationships in their mutual capacity as the Shareholders of the Concessionaire and to record their respective rights and obligations in relation to the management and functioning of the Concessionaire and other matters incidental thereto.
- j. Brief description of the project:
- k. Project cost:
- l. Project location.

### m. Project Sector:

**NOW, THEREFORE**, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

#### 1 Definitions and interpretation

This Agreement shall be interpreted according to the provisions of Schedule 1 (*Definitions and Interpretation*).

#### 2 Effective Date

This agreement shall become effective from Monday, the immediately upon the 15<sup>th</sup> day of March, 2021 following execution hereof, to the satisfaction of the following actions (such date being the effective date "**Effective Date**"):

- (i) The Concessionaire shall have resolved by way of special resolution, in an extra ordinary General Meeting of the Shareholders of the Concessionaire, alteration of the Charter Documents of the Concessionaire, as necessary, to reflect the terms of this Agreement;
- (ii) The Concessionaire shall have filed with the concerned Registrar of Companies, amended Charter Documents as above, as necessary, and provided the Government with the receipt issued by the said Registrar of Companies evidencing filing of the Chartered Documents amended as above;
- (iii) The Concessionaire shall have delivered and the Private Participant shall have caused the Concessionaire to deliver to the Government a certified true copy of all such resolutions and/or any other document(s) evidencing performance of the actions contemplated in this Clause;
- (iv) The IIB-DG has provided the requisite fund for the Project into the Bank accounts of the SPV.

#### 3 The business of the Company and SPV and details of the Company and SPV

##### 3.1

- (a) The business of the Company is to act as the holding company of SPV.
- (b) The business of SPV is to carry out or procure the carrying out of the privately financed project relating to (**Project**).

3.2 Details of the Company and SPV following the share subscriptions and board appointments will be as detailed in Schedule 2 (*Details of the Company and the SPV*).

#### 4. Funding of the Company and the SPV and financial matters

4.1. The SPV shall maintain a shareholders ratio as follows:

- i. IIB Development Group **70%**
- ii. Afum Quality Limited **30%**

4.2. Immediately upon the execution of this Agreement by each of the Parties, each Party shall take or procure to be taken the following steps either by themselves or at meetings of the Board or of the members of the Concessionaire/ SPV (as appropriate) to the extent not already taken:

- (a) the parties shall procure that the necessary board and/or shareholder resolutions in respect of the Concessionaire and SPV are passed to adopt the IIB DEVELOPMENT GROUP Articles and the SPV Articles with immediate effect;
- (b) the following subscriptions shall be made in the capital of the Company and advances made to the SPV in relation to Shareholder Debt:
  - (i) the concessionaire shall subscribe for the number of Shares and shall advance the amount of Shareholder Debt as set out opposite its name in the Data Sheet;
  - (ii) the Party Equity Provider shall subscribe for the number of Shares and shall advance the amount of Shareholder Debt as set out opposite its name in the Data Sheet,
- (c) the Company shall subscribe for the number of shares in SPV as set out opposite its name in the Data Sheet,

following which the Company and SPV shall deliver the relevant definitive share certificates in relation to the allotment of Shares (and any certificates in relation to Shareholder Debt) pursuant to sub-clause (b) and sub-clause (c) and shall insert the names of the allottees in the register of members.

#### **4.2. Further capital**

- (d) No Shareholder shall be required to subscribe for any further Shares or to provide any additional funding for the SPV (or guarantees or indemnities on behalf of the SPV) which, for the avoidance of doubt, shall include any additional funding by way of shareholder loans and/or required to increase the working capital requirements of the SPV.
- (e) The SPV shall not allot any Shares to any person (other than a Shareholder) unless that person has first executed a Deed of Adherence in the form set out in Schedule 4 (*Deed of Adherence*).
- (f) If, in the opinion of the SPV Board, requires further funding, the SPV Board shall determine how the SPV,) should obtain such additional funding, whether by way of the allotment of shares, by obtaining additional debt finance, or such other means as the SPV Board may determine, PROVIDED THAT the foregoing shall be subject to the SPV Board seeking and obtaining any required approval from the Shareholders for the further funding proposals if any to the extent

required under clause 6.2 (*Reserved Matters*).

- (g) Subject to the approval of the Shareholders pursuant to clause 6.2 (*Reserved Matters*), if the Board determines to allot further Shares, such Shares shall be allotted in accordance with the provisions of sub-clauses (f) to (i) below.
- (h) Subject to the provisions of sub-clauses (g) and (h) and clause 4.3 (*Offers to Allot*), on any allotment of Shares the Shares shall be offered for allotment by the Company to Shareholders pro rata to the number of Shares then in issue.
- (i) If the Directors determine to allot Shares in the Company, the Directors shall, of the Shares to be offered, first offer the Shares to the Shareholders pro rata to each Shareholder's existing holdings of Shares (**first offer**).
- (j) To the extent that any Shares are not accepted under the first offer the Directors shall offer the remaining Shares to the Shareholders who have accepted that first offer pro rata to their holdings of Shares following the first offer (**second offer**). To the extent that any second offer is not accepted by any such Shareholder but is accepted by other Shareholders, the Directors shall make such subsequent offers with the necessary changes having been made to those persons who have accepted the second offer until all the Shares have been accepted or (failing acceptance) until there are no persons willing to take further Shares whereupon the Directors may offer the remaining Shares to any Suitable Third Party.
- (k) A Shareholder may accept a first offer, or any other offer made to it, in whole or in part.

#### **4.3. Offers to Allot**

- a. Each offer shall be made by the Board by notice in writing (an **Offer to Allot**) and in the case of Shareholders shall be served on Founder Shareholders at their address for service set out in clause 13.8 (*Notices*) and on New Shareholders at the address for service notified to the Company by such New Shareholder.
  - (l) Each Offer to Allot shall:
    - (i) specify the total number of Shares which are on offer;
    - (ii) specify the number of Shares for which the recipient of the Offer to Allot may subscribe;
    - (iii) specify the price per Share;
    - (iv) specify the period during which the offer will remain open for acceptance, which for a first offer shall be fifteen (15) Business Days after the date of service of the Offer to Allot and for all other offers five (5) Business Days after the date of service of the Offer to Allot; and
    - (v) contain a statement to the effect that the offer shall not be deemed to be accepted until the Board has either

received notices of acceptance in respect of all the Shares available for allotment or, having received notices of acceptance in respect of less than all the Shares offered for allotment, has elected to issue such Shares notwithstanding that notices of acceptance have not been received in respect of all the Shares offered for allotment.

- (II) After the expiry of each Offer to Allot the Board shall as soon as practicable make such additional offers as may be necessary in accordance with this clause 4 (*Funding of the Company and SPV and financial matters*).
- (III) Each of the Shareholders agrees to approve any resolution put to a general meeting of the Company to renew the authority of the Directors to allot Shares in the Company.

#### **4.4. Additional Shareholder Debt**

The provisions of clause 4.2 and clause 4.3 relating to any additional issue of Shares shall apply with the necessary changes to any further issue of/ borrowing of Shareholder Debt.

### **5. The Board of the SPV**

#### *5.1. Composition of the Board and the right to appoint Directors*

- (a) Each of the Boards shall consist of not less than two Directors, to be appointed in accordance with this Agreement and the SPV Articles and the Concession Agreement.
- (b) The Shareholders shall be entitled in accordance with the SPV Articles and this Agreement to nominate and appoint in writing persons as Directors of the Company and to remove such persons from office. Any Shareholder holding [ 5]% or more of the issued Share capital (a **Material Shareholder**) shall be entitled to nominate one Director for every 15% of the issued Share capital of the Company held by it.
- (c) The persons nominated and appointed by the parties to act as the initial Directors for the purposes of sub-clause (c) are as set out in Schedule 2 (*Details of the Company and the SPV*).
- (d) In addition to its rights to nominate and appoint Directors under sub-clause (b), each Material Shareholder shall be entitled in accordance with the Articles, to nominate and appoint in writing one or more persons (up to a maximum of three) as alternate director(s) to each of its Director appointees and to replace any such person(s) as an alternate director from time to time.
- (e) The parties shall procure that the Directors of the Company (and any



alternate directors) appointed or removed in accordance with this clause 5.1 shall also be appointed and removed, as the case may be, as Directors / alternate directors of SPV.

## **5.2. Quorum requirements for Board meetings**

- (a) Subject to sub-clauses (b) and (c), the quorum for Board meetings of the Company and SPV respectively shall comprise one Director appointed by each Material Shareholder (or their respective alternates).

If within 30 minutes of the time for the relevant meeting no Director (or alternate) appointed by a Material Shareholder attends a meeting of Directors called in accordance with this clause 5.2, then (unless the relevant Director has given a written waiver in relation to his/her attendance) such meeting shall be adjourned in accordance with article 3.2 (*Proceedings of Directors*) of the SPV Articles and when reconvened such adjourned meeting shall, subject to the provisions of article (*Proceedings of Directors*), be deemed to be quorate notwithstanding the fact that a Director appointed by that Material Shareholder may not be present.

- (b) If a Material Shareholder fails to appoint and maintain in office at least one Director then, if a meeting of the Directors is called in accordance with this clause 5.2 and notice of the meeting is given to that Material Shareholder as if it were a Director, the meeting of Directors shall be deemed to be quorate notwithstanding the fact that no Director appointed by that Material Shareholder is present.

## **5.3 Removal of/ change to nominated Directors**

- (a) If a Material Shareholder (the **Appointing Shareholder**) removes any person nominated by it as a Director (such a Director being an **Outgoing Director**) then the Appointing Shareholder shall procure that the Outgoing Director vacates office without any claim to the Company for loss of office or otherwise relating to the Outgoing Director's vacation of office and the Appointing Shareholder shall indemnify the Company against all losses, liabilities and costs which the Company may incur arising out of, or in connection with, any claim by the Outgoing Director for wrongful or unfair dismissal or redundancy or other loss arising out of the Outgoing Director's removal from or loss of office.
- (b) If any Material Shareholder (an **Outgoing Shareholder**) ceases to be a Material Shareholder and any Director has been nominated as a Director by the Outgoing Shareholder pursuant to clause 5.1 (*Composition of the Boards and the right to appoint Directors*), the Outgoing Shareholder shall procure that any such Director vacates office without any claim to the Company for loss of office or otherwise relating to such Director's vacation of office and the Outgoing Shareholder shall indemnify the Company against all losses, liabilities and costs which the Company may incur arising out of, or in connection with, any claim by such Director for

wrongful or unfair dismissal or redundancy or other loss arising out of such Director's removal from or loss of office.

- (c) The provisions of sub-clause (a) and sub-clause (b) above apply with the necessary changes in relation to SPV Directors as if references to the Company were references to SPV.

#### **5.4. Chairman of the Board**

- (a) There shall be a Chairman of the SPV Board appointed or nominated in accordance with sub-clause (b).
- (b) the Chairman shall be one of the Board of Directors and shall be appointed on rotational basis for a term of five years by the IIB-DG , Majority shareholder.
- (c) If a Chairman is unable to attend any meeting of the Board or of the Shareholders of the SPV the Directors in attendance shall appoint one of their number as the chair for that meeting to act in his place.

#### **5.5. Board meetings and Board voting**

- (a)
  - (i)
    - (A) Prior to the end of the Lock in Period resolutions of the Board shall,
      - (1) where the Concessionaire owns a majority of the shares, require a vote in favour from at least one Director appointed by the Concessionaire and at least one Director appointed by another Material Shareholder and
      - (2) where the Concessionaire does not own a majority of the shares, require a simple majority vote. However, this sub-clause 5.5(a)(i)(A) shall not apply to clause 5.6(e) in relation to any Board vote to exclude the Observer from all or any part of any Board meeting and/or from having sight of Board papers or other information.
    - (B) After the end of the Lock in Period, resolutions of the Board shall be determined by a simple majority of votes cast for or against each resolution save that subject is Reserved requires a special resolution.
  - (ii) Subject to sub-clause (a)(iii), clause 5.4(b) and (c) (*Chairman of the Board*) and clause 6.5 (*Step-aside provisions*), at Board meetings each Director (other than an independent

non-executive Chairman appointed under clause 5.4(b)) shall have one vote.

- (iii) If a Material Shareholder has more than one Director appointee but not all its appointees are present at the Board meeting then its Director(s) or their alternate(s) present shall be entitled to vote each relevant absent Director's vote.
- (b) Unless otherwise agreed by all of the Directors, not less than 10 (ten) Business Days' notice (or such other period of notice as may be agreed from time to time by all of the Directors) of each meeting of the Board specifying the date, time and place of the meeting shall be given to all Directors. All meetings of the Board shall take place at such location as the Board shall agree and the Material Shareholders shall use all reasonable endeavours to procure that their respective Directors attend each such meeting and to procure that a quorum (in accordance with the provisions contained in this clause 5 (*The Boards of the Company and the SPV*) and in the Articles) is present at each such meeting of which due notice has been given.
- (c) Unless otherwise agreed by the Board:
  - (i) meetings of the Directors shall be held not less than quarterly on such dates as they may agree (and failing such agreement on such day as the Chairman shall decide);
  - (ii) a telephone conference call or video conference or a combination of the same, at which all participants are able to speak to and hear each of the other participants and at which for all times at that meeting a quorum of the Directors is able to so participate, shall be valid as a meeting of the Directors;
  - (iii) a resolution (which may be in counterparts) in writing signed by all the Directors entitled to receive notice of a meeting and vote at the meeting shall be as valid and effectual as if it had been passed at a meeting of Directors duly convened and held; and
  - (iv) any Director shall by notice to the Company and each other Director be entitled to convene a meeting of the Directors on not less than ten (10) Business Days notice.
- (d) Unless otherwise agreed by all of the Directors, all papers for meetings of the Board will be sent to all Directors not less than five (5) Business Days prior to the relevant meeting and, unless otherwise agreed by all of the Directors, draft minutes of meetings of the Board will be sent to each Director as soon as practicable after the holding of the relevant meeting.
- (e) The provisions of sub-clauses (a) to (d) shall apply with necessary changes as if references to the Company were references to SPV.
- (f) Unless otherwise agreed by all of the Directors, a meeting of the SPV Board shall follow immediately after a meeting of the Concessionaire

Board.

- (g) Notwithstanding any other provisions of this Agreement or of the Articles, if a Shareholder (the **Relevant Shareholder**) is in material breach of its obligations under this Agreement the Directors appointed by it shall be disenfranchised from voting at Board meetings unless and until that breach is remedied and no approval shall be required of the Relevant Shareholder's Directors for any Reserved Matter Board Approval matters. If there is a dispute as to whether a Relevant Shareholder is in material breach of its obligations under this Agreement then:
- (i) the Relevant Shareholder shall be deemed to be in material breach if the Material Shareholders (excluding the Relevant Shareholder) each confirm in writing to the Relevant Shareholder that they consider the Relevant Shareholder to be in material breach setting out the basis of that breach;
  - (ii) however, the Relevant Shareholder may then refer the question of whether it is in material breach to the dispute resolution procedure in clause 11 (*Disputes*).

#### 5.6 *Observers at Board meetings*

- (a) Concessionaire shall be entitled to nominate (and remove) by notice in writing to the Company (copied to the Directors) from time to time a person as an observer (the **Observer**) to meetings of the Concessionaire Board and of the SPV Board. This entitlement to nominate an Observer is a right of Concessionaire irrespective of whether or not it holds Shares in the SPV.
- (b) Ghana Shippers Authority shall appoint a Director Observer who shall be entitled to attend meetings of the Board of Directors. Where the Observer Director appointed by the Ghana Shippers Authority is absent from the meeting of the Board of Directors, the Ghana Shippers Authority by notice in writing to the Company (addressed to the Chairman or Company Secretary) nominate an observer to attend the meeting of the Board of Directors.
- (c) An Observer shall enter into a confidentiality undertaking in favour of the parties in the Agreed Form.
- (d) The Observer shall have no right to vote at Board meetings, but shall have the right to speak and contribute at a Board meeting unless the Board by majority vote decides otherwise from time to time. The Observer shall be entitled to notice of Board meetings as if he/she were a Director.
- (e) The Board by special resolution may exclude the Observer (except an Observer nominated by the Ghana Shippers Authority) from all or part of any Board meeting or from having sight of Board papers or other information if the Board considers it reasonable to do so in all the

circumstances (and in the event of any disagreement over exclusion then the exclusion shall be decided by a majority vote).

- (f) Notwithstanding the provisions in sub-clause (d) and sub-clause (e), the Observer shall not be entitled to attend all or any part of a Board Meeting or to receive Board papers which relate to any dispute or matter where proceedings have been issued against the SPV such that the step-aside provisions in sub-clause 6.5(d) apply.

#### 5.7 *Director remuneration*

The Company shall pay Director remuneration (if any) as set out in the Business Plan. Variation of any such remuneration shall be a Reserved Matter.

### **6. Management of Company and SPV affairs**

#### 6.1. *Management of the Businesses*

The parties shall exercise all rights and powers available to them in relation to the Company and SPV to procure that (in so far as they are able to do so) at all times during the term of this Agreement:

- a. the business of the Company shall consist exclusively of the Concessionaire Business;
- b. the business of SPV shall consist exclusively of the SPV Business; with the exception of:
  - i. matters for which responsibility is expressly delegated by the SPV Board to the officers of SPV; and
  - ii. those matters requiring Reserved Matter Board Approval or Shareholder approval pursuant to clause 6.2 (*Reserved Matters*),all the business of the SPV, other than routine day-to-day business, shall be undertaken and transacted by the Directors;
- c. no payment will be made by the SPV and no cheque or payment instruction of either the SPV shall be signed other than in accordance with the mandates (general or specific) and procedures authorised by the respective Boards from time to time;
  - i. the SPV will, if it requires any approval, consent or licence for the carrying on of its business in the places and in the manner in which it is from time to time carried on or proposed to be carried on, use all reasonable endeavours to obtain and maintain the same in full force and effect; and

#### **6.2. Reserved Matters**

Subject to clause 6.4 (*Shareholders' and Company undertakings*) the Reserved Matters listed in Schedule 6 (*Reserved Matters*) shall not be

carried out:

- a. in the case of those matters ticked in the second column ("Shareholder") without the prior written approval of each Material Shareholder; or
- b. in the case of those Reserved Matter Board Approval matters ticked in the third column ("Board") without the prior written approval of a Director appointed by each of the Material Shareholders or all of the Directors who have been appointed by the Material Shareholders and each of the Shareholders shall use their respective rights and powers to procure, so far as they are each able, that no such Reserved Matter is carried out unless the required approval has been given.

### 6.3 *Manner of giving Shareholder approval*

- a. Subject to sub-clause (b) and to sub-clause (c), the written approvals required from Shareholders referred to in clause 6.2 (*Reserved Matters*) may be given and signed for a Material Shareholder by a Director nominated by it under clause 5.1 (*Composition of the Boards and the right to appoint Directors*).
- b. Notwithstanding the provisions of Concessionaire Article 5 (*Directors' power to authorise conflict situations*), if at a Board meeting (the **Original Meeting**), a matter arises for resolution which a Director reasonably considers gives rise to a conflict of interest between his duty to his appointor /employer and his duty as a Director to promote the success of the Company/SPV he shall, upon declaring such conflict, be entitled to abstain from casting his vote and to refer the relevant matter back to the relevant Shareholder whose decision on the resolution shall be substituted for the decision of the abstaining Director PROVIDED THAT (except in the case of a matter which is Reserved Matter Board Approval matter) such decision is notified to the company secretary in writing and is received by him within fifteen (15) Business Days of the date of the Original Meeting at which the relevant Director notified his intention to make such referral. If no decision is received from the Shareholder within such period, the requisite Board approval shall be capable of being given by one Director appointed by each of the other Material Shareholders (the **Other Directors**) and shall be so given if at the Original Meeting the Other Directors resolved to pass the resolution in question.
- c. A Material Shareholder may opt out of the mechanism in sub-clause (a) and sub-clause (b) by giving notice under this sub-clause (c) to the other parties. The effect of the notice shall be that, for any matter requiring Shareholder approval, that approval will only then be deemed to have been given when that Material Shareholder has given its specific approval in writing to that matter. A Material Shareholder may opt back in to the mechanism in sub-clause (a) and sub-clause (b) by notice in writing under this sub-clause (c).

- i. Notwithstanding the provisions of Concessionaire Article 5 (*Directors' power to authorise conflict situations*), if a Director considers he has a conflict of interest between his duty to his appointor /employer and his duty as a Director to promote the success of the SPV in relation to any matter then he may refer the matter to his Material Shareholder appointor for approval or otherwise and, if given in writing, the Shareholder approval shall be valid in place of the Director approval.

#### **6.4. Shareholders' and SPV undertakings**

Each Shareholder undertakes to each of the other Shareholders that, in its capacity as a Shareholder, it will act in a manner that is consistent with and shall exercise all voting rights and other powers of control available to it in relation to the SPV so as to procure (insofar as it is able by the exercise of such rights and powers) that the SPV complies with the provisions of the Project Documents to which it is a party.

### **7. Distributions**

- 7.1. Subject to clause 6.2 (*Reserved Matters*) the parties shall procure (insofar as permitted by law) that, subject to any restrictions imposed pursuant to the Project Documents and subject to the working capital and other financial requirements of SPV (e.g. budgeted expenditure and maintenance reserves) as determined by the SPV Directors:
  - a. SPV shall distribute all amounts which are lawfully available for distribution by the SPV to the Parties by way of dividend on the Shares in SPV but only after payment of any interest and principal which is then due and payable, in order of priority, in relation to any Shareholder Debt by the SPV under the relevant Loan Note Instrument; and
  - b. the SPV shall distribute all amounts which are lawfully available for distribution by the SPV to the Shareholders by way of dividend on the Shares. The dividend payable per Share shall be calculated pro-rata to the total number of Shares.

### **8. Budgeting, Business Planning and financial matters**

- (a) The first Business Plan relating to the Concessionaire Business and the SPV Business covering the period from the date specified in the Data Sheet through to the end of the first financial year of the Company has been approved by the Shareholders and comprises Schedule 3 (*Agreed Form Business Plan*) to this Agreement. The Business Plan shall be reviewed by the Board at least every six months and updated for each financial year in accordance with the provisions of sub-clause (b).
- (b) No earlier than three months and no later than one month before the end of each financial year of the Company, the Company will prepare and circulate to Shareholders a draft of the proposed Business Plan for the next financial year (**Draft Business Plan**). The



Draft Business Plan (with such amendments as are agreed to it) will become the Business Plan in place of the then current Business Plan upon the later of:

- (i) the relevant Reserved Matter approval being given under clause 6.2 (*Reserved Matters*) to it; and
- (ii) the start of the financial year to which it relates.

8.2 The Annual Budget for each financial year shall form part of the Business Plan. The Annual Budget shall be reviewed by the Board at least every three months. From the end of the second financial year following the end of the Lock-in Period (as defined in clause 9.7(d)) the Annual Budget shall include relevant lifecycle costs.

### 8.3. *Financial records*

- (a) The Shareholders shall use reasonable endeavours to procure that each of the Company and SPV shall keep proper books of account and make true and complete entries of all its dealings and transactions of and in relation to its Business.
- (b) The Company shall (and shall procure that SPV shall) keep proper books of account and make true and complete entries of all its dealings and transactions of and in relation to their Businesses.

### 8.4 *Provision of information to Shareholders and designated third parties*

- (a)
  - (i) The Company shall supply in respect of the Company, and shall procure that SPV shall supply in respect of the SPV, each of the Shareholders (and to Concessionaire if Concessionaire is not then a Shareholder) with the Transparency Information as detailed in Part A of Schedule 7 (*Transparency Information and Commercially Sensitive Information*) relating to the Company/SPV with the relevant period set out therein.
  - (ii) Each Shareholder shall provide to each other Shareholder (and to Concessionaire if Concessionaire is not then a Shareholder) the information as detailed in Part B of Schedule 7 (*Transparency Information and Commercially Sensitive Information*) within the relevant period set out therein.
- (b) Each of the Company, SPV and each Shareholder will use its reasonable endeavours to assist Concessionaire in its preparation of any report required by a government department from time to time, which relates in whole or in part to the Project. Notwithstanding the provisions of clause *Information*):
  - (Confidentiality and Freedom of each Shareholder may (but only once the relevant Shareholder has made the intended recipient aware of that Shareholder's obligations of confidentiality under this Agreement (and in the case of the intended recipients in (D) and (E)) has obtained a written undertaking from that



intended recipient agreeing with that Shareholder and for the benefit of all other Shareholders and the Company and the SPV, to comply with such obligations of confidentiality as though it were a party to this Agreement) disclose any information received from the Company, SPV or any Director, to:

- (A) any shareholder in it;
  - (B) any director or other officer of, adviser to, trustee or manager of, or investor or prospective investor in its Shareholder's Group;
  - (C) the Shareholder's investment adviser and any of its other professional advisers;
  - (D) any member or prospective member of the Shareholder's Group;
  
  - (E) potential purchasers of any of that Shareholder's interest in the Company; and
  - (F) any person to whom it is required by law or a regulatory authority or body or by the Project Documents to be disclosed.
- (ii) Concessionaire may disclose and use any Transparency Information in such manner and for such purposes as it may determine from time to time, including reports and reviews of the performance of PF2 projects generally or specifically in respect of the Project and in relation to any audit, accounting or other review or scrutiny by any government or public body where Concessionaire considers it appropriate to make some or all of such information available; and
- (iii) the Company shall permit (and shall procure that SPV shall permit) all records referred to in clause 8.3 (*Financial records*) and/or clause 8.4(a) (*Provision of information to Shareholders and designated third parties*) to be examined and copied from time to time by Concessionaire or by any person to whom Concessionaire notifies the Company that it wishes to have access to any such documents, records or information under sub-clause (b)(ii).
- (c) If Concessionaire ceases to hold any Shares it shall still be entitled to (and the Company and the other parties shall provide) the Transparency Information.

#### 8.5. Tax matters

(a)

- (i) Each Shareholder shall use its reasonable endeavours to ensure that both the Company and SPV are treated by all relevant authorities as being resident for taxation and other purposes in the Republic of Ghana.
  
- (ii) [*other tax provisions to be agreed*]

- (b) To the extent that any tax losses arise, the Shareholders shall agree from time to time as the losses arise, how the losses shall be treated. The Shareholders agree, if so requested by a Shareholder, to discuss a mechanism for the obtaining of relief for a proportionate share of trading losses of each of the Shareholders and other amounts eligible for relief from corporation tax by virtue of consortium-relief provisions by the Company or SPV or a Shareholder and compensation. Each Shareholder agrees that no such mechanism shall be approved by the Company or SPV without the approval of the other Shareholders (acting reasonably and having regard to what is most likely to promote the success of the Company and SPV).

## **9 Restrictions on share transfers**

### *9.1 Restrictions on transfers of Shares in the Company*

- (a) Except in relation to any transfer of Shares permitted by Article 12 (*Transfer – Permitted Transfers*), in the Concessionaire Articles, all transfers of Shares shall be subject to the rights of first refusal set out in the Concessionaire Articles.
- (b) Without prejudice to a shareholder's right of refusal under this clause, a Party herein shall reserve right to transfer part not all of its shares to its partner or partners.
- (c) Each party undertakes to transfer Shares only in accordance with this Agreement and the Concessionaire Articles and to procure that only transfers made in accordance with this Agreement and the Concessionaire Articles are registered.
- (d) Each Shareholder undertakes to comply with any restrictions on the transfer of Shares contained in the Project Documents.
- (e) No Shareholder shall sell or transfer any Shares to any person other than another Shareholder unless that person has first executed a Deed of Adherence in the form set out in Schedule 4 (*Deed of Adherence*). Each of the parties shall execute any such Deed of Adherence in respect of a transfer of Shares made in accordance with this Agreement and the Concessionaire Articles. The Company shall not register any transfer in accordance with this Agreement and the Concessionaire Articles unless the transferee (other than a Shareholder) has first executed a Deed of Adherence in the form set out in Schedule 4 (*Deed of Adherence*).
- (f) No Shareholder shall, except with the prior written consent of all the Shareholders:
  - (i) grant any option over any Shares (or any interest, whatsoever, legal or beneficial, in any Shares); or
  - (ii) enter into any agreement in respect of the votes attached to any Shares (other than in any shareholders' agreement entered into between the shareholders of any company which is a Material Shareholder),
    - (A) the Company from granting a security interest over its

shares in SPV to a funder of the SPV in relation to a project or

(B) arrangements between Concessionaire and the Authority from time to time.

- (g) No Shareholder shall be entitled to give a Transfer Notice if it (or, if it is a company, any of its Associates excluding SPV) is at that time in material breach of this Agreement. Nothing in this sub-clause (f) shall prevent the service of a Transfer Notice which a Shareholder is required to give in accordance with the Concessionaire Articles or the giving of a Deemed Transfer Notice in accordance with the Articles.
- (h) Each of the Company and SPV shall procure that each share certificate issued by it will carry the following statement:
  - (i) A Shareholder may not transfer any Share to an Unsuitable Third Party.
  - (j) No Shareholder wishing to transfer Shares (**Transferring Shareholder**) may do so unless it transfers (or procures the transfer of) an equivalent proportion (relative to the number of Shares that the Transferring Shareholder owns) of any Shareholder Debt held by it or any member of the Shareholder's Group to the proposed transferee. The Transferring Shareholder must elect to include reference to both Shares and Shareholder Debt (where relevant) in a Transfer *Events of Default and deemed transfers*

9.2 Notwithstanding the provisions of the Concessionaire Articles, if an Event of Default occurs in relation to a Shareholder (**Defaulting Shareholder**) which, if capable of remedy, has not been remedied within twenty (20) Business Days of the Shareholder in default becoming aware of the Event of Default (or such longer period as the other Shareholders may notify in writing to the Defaulting Shareholder) (the **Remedy Period**) then the Defaulting Shareholder shall be deemed, at the end of the Remedy Period, to have given a Deemed Transfer Notice in respect of all the Shares held by it (**Default Shares**) in accordance with the provisions of the Concessionaire Articles.

### 9.3 *Shareholder Debt*

- (a) To the extent that the IIB-DG is fully funding the entire cost of the Project, a shareholder shall not be indebted in terms of a shares acquired in the SPV. Thus, there shall not be a Default Shares standing in the name of any shareholder of the SPV.

### 9.8. *Lock In Periods*

- (a) **Shares in the SPV.** Subject always to clause 9.1 (h), each Shareholder agrees that it shall not transfer or dispose of any interest in or over or right attaching to any of its Shares except by a transfer:
  - (i) to a transferee at any time after the expiry of the Lock In Period

- (as defined in sub-clause (d));
- (ii) at any time to a transferee permitted in accordance with Article 12.1, 12.2 or 12.3 of the Concessionaire Articles; or
  - (iii) in the case of Concessionaire, to a transferee at any time including during the Lock In Period (as defined in sub-clause (d)), but subject to sub-clauses (a)(i) to (iii) above, otherwise in accordance with the provisions of the Concessionaire Articles and this clause 9 (*Restrictions on share transfers*).
- (b) **Shares in the Concessionaire.** The Concessionaire shall reserve the right to transfer part of its shares to its partners but for the purpose of the Concession Agreement hold same in trust for the said beneficial interest holder partners. The Concessionaire shall reserve the right to keep the partners identity in confidence to the extent as the laws of Ghana can accommodate.
  - (c) **Shares in the IIB-DG .** IIB-DG shall reserve the right to transfer part of its shares to its partners but for the purpose of the Concession Agreement hold same in trust for the said beneficial interest holder partners. The IIB-DG shall reserve the right to keep the partners identity in confidence to the extent as the laws of Ghana can accommodate.
  - (d) **Shares in other parties than the IIB-DG** No transfer of any legal or beneficial interest in any share capital of the SPV in the Other parties Equity Providers or change in the control over the exercise of voting rights conferred by shares held by the Original TPEP, before the expiry of the Lock In Period.
  - (e) For the purposes of this Agreement, **Lock In Period** means the period from and including the date of this Agreement up to and including the end of the SPV Lock In Period.

## 10 Warranties and undertakings

### 10.1. Warranties by Concessionaire

Concessionaire warrants and represents to each of the other parties at the date of this Agreement that:

- (a) it is duly incorporated under the laws of the Republic of Ghana;
- (b) it has the corporate power to enter into and to exercise its rights and perform its obligations under the Project Documents to which it is a party;
- (c) each Project Document to which it is a party constitutes, or will when executed constitute, legal, binding and enforceable obligations on it;
- (d) it has taken all necessary action to authorise the execution of and the performance of its obligations under the Project Documents to which it is a party (and in the case of a Project Document executed after the date of this Agreement will take all necessary action to authorise the execution of such Project Document);
- (e) no claim is being asserted and no litigation, arbitration or

administrative proceeding is presently in progress, or, to the best of its knowledge pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under those Project Documents to which it is a party;

- (f) it is not subject to any contractual obligation, compliance with which will be likely to have a material adverse effect on its ability to perform its obligations under the Project Documents to which it is a party; and
- (g) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge are threatened) for its winding-up or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, administrator or similar officer in relation to any of its assets or revenue.

#### *10.2. Warranties by the Concessionaire, the IIB-DG , the Company and the SPV*

10.2 The Concessionaire, the IIB-DG , the Company and the SPV each severally warrant and represent to each of the other parties at the date of execution of this Agreement that:

- (a) each of them is duly incorporated under the laws of Ghana or their respective countries of incorporation and has the corporate power to enter into and to exercise its rights and perform its obligations under the Project Documents to which it is a party;
- (b) each Project Document to which it is a party constitutes, or will when executed constitute legal, binding and enforceable obligations on each of them;
- (c) each of them has taken all necessary action to authorise the execution of and the performance of their obligations under the Project Documents to which they are respectively parties (and in the case of a Project Document executed after the date of this Agreement will take all necessary action to authorise the execution of that Project Document);
- (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge pending or threatened against any of them or any of their assets which will or might have a material adverse effect on their ability to perform their obligations under the Project Documents;
- (e) none of them is subject to any contractual obligation, compliance with which will be likely to have a material adverse effect on their ability to perform their obligations under the Project Documents;
- (f) no proceedings or other steps have been taken and not discharged (nor, to the best of their knowledge, are threatened) for the winding-up of any of them or for their dissolution or for the appointment of a receiver, administrative receiver, liquidator, administrator or similar officer in relation to any of their assets or revenue; and

- (g) each of them has complied with and currently complies with the all relevant anti- bribery and corruption laws applicable to its business and operations.
- (h) The IIB-DG warrants that the funds or the source of the funds it is investing in the SPV or the Project is not tainted with corruption or breaches the anti-corruption, anti-money laundering and other financial laws of Ghana.

### *10.3. Warranties by the Concessionaire, the Company and the SPV*

The Concessionaire, the Company and the SPV each severally warrant and represent to each of the other Shareholders at the date of execution of this Agreement that each of the SPV is newly incorporated companies and have not traded prior to the date of this Agreement.

### *10.4. Tax compliance*

Each Shareholder represents and warrants that, as at the date of this Agreement, it has notified Concessionaire in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance.

### *10.5 If at any time an Occasion of Tax Non-Compliance occurs in relation to a Shareholder, the Shareholder shall:*

1. notify Concessionaire in writing of such fact within five (5) Business Days of promptly provide to Concessionaire:
  - (i) details of the steps which the Shareholder is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
  - (ii) such other information in relation to the Occasion of Tax Non-Compliance as Concessionaire may reasonably require.

### *10.6 If:*

- (i) the warranty given by a Shareholder pursuant to clause 10.4 is untrue; and/or
- (j) the Shareholder commits a material breach of its obligation to notify Concessionaire of any Occasion of Tax Non-Compliance as required by clause 10.5 or the SPV under the analogous provisions of the Authority Project Agreement;

### *10.7 Provisional Transfer Notices*

If a Shareholder receives a Provisional Transfer Notice:

- a. it shall have ninety (90) days to effect the transfer of its Shares and Shareholder Debt to a Suitable Third Party; and
- b. in relation to any such transfer:

- (i) the pre-emption and transfer provisions in this Agreement and the Articles shall apply;
  - (ii) if the Shares and Shareholder Debt are transferred to a Suitable Third Party then the other Shareholders shall take (or procure) all steps reasonably requested of them by the transferring Shareholder to enable any such transfer to be effected and registered.
- c. If the Shareholder has not effected the transfer of its Shares and Shareholder Debt to a Suitable Third Party within the ninety (90) day period referred to (or such longer period as may be agreed by Concessionaire) then the same shall constitute an Event of Default in respect of that Shareholder.

## 11 Disputes

- 11.1 If there is a disagreement or dispute arising between two or more of the parties in connection with this Agreement (a **Dispute**), the parties shall apply the Alternative Dispute Resolution Act of Ghana to resolve all disputes. A matter or action requiring approval as a Reserved Matter not receiving the necessary approval shall not constitute a Dispute. If one party serves formal written notice on one or more of the others that a Dispute has arisen and the parties are unable to resolve the Dispute within a period of twenty (20) Business Days from the service of such notice, then the Dispute shall be referred to the mediation first and where the dispute remains unsettled then Arbitration. No recourse to litigation by any party against any other under this Agreement shall take place unless and until such procedure has been followed.

## 12 Winding Up

- 12.1 Without prejudice to clause 6.2, if the Shareholders pass a resolution pursuant to this Agreement or otherwise to wind up the Company by way of a members' voluntary winding-up they shall procure that the Official Liquidator appointed under the Companies Act of Ghana.
- 12.2 Except to the extent each party has contractual obligations to the contrary, the Shareholders shall prove in the winding-up of the Company to the maximum extent permitted by law for all sums due or to fall due to them respectively from the Company and shall exercise all rights of set-off and generally do all such other acts and things as may be available to them in order to obtain the maximum receipts and recoveries.
- 12.3 To the extent that any or all of the Shareholders do not receive satisfaction in full in the winding-up of the Company of all sums due or to fall due to them the aggregate shortfall between all sums due or to fall due to the Shareholders and all amounts actually recovered by the Shareholders from the Company or its liquidator (whether by direct payment or the exercise of any right of set-off or otherwise) shall be calculated and apportioned between the Shareholders in the same proportions as the Shareholders hold Shares at the time of the determination. The Shareholders shall make



such contributions to each other as are necessary to procure that the Shareholders bear the aggregate amount of such shortfall in such proportions.

### 13 Miscellaneous

#### *Confidentiality and Freedom of Information*

##### 13.1

- (a) Subject to clause 8.4(b)(ii), during the term of this Agreement and after termination or expiry of the Agreement for any reason whatsoever, a party receiving information from another party shall:
  - (i) keep Confidential Information (as defined in sub-clause (e)) confidential;
  - (ii) not disclose Confidential Information to any other person other than with the written consent of the party disclosing such information or in accordance with sub-clauses (b) to (d); and
  - (iii) not use Confidential Information for any purpose other than the performance of its obligations under this Agreement and the other Project Documents.
- (b) During the term of this Agreement, a party receiving information from another party may, subject to the provisions of clause 8.4 (*Provision of information to Shareholders and designated third parties*), disclose Confidential Information to its employees, contractors, sub-contractors, agents and advisers under conditions of confidentiality in each case to the extent that it is reasonably necessary for the purposes of this Agreement, or any other Project Document and may disclose Confidential Information to its funders, prospective funders, prospective shareholders of the Company or prospective purchasers of its assets under conditions of confidentiality. In each case the permitted recipient of such Confidential Information shall be known as a **Recipient**.
- (c) The party receiving information from another party shall so far as practicable procure that each Recipient is made aware of and complies with all that receiving party's obligations of confidentiality under this Agreement as if the Recipient were a party to this Agreement.
- (d) Without prejudice to sub-clause (b), the obligations contained in sub-clauses (a) to (c) shall not apply to:
  - (i) any disclosure of information that is reasonably required by any person engaged in the performance of their obligations under the Agreement for the performance of those obligations;
  - (ii) any matter which a party can demonstrate is already, or becomes, generally available and in the public domain otherwise than as a result of a breach of any of the provisions in



sub-clauses (a) to (c);

- (iii) any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the party making the disclosure or the rules of any stock
  - (iv) exchange or governmental or regulatory authority having the force of law or, if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned;
  - (v) any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
  - (vi) any provision of information to the parties' own professional advisers or insurance advisers or to lenders in respect of the Project or such lender's professional advisers or insurance advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Company and/or SPV to enable it to carry out its obligations under this Agreement or may wish to acquire shares in the Company and/or SPV in accordance with the provisions of this Agreement to that person or their respective professional advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
  - (vii) any disclosure for the purposes of:
    - (A) the examination and certification of the Company's or the SPV's accounts;
    - (B) any examination by a statutory authority with legal mandate;
    - (C) complying with a proper request from either party's insurance adviser, or insurer on placing or renewing any insurance policies; or
    - (D) (without prejudice to the generality of sub-clause (d)(iii) above) compliance with the environmental protection regulations or Environmental Protection Agency of Ghana.
- (e)
- (i) Where disclosure is permitted under sub-clause (d), other than sub-clauses (d)(ii), (iii), and (vi), the party providing the information shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Agreement.
  - (ii) For the purposes of the Auditor General and Audit Service of

Ghana may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Company and/or SPV and may require the Company and/or SPV to

- (iii) produce such oral or written explanations as he considers necessary. For the avoidance of doubt it is hereby declared that the carrying out of an examination
- (iv) For the purposes of this clause 13.1 (*Confidentiality and Freedom of Information*), **Confidential Information** means:
  - (A) information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, commercially sensitive intellectual property rights and know-how of any party and all personal data and sensitive personal data within the meaning of the Data Protection laws of Ghana; and
  - (B) Commercially Sensitive Information.

### **Freedom of Information**

- (f) References in sub-clauses (f) to (m) shall apply to SPV with the necessary changes. The parties acknowledge that Concessionaire is subject to the requirements of the Ghana Harbours Authority, Ghana Shippers Authority, Environmental Protection Agency and other statutory regulatory authorities by virtue of the Concession Agreement hence in compliance with such authorities shall freely disclose the information required for such compliance;
- (g) Where Concessionaire receives a Request for Information in relation to Information that the SPV is holding on behalf of Concessionaire, Concessionaire shall transfer to the Company such Request for Information that it receives as soon as practicable and in any event within [five] Business Days of receiving a Request for Information and the SPV shall:
  - (i) provide Concessionaire with a copy of all such Information in the form that Concessionaire requires as soon as reasonably practicable and in any event within [ten] Business Days (or such other period as Concessionaire may acting reasonably specify) of Concessionaire's request; and
  - (ii) provide all necessary assistance as reasonably requested by Concessionaire in connection with any such Information, to enable Concessionaire to respond to a Request for Information within the time for compliance stipulated by the notice of the request and up until such time as the SPV has

provided Concessionaire with all the Information specified in sub-clause (g)(i), the SPV may make representations to Concessionaire as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that Concessionaire shall be responsible for determining at its absolute discretion:

- (iii) whether the Information is exempt from disclosure in accordance with law;
  - (iv) whether the Information is to be disclosed in response to a Request for Information, and in no event shall the SPV respond directly or allow its subcontractors to reply directly to a Request for Information unless expressly authorised to do so by Concessionaire.
- (h) The SPV shall ensure that all Information held on behalf of Concessionaire is retained for disclosure for at least six years from the date it is acquired and shall permit Concessionaire to inspect such Information as requested from time to time.
- (i) The SPV shall transfer to Concessionaire any Request for Information received by the SPV as soon as practicable and in any event within two (2) Business Days of receiving it.
- (j) The SPV acknowledges that any lists provided by it listing or outlining Confidential Information, are of indicative value only and that Concessionaire may nevertheless be obliged to disclose Confidential Information in accordance with sub-clause (i) above.
- (k) If Concessionaire makes a request to the SPV pursuant to sub-clause (g)(ii) the Company shall, as soon as practicable, and in any event within five (5) Business Days of receipt of such request, inform Concessionaire of the SPV estimated costs of complying with the request to the extent these would be recoverable if incurred by Concessionaire.
- (l) The SPV acknowledges that (notwithstanding the provisions of clause 13.1 (*Confidentiality and Freedom of Information*)) Concessionaire may, acting in accordance with the law disclose Information concerning the SPV:
- (i) in certain circumstances without consulting with the SPV, or
  - (ii) following consultation with the SPV and having taken their views into account.

### 13.2 Governing law and Jurisdiction

- (a) This Agreement and any non-contractual obligations arising out of or in connection shall be subject to the laws of Ghana.

- (b) Subject to the provisions of clause 11 (*Disputes*), the parties agree that the Alternative Dispute Resolution procedures of Ghana or the courts of Ghana shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Agreement and irrevocably submit to the jurisdiction of those courts.

### 13.3. *Further assurance*

Each party will:

- b. execute any document and do anything; and
  
- c. use all reasonable endeavours to procure that any third party (where necessary) executes any deed or document and does anything, reasonably necessary to implement the terms of this Agreement.

### 13.4. *Costs*

Each party shall bear its own costs in relation to the drafting, negotiating and implementation of the Project Documents.

### 13.5. *Insurance*

- (a) The SPV shall take out and maintain with reputable insurers all insurances required to be maintained by law and such other prudent insurances against such risks as are normally insured against by businesses carrying on activities similar to those of the SPV and (without prejudice to the generality of the foregoing) shall insure its assets of an insurable nature for their full replacement or reinstatement value. Each of the SPV shall comply with its obligations under the Project Documents in respect of insurance.
  
- (b) The SPV shall take out and maintain appropriate directors and officers liability insurance.

### 13.6. *Assignment*

- (a) This Agreement, shall be binding on, and shall enure to the benefit of, each of the parties and their respective successors. In the case of Concessionaire its successors shall include any person to whom it transfers the property, rights and obligations of Concessionaire.
  
- (b) The Concessionaire may assign parts of its interest to its partners or other Third Parties but in the mutual interest of Parties in this Agreement.
  
- (c) Save as permitted by sub-clause (a), (b) and (c), no party shall assign, transfer, sub contract or otherwise dispose of any interest in this Agreement.

### 13.7. *Entire agreement*

Except where expressly provided otherwise in this Agreement, this Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject of this Agreement.

### 13.8. Notices

- (a) All notices under this Agreement shall be in writing and all certificates, notices or written instructions to be given under the terms of this Agreement shall be served by sending the same by first class post, email or by hand, leaving the same at:

#### **For The Concessionaire**

#### **For IIB DEVELOPMENT**

**Carolina Mateos  
1050 CONNECTICUT AVE NW,  
5TH FLOOR  
WASHINGTON, DC 20036  
Office: 571-207-0211  
info@iibdevelopmentgroup.com  
www.iibdevelopmentgroup.com**

- (b) Any party to this Agreement may change its nominated address or email address by prior notice to the other parties.
- (c) Notices given by post shall be effective upon the earlier of (i) actual receipt, and (ii) five (5) Business Days after mailing. Notices delivered by hand shall be effective upon delivery. Notices given by email shall be deemed to have been received (unless there is an error message returned to that email):
- (i) within two (2) hours after sending, if sent on a Business Day between the hours of 9am and 4pm; or
  - (ii) by 11am on the next following Business Day, if sent after 4pm, on a Business Day but before 9am on that next following Business Day.

### 13.9 Third Party Rights

The Parties agreed that this Agreement is not intended to, and does not, give to any person who is not a party to this Agreement any rights to enforce any provisions contained in this Agreement.

### 13.10 Waiver – no waiver unless in writing

Any relaxation, forbearance, indulgence or delay (together **indulgence**) of any party in exercising any right shall not unless made in writing, be construed as a waiver of the right and shall not affect the ability of that party subsequently to exercise that right or to pursue any remedy, nor

shall any indulgence constitute a waiver of any other right (whether against that party or any other person).

### 13.11 Severability

If any provision of this Agreement shall be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability or legality of the remaining provisions of this Agreement.

### 13.12 .Amendments

This Agreement may not be varied except by an agreement in writing executed as a deed by duly authorised representatives of the parties.

**Executed as a deed** by the parties or their duly authorised representatives on the date of this Agreement.

Executed,sealed and delivered as a **DEED**, For and on behalf of  
**AFUM QUALITY LIMITED/CONCESSIONAIRE)**  
acting by its duly authorised signatories:)

MR. ISAAC AFUM  
CHIEF EXECUTIVE OFFICER

\_\_\_\_\_

Executed,sealed and delivered as a DEED, For and on behalf of  
**IIB DEVELOPMENT GROUP,**

acting by its duly authorised signatories:)

BASHA BANCZYK

Vice President

\_\_\_\_\_

\

## Schedule 1 Definitions and Interpretation

### 1 Definitions

1.1 In this Agreement, unless the context otherwise requires:

**Alternate** means an alternate director appointed by a Material Shareholder under clause 5.1(d) (*Composition of the Boards and the right to appoint Directors*);

**Annual Budget** means the annual budget forming part of the Business Plan;

**Appointing Shareholder** has the meaning given in clause 5.3(a) (*Removal of/ change to nominated Directors*);

**Articles** means the Concessionaire Articles or the SPV Articles as the context requires;

**Associate** means in relation to any company:

- (a) any company of which such company is a subsidiary;
- (b) any subsidiary of such company; or
- (c) any other subsidiary of such company's holding company

**Auditors** means the auditors for the time being of the Company;

**Authority Project Agreement** means [*add relevant definition of the project agreement*];

**Boards** means the Concessionaire Board and the SPV Board and **Board** means either of them;

**Chairman** means such independent non-executive Director or other Director as may be appointed from time to time pursuant to clause 5.4 (*Chairman of the Board*);

**Claim** has the meaning given in clause 6.5(c) (*Step-aside provisions*);

**Commercially Sensitive Information** means any information detailed in Part C of Schedule 7 (*Transparency Information and Commercially Sensitive Information*);

**Confidential Information** has the meaning given in sub-clause 13.1(e) (v) (*Confidentiality and Freedom of Information*);

**Connected Party** means, in relation to any Shareholder, any Associate, employee, director or authorised representative of that Shareholder;

**Consents** means all permissions, consents, approvals, planning permissions, certificates, permits, licences, statutory agreements and authorisations required by law, and all necessary consents and agreements from any third parties needed to carry out the Business in accordance with this Agreement;

**Data Sheet** means the document in the Agreed Form comprising Annexure 1 containing details about the SPV including, inter alia,

subscriptions by the parties for Shares and details of any Shareholder Debt advanced to the Company, directors details and other administrative matters;

**Deed of Adherence** means a deed in substantially the same form as the draft set out at Schedule 4 (*Deed of Adherence*);

**Deemed Transfer Notice** has the meaning given in the Concessionaire Articles;

**Default Shares** has the meaning given in clause 9.2 (*Events of Default and deemed transfers*);

**Defaulting Shareholder** has the meaning given in clause 9.2 (*Events of Default and deemed transfers*);

**Defaulting Shareholder Debt** has the meaning given in clause 9.3(a) (*Shareholder Debt*);

**Directors** means, as the context may require, the Concessionaire Directors and/or the SPV Directors as nominated by the relevant parties from time to time and **Director** shall mean any of them;

**Dispute** has the meaning given in clause 11.1 (*Disputes*);

**Event of Default** means

- (a) a petition being presented or a proceeding commenced (and such petition or proceeding not being discharged or dismissed) or an order being made or an effective resolution passed for the winding-up, insolvency, administration, re-organisation, re-construction, dissolution or bankruptcy of a Shareholder or for the appointment of a liquidator, receiver, administrative receiver, administrator, trustee or similar officer of a Shareholder or of all or any part of its business or assets PROVIDED THAT this paragraph shall not apply to any bona fide re-organisation or re-construction of a Shareholder whilst solvent (the structure of which has been previously approved by the other Shareholders in writing) in which a new company assumes (and is capable of assuming) all the obligations of the Shareholder;
- (b) a Shareholder stopping or suspending payments to its creditors generally or being unable to pay its debts as they fall due or seeking to enter into any composition or other arrangement with its creditors or being declared bankrupt or insolvent;
- (c) a creditor taking possession of all or any part of the business or assets of a Shareholder or any execution or other legal process being enforced against the business or any substantial asset of the Shareholder and not being discharged;



- (d) anything analogous or having an effect substantially similar to any of the events described in paragraphs (a) to (c);
- (e) a Shareholder changing the nature or scope of its business such that it becomes an Unsuitable Third Party; or
- (f) a Shareholder being in material breach of any of the warranties given by it in clause 10.1 to clause 10.3 (*Warranties*) of its obligations under clause 4.1 (*Initial subscriptions of Shares and Shareholder Debt*) within [20] Business Days of the due date];
- (g) a Shareholder attempting to sell, transfer, charge or otherwise dispose of any of its Shares or Shareholder Debt or any interest in Shares or Shareholder Debt otherwise than in accordance with this Agreement (which in all cases shall be deemed not to be capable of remedy) or any secured party taking any steps to enforce any charge created over any Shares held by the Shareholder in the Company; or
- (h) the circumstances where an Event of Default occurs as set out in clause 10.7(c); or
- (i) a Shareholder failing to comply with its obligations under clause 8.4(ii) (*Provision of information to Shareholders and designated third parties*) and failing to remedy the same within thirty (30) days of receipt of notice to do so from another Shareholder or breaching that obligation three (3) times within a period of twenty four (24) months; or
- (j) a Shareholder committing any material offence under any anti-bribery and corruption legislation in the USA from time to time or at common law in respect of fraudulent acts and provided always that if the offence is an offence under Section 7(1) of the Bribery Act 2010 no event of default shall arise unless Concessionaire considers, acting reasonably, the offence to be material.

**Expiry Date** has the meaning given in the Project Agreement;

**Financial Default** means the occurrence of an event of default under the Principal Funding Agreement;

**Financial Model** has the meaning given to it in the Principal Funding Agreement;

**Founder Shareholder** means a Shareholder who entered into this Agreement on the date on which it was signed;

**Funding Agreements** means Funding Agreement entered between the Parties hereto and/or with Senior Lender *defined by reference to relevant PF2 funding documents relating to the SPV*;

**Concessionaire Group** means:

- (a) Concessionaire, Afum Quality Limited.

**Concessionaire Articles** means the articles of association of the Company in the format set out in Schedule 6 (*The Articles of Association of the Company*) as amended from time to time;

**Concessionaire Board** means the board of Directors from time to time of the Company as constituted in accordance with this Agreement and the Concessionaire Articles;

**Concessionaire Business** means the business of Concessionaire as described in clause 3.1(a) (*The business of the Company and SPV and details of the Company and SPV*) and such other business as the Shareholders may from time to time agree should be carried on by Concessionaire;

**Concessionaire Director** means any director from time to time of Concessionaire including where applicable any Alternate;

**Instruction to Sell Notice** has the meaning given in clause 9.4 (*Appointment of the Sale Agent in certain circumstances*);

**Investment** has the meaning given in clause 9.4 (*Appointment of the Sale Agent in certain circumstances*);

**Loan Note Instrument** means the instrument creating unsecured loan notes dated on or about the date of this Agreement executed by SPV;

**Lock In Period** has the meaning given in clause 9.7(d) (*Lock In Periods*);

**Management Services Agreement** means the agreement in the Agreed Form to be entered into between the Company, SPV and [service provider] on or around the date of this Agreement relating to the provision of management services to the Company and SPV by the service provider;

**Market Value** has the meaning given in the Concessionaire Articles;

**Material Shareholder** has the meaning given in clause 5.1(b) (*Composition of the Boards and the right to appoint Directors*);

**Offer to Allot** has the meaning given in sub-clause 4.3 (*Offers to Allot*);

**Original Meeting** has the meaning given in sub-clause 6.3(b) (*Manner of giving Shareholder Approval*);

**Other Directors** has the meaning given in sub-clause 6.3(b) (*Manner of giving Shareholder Approval*);

**Outgoing Director** has the meaning given in sub-clause 5.3(a) (*Removal of/ change to nominated Directors*);

**Outgoing Shareholder** has the meaning given in sub-clause 5.3(b)

*(Removal of/ change to nominated Directors);*

**Principal Funding Agreement** means description of funding agreement instrument executed between the Parties hereto or *description of senior facility documents* ;

**Project** has the meaning given in clause 3.1(b) *(The business of the Company and SPV and details of the Company and SPV);*

**Project Agreements** means *description of relevant PF agreement and nature and extent of works and services] and [list other related project agreements – subcontracts etc];*

**Project Default** means the occurrence of an event of default under a Project Agreement;

**Project Documents** means this Agreement, the Funding Agreements, any Management Services Agreement and the Project Agreements;

**Provisional Transfer Notice** has the meaning given in clause 10.6;

**Public Sector Entity** means an entity which is classified, as at the relevant time, as being a public sector body or institution by the National Accounts Classification Committee;

**Recipient** has the meaning given in sub-clause 13.1(b) *(Confidentiality and Freedom of Information);*

**Relevant Shareholder** has the meaning given in clause 5.5(g);

**Relevant Tax Authority** means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Shareholder is established;

**Remedy Period** has the meaning given in clause 9.2 *(Events of Default and deemed transfers);*

**Requests for Information** shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant;

**Reserved Matters** means those matters listed in Schedule 7 *(Reserved Matters)* and ticked in the second column ("Shareholder"), which shall not be carried out without prior written approval in accordance with clause 6.2(a) *(Reserved Matters);*

**Reserved Matter Board Approval** means those matters listed in Schedule 7 *(Reserved Matters)* and ticked in the third column ("Board"), which shall not be carried out without prior written approval in accordance with clause 6.2(b) *(Reserved Matters);*

**Second Consideration Period** has the meaning given in clause 11.1 *(Disputes);*

**Shares** means the Shares referred to in Schedule 2 *(Details of the*

*Company and the SPV) together with any further shares issued from time to time pursuant to clause 4 (Funding of the Company and SPV and financial matters);*

**Shareholder Debt** means monies advanced or otherwise made available to the SPV by way of subordinated debt or loan stock subscription by a Shareholder or an Associate of a Shareholder (or, in relation to the SPV, by the Company);

**Shareholders** means the parties to this Agreement (except for the Company and SPV) and such other persons who may become shareholders in the Company from time to time as permitted by this Agreement and the Articles and **Shareholder** means any one of them;

**Shareholder's Group** means:

- (a) in relation to a Shareholder which is a company, the Shareholder and each of its Associates; and
- (b) in the case of Concessionaire each Associate of Concessionaire and each member of Concessionaire Group;

**SPV Articles** means the articles of association of SPV;

**SPV Board** means the board of Directors for the time being of SPV as constituted in accordance with this Agreement and the SPV Articles;

**SPV Business** means the business of SPV as described in clause 3.1(b) *(The business of the Company and SPV and details of the Company and SPV)* and such other business as the Shareholders may from time to time agree should be carried on by SPV;

**SPV Director** means any director for the time being of SPV including where applicable any Alternate;

**SPV Lock In Period** means the period during which shareholders in the SPV are not entitled to transfer shares in the SPV under clause [ ] *change in ownership clause in the PF2 Project Agreement*

**Suitable Third Party** means any person who is not an Unsuitable Third Party;

**Transfer Notice** has the meaning given in the Articles;

**Transparency Information** means the information described in Parts A and B of Schedule 7 *(Transparency Information and Commercially Sensitive Information)* and, for the avoidance of doubt, in no circumstances shall any Transparency Information constitute Commercially Sensitive Information whether or not listed in Part C of Schedule 7;

- (a) any person who has a material interest in the production, distribution or sale of tobacco products, alcoholic drinks and/or pornography;

- (b) any person whose activities are, in the reasonable opinion of Concessionaire, incompatible with the provision of [e.g. *educational services*];
- (c) any person whose activities, in the reasonable opinion of Concessionaire, pose or could pose a threat to national security.

## 1.2 Interpretation

This Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings and marginal notes and references to them in this Agreement shall be deemed not to be part of this Agreement and shall not be taken into consideration in the interpretation of this Agreement.
- (b) Except where the context expressly requires otherwise, references to clauses, sub- clauses, paragraphs, sub-paragraphs, parts and Schedules are references to clauses, sub-clauses, paragraphs, sub-paragraphs and parts of and Schedules to this Agreement and references to Sections, Appendices and Attachments (if any) are references to Sections, Appendices and Attachments to or contained in this Agreement.
- (c) The Schedules to this Agreement are an integral part of this Agreement and a reference to this Agreement includes a reference to the Schedules. In the event of any inconsistency between the provisions of the body of this Agreement and the Schedules, the body of this Agreement shall take precedence.
- (d) Words importing persons shall, where the context so requires or admits, include individuals, firms, partnerships, trusts, corporations, governments, governmental bodies, authorities, agencies, unincorporated bodies of persons or associations and any organisations having legal capacity.
- (e) Where the context so requires words importing the singular only also include the plural and vice versa and words importing the masculine shall be construed as including the feminine or the neuter or vice versa.
- (f) The language of this Agreement is English. All correspondence, notices, and information shall be in English.
- (g) References to any law are to be construed as references to that law as from time to time amended or to any law from time to time replacing, extending, consolidating or amending the same.
- (h) References to a public organisation shall be deemed to include a reference to any successor to such public organisation or any

organisation or entity which has taken over either or both the functions and responsibilities of such public organisation.

- (i) The words in this Agreement shall bear their natural meaning. The parties have had the opportunity to take legal advice on this Agreement and no term shall, therefore, be construed contra proferentem.
- (j) Reference to **parties** means the parties to this Agreement and references to a **party** mean one of the parties to this Agreement.
- (k) In construing this Agreement, the rule known as the ejusdem generis rule shall not apply nor shall any similar rule or approach to the construction of this Agreement and accordingly general words introduced or followed by the word other or including or in particular shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- (l) Reference to a document being in **Agreed Form** is a reference to the form of the relevant document agreed between the parties and for the purpose of identification initialled by each of them or on their behalf.
- (m) Where this Agreement states that an obligation shall be performed **no later than** or **within** or **by** a stipulated date or event which is a prescribed number of Business Days after a stipulated date or event the latest time for performance shall be noon on the last Business Day for performance of the obligations concerned.
- (n) If there is a conflict between the terms of this Agreement and the Articles, the terms of this Agreement shall prevail and, if there is such a conflict, the Shareholders shall procure at the request of any of the Shareholders any modification reasonably required to be made to the Articles as shall be necessary to remedy such conflict.
- (o) A person, being a company, shall be **controlled** by another person if that other person owns a majority of the voting equity of that person or controls the majority of the votes at meetings of the board of directors of that person.

## Schedule 2

### Details of the SPV

#### The SPV

Name:	Ashanti Port Service Limited	
Registered Office:	No. 16, Otinshie Street, East Legon	
Registered Number:	CS100042020	
Shareholders:	<b>Shareholder</b>	<b>Shares</b>
	Afum Quality Company	39%
	IIB Development Group, USA	70%
Directors:	1.	
Secretary:	□	

**Schedule 3: Agreed Form Business Plan to be attached**

**(Budgeting, Business Planning and financial matters)**



## Schedule 4: Deed of Adherence

**THIS DEED OF ADHERENCE** is made on **March 15,2021 (Covenantor)** in favour of the persons whose names are set out in the Schedule to this Deed and is supplemental to the shareholders' agreement dated **March 15,2021** made by Concessionaire, IIB-DG and SPV (**Shareholders' Agreement**).

Terms defined in the Shareholders' Agreement shall bear the same meanings herein.

### **It is agreed**

- 1 In consideration of the Covenantor being accepted as a party for the purposes of the Shareholders' Agreement by the parties thereto, as from [*insert date*] (**Adherence Date**) the Covenantor hereby confirms that it shall be a party to the Shareholders' Agreement as a Shareholder and agrees to be bound by all of the relevant provisions of the Shareholders' Agreement from the Adherence Date.
- 2 The Covenantor hereby acknowledges that it has heretofore received a copy of, and has read and understands the Shareholders' Agreement, the Concession Agreement and other Project Agreements, and covenants, agrees and confirms that it shall be bound by all provisions of the Shareholders' Agreement as if it was an original party thereto, including with respect to the rights and obligations of the transferor Party contained therein, and the Shareholders' Agreement shall have full force and effect on it, and shall be read and construed to be binding on it.
- 3 The Covenantor warrants and represents to each of the persons whose names are set out in the Schedule to this Deed, that the Covenantor is a Suitable Third Party.
- 4 The Covenantor makes all those warranties and representations, which are listed in full at clause 10.2 and clause 10.4 of the Shareholders' Agreement, to each of the persons whose names are set out in the Schedule to this Deed.
- 5 This Deed shall be governed by and construed in accordance with the laws of Ghana. The terms and conditions of the Shareholders' ' Agreement in relation to the provisions regarding arbitration and other terms and conditions shall be deemed to have been incorporated in this Deed.

**In witness whereof** this Deed has been executed by the Covenantor and is intended to be and is hereby delivered on the date first above written

**Name, Title and Signature**

**Name, Title and Signature**

**Schedule 5: Details of the Concessionaire /Or Initial Company**

**The Concessionaire Company**

Name:	Afum Quality Limited	
Registered Office:	Ground Floor Flat 1, Provincial Court, UPSA, Accra	
Registered Number:	CS089572016	
Shareholders:	<b>Shareholder</b>	<b>Shares</b>
Initial Directors:	<b>Material Shareholder Appointor</b>	<b>Initial Director appointee</b>
Secretary:		

### Schedule 6: Reserved Matter

Reference	Shareholder	Board	Reserved Matter
<b>B</b>			<b>Shares/ Shareholder Debt and constitutional</b>
B1	☐☐		Any amendment to the Memorandum or Articles of the SPV.
B2	☐☐		Any issue of (and the terms of any issue of) new Shares and/or additional Shareholder Debt or any variation of any rights attaching to any Shares or of the terms of any Loan Note Instrument.
B3	☐☐		The re-purchase or cancellation by the SPV of any Shares, or the reduction of the amount (if any) standing to the credit of its share premium account or capital redemption reserve (if any) or any other reserve of the SPV.
B4	☐☐		The re-purchase, repayment, redemption or cancellation of any Shareholder Debt (otherwise than in accordance with the terms of the relevant Loan Note Instrument).
B5		☐☐	The capitalisation of profits or reserves of the SPV.
B6	☐☐		A change of name of the SPV.
B7	☐☐		A change in the status of the SPV from a private limited company to a public limited company or from a company limited by shares to any other form of legal entity.
B8	☐☐		A listing of the SPV's share capital.
B9	☐☐		Any transfer or disposal by the SPV of shares in the SPV which is not required under the Funding Agreements.
B10	☐☐		A transfer by the Concessionaire or by the IIB-DG of any of its shares to a Public Sector Entity.
B11	☐☐		A sale, lease, transfer or other disposition of the whole or a material part of a Shareholder's undertaking in the SPV (where 'material' means having a value of more than \$500,000.
B12	☐☐		Any material acquisition or disposal of any shares or assets by the SPV (where 'material' means having a value of more than \$500,000.
<b>C</b>			<b>Management, control, directors and employees</b>
C1		☐☐	The devolution or transfer of management control of the SPV to persons outside the Board and, if approved, the terms of such devolution or transfer.
C2		☐☐	The appointment or removal of any Chairman of the SPV and/or of the [Contractor Representative] under any [PF2 Project Agreement] (as defined therein).
C3		☐☐	The making of loans or advances in excess of \$100,000 by the SPV to any Connected Party other than in the ordinary course of business.
C4		☐☐	(1) The engagement by the SPV of (and terms of engagement of) any individual person as a consultant or employee whose annual remuneration (including benefits) exceeds \$120,000.

<b>Reference</b>	<b>Shareholder</b>	<b>Board</b>	<b>Reserved Matter</b>
			(2) Any change to the terms of employment/ engagement and/or remuneration of a person or firm to whom (1) applies.
C5		☐☐	The engagement by the SPV of (and terms of engagement of) its auditors and any professional advisers) and any change to those terms of engagement.
C6	☐☐		Moving the central management and control of the SPV or the Company's tax residence outside the Republic of Ghana.
C7		☐☐	The approval of (and any change to) SPV policies which affect the potential statutory liability of directors (e.g. anti-bribery and corruption, health and safety, non-discrimination).
C8		☐☐	Any payment of fees or remuneration to directors to the SPV save as expressly provided under the Project Agreements and Financing Agreements.
<b>D</b>			<b>Management services and contracts with related parties</b>
D1		☐☐	Except for the Management Services Agreement, the entry into by the SPV of any contract with a Shareholder or an Associate of a Shareholder (and/or any material amendment or variation to such a contract).
D2		☐☐	Any material change to, or extension or renewal of, the Management Services Agreement
<b>E</b>			<b>Insolvency and related proceedings</b>
E1	☐☐		The commencement of any winding up or dissolution or of the appointment of any liquidator, administrator or administrative receiver of the SPV or any of its assets unless it shall have become insolvent (and no party shall present or cause to be presented or allow any act which would result in the winding up or the presentation of any petition for the winding up of the SPV).
<b>F</b>			<b>General</b>
F1		☐☐	Putting in place (and the terms of/ any changes to) appropriate insurances for the SPV (including D&O cover).

**Schedule 7: Reserved Matter (D2) – Management Services Contract.** To be included

<b>Reference</b>	<b>Shareholder</b>	<b>Board</b>	<b>Reserved Matter</b>
<b>G</b>			<b>SPV related Reserved Matters</b>

G1	<i>Approval level as per the relevant</i>	In relation to SPV each of the above Reserved Matters in this table shall also be a Reserved Matter in relation to SPV (as if references to the Company were references to SPV and to the Concessionaire Business were references to the SPV Business).
----	---	---

**DATA SHEET**

<b>PROFIT SHARING</b>	