
SALE OF BUSINESS AND ASSETS AGREEMENT

between

SAKUNDA HOLDINGS (PRIVATE) LIMITED

SAKUNDA TRADING (PRIVATE) LIMITED

KUDAKWASHE REGIMOND TAGWIREI

and

TRAFIGURA PTE LIMITED

BG Bowman Gilfillan

Member of Bowman Gilfillan Africa Group

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CONTENTS

1.	DEFINITIONS AND INTERPRETATION	1
2.	PROVISIONS WHICH TAKE IMMEDIATE EFFECT	2
3.	SUSPENSIVE CONDITIONS	2
4.	SECTION 47 NOTICES	5
5.	SALE.....	6
6.	PURCHASE PRICE OF THE BUSINESS AND THE ASSETS	6
7.	PAYMENT.....	6
8.	VAT	6
9.	STOCKTAKING.....	7
10.	CLOSING AND DELIVERY.....	8
11.	ASSIGNMENT OF CONTRACTS	9
12.	THIRD PARTY CONSENT NOT OBTAINED AT CLOSING	10
13.	LIABILITIES.....	11
14.	EMPLOYEES.....	11
15.	BOOKS AND RECORDS.....	13
16.	REPRESENTATIONS AND WARRANTIES	13
17.	RESTRICTIVE COVENANT.....	13
18.	PURCHASER'S RIGHT OF ACCESS	15
19.	CONDUCT OF BUSINESS	15
20.	INDEMNIFICATION	18
21.	PERSONAL GUARANTEE.....	23
22.	NOMINATION BY TRAFIGURA.....	24
23.	TERMINATION	25
24.	ANNOUNCEMENTS AND CONFIDENTIALITY	26
25.	DISPUTE RESOLUTION	27
26.	GENERAL	29
27.	ADDRESSES FOR LEGAL PROCESS AND NOTICES	32
28.	COSTS	33
	SCHEDULE 1 DEFINITIONS AND INTERPRETATION	35
	SCHEDULE 2 PURCHASE PRICE AND PAYMENT	46
	SCHEDULE 3 SALE ASSETS	51
	SCHEDULE 4 REPRESENTATIONS AND WARRANTIES	52
	SCHEDULE 5 DISCLOSURE SCHEDULE.....	61
	SCHEDULE 6 EMPLOYEES	61
	ANNEXURE A SHAREHOLDERS' AGREEMENT	61

PARTIES:

This Agreement is made between:

- (1) **SAKUNDA HOLDINGS (PRIVATE) LIMITED**, a company registered with limited liability, in accordance with the laws of Zimbabwe under registration number 19561/2005 (**Sakunda Holdings**);
- (2) **SAKUNDA TRADING (PRIVATE) LIMITED**, a company registered with limited liability, in accordance with the laws of Zimbabwe under registration number 5267/2011 (the **Seller**);
- (3) **KUDAKWASHE REGIMOND TAGWIREI**, an adult male resident of Zimbabwe with Zimbabwean National Identification number 29-135894Z66(**Tagwirei**); and
- (4) **TRAFIGURA PTE LIMITED**, a company registered in accordance with the laws of Singapore under registration number 199601595D (**Trafigura**).

WHEREAS:

- A. As at the Signature Date, Sakunda Trading, among other things, carries on the business of the importation of Petroleum Products into Zimbabwe and the sale of bulk of such Petroleum Products to registered oil marketing companies in Zimbabwe (the **Business**), and owns the Trading Assets which are integral to the conduct of the Business.
- B. It is now proposed that Trafigura and Sakunda Holdings will incorporate and register a company to be incorporated in Zimbabwe (the **Purchaser**), and that the Purchaser will purchase the Business and the Trading Assets from the Seller, and the Seller will sell the Business and the Trading Assets to the Purchaser, on the terms and subject to the conditions set out in this Agreement.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions.

Unless the context requires otherwise, the terms defined and set out in paragraph 1.1 of Schedule 1 shall have their respective meanings as set out in such Schedule for the purposes of this Agreement and the preamble above.

1.2 **Interpretation.**

In addition to the definitions set out in paragraph 1.1 of Schedule 1, unless the context requires otherwise, the rules and principles of interpretation set out in paragraph 1.2 of Schedule 1 shall apply for the purposes of this Agreement.

2. **PROVISIONS WHICH TAKE IMMEDIATE EFFECT**

The provisions of this Clause 2 and Clauses 1, 3, 4, 9, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28 of the Agreement (together with Schedule 1), shall take effect and become operative immediately upon the Signature Date (the **Operative Provisions**).

3. **SUSPENSIVE CONDITIONS**

3.1 All of the provisions of this Agreement, except for the Operative Provisions (such provisions the **Suspended Provisions**), shall take effect and become operative only upon the fulfilment or waiver of the following Conditions by or on the Long-stop Date (unless otherwise agreed in writing by the Parties):

3.1.1 that the Purchaser has been incorporated and registered as a private company under the laws of Zimbabwe in accordance with the requirements of the Companies Act, such that Trafigura (or any other member of the Trafigura Group) and Sakunda Holdings shall hold shares constituting 49% (forty nine percent) and 51% (fifty one percent) respectively of the total issued share capital of the Purchaser upon incorporation and registration;

3.1.2 that approval in writing (in a form acceptable to Trafigura, acting reasonably) for the implementation of this Agreement is duly obtained in accordance with the requirements of the Competition Act from the Zimbabwean Competition and Tariff Commission;

3.1.3 that any exchange control approval (in a form acceptable to Trafigura, acting reasonably) required from the Zimbabwean Exchange Control Department of the Reserve Bank of Zimbabwe for the implementation of this Agreement, in terms of the Zimbabwean Exchange Control Regulations, is duly obtained in writing in accordance with the requirements of such regulations and accompanying directives and rulings;

3.1.4 that any indigenisation related approval (in a form acceptable to Trafigura, acting reasonably) which might be required from the Minister of Youth, Indigenisation and Economic Empowerment in terms of the Indigenisation

Act is duly obtained in accordance with the requirements of the Indigenisation Act;

- 3.1.5 that the shareholders of the Seller in general meeting approve the disposal of the Business and the Trading Assets to the Purchaser in terms of section 183(1)(b) of the Companies Act;
- 3.1.6 that, following the incorporation and registration of the Purchaser in terms of Clause 3.1.1, all consents, licences, permits and other authorities required for the conduct of the Business are transferred to the Purchaser in terms of, and in accordance with all of the requirements of, all Applicable Laws;
- 3.1.7 that, following the incorporation and registration of the Purchaser in terms of Clause 3.1.1, the Seller and Sakunda Holdings obtains written approval from Old Mutual Investment Group Property Investments Zimbabwe (Private) Limited for the sub-letting of the leased premises from which to operate the Business following Closing and executes a sub-lease agreement (in a form and on terms and conditions acceptable to Trafigura, acting reasonably) relating to such leased premises from which to operate the Business following Closing;
- 3.1.8 that Trafigura executes a restraint of trade in favour of the Purchaser in which it gives the same, or substantially the same, undertakings as those given by the Warrantors in Clause 17.1.1 in relation to Zimbabwe only. For the avoidance of doubt such restraint of trade to be executed by Trafigura shall not in any way restrict or prevent Trafigura, or any of its Affiliates, directly or indirectly, from conducting, or having an economic, equity or any other interest in, any business outside of Zimbabwe (including any business which trades in any field of activity which is similar to the fields of activity carried on by any member of the Group or the Purchaser) and, without limitation, Trafigura and its Affiliates shall be entitled at all times, directly or indirectly, to import Petroleum Products into Zimbabwe provided that such Petroleum Products are, directly or indirectly, sold or supplied outside of Zimbabwe;
- 3.1.9 that, following the incorporation and registration of the Purchaser in terms of Clause 3.1.1, the parties to the Shareholders' Agreement enter into the Shareholders' Agreement;

- 3.1.10 that, following the incorporation and registration of the Purchaser in terms of Clause 3.1.1, the Purchaser will enter into written trade finance facilities with third party lending institution in the manner set out in the Shareholders' Agreement;
- 3.1.11 that, following the incorporation and registration of the Purchaser in terms of Clause 3.1.1, the Purchaser and the relevant counter-party enter into the following agreements (in a form and on terms and conditions acceptable to each of Trafigura and Sakunda Holdings, acting reasonably):
- 3.1.11.1 a sale of stock agreement to be entered into by the Seller and the Purchaser, pursuant to which the Seller agrees to sell all of the Stock to the Purchaser immediately following Closing;
- 3.1.11.2 a sale of stock agreement to be entered into by Trafigura and the Purchaser, pursuant to which Trafigura agrees to sell all of the Trafigura Stock to the Purchaser immediately following Closing;
- 3.1.11.3 an exclusive supply agreement to be entered into by Trafigura and the Purchaser, pursuant to which the Purchaser will, with effect from Closing, agree to purchase at competitive market-related terms all Petroleum Products to be supplied by the Purchaser in connection with the Business exclusively from Trafigura and/or its Affiliates;
- 3.1.12 that, following the incorporation and registration of the Purchaser in terms of Clause 3.1.1, the parties to the Cession and Pledge in Security enter into the Cession and Pledge in Security;
- 3.1.13 that, following the incorporation and registration of the Purchaser in terms of Clause 3.1.1, the Seller obtains written approval from each of Primero Energy, Trek Petroleum and Vemeda (as applicable) for the cession, assignment and delegation of the Seller's rights and obligations under the respective Key Contract to the Purchaser;
- 3.1.14 that, following the incorporation and registration of the Purchaser in terms of Clause 3.1.1, the parties to the Exclusive Use Agreement enter into the Exclusive Use Agreement; and
- 3.1.15 that each of the Warrantors provides Trafigura with all of the information and supporting documentation, required by any Applicable Laws and

internal company regulations, relating to the identity such that Trafigura satisfactorily completes all of its internal 'Know Your Client' processes in relation to each such Warrantor.

- 3.2 Each of the Conditions included in Clauses 3.1.5 to 3.1.15 (both inclusive) are for the benefit of Trafigura and may accordingly be waived, in whole or in part, by (but only by) Trafigura by written notice to the other Parties given on or before the date specified for its fulfilment or waiver of such Condition.
- 3.3 Each of the Parties will co-operate in good faith with the others and do everything reasonably required of it, including the furnishing of all such information and the execution of such additional forms or documents as may be so required, for the purposes of procuring the fulfilment of each of the Conditions set out in Clause 3.1 as soon as reasonably practicable following the Signature Date. Any filing fees payable to any governmental or regulatory authorities in connection with obtaining the approvals referred to in Clauses 3.1.1 to 3.1.4 (both inclusive) shall be paid by the Party liable under the Applicable Law to make such payment.
- 3.4 On the Effective Date the Suspended Provisions shall take effect and become operative.
- 3.5 If any one or more of the Conditions are not fulfilled or not waived in writing (as applicable) prior to the date and time stipulated for fulfilment or waiver thereof, then the Suspended Provisions shall not take effect and this Agreement shall terminate automatically without any further action required by any of the Parties. In the event that this Agreement is validly terminated in accordance with this Clause 3.5, each of the Parties shall be relieved of its respective duties and obligations arising in terms of this Agreement from and after the date of such termination, and such termination shall be without liability to Trafigura, the Purchaser or the Seller; provided that no such termination shall relieve any Party from liability (including any liability for damages) for any breach of this Agreement or other liability arising prior to termination hereof. Notwithstanding anything to the contrary in this Clause 3.5, the provisions and/or obligations of the Parties set out in this Clause 3 and Clauses 1, 16, 20, 21, 22, 23, 24, 25, 26, 27 and 28 of this Agreement (together with Schedule 1) shall survive any such termination and shall be enforceable in terms of this Agreement.

4. SECTION 47 NOTICES

- 4.1 The Parties agree that the Transaction will not be advertised under section 47 of the

Insolvency Act. Each of the Warrantors hereby, jointly and severally:

- 4.1.1 undertakes at its cost to take all action as may be required to ensure that this Agreement shall not in any circumstances become void or voidable; and
- 4.1.2 indemnifies Trafigura and the Purchaser against any and all Losses which Trafigura and/or the Purchaser may suffer as a result of the Transaction not being advertised under section 47 of the Insolvency Act and/or as a result of this Agreement otherwise becoming void or voidable.

5. SALE

- 5.1 Upon the terms and subject to the conditions contained in this Agreement, with effect from Closing, the Seller agrees to sell to the Purchaser, and Trafigura and Sakunda Holdings agree to procure that the Purchaser will purchase from the Seller, the Business as a single going concern and the Trading Assets, in each case with full title guarantee and free from, and clear of, any and all Encumbrances.
- 5.2 The risk in, and benefit and ownership of, the Business, together with the Trading Assets, shall pass to the Purchaser following Closing on the Closing Date.
- 5.3 For the avoidance of doubt, and without limiting anything in this Agreement, the Parties hereby agree and acknowledge that neither Trafigura nor the Purchaser are purchasing, or will otherwise (before or after Closing) be responsible for or have any liability or obligations in relation to, any Receivables, Continuing Contracts (other than Material Agreements which are being purchased by, and transferred to, the Purchaser in accordance with Clause 11) or Immoveable Property.

6. PURCHASE PRICE OF THE BUSINESS AND THE ASSETS

The purchase price payable by the Purchaser to the Seller for the Business and all of the Trading Assets shall be dealt with in the manner set out in Schedule 2.

7. PAYMENT

At Closing, each of the Purchaser and Trafigura shall perform the actions respectively listed in relation to that Party in Schedule 2.

8. VAT

- 8.1 The Parties agree for the purposes of the VAT Act that:

- 8.1.1 the Business, including all of the Trading Assets, is sold as a going concern;
- 8.1.2 all the assets necessary to carry on the Business are being sold by the Seller to the Purchaser;
- 8.1.3 the Business is, and on Closing will be, an income-earning activity; and
- 8.1.4 the purchase price for the Business referred to in Clause 6 is inclusive of value added tax at a rate of 0% (zero percent).
- 8.2 The Parties record that the sale of the Business falls within the ambit of the VAT Act and value added tax is payable at the rate of 0% (zero percent).
- 8.3 Should the Commissioner of ZIMRA rule that value added tax (or any similar Tax) is payable in respect of the sale of the Business or the Trading Assets (or any part thereof) at a rate exceeding 0% (zero percent), the Purchaser shall pay such value added tax on the presentation of a valid Tax invoice when the Purchaser is required to make payment thereof under any Applicable Laws.
- 8.4 Each of the Parties warrants to the other that it will, on Closing, be registered as a vendor in terms of the VAT Act.

9. STOCKTAKING

- 9.1 On the day prior to the Closing Date the Seller, Trafigura and the Purchaser, so procured by Trafigura and Sakunda Holdings, shall carry out a stocktaking of the Stock and the Trafigura Stock to determine and value the Stock and the Trafigura Stock as at Closing for the purposes of the sale of stock agreements referred to in Clauses 3.1.11.1 and 3.1.11.2, and prepare a stocksheet reflecting the results of the stocktaking and sign such stocksheet.
- 9.2 For the purposes of that stocktaking the value of the Stock and the Trafigura Stock shall be determined and valued at the lower of (i) cost or (ii) net realisable value, in each case as determined in accordance with IFRS and on the basis of, and by applying, the accounting principles, policies, practices and methods of the Group consistent with previous years; provided that to the extent that any such accounting principle, policy, practice or method applied by the Seller in previous years is inconsistent with IFRS, IFRS shall prevail.
- 9.3 The Seller, Trafigura and the Purchaser shall each be entitled to have as many representatives as they may reasonably require being present throughout the

stocktaking.

9.4 If there exists any dispute between the Seller, Trafigura and the Purchaser in regard to the value of the Stock or the Trafigura Stock pursuant to the stocktaking, they shall forthwith refer that dispute to an independent firm of practising chartered accountants for determination in accordance with the following provisions:

9.4.1 the independent firm of practising chartered accountants shall be appointed by agreement between the Seller, Trafigura and the Purchaser or, failing agreement between them within 2 (two) Business Days of any such dispute being notified by any Party to the others, by the President for the time being of the Zimbabwean Institute of Chartered Accountants;

9.4.2 any chartered accountants appointed in terms of Clause 9.4.1 shall act as valuers and not as arbitrators and their decision shall, in the absence of manifest error, be final and binding on the Parties; and

9.4.3 the fees and charges of any such chartered accountants shall be shared equally between the Seller and the Purchaser unless the chartered accountants decide otherwise, which they shall have the power to do if the circumstances justify any different allocation, including an allocation under which one of the Parties alone will bear all the fees and charges.

10. CLOSING AND DELIVERY

10.1 Unless otherwise agreed by the Parties in writing, a Closing meeting shall be held at 10h00 on the Closing Date, subject to each of the Conditions remaining satisfied on such date. The Closing meeting shall take place at the Seller's offices, being at 17th Floor, Century Towers, 40 Samora Machel Avenue, Harare, Zimbabwe or at such other place and/or time as the Parties may agree in writing.

10.2 Against receipt at the Closing meeting of evidence of a wire transfer by the Purchaser to the bank account referred to in paragraph 1.4 of Schedule 2 of the Purchase Price, the Seller shall deliver:

10.2.1 written evidence (in a form acceptable to Trafigura, acting reasonably) that all Encumbrances held by any banks or other financial institutions over, or relating to, any of the Trading Assets have been irrevocably released and discharged such that all Trading Assets are free from, and clear of, any and all Encumbrances immediately prior to and at Closing;

- 10.2.2 the Business, together with all of the Trading Assets, to the Purchaser at the premises at which it then conducts its business (or at such other place as notified in writing by the Purchaser); and
- 10.2.3 written resolution passed by the shareholders of the Purchaser in general meeting approving and ratifying the Delegation of Authority.
- 10.3 The Seller shall take all such steps and do everything that is reasonably required of it to put the Purchaser in actual possession and operating control of the Business and all of the Trading Assets on the Closing Date.
- 10.4 The Seller hereby cedes, assigns and transfers to the Purchaser, with effect from the Closing Date, all of, and all of the rights in and to, the Trading Assets (including the Intellectual Property and any motor vehicles included in the Trading Assets), and if any of those rights are registered in any statutory register, it shall sign all such documents and do everything else which may be required by the Purchaser (i) to record or otherwise give effect to the cession, assignment and transfer of the Trading Assets or any of them and/or (ii) for the registration of such cession, assignment and transfer of the rights, including in any statutory register.
- 10.5 Notwithstanding anything to the contrary in this Agreement, all of the matters to be completed pursuant to Clause 10.2 and paragraph 1.2 of Schedule 2 shall be deemed to have been completed simultaneously, and that none of them shall be deemed to have been completed unless all of them have been completed.

11. ASSIGNMENT OF CONTRACTS

- 11.1 The Seller shall cede, delegate and assign to the Purchaser with effect from Closing all the Seller's rights and all their respective obligations under every Material Contract; and Trafigura and Sakunda Holdings shall procure that the Purchaser shall accept the cession, delegation and assignment of all those rights and obligations under each such Material Contract with effect from Closing.
- 11.2 The Seller shall, and Trafigura and Sakunda Holdings shall procure that the Purchaser shall, enter into all such agreements and sign all such documents and do all such things as may reasonably be required of them to give effect to the provisions of Clause 11.1.
- 11.3 The Seller indemnifies Trafigura and the Purchaser against all claims which may be made against, and all Losses which may be incurred by, Trafigura and/or the

Purchaser under or in respect of any Material Contract and/or Continuing Contract, but only if and to the extent that the claim or Loss is in respect of an obligation incurred by the Seller before Closing under the Material Contract or Continuing Contract in question.

12. THIRD PARTY CONSENT NOT OBTAINED AT CLOSING

- 12.1 If any Third Party Consent is required to transfer, cede, assign or delegate a Trading Asset, in whole or in part (including the Seller's rights under any Material Contract) to the Purchaser and such Third Party Consent has not been obtained on or before Closing, the Seller shall take all steps as may be required to obtain such consent as soon as possible following Closing and to effect any transfer, cession, assignment or delegation of that Trading Asset to the Purchaser.
- 12.2 In so far as any of the Trading Assets, in whole or in part (including the Seller's rights under any Material Contract) are not transferred, ceded, assigned or delegated to the Purchaser at Closing and until such time as they are formally transferred, ceded, assigned and/or delegated to the Purchaser:
- 12.2.1 the Seller shall be deemed to hold all such Trading Assets on trust for the Purchaser;
- 12.2.2 the Seller shall exercise all of their respective rights under, and in relation to, the Trading Asset for the benefit of the Purchaser and shall collect and pay to the Purchaser promptly all amounts due to be paid to the Seller under, or in respect of, such Trading Asset; and
- 12.2.3 without limiting anything in Clause 12.2.2, and to the extent permissible under Applicable Law or the terms of any relevant agreement: (i) the Seller shall use all reasonable endeavours to procure that the Purchaser shall be entitled to the benefit, use and enjoyment of those Trading Assets, to receive the income therefrom, and to have all rights and claims in relation to those Trading Assets; and (ii) the Purchaser shall perform all the obligations of the Seller in respect of such Trading Assets which arise after Closing.
- 12.3 If, in respect of any Trading Asset, a Third Party Consent is refused or not obtained within three months of Closing (or within such other period as may be agreed between the relevant Parties in writing), the relevant Parties shall each use all reasonable endeavours to achieve an alternative solution pursuant to which the Purchaser shall receive the full benefits of the relevant Trading Asset and shall

assume the associated obligations or achieve any other alternative solution as deemed appropriate by the Parties acting in good faith, provided that any alternative solution shall be permitted by law and shall not constitute any breach or default in relation to the relevant Trading Asset.

13. LIABILITIES

- 13.1 Against compliance by the Seller with its obligations in terms of Clause 14, Trafigura and Sakunda Holdings will procure that the Purchaser agrees to assume and discharge on due date all of the Employee-related Liabilities as at Closing. The value of the Employee-related Liabilities shall be the value of the aggregate leave pay, annual bonus payments and any other amounts accrued to the Transferring Employees as at the Closing Date, other than severance pay.
- 13.2 Notwithstanding anything to the contrary contained in this Agreement, none of Trafigura, the Purchaser, nor any other member of the Trafigura Group, shall assume, or shall be deemed to have assumed, any liability or Loss of any of the Warrantors or any of their respective Affiliates other than the liabilities referred to in Clause 13.1, and all liabilities of the Warrantors and their respective Affiliates other than the liabilities referred to in Clause 13.1 shall be excluded from this Agreement and retained by the Warrantors and their respective Affiliates.
- 13.3 Each of the Warrantors agrees to indemnify and hold Trafigura, the Purchaser, and each other member of the Trafigura Group harmless against all liabilities and Losses they are not obliged to assume and discharge in terms of Clause 13.1 and against any demand, claim, action or other Legal Proceedings made or instituted against Trafigura, the Purchaser, or any other member of the Trafigura Group in respect of any of them, and against all costs or other Losses incurred by Trafigura, the Purchaser, or any other member of the Trafigura Group or awarded against Trafigura, the Purchaser, or any other member of the Trafigura Group in respect of any such demand, claim, action or other Legal Proceedings.

14. EMPLOYEES

- 14.1 The Parties record that:
- 14.1.1 the Business will be transferred from the Seller to the Purchaser as a going concern and that the provisions of section 16 of the Labour Act are accordingly applicable; and

- 14.1.2 upon the transfer of the Business on Closing, the employment of all the Employees employed in the Business immediately before Closing (the **Transferring Employees**) will continue in force with the Purchaser.
- 14.2 Schedule 6 lists the names of all Employees who are employed in the Business as at the Signature Date and sets out the following amounts as at the Signature Date in respect of all such Employees who are employed in the Business and the principles applied in calculating those amounts:
- 14.2.1 the aggregate leave pay accrued but not paid as at the Signature Date;
- 14.2.2 the aggregate bonus payments accrued but not paid as at the Signature Date;
and
- 14.2.3 any other amounts accrued but not paid as at the Signature Date.
- 14.3 The Purchaser shall be liable to the Transferring Employees for the payment of all amounts referred to in Clause 14.2.
- 14.4 As soon as reasonably practicable after the Signature Date, the Parties shall jointly advise the employees of the Business of the transfer of their contracts of employment from the Seller to the Purchaser with effect from Closing, and the Seller shall inform them of the contents of Schedule 6 and Clause 14.3 in accordance with the provisions of any Applicable Laws, including but not limited to the Labour Act.
- 14.5 The Seller shall be liable for, and hereby indemnify and hold Trafigura and the Purchaser harmless against, any and all Losses which Trafigura or the Purchaser may suffer as a result of, or which may be attributable to any claim which any transferring employee and/or any trade union may have or institute against Trafigura or the Purchaser pursuant to, any cause of action which arose prior to Closing or to the Seller's failure to comply with the provisions of any Applicable Laws, including but not limited to the Labour Act.
- 14.6 The Seller undertakes to cooperate with the Purchaser and to do all such things and to sign and provide all such documents as may reasonably be required by Trafigura or the Purchaser to procure the transfer after Closing of all the employees employed in the Business immediately before Closing, from the pension and/or provident fund and medical aid fund of the Seller (the **Seller Funds**) to the pension and/or provident fund and medical aid fund of the Purchaser (the **Purchaser Funds**).

- 14.7 The Seller and the Purchaser, so procured by Trafigura and Sakunda Holdings, undertake to use their best efforts to procure that the trustees of the Seller Funds permit the Transferring Employees to remain members of the Seller Funds pending the commencement of their membership in the Purchaser Funds.

15. **BOOKS AND RECORDS**

Trafigura's and the Purchaser's representatives shall be entitled at all reasonable times and on reasonable notice to inspect and make copies of and extracts from the Seller's books of account, records and other documents for, or which relate to, the Business, to such extent as the Purchaser may reasonably require from time to time before or after Closing, for the purposes of exercising any of its rights under this Agreement and for the continued operation and management of the Business.

16. **REPRESENTATIONS AND WARRANTIES**

- 16.1 Each of the Warrantors hereby, jointly and severally, warrants and represents to, and for the benefit of, Trafigura and the Purchaser as at (i) the Signature Date and (ii) immediately prior to Closing on the Closing Date, that each of the warranties and representations set out in paragraph 1.1 of Schedule 4 is true and correct, in each case by reference to the facts and circumstances then existing (save where an individual warranty or representation specifies another date or period, in which case that specified date or period shall apply).

- 16.2 Trafigura hereby warrants and represents to the Seller as at (i) the Signature Date and (ii) immediately prior to Closing on the Closing Date, that each of the warranties and representations set out in paragraph 1.2 of Schedule 4 is true and correct, in each case by reference to the facts and circumstances then existing (save where an individual warranty or representation specifies another date or period, in which case that specified date or period shall apply).

17. **RESTRICTIVE COVENANT**

- 17.1 Except as otherwise set forth in this Clause 17, each of the Warrantors irrevocably and unconditionally undertakes that it will not, and that it will procure that none of its Affiliates will (all such Warrantors and Affiliates, collectively, the **Restraintees**), without Trafigura's prior written consent:

- 17.1.1 for a period of the later of (i) 36 (thirty six) months after the Closing Date or (ii) the expiry of 6 (six) months after Sakunda Holdings (or any of its

Affiliates) ceases to be a shareholder in the Purchaser, compete with any business being conducted by any member of the Group as at the Signature Date, or be interested in any business which trades in any field of activity which is similar to any of the fields of activity carried on by any member of the Group as at the Signature Date and within any of the areas of restraint set out in Clause 17.2. For this purpose, any Restrainee shall be deemed to be in breach of this Clause 17.1 if such Restrainee:

- 17.1.1.1 becomes engaged or interested, whether directly or indirectly, and whether as proprietor, partner, shareholder, agent, consultant, financier or otherwise, in any company, firm, business or undertaking which carries on business in any of the fields referred to in this Clause or in any of the areas referred to in Clause 17.1.1; or
- 17.1.1.2 attempts to solicit any business relating to a field of activity referred to in this Clause 17.1.1 from, or entice away from the Purchaser, any customer who or which was, at the Signature Date or the Closing Date, or at any time between those dates, a customer or a prospective customer of the Business; and/or
- 17.1.2 for a period of the later of (i) 24 (twenty four) months after the Closing Date or (ii) the expiry of 6 (six) months after Sakunda Holdings (or any of its Affiliates) ceases to be a shareholder in the Purchaser, make an offer to, solicit, persuade, induce, encourage or procure any employee of the Purchaser, or any person who was an employee of any member of the Group at any time during the 12 (twelve) months ending on the Closing Date, to become employed by or interested in any business which trades in any field or activity which is similar to any field of activity referred to in Clause 17.1.1, or to terminate his or her employment with the Purchaser, in each case whether or not such employee would thereby commit a breach of his employment agreement; and/or
- 17.1.3 disclose or permit to be disclosed to any person any of the know-how, trade secrets or other confidential information relating to the Business which is not available to the general public, save as required by law.
- 17.2 The area of restraint referred to in Clause 17.1 shall be every province of Zimbabwe. For the avoidance of doubt, the restraint of trade set forth in Clause 17.1 shall not in any way restrict or prevent any Restrainee, directly or indirectly, from conducting, or

having an economic, equity or any other interest in, any business outside of Zimbabwe (including any business which trades in any field of activity which is similar to the fields of activity carried on by any member of Trafigura or the Purchaser) and, without limitation, each Restrainee shall be entitled at all times, directly or indirectly, to import Petroleum Products into Zimbabwe provided that such Petroleum Products is, directly or indirectly, sold or supplied outside of Zimbabwe.

- 17.3 The Parties acknowledge that each of the undertakings in this Clause 17 is an entirely independent restriction and is no greater than is reasonably necessary to protect the interests of Trafigura and the Purchaser. If any such restriction shall be held void or unenforceable but would be valid if deleted in part or reduced in its application, then that restriction shall apply with such minimum modifications as may be necessary to make it valid and effective. Each of the Parties acknowledges that it has entered into this Agreement on an arm's length basis and that it has taken independent legal advice in so doing.

18. **PURCHASER'S RIGHT OF ACCESS**

- 18.1 Following the Signature Date, the Warrantors shall procure that each member of the Group delivers to Trafigura and the Purchaser, within 5 (five) Business Days (or such later date as the Parties may agree in writing) of the end of each calendar month during the Pre-Closing Period, the Management Accounts for the Group.
- 18.2 Following the Signature Date, and subject to all Applicable Laws, Trafigura shall be entitled at any time during the Pre-Closing Period, upon giving reasonable notice to the Seller, to reasonable access to the Seller's premises, sites of operation, books, records and employees.

19. **CONDUCT OF BUSINESS**

- 19.1 During the Pre-Closing Period, each of the Warrantors shall procure that:
- 19.1.1 the business of each member of the Group is carried on in all material respects in the usual and ordinary course; and
- 19.1.2 each member of the Group complies with all Applicable Laws and shall use all reasonable efforts to obtain and maintain all licenses, consents and authorisations material to the Group's business as conducted at the Signature Date (including the Business).

- 19.2 In addition to the provisions of Clause 19.1, each of the Warrantors shall procure that, during the Pre-Closing Period, no member of the Group shall, without obtaining the prior written consent of Trafigura, acting reasonably:
- 19.2.1 alter its constitutional documents;
- 19.2.2 alter in any material respect the nature or scope of its business or activities;
- 19.2.3 modify any of the rights attached to any shares, or create, allot or issue (or agree to create, allot or issue) any share or loan capital or other security or grant any share option or option on any shares or loan capital or other security;
- 19.2.4 create, or agree or permit to be created, any Encumbrance over any of the shares in any member of the Group as at the Signature Date or over any of the material assets of the Group;
- 19.2.5 make any change to the terms of employment of any or all Employees (including providing salary increases or bonuses or benefits) save as required by Applicable Law, or hire any senior Employees;
- 19.2.6 dispose of any of its material assets, rights or other benefits the value of which exceeds the Threshold;
- 19.2.7 lease or acquire any material assets (movable or immovable) the value of which exceeds the Threshold, or enter into any material commitment in excess of the Threshold;
- 19.2.8 acquire any interest (whether by merger, consolidation, purchase, subscription of shares or assets or otherwise) in any business or entity;
- 19.2.9 enter into or agree to enter into any joint venture, partnership, association or agreement or other venture for the sharing of profits or assets;
- 19.2.10 enter into, renew, or agree to enter into or renew, any supply related agreement; or
- 19.2.11 enter into any agreement or take any action which, in the reasonable opinion of the Purchaser, could have a material adverse effect on the Business.
- 19.3 The Warrantors hereby agree to procure that, during the Pre-Closing Period, no resolutions will be passed by the shareholders or directors of any member of the

Group, save for such resolutions as:

- 19.3.1 may be necessary to give effect to this Agreement;
- 19.3.2 are approved by Trafigura in writing insofar as they are required for the ordinary conduct of the business of any member of the Group; or
- 19.3.3 are approved by Trafigura in writing in terms of Clause 19.4 insofar as they are required from any member of the Group under any Applicable Law.
- 19.4 As regards any request by the Seller for prior written consent required in terms of Clause 19.2, it is agreed that:
 - 19.4.1 the request shall be made in writing to Trafigura and be delivered to Trafigura in the manner set out in Clause 27;
 - 19.4.2 the request shall contain any and all information specifying in reasonable detail the consent that is sought by the Seller and shall be accompanied by any relevant document, information or paper supporting the request;
 - 19.4.3 the Seller shall promptly provide all documents and information requested by Trafigura; and
 - 19.4.4 that consent shall be, and shall be deemed to have been, granted if:
 - 19.4.4.1 the Seller receives written consent from Trafigura within 3 (three) Business Days, unless a shorter period is prescribed under any Applicable Law, following the date of submission of the later of (i) a written request to Trafigura in accordance with Clause 19.4.1 or (ii) any other document and/or information in terms of Clause 19.4.3 (as applicable); or
 - 19.4.4.2 no response is received from Trafigura in writing within 3 (three) Business Days, unless a shorter period is prescribed under any Applicable Law, following the date of submission of the later (i) a written request to Trafigura in accordance with Clause 19.4.1 or (ii) any other document and/or information in terms of Clause 19.4.3 (as applicable).

20. **INDEMNIFICATION**

20.1 **Survival of Representations and Warranties.**

20.1.1 The representations and warranties of the Warrantors contained in this Agreement shall survive Closing for the period set out in Clauses 20.1.2 and 20.1.3, as applicable, and claims may be asserted with respect thereto to the extent permitted in this Clause 20.1.1. Any claim for indemnification not made by Trafigura or the Purchaser on or prior to such date will be irrevocably and unconditionally released and waived.

20.1.2 All the representations and warranties made by the Warrantors other than the representations and warranties set out in paragraphs 1.1.1 (Organisation and Good Standing), 1.1.2 (Authorisation of Agreement), 1.1.3 (Conflicts and Consents of Third Parties), 1.1.4 (Trading Assets) and 1.1.12 (Environment) of Schedule 4, shall survive until the date that is 3 (three) years after the Closing Date.

20.1.3 The representations and warranties made by the Warrantors in paragraphs 1.1.1 (Organisation and Good Standing), 1.1.2 (Authorisation of Agreement), 1.1.3 (Conflicts and Consents of Third Parties), 1.1.4 (Trading Assets) and 1.1.12 (Environment) of Schedule 4, shall survive indefinitely.

20.2 **General Indemnification by the Warrantors.**

20.2.1 Subject to Clauses 20.1 and 20.6, all of the Warrantors hereby, jointly and severally, agree to indemnify and hold Trafigura and the Purchaser harmless from and against, and pay to Trafigura and the Purchaser the amount of, any and all losses, liabilities, damages (excluding all incidental, consequential and punitive damages), costs and expenses of any nature whatsoever and howsoever occurred (individually, a **Loss** and collectively **Losses**) incurred or suffered by Trafigura or the Purchaser resulting directly or indirectly from the failure of any of the warranties or representations made by the Warrantors in this Agreement to be true and correct (i) as at the Signature Date and (ii) as of the Closing Date (if such warranties were repeated with reference to the facts and circumstances then existing).

20.2.2 Trafigura and the Purchaser acknowledge and agree that the Warrantors shall not have any liability under Clause 20.2.1 for any Loss to the extent that such Loss arises as a result of (i) any voluntary act, omission, transaction or

arrangement carried out after Closing by or at the direction of the Purchaser or (ii) any matter or thing done or omitted prior to Closing by Trafigura or the Purchaser or any member of the Group at the written request of, or with the written approval of, Trafigura or the Purchaser (including, without limitation, pursuant to Clause 19).

20.2.3 Any claim made by Trafigura or the Purchaser for indemnification under this Clause 20.2 shall be in writing and shall include reasonable details of the claim and the basis therefore. If the claim for indemnification relates to a contingent liability, Trafigura or the Purchaser (as applicable) shall be required to provide notice of that potential claim within the time period stipulated in Clauses 20.1.2 and 20.1.3 and, as soon as practicable after that contingent liability becomes an actual liability, which is a liquidated amount and is due, owing and payable, Trafigura or the Purchaser shall provide written notice thereof to the Warrantors confirming the liquidated amount of the claim.

20.2.4 Subject to paragraph 1.4.1 of Schedule 4, the Parties agree and acknowledge that Trafigura and/or the Purchaser shall be entitled to bring any claim for indemnification under this Clause 20.2, in full and without restriction, in relation to any matter irrespective of whether or not any information relating to such matter was disclosed to Trafigura or the Purchaser (or any of their respective directors, officers, employees, representatives or advisers) prior to or after the Signature Date as part of its due diligence in relation to the Group or the Purchaser otherwise has knowledge relating to such matter.

20.3 **Specific Indemnification by the Warrantors.**

20.3.1 In addition to the indemnities provided by the Warrantors in Clause 20.2, all of the Warrantors hereby, jointly and severally, agree to indemnify and hold Trafigura and the Purchaser harmless from and against, and pay to Trafigura and the Purchaser the amount of, any and all Losses incurred or suffered by Trafigura or the Purchaser resulting directly or indirectly from:

20.3.1.1 any breach of the warranties given in paragraphs 1.1.1 (Organisation and Good Standing), 1.1.2 (Authorisation of Agreement), 1.1.3 (Conflicts and Consents of Third Parties) and 1.1.4 (Trading Assets) of Schedule 4;

- 20.3.1.2 any matter or event which arises or arose, or resulted from any matter or event which arises or arose, prior to the Closing Date in relation to any member of the Group and/or the Business, including without limitation any and all Tax liability, third party claims and/or debt, liabilities or obligations owed to any person;
- 20.3.1.3 any current or pending disputes, investigations or outstanding queries by any governmental or regulatory authority, ZIMRA or any other relevant Tax authority in respect to any member of the Group;
- 20.3.1.4 any member of the Group, or any of its directors, officers or employees, or any of their respective Affiliates, having, prior to the Closing Date, engaged in corrupt activities (as defined under the applicable anti-corruption or bribery laws) or directly or indirectly paid, given or offered to pay or give any money, gift or anything else of value to attempt to influence any act or decision (including a decision not to act) of any person, including but not limited to (i) a government official or government employee, or (ii) any official or employee of an entity in which any government holds a substantial ownership interest, or (iii) any official or employee of a public international organisation, or (iv) any political party or political party official, or (v) any candidate for political office, in his or her official capacity or to induce an official to use his or her influence to affect a decision so as to assist any member of the Group in obtaining or retaining business or directing business to any person or to secure any improper advantage;
- 20.3.1.5 any failure by any member of the Group and/or any person which is party to any agreement or arrangement (oral or written) with any member of the Group to have obtained all necessary consents, permits and licences for, or to have failed to comply with all Applicable Laws in relation to, the operation of its business;
- 20.3.1.6 any Taxes, duties or similar payments that are paid, or required to be paid, by Trafigura or the Purchaser in relation to the transfer to the Purchaser of any of the Trading Assets, whether before or after the Closing Date;
- 20.3.1.7 any Loss in relation to any Employee-related Liabilities arising prior

to the Closing Date; and/or

20.3.1.8 any rights or obligations of any member of the Group under, or in relation to, the NOIC Agreement not having been duly and validly assigned, ceded, delegated and transferred to the Purchaser with effect from Closing.

20.3.2 Notwithstanding anything to the contrary in this Agreement, each of the Parties hereby agrees that none of the limitations or qualifications set out in Clauses 20.6 or 20.7 shall apply to any of the indemnities given in this Clause 20.3. Without limiting anything in this Clause, and notwithstanding anything in paragraph 1.3.1 of Schedule 4, the Parties agree and acknowledge that the Purchaser shall be entitled to bring any claim for indemnification under this Clause 20.3, in full and without restriction, in relation to any matter irrespective of whether or not any information relating to such matter was disclosed to Trafigura or the Purchaser (or any of their respective directors, officers, employees, representatives or advisers) prior to or after the Signature Date as part of its due diligence in relation to the Group, such information is set out in the Disclosure Schedule and/or Trafigura or the Purchaser (or any of their respective directors, officers, employees, representatives or advisers) otherwise has knowledge relating to such matter.

20.4 **Indemnification by the Purchaser.**

20.4.1 Subject to Clause 20.6, Trafigura hereby agrees to indemnify and hold the Seller harmless from and against, and pay to the Seller the amount of, any and all Losses incurred or suffered by the Seller resulting directly or indirectly from the failure of any of the warranties or representations made by Trafigura in this Agreement to be true and correct (i) as at the Signature Date and (ii) as of the Closing Date (if such warranties were repeated with reference to the facts and circumstances then existing).

20.4.2 The Seller shall be entitled to bring any claim under, or relating to any of the matters referred to in, Clause 20.4.1 until the date that is 12 (twelve) months after the Closing Date. Any such claim not made by the Seller on or prior to such date will be irrevocably and unconditionally released and waived.

20.5 **Indemnification Procedures.**

20.5.1 A claim for indemnification pursuant to Clauses 20.2, 20.3 or 20.4 for any

matter not involving a third-party claim may be asserted by notice to the Party from whom indemnification is sought, subject to (in the case of claims brought pursuant to Clauses 20.2 or 20.4 only) Clauses 20.1 and 20.6.

20.5.2 In the event that any Legal Proceedings shall be instituted, or that any claim shall be asserted, by any third party which is reasonably likely to result in a claim being made by a Party (the **Indemnified Party**) under Clauses 20.2, 20.3 or 20.4 (regardless of the limitations set forth in Clause 20.6) (such claim an **Indemnification Claim**), the Indemnified Party shall promptly cause written notice of the relevant Legal Proceedings or assertion of claim of which it has knowledge, in each case which is reasonably likely to result in an Indemnification Claim, to be forwarded to the Party (the **Indemnifying Party**) against whom the such Indemnification Claim may be made.

20.5.3 The failure of the Indemnified Party to give prompt notice of any Indemnification Claim shall not release, waive or otherwise affect the Indemnifying Party's obligations with respect thereto except to the extent that the Indemnifying Party is prejudiced as a result of such failure.

20.5.4 The Parties agree to take all commercially reasonable steps to co-operate with each other in connection with the defence, negotiation or settlement of any such Indemnification Claim.

20.6 **Limitations.**

20.6.1 The maximum aggregate amount that Trafigura or the Purchaser shall be entitled to recover from the Warrantors shall:

20.6.1.1 in relation to all claims for indemnification for breach of the representations and warranties set out in Schedule 4, with the exception of the Fundamental Warranties, be 100% (one hundred percent) of the Purchase Price, subject to Clauses 20.6.1.2 and 20.6.2; and

20.6.1.2 in relation to all claims for indemnification for breach of the Fundamental Warranties, be unlimited.

20.6.2 The maximum aggregate amount that the Seller shall be entitled to recover from Trafigura shall in relation to all claims for indemnification for breach of the warranties set out in paragraph 1.2 of Schedule 4, be 100% (one hundred

percent) of the Purchase Price.

20.7 **Calculation of Losses.**

20.7.1 The amount of any Losses for which indemnification is provided under this Clause 20 shall be net of any amounts actually recovered by the Indemnified Party under insurance policies or otherwise from third parties with respect to such Losses and net of any tax benefit actually realised by the Indemnified Party (or any of its Affiliates) directly from the Loss giving rise to the indemnification obligation. Each Party shall use its commercially reasonable efforts to recover under insurance policies for any Losses.

20.7.2 No Party shall be liable to any other person for any consequential, incidental, indirect, special or punitive damages of such other person, including loss of future revenue, income or profits, diminution of value or loss of business reputation or opportunity relating to the breach or alleged breach hereof (provided that such limitation in respect of profits shall not limit a Party's right to recover contract damages in connection with any other Party's failure to close in violation of this Agreement).

20.8 **Treatment of Payments.**

The Seller and Trafigura agree to treat any payment made pursuant to this Agreement by way of an indemnity or for a breach of warranty or representation as an adjustment to the Purchase Price for income tax purposes.

21. **PERSONAL GUARANTEE**

21.1 In consideration of the Purchaser entering into this Agreement, Tagwirei, as primary obligor and co-principal debtor and not merely as surety, unconditionally and irrevocably guarantees to Trafigura and the Purchaser the proper and punctual performance of each of the Warrantors' obligations under this Agreement, including the due and punctual payment of any sum which any of the Warrantors is liable to pay (the **Guaranteed Obligations**) without condition, set off or counterclaim.

21.2 Tagwirei's personal liability in respect of the Guaranteed Obligations will not be affected by any act or omission or other circumstances which but for this Clause might operate to impair, release or discharge such obligations, including:

21.2.1 an extension of time for performance by any of the Warrantors of its obligations under this Agreement or other amendment, waiver or release;

- 21.2.2 a defect in the Guaranteed Obligations such as to make them void, voidable or unenforceable against Tagwirei;
- 21.2.3 the change in constitution or control of any of the Warrantors;
- 21.2.4 the dissolution or removal from the Register of Companies or the ceasing to exist (whether or not capable of reinstatement or reconstitution) of any of the Warrantors;
- 21.2.5 the occurrence of any insolvency related event in relation to any of the Warrantors;
- 21.2.6 the discharge or release of any other guarantor or Party to security under or in connection with this Agreement; and
- 21.2.7 the release, variation or failure to perfect or enforce any security or guarantees held by another Party.
- 21.3 This personal guarantee is a continuing guarantee and will remain in full force and effect and shall not be discharged, limited, impaired, reduced or terminated in any way by any circumstance or condition whatsoever until all of the Guaranteed Obligations have been satisfied in full and, until the Guaranteed Obligations have been so satisfied, Tagwirei will have no rights of subrogation or indemnity and will not claim in competition with the Purchaser against any of the Warrantors.
- 21.4 Tagwirei hereby irrevocably indemnifies Trafigura and the Purchaser from and against all Losses suffered and/or incurred by Trafigura and/or the Purchaser as a result of any failure by any of the Warrantors to perform any of its obligations under this Agreement.

22. NOMINATION BY TRAFIGURA

- 22.1 Trafigura may, by giving notice in writing to that effect to the Seller no later than 30 (thirty) Business Days following the Signature Date (or such later date as may be agreed in writing by the Parties) (**Nomination Date**), to nominate any of its Affiliates (**Nominee**) to become a party to this Agreement in its place such that the Nominee shall become a shareholder in the Purchaser, on the basis that:
- 22.1.1 such written notice shall be delivered to the Seller and shall clearly and fully describe and furnish complete registration details in relation to the Nominee; and

22.1.2 the written notice shall be accompanied by written agreement in terms of which the Nominee agrees to assume all of the rights and obligations of Trafigura in terms of this Agreement.

22.2 By signing this Agreement, the Warrantors hereby, irrevocably and unconditionally, agree to any such nomination by Trafigura of the Nominee and to the cession, assignment and delegation from Trafigura to the Nominee of all of Trafigura's rights and obligations under this Agreement.

23. TERMINATION

23.1 This Agreement may be terminated prior to Closing as follows:

23.1.1 by mutual written consent of the Parties;

23.1.2 by written notice from Trafigura to the Seller at any time, at its sole discretion;

23.1.3 by Trafigura if any of the Warrantors fails in any respect to perform any of its material obligations or undertakings in this Agreement when performance thereof is due, and does not cure such failure within 30 (thirty) calendar days (or such later date as the Parties may agree in writing) after Trafigura delivers written notice thereof or, if sooner, prior to the Closing Date;

23.1.4 by the Warrantors if Trafigura fails in any respect to perform any of its material obligations or undertakings in this Agreement when performance thereof is due, and does not cure such failure within 30 (thirty) calendar days (or such later date as the Parties may agree in writing) after the Warrantors deliver written notice thereof or, if sooner, prior to the Closing Date; or

23.1.5 by Trafigura if there shall be in effect a final non-appealable order of a governmental body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated in this Agreement; it being agreed that the Parties shall promptly institute review proceedings in respect of, or appeal, as applicable, any adverse determination which is reviewable or appealable (and pursue such review or appeal with reasonable diligence) if any Party obtains and delivers to the other Parties, by no later than 10 (ten) Business Days (or such later date as the Parties may agree in writing) after receipt of the adverse determination, an opinion in writing from a practising counsel of the Harare bar of Zimbabwe

with at least 15 (fifteen) years practical experience expressing that a review or appeal of such determination could be successful.

23.2 **Procedure upon Termination.**

In the event of termination of this Agreement by Trafigura or the Warrantors pursuant to Clause 23.1, written notice thereof shall forthwith be given to the Parties, and this Agreement shall terminate, and the purchase of the Business and the Trading Assets hereunder shall be abandoned, without further action by Trafigura and/or the Warrantors.

23.3 **Effect of Termination.**

In the event that this Agreement is validly terminated in accordance with Clauses 23.1 and 23.2, each of the Parties shall be relieved of its respective duties and obligations arising under this Agreement from and after the date of such termination, and such termination shall be without liability to Trafigura, the Purchaser the Company or the Seller; provided that no such termination shall relieve any Party from liability (including any liability for damages) for any breach of this Agreement or other liability arising prior to termination hereof; and provided further that the provisions and obligations of the Parties set out in Clauses 1, 2, 16, 20, 21, 22, 24, 25, 26, 27 and 28 of this Agreement (together with Schedule 1) shall survive any such termination and shall be enforceable under this Agreement.

23.4 In, and only in, the event that this Agreement is validly terminated by Trafigura in accordance with Clause 23.1.2, Trafigura undertakes to pay an amount (the **Break Fee**) equal to 10% (ten percent) of the Purchase Price to the Seller as soon as reasonably possible, in any event no later than 20 (twenty) Business Days after terminating this Agreement. For the avoidance of doubt, the Parties hereby agree and acknowledge that the Break Fee shall not be payable by Trafigura in the event that this Agreement terminates in any other circumstances, including if it terminates in accordance with Clauses 3.5, 23.1.1, 23.1.3, 23.1.4 or 23.1.5.

23.5 Notwithstanding anything to the contrary in this Agreement, the Parties agree that after Closing, this Agreement is not capable of termination and may not be terminated by any of the Parties.

24. **ANNOUNCEMENTS AND CONFIDENTIALITY**

24.1 Subject to Clause 24.2, none of the Parties shall make any announcement or statement