

TRAFIGURA PTE LTD

and

KUDAKWASHE REGIMOND TAGWIREI

SERVICES AGREEMENT

THIS AGREEMENT is made as of

BETWEEN:

1. **TRAFIGURA PTE LTD**, a company incorporated under the laws of Singapore, with registered number 199601595D, having its registered office at 1 Marina Boulevard #28-00, One Marina Boulevard, 018989 Singapore ("**TPTE**"); and
2. **KUDAKWASHE REGIMOND TAGWIREI**, an adult male resident of Zimbabwe with Zimbabwean National Identification number 29-135894Z66 (**Tagwirei**);

each a "**Party**" and together the "**Parties**".

WHEREAS:

- (A) Tagwirei has (i) knowledge and skill in the refined petroleum products markets in the Territory, and (ii) has access to infrastructure for the importation of such products into the Territory.
- (B) TPTE is an international commodity trading company.
- (C) On or about 19 July 2013, the Parties have agreed to jointly undertake the Business (as hereinafter defined).
- (D) The Business is undertaken principally by TPTE. Furthermore, for the purpose of transporting the refined petroleum products into the Territory, the Business is undertaken in the name of Sakunda Supplies.
- (E) On or about 19 July 2013, the Parties, either directly, or through wholly owned legal entities, entered into the following agreements:
 - (i) **Tagwirei** and his affiliate companies, **Sakunda Holdings (Private) Limited (Sakunda Holdings)** and **Sakunda Trading (Private) Limited (Sakunda Trading)** and **TPTE** concluded a sale of business and assets agreement (the **Sale Agreement**), on the basis of which TPTE agreed a payment to Tagwirei in the amount a) of USD 12 000 000 (twelve million United States Dollars) for entering into the Business and b) USD 12 000 000 (twelve million United States Dollars) for gaining access to the NOIC pipeline contract (by receiving 49% of the shares in **Sakunda Supplies (Private) Limited (Sakunda Supplies)** (subject to completion of the assignment of the NOIC Agreement to **Sakunda Supplies** as outlined in the **Sale Agreement**) and a supply contract with TPTE).
 - (ii) In terms of the **Sale Agreement**, (i) TPTE and **Sakunda Holdings** incorporated and registered **Sakunda Supplies** and (ii) as a result of which **Sakunda Trading** assigned certain contracts, and transferred various assets and liabilities to **Sakunda Supplies**.
- (F) On or about 1 November 2013, the Parties, either directly, or through wholly owned legal entities, entered into the following agreements:

- (i) A shareholders' agreement regulating their affairs (the **Shareholders' Agreement**).
 - (ii) Pursuant to the Shareholders' Agreement Tagwirei and Sakunda Supplies entered into a services agreement in terms of which Tagwirei agreed to provide certain services to Sakunda Supplies (the **Tagwirei Service Agreement**).
 - (iii) Pursuant to the Shareholders' Agreement TPTE and Sakunda Supplies entered into a services agreement in terms of which TPTE agreed to provide certain services to Sakunda Supplies (the **TPTE Service Agreement**).
 - (iv) TPTE Supply Agreement dated October 21, 2014.
- (G) TPTE and its affiliates (individually or together "**Trafigura**"), Tagwirei and his affiliates wish to amend how such Business is undertaken in the Territory and how each Party is compensated for the same and have agreed to set out such terms in this Agreement.

WHEREBY IT IS AGREED as follows:

1. Interpretation

1.1 Save as otherwise defined in this In this Agreement (and the recitals thereto):

"Agreement"	means this agreement;
"Asset Purchase Documents"	means the agreements between the Parties in connection with the sale and purchase of the assets of Sakunda Trading, including inter alia, the Sale Agreement and the Shareholders' Agreement;
"Business"	business shall be limited to the importation of Petroleum Products into the Territory and the sale in bulk to registered oil marketing companies in the Territory, and any other kinds of business which Parties may agree upon from time to time
"Business Day"	means a day when banks are generally open for business in Geneva, Harare and Singapore;
"Effective Date"	means the Start Date;
"Fees"	means the Relevant Business Fees and the Specific Transaction Fees to be paid by Trafigura to Tagwirei in respect of each Financial Year during the Term;
"FFA"	means the final fee adjustment calculated in accordance with clause 3.4;
"Final Financial Year"	means the Financial Year in which this Agreement terminates;

“Financial Year”	means the period from the Effective Date to the following 30 September and thereafter each period of 1 October to 30 September inclusive until the Final Financial Year when it shall be the period from 1 October until the Termination Date;
“Governmental Authority”	means any nation or government, any state, or other political subdivision thereof and any entity, body, agent, commission or court, whether domestic, foreign, regional or multinational, exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any executive official thereof;
“Payment Date”	means, for the Fees in respect of any Financial Year, 31, January in the calendar year following the year in which that Financial Year ended;
“Relevant Business”	means transactions (or a part or parts of such transactions) executed as part of the Business involving Tagwirei providing the Services other than Specific Transactions;
“Relevant Business Fees”	means the fees calculated pursuant to clause 3.2;
“Sakunda Group”	means Sakunda Holdings and any subsidiary thereof;
“Services”	Means the services provided by Tagwirei pursuant to the Tagwirei Service Agreement;
“Service Agreements”	means (i) Tagwirei Service Agreement and, (ii) the TPTE Service Agreement;
“Specific Transaction Fees”	means fees agreed on a case by case basis for Specific Transactions and to be denominated in US dollars;
“Specific Transactions”	means only those transactions or projects (or a part or parts of such transactions), including without limitation, M&A, joint ventures, financings, structured finance which TPTE and Tagwirei jointly determine is not Relevant Business and should be considered Specific Transactions;
“Start Date”	means the date of signature by the last Party hereto;
“Tagwirei Services”	means those services to be provided by Tagwirei as set out in schedule 1;
“Tax”	means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any related penalty or interest payable in connection with any failure

to pay or any delay in paying any of the same);

"Term"	means the period from the Start Date until the Termination Date;
"Termination Date"	means the actual date of termination of this Agreement pursuant to clause 6;
"Territory"	means the Republic of Zimbabwe; and
"Trafigura Services"	means those services to be provided by Trafigura as set out in schedule 2;

1.2 In this Agreement, unless otherwise specified:

- (i) references to clauses are to clauses of this Agreement;
- (ii) words in the singular shall include the plural, and vice versa;
- (iii) a reference to a person shall include a reference to a firm, a body corporate, an unincorporated association or to a person's executors or administrators;
- (iv) a reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;
- (v) the word "including" shall be construed without limitation;
- (vi) a reference to any other agreement shall be a reference to that agreement as amended, supplemented, assigned or novated from time to time; and
- (vii) the *contra proferentem* rule shall not apply and accordingly none of the provisions of this Agreement shall be construed against or interpreted to the disadvantage of the Party responsible for the drafting or preparation of such provisions; and
- (viii) headings to clauses and schedules are for convenience only and do not affect the interpretation of this Agreement.

2. The Services

- 2.1 In relation to the Business, Tagwirei shall provide the Tagwirei Services during the Term of this Agreement.
- 2.2 Tagwirei shall have no authority to enter into any binding obligations for or on behalf of Trafigura in any capacity and shall not represent to any third party that it has authority to do so unless otherwise specifically and expressly authorised to do so in writing.
- 2.3 The rights conferred upon TPTE by this Agreement are for the benefit of Trafigura and this Agreement shall be construed accordingly, vice versa regarding Tagwirei.

- 2.4 Tagwirei acknowledges that Trafigura will provide the Trafigura Services and that will result in significant investment and accordingly engagement by Tagwirei in any activities relating to the Business (other than as agreed with TPTE) would cause Trafigura irreparable damage. To induce TPTE to enter into this Agreement, Tagwirei agrees that for the Term, Tagwirei will ensure that he does not directly or indirectly in any capacity whatsoever provide services in relation to any business activity that could compete with the Business (other than as agreed with TPTE).
- 2.5 TPTE acknowledges that Tagwirei will use his significant market experience, network and contact base as part of developing and assisting the Business in the Territory and this will result in significant value addition to Trafigura and increase Trafigura's profile in the Territory. To induce Tagwirei to enter into this Agreement, TPTE agrees that for the Term, TPTE will ensure that it does not directly or indirectly in any capacity whatsoever partake in any business activity that could compete with the Business in the Territory (other than as agreed in writing with Tagwirei).

3. The Fees

- 3.1 In respect of the Services contemplated under this Agreement, in respect of each Financial Year, TPTE in agreement with Tagwirei shall (acting in a reasonable commercial manner) either estimate or calculate the Fees.
- 3.2 In respect of any Financial Year, provided the Services have been performed, the Relevant Business Fees shall be calculated by Trafigura as follows:

$$F = (0.51 \times I) - \text{but only if } I \text{ is a positive number}$$

and

$$I = (P - L) - CL - IDC$$

Where:

F is the Relevant Business Fees for that Financial Year;

I is the net relevant profit or loss for calculating the Relevant Business Fees;

P is the aggregate of all the net profit (after deduction of direct costs, management costs and expenses, and withholding of any Tax, corporate income taxes due on the profit and the up-streaming of the dividends to Tagwirei and TPTE and any reserves or provisions made by Trafigura) allocated to Relevant Business recognised/realised by Trafigura in its books and records (following the applicable accounting standards used by TPTE) as at the end of that Financial Year for that Financial Year;

L is the aggregate of all the net loss (after deduction of direct costs, management costs and expenses, and withholding of any Tax, corporate income taxes due on the profit and the up-streaming of the dividends to Tagwirei and TPTE and any reserves or provisions made by Trafigura) allocated to Relevant Business recognised/realised by Trafigura in its books and records (following the applicable accounting standards used by TPTE) as at the end of that Financial Year for that Financial Year;

CL is the absolute value of I from the previous Financial Year if the value of I for that previous year was negative (a loss);

IDC is the indirect costs and overhead (not otherwise deducted in the calculation of P or L) calculated by Trafigura in agreement with Tagwirei (in a commercially reasonable manner) as being applicable to the Relevant Business or the Business Development for that Financial Year; and

All stated in US dollars. In the event that any currency conversion is necessary for the purposes of calculating "F", the conversion shall be undertaken by Trafigura acting in a commercially reasonable manner.

- 3.3 In respect of any Financial Year, provided the Services have been performed, the Specific Fees shall be paid in accordance with the agreement reached between Trafigura and Tagwirei, if such Fees are due and payable in that Financial Year less a contingency for Tax or other reserves or provisions that Trafigura, jointly with Tagwirei, deem appropriate in respect of the Specific Fees.
- 3.4 Following the end of the Final Financial Year, Trafigura in agreement with Tagwirei, shall calculate the FFA as follows:

$$\text{FFA} = \text{A} - \text{B}$$

Where:

$$\text{A} = (0.51 \times \text{TPNL})$$

and

$$\text{TPNL} = (\text{TP} - \text{TL}) - \text{TIDC}$$

Where:

TP means the aggregate of all the net profit (after deduction of direct costs, management costs and expenses, and withholding of any Tax, corporate income taxes due on the profit and the up-streaming of the dividends to Tagwirei and TPTE and any reserves or provisions made by Trafigura in agreement with Tagwirei) allocated to Relevant Business during the Term as recognised/realised by Trafigura from its books and records (following the applicable accounting standards used by TPTE) as at the end of the Final Financial Year for the Term;

TL means the aggregate of all the net loss (after deduction of direct costs, management costs and expenses, and withholding of any Tax, corporate income taxes due on the profit and the up-streaming of the dividends to Tagwirei and TPTE and any reserves or provisions made by Trafigura) allocated to Relevant Business during the Term as recognised/realised by Trafigura in agreement with Tagwirei from its books and records (following the applicable accounting standards used by TPTE) as at the end of the Final Financial Year for the Term

TIDC means the aggregate of all the indirect costs and overhead (not otherwise deducted in the calculation of TP or TL) calculated by Trafigura in agreement with

Tagwirei (in a commercially reasonable manner) as being applicable to the Relevant Business or the Business Development) as at the end of the Final Financial Year for the Term;

and

B means the aggregate of Relevant Business Fees paid or payable for all the Financial Years during this Agreement.

4. Payment of the Fees

4.1 Within 10 Business Days of receiving its auditor's report in respect of each Financial Year (other than the Final Financial Year), Trafigura shall notify Tagwirei of the amount of the Fees together with its calculation of the Fees for that Financial Year.

4.2 Subject to Clause 4.3, for each Financial Year, the Fees shall be paid by Trafigura on the Payment Date for that Financial Year, or such earlier date as the Parties shall mutually agree, to the nominated account of Tagwirei provided that account is notified and approved by Trafigura no later than 60 calendar days prior to the relevant Payment Date, otherwise to Tagwirei last notified and approved bank account.

4.3 In the event that the FFA is:

- (i) a positive number, then Trafigura shall pay to Tagwirei to the nominated account of Tagwirei provided that account is notified and approved by Trafigura no later than 60 calendar days prior to the relevant Payment Date, otherwise to Tagwirei last notified and approved bank account.; or
- (ii) a negative number, the Tagwirei shall pay to Trafigura to the nominated account of Trafigura or, with Trafigura's agreement, shall be paid in instalments on terms acceptable to Trafigura .

the absolute value of FFA .

Trafigura shall be entitled to set off or net in whole or part any unpaid Relevant Transactions Fees for any Financial Year (whether or not due and payable) against the FFA due to Trafigura.

5. Termination of Services Agreements

5.1 In consideration of the mutual release by the Parties, it is hereby agreed that with effect from the Start Date:

- (i) the TPTE Service Agreement be and are hereby terminated in all respects;
- (ii) the TPTE shall be released irrevocably and unconditionally from all obligations and liabilities under the TPTE Service Agreement.

5.2 Each of the Parties acknowledges and confirms that no rights or obligations accruing to it under the Service Agreements nor have any rights been assigned or novated by it to any person who is not a party to the Services Agreement.

6. Termination

6.1 This Agreement may be terminated at any time as follows:

- (i) by mutual written consent of the Parties;
- (ii) by written notice from TPTE to Tagwirei if the Shareholders' Agreement is, for any reason, terminated;
- (iii) if at any time the other Party:
 - (a) commits any irremediable material breach of this Agreement; or
 - (b) commits persistent deliberate breaches of this Agreement which collectively amount to a material breach of this Agreement; or
 - (c) commits any remediable material breach of this Agreement and fails to remedy such breach within a period of twenty (20) Business Days from the service on it of a notice specifying the breach and requiring it to be remedied.

6.2 In the event of termination of this Agreement by the Parties pursuant to clause 6.1, written notice thereof shall forthwith be given to the Parties, and this Agreement shall terminate without further action by the Parties.

6.3 In the event that this Agreement is validly terminated in accordance with clauses 6.1 and 6.2, 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 TPTE or Tagwirei; 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, 8, 6, 11 to 17 of this Agreement shall survive any such termination and shall be enforceable under this Agreement.

7. Tax

7.1 Tagwirei shall be fully responsible for and shall indemnify TPTE and Trafigura for and in respect of any taxation or tax cost of any nature relating to Tagwirei, the Tagwirei Services or this Agreement and shall further indemnify TPTE and Trafigura against all against any claim, payment, loss or liability and reasonable costs, expenses and any penalty, fine or interest incurred or payable by either TPTE and/or Trafigura in connection with or in consequence of any such liability, deduction, contribution, assessment or claim which Trafigura suffers by it for or on account of any Tax whenever and howsoever arising in relation to any payment made by it under this Agreement relating to Tagwirei, the Tagwirei Services or this Agreement and Trafigura will be entitled to deduct the amount of any such Tax from any payment payable by it under this Agreement. This obligation shall survive the termination of the other provisions of this Agreement.

- 7.2 If Tagwirei is required by law to make any deduction on account of Tax on any payment due from it to Trafigura, the amount of any such payment shall be increased to an amount which after making that deduction leaves an amount equal to the payment which would have been made if no deduction had been required.

8. Warranties

- 8.1 TPTE warrants to Tagwirei in the following terms:

- (i) it is validly incorporated, in existence and duly registered and has the requisite capacity, power and authority to enter into and perform this Agreement.
- (ii) this Agreement has been duly executed and delivered by its authorized representatives and constitutes its legally valid and binding obligation.

- 8.2 Tagwirei warrants to TPTE that:

- (i) he is skilled and experienced at providing the Services;
- (ii) he shall carry out his obligations under this Agreement in a timely manner and using reasonable skill and care.

- 8.3 Without limitation, the provisions of this clause 8 are material terms of this Agreement.

9. Entire agreement and inconsistency

- 9.1 This Agreement constitutes the whole and only agreement between the Parties relating to the matters contained herein. In entering into this Agreement, each Party acknowledges that it is not relying upon any pre-contractual statement which is not expressly set out in them.

- 9.2 Except in the case of fraud, no Party shall have any right of action against any other Party to this Agreement arising out of or in connection with any pre-contractual statement.

- 9.3 For the purposes of this clause, "pre-contractual statement" means any draft, agreement, undertaking, representation, warranty, promise, assurance or arrangement of any nature whatsoever, whether or not in writing, relating to the subject matter of the Asset Purchase Documents made or given by any person at any time prior to the date of this Agreement.

- 9.4 If and to the extent that any provision of this Agreement conflicts with any of the Asset Purchase Documents or any law, then the Parties shall:

- (A) to the extent possible, let the provisions of this Agreement prevail and act between themselves as if the provisions of this Agreement are in full force; and/or
- (B) to the extent required and possible, amend or procure the amendment of the Asset Purchase Documents and replace any provision that conflicts with this Agreement and/or any law by another provision that does not conflict with this Agreement and/or law, but that has the same effect.

- 9.5 If any Party requires a provision of the Asset Purchase Documents to be amended to remove a conflict or inconsistency between this Agreement (on the one hand) and the Asset Purchase Documents (on the other) then the Parties undertake to use their best endeavours to co-operate in good faith in securing such amendment or the inclusion by taking steps to amend the Asset Purchase Documents, as applicable.

10. Further assurance

- 10.1 The Parties agree to execute and deliver to each other all additional documents and to do all further acts and things as may be reasonably required, or as may be reasonably requested by any other Party to give effect to this Agreement and the matters contemplated under it.
- 10.2 The Parties shall co-operate with one another to ensure that any application for consent or approval that has been submitted to other Government Authority in connection with the this Agreement or the transactions contemplated therein.

11. Unenforceable provisions

If any term or provision of this Agreement shall be found by a court or arbitral tribunal of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court or arbitral tribunal's opinion to render such term or provision enforceable, and the rights and obligations of the Parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the Parties in this Agreement.

12. Variation

No variation to or waiver under this Agreement shall be effective unless made in writing and signed by or on behalf of all the Parties.

13. Contracts (Rights of Third Parties) Act 1999

The Parties to this Agreement intend Trafigura and Tagwirei can enforce this Agreement but otherwise do not intend that any term of this Agreement should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person, who is not a Party to this Agreement.

14. Confidentiality

- 14.1 Each Party shall treat as confidential all information which relates to the provisions and subject matter of this Agreement.
- 14.2 Each Party shall:
- (i) not disclose any such confidential information to any person other than any of its directors or employees who needs to know such information in order to discharge his duties;

- (ii) procure that any person to whom any such confidential information is disclosed by it complies with the restrictions contained in this clause as if such person were a Party to this agreement.

14.3 Notwithstanding the other provisions of this clause, either Party may disclose any such confidential information:

- (i) to the extent required by law;
- (ii) to the extent required by existing contractual obligations;
- (iii) to the extent required by any securities exchange or regulatory or governmental body to which that Party is subject or submits;
- (iv) to its professional advisers, auditors and bankers provided they have a duty to keep such information confidential;
- (v) to the extent the information has come into the public domain through no fault of that Party; or
- (vi) to the extent the other Party has given prior written consent to the disclosure.

14.4 The restrictions contained in this clause shall continue to apply after the termination of the other provisions of this Agreement without limit in time.

15. Counterparts

This Agreement may be executed in any number of counterparts, and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute one and the same instrument.

16. Governing law

This Agreement shall be governed by and construed in accordance with English law. Any matter, claim or dispute arising out of or in connection with this Agreement, whether contractual or non-contractual, is to be governed by and determined in accordance with English law.

17. Dispute Resolution

17.1 All claims, disputes or differences whatsoever between the Parties arising out of or in connection with the Agreement (including without limitation to any question regarding its existence, validity or termination) shall be referred to arbitration in London, England, in accordance with the Arbitration Act 1996 (or any subsequent amendment or re-enactment thereof) (the **Act**).

17.2 The claiming Party shall appoint one arbitrator and give written notice to the other Party of the appointment (**Arbitration Notice**). The defending Party shall appoint and give notice to the claiming Party of the second arbitrator within 14 days of the Arbitration Notice. The third arbitrator shall be appointed by the two arbitrators so appointed within

- IN WITNESS** of which this Agreement has been executed by the Parties.

Date:

[illegible]

Schedule 1

- Maintaining and growing existing relationships with key stakeholders including but not limited to governmental, regulatory and local authorities in the Territory, NOIC, state-owned companies and parastatal agencies;
- Maintaining and growing existing relationships with key customers, including but not limited to oil marketing companies in the Territory; and
- Anything else as deemed appropriate and agreed by the Parties from time to time.

Schedule 2

- accounting, bookkeeping and reporting;
- “deals desk” (if deemed required by the shareholders), as such term is commonly understood, which may include commodity price hedging, selling price optionalities;
- operations including but not limited to shipping and logistics, credit management, and invoicing; and
- any other commercial support as may be required from time to time.