

about this Agreement or its contents without first having obtained prior written consent from each of the other Parties to make such announcement or statement and to its contents, provided that such consent may not be unreasonably withheld or delayed.

24.2 The provisions of Clause 24.1 shall not apply to any announcement or statement which any of the Parties is obliged to make in terms of any Applicable Law, provided that the Party in question shall consult, to the extent practicable, with the other Party before making any such announcement or statement.

24.3 The Parties also agree, subject to the provisions of Clause 24.2, to keep the contents of this Agreement confidential among themselves, and each Party accordingly undertakes to the other not to disclose the contents of this Agreement to any third party, without the prior written consent of the other Parties, such consent not to be unreasonably withheld or delayed.

24.4 Each of the Parties shall use reasonable endeavours to procure that its directors, officers, employees, agents, advisers and Affiliates observe a corresponding obligation of confidence to that set out in Clauses 24.1, 24.2 and 24.3 in relation to the Parties themselves.

## 25. **DISPUTE RESOLUTION**

25.1 In the event of any dispute arising out of or relating to this Agreement, or the breach, termination or invalidity thereof then any Party may give written notice to the other Party to initiate the procedure set out below (the **Dispute Notice**).

25.2 The Parties shall first endeavour to settle the dispute by negotiating with each other in good faith. If such negotiations fail or do not occur within 10 (ten) Business Days of the Dispute Notice, the dispute shall not become the subject of litigation or arbitration until it has been heard by a mediator and any Party may refer the dispute to mediation in accordance with the procedures set out in this Clause 25.

25.3 The Parties shall agree on the mediator within 5 (five) Business Days of the Dispute Notice.

25.4 If for any reason the Parties do not agree on a mediator within 5 (five) Business Days of the Dispute Notice or the mediator agreed upon by the Parties cannot or does not accept an invitation to mediate and the Parties have for any reason failed to agree on another mediator within 10 (ten) Business Days of the Dispute Notice (or such longer

period of time as the Parties may agree to in writing), then any Party may ask the chairperson for the time being of the Tokiso Dispute Settlement Proprietary Limited to appoint a mediator. The mediator shall be a mediator accredited by Tokiso Dispute Settlement Proprietary Limited.

- 25.5 The Parties shall agree on the mediation procedure and failing agreement within 5 (five) Business Days of the Dispute Notice (or such longer period of time as the Parties may agree to in writing), then the mediation shall take place in accordance with the UNCITRAL Model Conciliation Rules. All communications made by the disputants to the mediator or to each other during or in connection with the mediation are made without prejudice to any rights which they may have and form part of bona fide settlement negotiations. The Parties shall keep the mediation proceedings and any order made by the mediator confidential save to the extent otherwise contemplated herein. The mediator shall not be compelled by any disputant to disclose any fact learnt in the course of the mediation in any subsequent Legal Proceedings which may take place and the Parties waive their right to require the mediator to testify regarding what transpired in the mediation.
- 25.6 If for any reason, including lack of cooperation by any of the Parties, a dispute is not settled by mediation within 30 (thirty) calendar days of the Dispute Notice (or such longer period of time as the Parties may agree to in writing), the dispute shall be settled by arbitration.
- 25.7 The Parties may agree on the arbitration procedure and, failing agreement within 5 (five) Business Days of the exhaustion of the period referred to in Clause 25.6, the arbitration shall be take place in accordance with the UNCITRAL Arbitration Rules in force at the time of the dispute.
- 25.8 The appointing authority in terms of the UNCITRAL Arbitration Rules shall be the chairperson for the time being of Association of Arbitrators (Southern Africa).
- 25.9 Unless agreed otherwise by the Parties in writing:
- 25.9.1 the mediation and the arbitration shall be administered by the Parties;
- 25.9.2 the mediation and the arbitration shall be held in Harare, Zimbabwe;
- 25.9.3 Trafigura shall pay the travel and accommodation costs of the mediator or arbitrators;

- 25.9.4 the mediation and the arbitration shall be conducted in the English language;
- 25.9.5 the number of mediators shall be 1 (one) and the number of arbitrators shall be 3 (three);
- 25.9.6 the governing substantive law of the contract shall be the law of Zimbabwe;
- 25.9.7 the governing procedural law of the arbitration shall be the laws of Zimbabwe;
- 25.9.8 the arbitrators referred to in Clause 25.9.5 shall have the same remedial powers as a court of law in Zimbabwe would have were it adjudicating the dispute; and
- 25.9.9 the arbitrators shall deliver an award together with written reasons within 30 (thirty) calendar days from the date upon which the arbitration ends.
- 25.10 Nothing in this Clause 25 shall preclude any Party from seeking interim and/or urgent relief from a Court of competent jurisdiction and to this end the Parties hereby consent to the non-exclusive jurisdiction of the Zimbabwean courts.

26. **GENERAL**

26.1 **Remedies.**

Subject to the provisions of Clause 25, no remedy conferred by this Agreement is intended to be exclusive of any other remedy which is otherwise available at law, by statute or otherwise. Each remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law, by statute or otherwise. The election of any one or more remedy by any of the Parties shall not constitute a waiver by such Party of the right to pursue any other remedy.

26.2 **Severance.**

If any provision of this Agreement, which is not material to its efficacy as a whole, is rendered void, illegal or unenforceable in any respect under any law, (i) such provision shall be deemed to be amended to the minimum extent necessary to cause such provision to be valid, enforceable and legal while preserving the intent of the Parties as expressed in, and the benefits to such Parties provided by, such provision or (ii) if such provision cannot be so amended, such provision shall be severed from this Agreement and an equitable adjustment shall be made to this Agreement

(including addition of necessary further provisions to this Agreement) so as to give effect to the intent as so expressed and the benefits so provided. No such amendment or severance shall in any way affect or impair the validity, legality and enforceability of the remaining provisions of this Agreement.

26.3           **Entire Agreement.**

26.3.1           This Agreement constitutes the entire agreement between the Parties in regard to its subject matter.

26.3.2           None of the Parties shall have any claim or right of action arising from any undertaking, representation or warranty not included in this Agreement.

26.4           **Variations.**

No agreement to vary, add to or cancel this Agreement shall be of any force or effect unless recorded in writing and signed by or on behalf of all of the Parties.

26.5           **Binding Effect; Assignment.**

26.5.1           This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Subject to Clause 26.5.2, nothing in this Agreement shall create or be deemed to create any third party beneficiary rights in any person or entity not a party to this Agreement.

26.5.2           Each of the Parties agrees that this Agreement shall, by way of *stipulatio alteri*, constitute a contract and undertaking for the benefit of the Purchaser once incorporated which shall be capable of acceptance at any time by the Purchaser by written notice to that effect to the Parties. Prior to acceptance, the benefit of the stipulation may not be withdrawn by any of the Parties without the written consent of Trafigura and the Purchaser.

26.5.3           Notwithstanding anything to the contrary in this Agreement, all of the Warrantors' duties, obligations, undertakings and liabilities under, or in connection with, this Agreement are joint and several.

26.5.4           Save as permitted by the provisions of this Agreement, no Party may cede any of its rights or delegate any of its obligations under this Agreement.

26.6           **General Co-operation.**

26.6.1           The Parties shall co-operate with each other and execute and deliver to the other Party such other instruments and documents and take such other actions as may be reasonably requested from time to time in order to carry out, evidence and confirm their rights and the intended purpose of this Agreement.

26.6.2           The Parties shall use all reasonable efforts to:

26.6.2.1           take all actions necessary or appropriate to consummate the Transaction; and

26.6.2.2           cause the fulfilment at the earliest practicable date of all the conditions to their respective obligations to consummate the Transaction.

26.7           **Further Assurance.**

Notwithstanding anything to the contrary contained in this Agreement, the Seller shall endeavour to promptly transfer on written demand by Trafigura any and all employees, contracts and assets that are required by the Purchaser to operate the Business to the extent that such employees, contracts or assets were not transferred to the Purchaser on the Closing Date and/or listed in Schedule 3 or Schedule 6 respectively.

26.8           **Counterparts.**

This Agreement may be signed in any number of counterparts, and by each Party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument. Delivery of an executed counterpart signature page of this Agreement by e-mail (PDF) or telecopy shall be as effective as delivery of a manually executed counterpart of this Agreement. In relation to each counterpart, upon confirmation by or on behalf of the signatory that the signatory authorises the attachment of such counterpart signature page to the final text of this Agreement, such counterpart signature page shall take effect together with such final text as a complete authoritative counterpart.

26.9           **Governing Law and Jurisdiction.**

26.9.1           This Agreement and the rights and obligations of the Parties, including all

non-contractual obligations arising under or in connection with this Agreement, shall be governed by, and construed and enforced in accordance with, the laws of Zimbabwe.

- 26.9.2 Each of the Parties hereby irrevocably submits hereunder to the non-exclusive jurisdiction of the Zimbabwean courts in respect of any claim, dispute or difference arising out of, or in connection with, this Agreement and/or any non-contractual obligation arising in connection with this Agreement.

27. **ADDRESSES FOR LEGAL PROCESS AND NOTICES**

- 27.1 All notices and other communications under this Agreement shall be in writing and shall be deemed given (i) when delivered personally by hand (with written confirmation of receipt), (ii) when sent by facsimile (with written confirmation of transmission) or (iii) 2 (two) Business Days following the calendar day sent by overnight courier (with written confirmation of receipt), in each case at the following addresses and facsimile numbers (or to such other address or facsimile number as a Party may have specified by notice given to the other Party pursuant to this provision:

- 27.1.1 If to the Seller:  
17<sup>th</sup> Floor, Century Towers  
40 Samora Machel Avenue  
Harare  
Zimbabwe  
Facsimile: +2634 750 167  
Attention: Mr. K. Tagwirei;

- 27.1.2 If to Sakunda Holdings:  
17<sup>th</sup> Floor, Century Towers  
40 Samora Machel Avenue  
Harare  
Zimbabwe  
Facsimile: +2634 750 167  
Attention: Mr. K. Tagwirei;

- 27.1.3 If to Tagwirei:  
17<sup>th</sup> Floor, Century Towers  
40 Samora Machel Avenue  
Harare  
Zimbabwe  
Facsimile: +2634 750 167  
Attention: Mr K. Tagwirei; and

27.1.4

If to Trafigura:

32 Jellicoe Avenue  
Rosebank  
Johannesburg  
South Africa  
Facsimile: +27 11 684 1511  
Attention: Mr. G. Henderson, Legal Counsel

With copies which shall not constitute notice to:

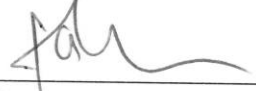
Bowman Gilfillan  
165 West Street  
Sandton  
Johannesburg 2146  
Republic of South Africa  
Facsimile: +27 (0)11 669 9001  
Attention: Charles Young.

28. **COSTS**

Each of the Parties shall pay their own costs incurred by it to its attorneys and other professional advisers for the preparation and signing of this Agreement and its Schedules and Annexures.

SIGNED at Harare, Zimbabwe on this the 19<sup>th</sup> day of July 2013.

For and on behalf of  
**SAKUNDA TRADING (PRIVATE) LIMITED**



Signatory:

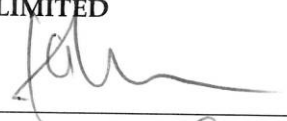
Capacity:

Who warrants his authority hereto



SIGNED at Harare, Zimbabwe on this the 19<sup>th</sup> day of July 2013.

For and on behalf of  
**SAKUNDA HOLDINGS (PRIVATE)  
LIMITED**



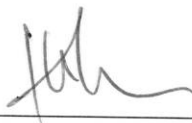
Signatory:

Capacity:

Who warrants his authority hereto



SIGNED at Harare, Zimbabwe on this the 19<sup>th</sup> day of July 2013.



**KUDAKWASHE REGIMOND TAGWIREI**

SIGNED at Harare, Zimbabwe on this the 19<sup>th</sup> day of July 2013.

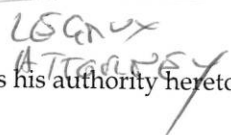
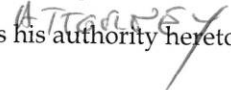
For and on behalf of  
**TRAFIGURA PTE LIMITED**



Signatory:

Capacity:

Who warrants his authority hereto


**SCHEDULE 1**  
**DEFINITIONS AND INTERPRETATION**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions.**

For the purposes of this Agreement and the preamble above, unless the context requires otherwise:

- 1.1.1 **Addendum** has the meaning given in paragraph 1.1.2 of Schedule 2;
- 1.1.2 **Affiliate** means (i) with respect to any juristic person, any other person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such person, and the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management, business and policies of such person, whether through ownership of voting securities, by contract or otherwise, (ii) with respect to any trust, any trustee or beneficiary of such trust, or any spouse, parent, legal guardian, child (whether step-child, biological or adopted child) or sibling of any such trustee or beneficiary and (iii) with respect to any natural person, any spouse, parent, legal guardian, child (whether step-child, biological or adopted child) or sibling of such natural person;
- 1.1.3 **Agreement** means this sale of business and assets agreement and includes its Schedules and Annexures which shall form part of it;
- 1.1.4 **Applicable Laws** means, in relation to a Party, all and any of the following: (i) statutes and subordinated legislation and common law; (ii) regulations; (iii) ordinances and by-laws; (iv) directives, codes of practice, circulars, guidance notices, judgments and decisions of any competent authority, or any governmental, intergovernmental or supranational agency, body, department or regulatory, self-regulatory or other authority or organisation; and (v) other similar provisions, from time to time, compliance with which is mandatory for that Party, and **Applicable Law** shall be construed accordingly;
- 1.1.5 **Audited Accounts** means the audited Financial Statements of the Group for

- the period ending 31 December 2012;
- 1.1.6 **Break Fee** has the meaning given in Clause 23.4;
- 1.1.7 **Business** has the meaning given in paragraph A of the preamble above;
- 1.1.8 **Business Day** means any day other than a Saturday, Sunday or statutory holiday in Zimbabwe or South Africa;
- 1.1.9 **Cession and Pledge in Security** means the cession and pledge in security (in a form and on terms and conditions acceptable to Trafigura, acting reasonably) to be entered into by the Purchaser, Trafigura (or such other member of the Trafigura Group that is the shareholder of the Purchaser upon its incorporation and registration in terms of Clause 3.1.1) (as cessionary) and Sakunda Holdings (as cedent) pursuant to which Sakunda Holdings pledges to and in favour of Trafigura (or such other member of the Trafigura Group that is the shareholder of the Purchaser upon its incorporation and registration in terms of Clause 3.1.1) all shares held by it in the issued share capital of the Purchaser and cedes *in securitatem debiti* in favour of Trafigura (or such other member of the Trafigura Group that is the shareholder of the Purchaser upon its incorporation and registration in terms of Clause 3.1.1) all shareholder claims (including rights to any future distributions or dividends) it has against the Purchaser;
- 1.1.10 **Claim** has the meaning given in paragraph 1.6.2 of Schedule 2;
- 1.1.11 **Closing** means completion of the steps referred to in Clause 10 on the Closing Date;
- 1.1.12 **Closing Date** means 5 (five) Business Days immediately following the Effective Date occurs (or, in each case, such other date as the Parties may agree upon in writing);
- 1.1.13 **Companies Act** means the Companies Act (Chapter 24:03), as amended;
- 1.1.14 **Competition Act** means the Competition Act (Chapter 14:28), as amended;
- 1.1.15 **Competition and Tariff Commission** means the Competition and Tariff Commission established in terms of section 4 of the Competition Act;
- 1.1.16 **Conditions** means the suspensive conditions set out in Clause 3.1.1 to 3.1.14

(both inclusive); and **Condition** shall mean any one of them as the context may require;

- 1.1.17 **Continuing Contracts** means any on-going contracts entered into by the Seller for the purposes of, or in relation to, the Business and which have been entered into and are in force at the Signature Date or are entered into and come into force after that date and, in either case, are to or will continue according to their terms to remain in force up to and for any period after the Closing, including without being limited to all Immoveable Property Leases, and **Continuing Contract** shall have a corresponding meaning;
- 1.1.18 **Deferred Amount** means an amount equal to \$1 500 000 (one million five hundred thousand USD);
- 1.1.19 **Delegation of Authority** has the meaning given in the Shareholders' Agreement;
- 1.1.20 **Disclosure Schedule** means the disclosure schedule set out in Schedule 5 which forms part of this Agreement prepared by or on behalf of the Seller to qualify the warranties set out in Schedule 4;
- 1.1.21 **Dispute Notice** has the meaning given in Clause 25.1;
- 1.1.22 **Effective Date** means the date on which the last Condition to be fulfilled or waived is fulfilled or waived (as applicable) in accordance with the terms and subject to the conditions of this Agreement;
- 1.1.23 **Employees** means all the employees of the Group;
- 1.1.24 **Employee-related Liabilities** means the liabilities referred to in Clause 14.2 but as at the Closing Date, not the Signature Date;
- 1.1.25 **Exclusive Use Agreement** means the agreement giving the Purchaser the same terms (including, but not limited, to the price), rights and benefits that Sakunda Holdings has under the NOIC Agreement for an indefinite period;
- 1.1.26 **Encumbrance** means any security interest, option, pre-emption right, mortgage, debenture, notarial bond, charge, encumbrance, pledge, lien, cession in security, assignment, subordination, hypothecation, title retention or any other security interest, agreement or arrangement, or any agreement to create any of the above;

- 1.1.27 **Extended Retention Period** has the meaning given in paragraph 1.6.4 of Schedule 2;
- 1.1.28 **Financial Statements** means the Audited Accounts, including the related notes and schedules thereto, and the Management Accounts;
- 1.1.29 **Fundamental Warranties** means the representations and warranties set out in paragraphs 1.1.3 (Conflicts and Consents of Third Parties), 1.1.4 (Trading Assets) and 1.1.12 (Environment) of Schedule 4;
- 1.1.30 **Goodwill** means the goodwill of the Business as at the Closing;
- 1.1.31 **Group** means Sakunda Energy, Sakunda Holdings, Sakunda Logistics, Sakunda Properties and Sakunda Trading, together with all of their respective subsidiaries;
- 1.1.32 **Group Documents** has the meaning given in paragraph 1.1.2.1 of Schedule 4;
- 1.1.33 **Guaranteed Obligations** has the meaning given in Clause 21.1;
- 1.1.34 **IFRS** means International Financial Reporting Standards as issued from time to time by the International Accounting Standards Board or its successor body for the preparation of financial statements;
- 1.1.35 **Immoveable Properties** means the immoveable properties owned by the Seller;
- 1.1.36 **Immoveable Property Lease** has the meaning given to it in paragraph 1.1.5.1 of Schedule 4;
- 1.1.37 **Indemnification Claim** has the meaning given to it in Clause 20.5.2;
- 1.1.38 **Indemnified Party** has the meaning given to it in Clause 20.5.2;
- 1.1.39 **Indemnifying Party** has the meaning given in Clause 20.5.2;
- 1.1.40 **Indigenisation Act** means The Indigenisation and Economic Empowerment Act, (Chapter 14:33) as amended;
- 1.1.41 **Insolvency Act** means the Insolvency Act (Chapter 6:04), as amended;
- 1.1.42 **Intellectual Property** means:

- 1.1.42.1 all trade marks, whether registered or unregistered, and trade names owned by the Seller in relation to the Business (including, without being limited to, its trade name "Sakunda Trading" and the logo comprising that name);
- 1.1.42.2 all rights under any patent, copyright or design, whether registered or unregistered, and any applications therefor owned by the Seller in relation to the Business;
- 1.1.42.3 all technologies, methods, formulations, data bases, trade secrets, know-how, inventions, and other intellectual property owned by the Seller in relation to the Business;
- 1.1.42.4 all information files, records, data, plans, contracts and recorded knowledge owned by the Seller in relation to the Business, including customer and supply lists related to the foregoing; and
- 1.1.42.5 all e-mail, internet and internet domain names specifically used by or in connection with the Business.
- 1.1.43 **Key Contracts** means the contracts in place at the Signature Date between the Seller and each of Primero Energy, Trek Petroleum and Vemeda;
- 1.1.44 **Legal Proceedings** means any judicial, administrative or arbitral actions, suits, investigations, or proceedings (public or private) by or before a governmental body (including, without limitation, any supra-national, national, state, municipal or local government, any tribunal or any quasi-governmental or private body exercising any regulatory, taxing, importing or other governmental or quasi-governmental authority);
- 1.1.45 **Long-stop Date** means the date falling 9 (nine) calendar months following the Signature Date (or such later date as the Parties may agree in writing);
- 1.1.46 **Loss** has the meaning given in Clause 20.2.1;
- 1.1.47 **Management Accounts** means the monthly Financial Statements showing the financial position of the Group prepared and finalised, for the period commencing on the Statement of Financial Position Date and ending on June 2013, by each member of the Group during the month immediately following the calendar month to which the relevant statement of comprehensive

- income and statement of financial position relates;
- 1.1.48 **Material Contracts** has the meaning given in paragraph 1.1.6.1 of Schedule 4;
- 1.1.49 **NOIC** means the National Oil Infrastructure Company of Zimbabwe (Private) Limited;
- 1.1.50 **NOIC Agreement** means the throughput and storage agreement, dated 23 September 2011, between Sakunda Holdings and NOIC;
- 1.1.51 **NOIC Agreement Value Amount** has the meaning given in paragraph 1.1.2 of Schedule 2;
- 1.1.52 **Nomination Date** has the meaning given in Clause 22.1;
- 1.1.53 **Nominee** has the meaning given in Clause 22.1;
- 1.1.54 **Operative Provisions** has the meaning given in Clause 2;
- 1.1.55 **Outstanding Deferred Balance** has the meaning given in paragraph 1.6.3.1 of Schedule 2;
- 1.1.56 **Parties** means the Warrantors and Trafigura, and **Party** means any one of them as the context may require;
- 1.1.57 **Petroleum Products** means bitumen, fuel oil, gas oil, gasoline, jet A1, kerosene, liquefied petroleum gas (LPG), paraffin and any other form of refined oil product;
- 1.1.58 **Pre-Closing Period** means the period from the Signature Date until the Closing Date (both dates inclusive);
- 1.1.59 **Primero Energy** means Primero Energy (Private) Limited, a company registered in accordance with the laws of Zimbabwe;
- 1.1.60 **Purchase Price** has the meaning given in paragraph 1.1 of Schedule 2;
- 1.1.61 **Purchaser** means the private company to be incorporated and registered in Zimbabwe in accordance with Clause 3.1.1;
- 1.1.62 **Purchaser Documents** has the meaning given to it in paragraph 1.2.2.1 of Schedule 4;

- 1.1.63 **Purchaser Funds** has the meaning given to it in Clause 14.6;
- 1.1.64 **Receivables** means all the claims of the Seller against the trade debtors of the Seller pertaining to the Business as at Closing, and **Receivable** shall have a corresponding meaning;
- 1.1.65 **Reference Price** has the meaning given in paragraph 1.2.1 of Schedule 2;
- 1.1.66 **Relevant Benefits** means any lump sum, gratuity or other benefit (including a non-cash benefit) provided (or to be provided): (i) on or in anticipation of the retirement of an Employee, former employee or independent contractor of any member of the Group, including any superannuation or post retirement medical aid benefit; (ii) on or in connection with the death, incapacity, sickness, disability or any accident of an Employee, former employee or independent contractor of any member of the Group; (iii) after the retirement or death of an Employee, former employee or independent contractor of any member of the Group in connection with past service; (iv) on or in anticipation of, or in connection with, any change in the nature of service of an Employee or independent contractor;
- 1.1.67 **Restrainees** has the meaning given in Clause 17.1;
- 1.1.68 **Retention Period** has the meaning given in paragraph 1.6.1 of Schedule 2;
- 1.1.69 **Sakunda Holdings** means Sakunda Holdings (Private) Limited, a company registered in accordance with the laws of Zimbabwe under registration number 19561/2005;
- 1.1.70 **Sale Assets** means the assets (other than those constituting Goodwill, Intellectual Property or Stock) owned by the Seller listed in Schedule 3, all of which relate to, or are used in, the Business and are being sold to the Purchaser in terms of this Agreement;
- 1.1.71 **Seller Funds** has the meaning given in Clause 14.6;
- 1.1.72 **Shareholders' Agreement** means the new shareholders' agreement to be entered into by Trafigura (or such other member of the Trafigura Group that is the shareholder of the Purchaser upon its incorporation and registration in terms of Clause 3.1.1) and Sakunda Holdings to govern their relationship following Closing as shareholders in the Purchaser, in, or substantially in, the

form attached hereto as **Annexure A**;

- 1.1.73 **Signature Date** means the date on which this Agreement is signed by the Party last signing in time;
- 1.1.74 **South Africa** means the Republic of South Africa;
- 1.1.75 **Statement of Financial Position** means the audited statement of financial position for the Group as at 31 December 2012;
- 1.1.76 **Statement of Financial Position Date** means 31 December 2012;
- 1.1.77 **Stock** means all stocks of Petroleum Products owned by Sakunda Trading as at Closing;
- 1.1.78 **Suspended Provisions** has the meaning given in Clause 3.1;
- 1.1.79 **Taxes** includes (without limitation) all present and future taxation, charges, imposts, duties, levies, deductions, withholdings or fees of any kind whatsoever, whether of Zimbabwe or elsewhere, including tax on net or gross income, profits and gains and including any excise, value added, occupation, payroll, unemployment insurance fund or skills development taxes or any amount payable on account of or as security for any of the foregoing, by whomsoever and whenever imposed, levied, collected, withheld or assessed, together with any penalties, additions, fines, surcharges or interest relating thereto, and any payment whatsoever which the relevant person may be or becomes bound to make to any person as a result of the discharge by that person of any tax which the relevant person has failed to discharge or to any late or incorrect return in respect of any of them and regardless whether such taxes, levies, duties, imposts, charges, withholdings, penalties and interest are chargeable directly or primarily against or attributable directly or primarily to the relevant person or any other person and of whether any amount in respect of them is recoverable from any other person; and **Tax** and **Taxation** shall be construed accordingly;
- 1.1.80 **Threshold** means \$50 000 (fifty thousand USD);
- 1.1.81 **Third Party Consent** means a consent, license, approval, authorisation or waiver required from a third party for the conveyance, transfer, assignment, cession, delegation or novation in favour of the Purchaser of any of the

Trading Assets (in a form and on terms acceptable to the Purchaser, acting reasonably);

- 1.1.82      **Trading Assets** means all the assets (other than the Stock) of every kind, movable and immovable, corporeal and incorporeal, and wherever situated, in each case as at Closing, which are owned by any of the Seller which relate to, or are used in, the Business as at Closing, and which shall include, without being limited to, the Sale Assets, the Goodwill and the Intellectual Property;
- 1.1.83      **Trafigura Group** means Trafigura and all of its Affiliates;
- 1.1.84      **Trafigura Stock** means all stocks of Petroleum Products situated in Zimbabwe for sale in Zimbabwe and owned by Trafigura as at Closing;
- 1.1.85      **Transaction** means the transaction in terms of which the Purchaser will acquire the Trading Assets and the Business from the Seller in terms of this Agreement;
- 1.1.86      **Transferring Employees** has the meaning given in Clause 14.1.2;
- 1.1.87      **Trek Petroleum** means Chaparell Trading (Private) Limited (trading as Trek Petroleum), a company registered in accordance with the laws of Zimbabwe;
- 1.1.88      **UNCITRAL** means the United Nations Commission on International Trade Law;
- 1.1.89      **USD or \$** means the United States Dollar;
- 1.1.90      **VAT Act** means the Value Added Tax Act (chapter 23:12), as amended from time to time;
- 1.1.91      **Vemeda** means Vemeda Limited, a company registered in accordance with the laws of Zimbabwe;
- 1.1.92      **Warrantors** means the Seller, Sakunda Holdings and Tagwirei, and **Warrantor** means any one of them as the context may require;
- 1.1.93      **Zimbabwe** means the Republic of Zimbabwe;
- 1.1.94      **Zimbabwean Exchange Control** means the Exchange Control Department of the Treasury Department of the Reserve Bank of Zimbabwe;

- 1.1.95 **Zimbabwean Exchange Control Regulations** means the Exchange Control Regulations, Statutory Instrument 109 of 1996, as amended; and
- 1.1.96 **ZIMRA** means the Zimbabwe Revenue Authority.
- 1.2 **Interpretation.**
- 1.2.1 In addition to the definitions in paragraph 1.1 of Schedule 1, unless the context requires otherwise:
- 1.2.1.1 the singular shall include the plural and vice versa;
- 1.2.1.2 a reference to any one gender, whether masculine, feminine or neuter, includes the other two;
- 1.2.1.3 any reference to a person, includes, without being limited to, any individual, body corporate, partnership, limited liability company, firm, joint venture, association, joint-stock company, trust, unincorporated association, government, state or agency of a state (including a tax authority), or other entity, whether incorporated or unincorporated;
- 1.2.1.4 any word or expression defined in and for the purposes of this Agreement shall if expressed in the singular include the plural and vice versa and a cognate word or expression shall have a corresponding meaning;
- 1.2.1.5 references to a statutory provision include any subordinate legislation made from time to time under that provision and references to a statutory provision include that provision as from time to time modified or re-enacted as far as such modification or re-enactment applies, or is capable of applying, to this Agreement or any transaction entered into in accordance with this Agreement;
- 1.2.1.6 references in this Agreement to "Clauses", "Sub-clauses", "Schedules" and "Annexures" are to clauses and sub-clauses of, and schedules and annexures to, this Agreement references to "paragraphs" are to paragraphs of the relevant schedule to this Agreement;
- 1.2.1.7 save where expressly stated otherwise, references in this Agreement

to any act, regulation, legislation or other enactment are references to the relevant act, regulation, legislation or enactment of Zimbabwe;

1.2.1.8 unless otherwise provided, any number of calendar days prescribed shall be determined by excluding the first and including the last calendar day or, where the last calendar day falls on a calendar day that is not a Business Day, the next succeeding Business Day;

1.2.1.9 references to day(s), month(s) or year(s) shall be construed as Gregorian calendar day(s), month(s) or year(s); and

1.2.1.10 references to times are to times in Harare, Zimbabwe.

1.2.2 All the headings and sub-headings in this Agreement are for convenience only and are not to be taken into account for the purposes of interpreting it.

1.2.3 The terms of this Agreement having been negotiated, the rule of construction that provisions are to be construed against the party drafting an agreement or part of an agreement or on whose behalf an agreement or part of an agreement was drafted shall not apply to this Agreement.

**SCHEDULE 2**  
**PURCHASE PRICE AND PAYMENT**

**1. PURCHASE PRICE OF THE BUSINESS AND THE ASSETS**

1.1 The purchase price payable by the Purchaser to the Seller for the Business and all of the Trading Assets shall be an amount (the **Purchase Price**) payable by the Purchaser to the Seller in cash, being the amount which results from taking:

1.1.1 \$12 000 000 (twelve million USD); *plus*

1.1.2 in (but only in) the event as a pre-condition that, following the incorporation and registration of the Purchaser in terms of Clause 3.1.1 and prior to the end of the period ending 6 (six) months after the Closing Date, NOIC and Sakunda Holdings shall enter into a written addendum to the NOIC Agreement (the **Addendum**) pursuant to which: (i) Sakunda Holdings shall be permitted to assign, cede and/or delegate to any of its Affiliates (as such term is defined in the NOIC Agreement) any or all of the rights and obligations under, or in relation to, the NOIC Agreement without the prior written consent of NOIC; (ii) the definition of "Affiliate" (as such term is defined in the NOIC Agreement) be deleted and replaced with the following new definition "*Affiliate*" means (i) with respect to any juristic person, any other person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such person, and the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management, business and policies of such person, whether through ownership of voting securities, by contract or otherwise, (ii) with respect to any trust, any trustee or beneficiary of such trust, or any spouse, parent, legal guardian, child (whether step-child, biological or adopted child) or sibling of any such trustee or beneficiary and (iii) with respect to any natural person, any spouse, parent, legal guardian, child (whether step-child, biological or adopted child) or sibling of such natural person'; and (iii) the terms of the NOIC Agreement shall be amended such that it remains valid for at least 4 (four) years following the Closing Date, \$12 000 000 (twelve million USD) (**NOIC Agreement Value Amount**); *minus*

1.1.3 the sum equal to 49% (forty nine percent) of the Employee-related Liabilities, provided that, notwithstanding anything to the contrary in this Agreement, the Purchase Price shall in no circumstances exceed:

- 1.1.4 in the event that, following the incorporation and registration of the Purchaser in terms of Clause 3.1.1 and prior to the end of the period ending 6 (six) months after the Closing Date, NOIC duly executes the Addendum, \$24 000 000 (twenty four million USD); and
- 1.1.5 in all other circumstances, \$12 000 000 (twelve million USD).

## **PAYMENT**

- 1.2 At Closing, against delivery by the Seller of all of the documents referred to in Clause 10, Trafigura and Sakunda Holdings shall procure that the Purchaser shall, in respect of the Business and the Trading Assets pay to the Seller:
- 1.2.1 \$12 000 000 (twelve million USD); *plus*
- 1.2.2 in (but only in) the event as a pre-condition that, following the incorporation and registration of the Purchaser in terms of Clause 3.1.1 and prior to the Closing Date, NOIC duly executes the Addendum in accordance with paragraph 1.1.2 of this Schedule, the NOIC Agreement Value Amount; *minus*
- 1.2.3 the Deferred Amount.
- 1.3 **Calculation of the Purchase Price.**
- The Purchase Price shall be calculated on Closing in accordance with this Schedule 2.
- 1.4 **Bank Account.**
- Trafigura and Sakunda Holdings shall procure that the Purchase Price shall be paid by the Purchaser by wire transfer into a bank account nominated by the Seller in writing no later than 3 (three) Business Days prior to the Closing Date.
- The Parties agree that payment by the Purchaser of the Purchase Price and any other amounts payable under this Agreement into such bank account shall constitute full and final discharge and settlement of the Purchaser's payment obligations in relation to the Seller.
- 1.5 **NOIC Agreement.**
- 1.5.1 In the event that:
- 1.5.1.1 the NOIC Agreement Value Amount has not been included in the

calculation of the Purchase Price in accordance with paragraph 1.2.2 of this Schedule; and

1.5.1.2

NOIC duly executes the Addendum in accordance with paragraph 1.1.2 of this Schedule prior to the end of the period ending 6 (six) months after the Closing Date,

as promptly as practicable, but in any event no later than 10 (ten) Business Days after the Closing Date, (i) Sakunda Holdings shall assign, cede and/or delegate to the Purchaser all of the rights and obligations under, or in relation to, the NOIC Agreement and undertakes to execute any such written agreement or document as may be necessary to give effect to such assignment, cession and/or delegation and (ii) the Purchaser shall pay the Seller the NOIC Agreement Value Amount.

1.5.2

Any amounts paid by the Purchaser to the Seller shall be made by wire transfer into the bank account referred to in paragraph 1.4 of this Schedule (or such other bank account in Zimbabwe as may be notified in writing in advance by the Seller).

1.5.3

For the avoidance of doubt, neither Trafigura nor the Purchaser will have any obligation to pay the NOIC Agreement Value Amount in the event that NOIC does not execute the Addendum in accordance with paragraph 1.1.2 of this Schedule or executes such addendum after the end of the period ending 6 (six) months after the Closing Date.

1.6

**Deferred Amount.**

1.6.1

The payment by the Purchaser of the Deferred Amount shall be deferred for a period of at least 3 (three) years from the Closing Date (the **Retention Period**) (or such extended period as may be applicable in accordance with paragraph 1.6.4 of this Schedule) and the Purchaser shall have no obligation to pay such Deferred Amount (in whole or in part) to the Seller prior to the end of the Retention Period.

1.6.2

In the event that the Purchaser during the Retention Period (or such extended period as may be applicable in accordance with paragraph 1.6.4 of this Schedule) has any claim against any of the Warrantors under, or in connection with, this Agreement (a **Claim**), including without limitation any claim for indemnification, the Purchaser shall be entitled in relation to such

Claim to set off and deduct the amount of such Claim against and from the Deferred Amount.

1.6.3

Subject to paragraph 1.6.4 of this Schedule:

1.6.3.1

upon the expiry of the Retention Period, Trafigura and Sakunda Holdings shall procure that the Purchaser shall pay to the Seller an amount (the **Outstanding Deferred Balance**) equal to: (i) the Deferred Amount *minus* (ii) the aggregate total of all amounts of all Claims which have been set off against, and deducted from, the Deferred Amount by the Purchaser prior to the expiry of the Retention Period in accordance with paragraph 1.6.2 of this Schedule; and

1.6.3.2

such Outstanding Deferred Balance (together with interest on such amount for the period between the Closing Date and the date of payment, at a nominal annual interest rate equivalent to the deposit interest rate of the London branch of Barclays Bank calculated daily and compounded monthly in arrears) shall be paid by the Purchaser, so procured by Trafigura and Sakunda Holdings, as soon as reasonably practicable following the expiry of the Retention Period and in any event no later than 10 (ten) Business Days following such expiry date, and shall be made by wire transfer into the bank account referred to in paragraph 1.4 of this Schedule (or such other bank account in Zimbabwe as may be notified in writing in advance by the Seller).

1.6.4

In the event that the Purchaser shall have notified the Seller of any Claim prior to the expiry of the Retention Period, and such Claim has not been settled or determined by agreement between the Parties or in accordance with Clause 25 prior to the expiry of the Retention Period, then, notwithstanding paragraph 1.6.3 of this Schedule, an amount equivalent to the lesser of (i) the amount of such Claim and (ii) the Outstanding Deferred Balance, shall be retained by the Purchaser, and the Purchaser's obligation to pay such amount shall be postponed, until the relevant Claim is so settled or determined (the **Extended Retention Period**).

1.6.5

Upon the expiry of the Extended Retention Period, Trafigura and Sakunda Holdings shall procure that the Purchaser shall pay to the Seller an amount

equal to: (i) the amount retained by the Purchaser in accordance with paragraph 1.6.4 of this Schedule *minus* (ii) the aggregate total of all amounts of all Claims which have been set off against, and deducted from, such retained amount by the Purchaser prior to the expiry of the Extended Retention Period in accordance with paragraph 1.6.2 of this Schedule, and such amount (together with interest on such amount for the period between the Closing Date and the date of payment, at a nominal annual interest rate equivalent to the deposit interest rate of the London branch of Barclays Bank calculated daily and compounded monthly in arrears) shall be paid by the Purchaser, so procured by Trafigura and Sakunda Holdings, by wire transfer into the bank account referred to in paragraph 1.4 of this Schedule (or such other bank account in Zimbabwe as may be notified in writing in advance by the Seller), as soon as reasonably practicable following the expiry of the Extended Retention Period and in any event no later than 10 (ten) Business Days following such expiry date.

1.6.6

In the event of any dispute arising between the Parties in relation to any proposed Claim, the Parties will follow the procedure specified in Clause 25.

**SCHEDULE 3**

**SALE ASSETS**

	<b>Trading asset register</b>	<b>Cost</b>	<b>Depreciation</b>	<b>NBV</b>
<b><u>Motor vehicles</u></b>				
01.01.2012	Toyota Prado	125,000	(52,083)	72,917
01.01.2012	Mazda BT50 D/C	33,760	(33,760)	-
01.01.2012	Mazda 3	31,000	(27,491)	3,509
<b><u>Computers</u></b>				
01.06.2012	HP 3400 Desktop (Accounts Clerk Trading)	790	(120)	670
01.12.2012	HP P3400 Microtower Desktop - Trading	680	(73)	607
01.01.2013	HP PROBOOK 4530S i3 LAPTOP	1,050	(105)	945
18.01.2013	HP PROBOOK 4540S i3 LAPTOP	1,050	(105)	945
18.01.2013	HP PROBOOK 4540S i3 LAPTOP	1,050	(105)	945
<b><u>Printers</u></b>				
	2 HP 1415 printers			
	1 HP Laser P 2014			
	1 HP office jet Pro 8500 wireless			
<b><u>Desks and Chairs</u></b>				
	4 Nzou Desks			
	4 High back leather chairs			
	Adam bede excutive desk and leather chair			
	5 visitors chairs			
	<b>TOTAL</b>	<b>194,380</b>	<b>(113,842)</b>	<b>80,538</b>

**SCHEDULE 4**  
**REPRESENTATIONS AND WARRANTIES**

**1. REPRESENTATIONS AND WARRANTIES**

1.1. Each of the Warrantors hereby, jointly and severally, warrants and represents to the Purchaser as at (i) the Signature Date and (ii) immediately prior to Closing on the Closing Date, that each of the following warranties and representations 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):

**1.1.1. Organisation and Good Standing.**

1.1.1.1. Each member of the Group is a company validly incorporated, duly organised, validly existing under the laws of Zimbabwe and has all requisite power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted.

1.1.1.2. No person has taken any step, Legal Proceeding or other procedure with a view to the liquidation or winding up of, or the appointment of an administrator or a receiver (including an administrative receiver) or business rescue practitioner, whether out of court or otherwise, in relation to, any member of the Group.

**1.1.2. Authorisation of Agreement.**

1.1.2.1. Each Warrantor (as applicable) has all requisite legal capacity, power and authority, and as at Closing will have obtained all consents, licences, authorisations, waivers or exemptions required to empower it, to execute this Agreement and each other agreement, document, or instrument or certificate contemplated by this Agreement or to be executed by such Warrantor in connection with the consummation of the transactions contemplated by this Agreement (the Group Documents), and to consummate the transactions contemplated hereby and thereby.

1.1.2.2. This Agreement has been, and each of the relevant Group Documents will be at or prior to the Closing, duly and validly executed by the relevant Warrantor and (assuming the due authorisation, execution and delivery by the other parties hereto and thereto) this Agreement constitutes, and each relevant Group Document, when so executed and delivered will constitute, a legal, valid and binding obligation of each relevant Warrantor enforceable against the other parties in accordance with its terms,

subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights and remedies generally.

- 1.1.2.3. At Closing, the Seller shall have the legal capacity, power and authority to sell, transfer, cede and assign the Business and the Trading Assets as provided in this Agreement, and such transfer will convey to the Purchaser legal and beneficial ownership of the Business and the Trading Assets, and good and valid title to the Business and the Trading Assets, free and clear of any and all Encumbrances.

1.1.3. **Conflicts and Consents of Third Parties.**

- 1.1.3.1. Except as set forth in Schedule 5, none of the execution and delivery by any Warrantor of this Agreement or the Group Documents, the consummation of the transactions contemplated hereby or thereby, or compliance by any Warrantor with any of the provisions hereof or thereof will conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination or cancellation under, any provision of:

- 1.1.3.1.1. the memorandum and articles of association of any Warrantor;
- 1.1.3.1.2. any material contract, licence, consent or permit to which any Warrantor is a party or by which any of the properties or assets of any member of the Warrantors are bound;
- 1.1.3.1.3. any order of any governmental body applicable to any Warrantor or by which any of the material properties or assets of any Warrantor are bound; or
- 1.1.3.1.4. any Applicable Law.

- 1.1.3.2. Except as set forth in Schedule 5 and the approvals referred to in Clause 3.1, no consent, waiver, approval, order, permit or authorisation of, or declaration or filing with, or notification to, any person or governmental body is required on the part of any Warrantor in connection with the execution and delivery of this Agreement or the Company Documents or the compliance by any Warrantor with any of the provisions hereof or thereof, or the consummation of the transactions contemplated hereby or thereby.

1.1.4. **Trading Assets.**

- 1.1.4.1. **Ownership.** The Seller is the registered, legal and beneficial owners of each of the Trading Assets, free from, and clear of, all Encumbrances. None of the Trading Assets

is subject to any lease, instalment sale or credit agreement. No other person has any direct or indirect ownership or other interest or right (including any option, pre-emptive right, right of first refusal or right to acquire or claim delivery, ownership or transfer of the use, possession or enjoyment) in, or in relation to, the Business, any of the Trading Assets, or any component thereof, whether at present or in the future and none of the Seller have agreed to grant any such direct or indirect interest or right. No claim has been made by any person claiming to be entitled to any of the Trading Assets. Save for the warranties contained in this Schedule 4, the Trading Assets are sold *voetstoots*.

1.1.4.2. **Condition.** All the plant, machinery, equipment and vehicles used in the conduct of the Business and forming part of the Trading Assets, having regard to normal "wear and tear", can be efficiently and properly used for the purposes for which they were acquired or are retained and none is in need of renewal or replacement. The Trading Assets are in good order and condition, have been fully and properly maintained, and are fully operational. There are no material defects in any of the Trading Assets. The Stock consists of items of a quality and quantity currently usable and saleable in the ordinary course of business, which meet all applicable specifications and are fit for their intended purposes.

1.1.4.3. **Adequacy.** The Trading Assets to be transferred and sold to the Purchaser in terms of this Agreement, together, constitute all of the properties, assets, rights, facilities and services which are reasonably necessary for the Purchaser to carry on the Business in all material respects in the manner in which it is carried on as at the Signature Date and was carried on in the 12 (twelve) months prior to the Signature Date.

1.1.4.4. **Business.** The Business has been carried on in the ordinary and usual course without any interruption or alteration in its nature, scope or manner, and the Seller is in lawful possession of all assets which are necessary to enable it to carry on the Business. The Seller is not aware of any material circumstances arising outside the normal course of the carrying on of the Business which a purchaser of the Business could not reasonably be expected to be aware of, and which might reasonably be expected to affect materially and adversely the financial position, profitability or prospects of the Business or the value of any of the Business or its assets.

1.1.4.5. **Absence of Certain Developments.**

Except as contemplated by this Agreement, or as set forth in Schedule 5, since the Statement of Financial Position Date, each Seller has conducted its business in the ordinary course of business.

1.1.5. **Immovable Property.**

1.1.5.1. Schedule 5 sets forth a true and correct list of all leases of immovable property by any member of the Group (individually, an **Immovable Property Lease** and collectively, the **Immovable Property Leases**) as lessee or lessor, in each case which relate to any immovable property which relates to, or is in any way used by or in connection with, the Business.

1.1.5.2. Each of the Immovable Property Leases is valid, binding and in full force and effect, enforceable by the relevant member of the Group, as applicable, in accordance with their terms.

1.1.5.3. No member of the Group has assigned its rights under any of the Immovable Property Leases to any other person.

1.1.5.4. Each member of the Group has paid all rent and complied with all its obligations with respect to the Immovable Property Leases up to and including the Closing Date. There are no rent disputes pending or threatened, and no rent is currently under review.

1.1.6. **Contracts.**

1.1.6.1. The Warrantors have provided to Trafigura prior to the Signature Date copies or detailed descriptions (as applicable) of all agreements, arrangements and understandings (oral or written) with NOIC, Primero Energy, Trek Petroleum and Vemeda to which any member of the Group or any of their respective Affiliates is, or has at any time during the 5 (five) years prior to the Signature Date been, a party, in each case which relate to the Business (collectively, the **Material Contracts**).

1.1.6.2. All of the Material Contracts have been entered into in the ordinary and regular course of conduct of the Business and are of full force and effect according to their terms. The Seller is not in breach or default of any of those terms, and none of the terms of any of those contracts has been amended, nor have any of them been waived.

- 1.1.6.3. Each party with whom the Seller has contracted has complied in all material respects with the provisions of the relevant Material Contract and no Warrantor is aware of any intention of the part of any such contracting party to cancel any Material Contract.
- 1.1.6.4. Save for the Material Contracts, the Seller is not a party to any other contract or arrangement, whether written or unwritten, that is required to operate the Business.
- 1.1.7. **Labour.**
- 1.1.7.1. The Seller is not party to any labour or collective bargaining agreement.
- 1.1.7.2. The Seller has complied at all times in good faith with any obligation to consult with any of their respective employees.
- 1.1.8. **Employees.**
- 1.1.8.1. Schedule 6 sets out all of the Employees who work for, or in connection with, the Business as at the Signature Date, their functions, date of first employment, remuneration packages and benefits. Schedule 6 accurately reflects the following amounts in respect of all such Employees as at the Signature Date, and the principles applied in calculating those amounts:
- 1.1.8.1.1. the aggregate leave pay accrued but not paid as at the Signature Date;
- 1.1.8.1.2. the aggregate bonus payments accrued but not paid as at the Signature Date; and
- 1.1.8.1.3. any other amounts accrued but not paid as at the Signature Date.
- 1.1.8.2. No member of the Group provides, or is party to, or a member of, any share incentive, share option, profit sharing, bonus or other incentive scheme applicable to any of its past or current Employees or independent contractors.
- 1.1.8.3. No Employee is entitled to any benefit of employment other than the standard benefits of employment contained in the employment policies and employment contracts of the Group.
- 1.1.8.4. No member of the Group is a party to any contract of employment with any Employees or any contract with any independent contractor which is or will be terminable by it on more than 3 (three) months' notice or which, upon termination, obliges or will oblige any member of the Group to pay more than 3 (three) month's remuneration.

1.1.9. **Retirement arrangements.**

1.1.9.1. The Group does not provide, is not party to any scheme, agreement or arrangement for the provision of, and has no obligation to pay or contribute towards or otherwise fund in any way the payment of, any Relevant Benefits.

1.1.9.2. No member of the Group participates, or has ever participated, in any pension, provident, retirement annuity, superannuation or similar fund on behalf or for the benefit of any Employees, former employees or independent contractors of any member of the Group.

1.1.10. **Litigation.**

Except as set forth in Schedule 5, there are no Legal Proceedings or any arbitration or administrative proceedings (including any proceedings before any tribunal), pending or, threatened against any member of the Group.

1.1.11. **Compliance with Laws; Permits; Licences.**

1.1.11.1. Each member of the Group is, and has at all times been, in compliance with all Applicable Laws including, without limitation, all environmental, health and safety, exchange control, import and/or export control, anti-bribery, anti-corruption and anti-money laundering related laws and regulations. No member of the Group has received any written notice of or been charged with the violation of any laws or regulations.

1.1.11.2. Each member of the Group is in possession of all the necessary consents, permits, and licenses which are, or at any time have been, required for the conduct of the business of each member of the Group, including in relation to the construction, installation and continued use of all storage tanks used in the Group's business. There is no fact or circumstance which could in any way give rise to the non-renewal or cancellation of any such consent, permit or license or their renewal on conditions more onerous than currently applicable.

1.1.11.3. No approval, consent from, or notification to, any governmental or regulatory department, agency or similar body is required under or in relation to any such consent, permit or license in relation to implementing the Transaction.

1.1.11.4. Each of the consents, permits and licenses is in full force and effect and each member of the Group has complied with the terms of such consents, permits and licenses.

1.1.12. **Environment.**

1.1.12.1. The Group's business has not been the subject of any environmental audit, being any investigation, test, inspection or study performed by or at the request of any governmental or regulatory agency or authority.

1.1.12.2. No member of the Group is under any obligation or liability under any environmental or health and safety related law or regulation to remediate, clean up, rehabilitate or restore any property, whether in Zimbabwe or elsewhere, in order to ensure compliance with any such law or regulation in force at any time now or in the future, nor is there any contamination of any property owned, leased or otherwise utilised by any member of the Group by hazardous or toxic substances or wastes, pollutants or contaminants.

1.1.13. **Disclosure.**

No information known by the Seller or which ought to be known by the Seller has not been disclosed to Trafigura that (i) would reasonably be considered important for a prospective purchaser of the Business and the Trading Assets to obtain a true and fair view of each member of the Group as at the Signature Date; (ii) would make any disclosed information materially untrue or inaccurate; (iii) might reasonably have been expected to influence the Trafigura's decision to enter into this Agreement and procure that the Purchaser purchases the Business on the terms and at the price contained in this Agreement, and /or perform the obligations on its part contained in this Agreement.

1.2. 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 following warranties and representations 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):

1.2.1. **Organisation and Good Standing.**

Trafigura is a company duly organised and validly existing under the laws of Singapore and has all requisite power and authority to own, lease and operate properties and carry on its business.

1.2.2. **Authorisation of Agreement.**

1.2.2.1. Trafigura has all requisite legal capacity, power and authority, and as at Closing will have obtained all consents, licences, authorisations, waivers or exemptions required

to empower it, to execute this Agreement and each other agreement, document, instrument or certificate contemplated by this Agreement or to be executed by the Purchaser in connection with the consummation of the transactions contemplated by this Agreement (the Purchaser Documents), and to perform and consummate the transactions contemplated hereby and thereby.

- 1.2.2.2. This Agreement has been, and each Purchaser Document will be at or prior to the Closing, duly and validly executed by Trafigura and (assuming the due authorisation, execution and delivery by the other parties hereto and thereto) this Agreement constitutes, and each Purchaser Document, when so executed and delivered will constitute, a legal, valid and binding obligation of Trafigura or the Purchaser (as applicable) enforceable against Trafigura or the Purchaser (as applicable) in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights and remedies generally.

1.2.3. **Consents of Third Parties.**

- 1.2.3.1. No consent, waiver, approval, order, permit or authorisation of, or declaration or filing with, or notification to, any person or governmental body is required on the part of Trafigura in connection with the execution of this Agreement or the Purchaser Documents, as applicable.
- 1.2.3.2. Each warranty shall be a separate warranty and shall in no way be limited to or restricted by reference to or by inference from the terms of any other warranty, or by any words in this Agreement. Each Warrantor acknowledges that Trafigura has entered into this Agreement in reliance on the representations and warranties given by the Warrantors, each of which is a material representation inducing Trafigura to enter into this Agreement.

1.3. **Disclosure Schedules.**

- 1.3.1. Except where otherwise specified in this Agreement, the information, facts, matters and circumstances fairly disclosed in the Disclosure Schedule shall constitute a disclosure against and shall qualify each of the representations and warranties given by the Warrantors under paragraph 1.1 of Schedule 4 and the scope and effect of such warranties shall be limited accordingly; provided that such disclosure and qualification shall only apply to the extent that the relevant information, facts, matters and circumstances are disclosed in the Disclosure Schedule fairly, accurately and in sufficient detail such that the Purchaser can reasonably identify and understand the full nature,

extent and consequences of the information, facts, matters and circumstances being disclosed and the risks and potential liability resulting from such information, facts, matters and circumstances.

- 1.3.2. The Warrantors undertake not to bring any claim against any director, officer or employee of any member of the Group, which it may have in respect of a misrepresentation, inaccuracy or omission in or from information or advice provided by a director, officer or employee of any member of the Group for the purpose of assisting the Warrantors to give a warranty or prepare the Disclosure Schedule.

1.4. **No Other Representations or Warranties.**

Save for the warranties and representations expressly given in this Agreement, no further warranties or representations are given by any of the Parties.

SCHEDULE 5  
DISCLOSURE SCHEDULE

None.

# **SCHEDULE 6**

## **EMPLOYEES**

Name	Designation	Salary	Allowances						Pension & NSSA	Levies	GLA	Total	Vehicle Limit	Vehicle Durati on
			Transp ort	Lunch	Holida y	School Fees	Securit y	Medical Aid						
Innocent Rukweza	Head - Trading	8,000	564	220	833	1,000	800	660	446	262	196	13,281	100,000	4 years
Thembelihle Ndhlovu	Trader - Local	5,200	494	175	-	667	-	120	292	171	127	7,546	65,000	4 years
Tafadzwa Nyamwanza	Supplies Mgr	3,500	350	175	-	-	-	87	182	62	85	4,691	45,000	4 years
Nelly Mtengwa	Ass Accountant	2,500	296	135	-	-	-	240	137	46	61	3,415	-	-

ANNEXURE A  
SHAREHOLDERS' AGREEMENT