

TRINIDAD AND TOBAGO SECURITIES AND EXCHANGE COMMISSION



DRAFT

Repurchase Transaction Agreement

Between

PARTY "X"

And

PARTY "Y"

THIS AGREEMENT is made on the.....day ofin the year , between Party “X”, a body corporate established under the Companies Act, 1995 and having its principal place of business atof the One Part and Party “Y”, of the Other Part.

1. APPLICABILITY

- (a) From time to time the parties hereto may enter into transactions in which one party (“seller”) agrees to sell to the other (“buyer”) securities against the payment of the purchase price by Buyer to Seller, with a simultaneous agreement by Buyer to sell to the Seller securities equivalent to such securities at a date certain or on demand against the payment of the repurchase price by Seller to Buyer.
- (b) Each such transaction (which may be a repurchase transaction (“Repurchase Transaction”)) shall be referred to herein as a “Transaction” and shall be governed by this agreement, including any supplemental terms or conditions contained in Annex 1¹ hereto, unless otherwise agreed to in writing.

2. DEFINITIONS

- (a) “Act of insolvency” shall occur with respect to any party hereto upon –
 - (i) The party making a general assignment for the benefit of, entering into a reorganization, arrangement or composition with creditors;
 - (ii) The party admitting in writing that it is unable to pay for its debts as they become due;
 - (iii) The party being deemed unable to pay its debts pursuant to either section 356 of the Companies Act, Ch. 81:01 or section 3 of the Bankruptcy Act, Ch. 9:70;
 - (iv) The party seeking, consenting to or acquiescing in the appointment of any trustee, administrator, receiver, liquidator or analogous officer of the said party or any material part of its property;
 - (v) The presentation or filing of a petition in respect of the said party (other than by the counterparty to this agreement in respect of any obligation under this agreement) in any court or before any agency alleging or for the bankruptcy, winding-up or insolvency of such party (or any analogous proceeding) or seeking any reorganization, arrangement, composition, re-adjustment, administration, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such petition (except in the case of a petition for winding-up or any analogous proceeding, in respect of which no such 30 day period shall apply) not having been stayed or dismissed within 30 days of its filing;
 - (vi) The appointment of a receiver, administrator, liquidator or trustee or analogous officer of such party or over all or any material part of the party’s property; or

¹ See Annex 1 of the BMA/ISMA master repo agreement

- (vii) The convening of any meeting of its creditors for the purposes of considering a voluntary arrangement as referred to in section 418 of the Companies Act, 1995 (or any analogous proceeding);

“additional purchased securities” means securities provided by the seller to the buyer pursuant to paragraph 4 hereof;

“business day” means any day on which commercial banks are open for normal business not being a Saturday or a Sunday;

“buyer’s margin amount” means, with respect to any transaction as of any date, the amount obtained by the application of a percentage (which may be equal to the percentage that is agreed to as the seller’s margin amount) agreed to by the buyer and seller prior to entering into a transaction, to the repurchase price for such transaction as of such date;

“confirmation” has the meaning specified in paragraph 3(b) hereof;

“income” with respect to any security at any time means, any principal and return of capital then payable and all interest, dividends or other distributions thereon;

“margin deficit” has the meaning specified in paragraph 4 hereof;

“market value” with respect to any security as of any date, means the price of the fair market value of the security at the relevant date, as agreed by the parties or as determined by a mutually agreed to independent professional having the required experience;

“price differential” means, with respect to any transaction hereunder as of any date, the aggregate amount obtained by daily application of the repo rate for such transaction to the purchase price for such transaction on a 365 day year basis in each case for the actual number of days during the period commencing on, and including, the purchase date for such transaction and ending on, but excluding, the date of determination (reduced by any amount of such price differential previously paid by seller to buyer with respect to such transaction);

“Prime rate” means the arithmetic average of the prime lending rates quoted by the Central Bank of Trinidad and Tobago;

“purchase price” means on the purchase date the price at which the beneficial interest in the purchased securities is transferred by the seller to the buyer;

“purchased securities” means the securities, the beneficial ownership of which is transferred by seller to buyer in a transaction hereunder, and any securities substituted therefore in accordance with paragraph 8 hereof. The term “purchased securities” with respect to any transaction at any time also shall include additional purchased securities delivered pursuant to paragraph 4 hereof. Any reference herein to the transfer of purchased securities or

additional purchased securities shall mean a transfer of the beneficial ownership of such securities;

“repurchase date” means the date on which the seller is to repurchase the purchased securities from the buyer, including any date determined by the application of the provisions of paragraph 3(g) or 10 hereof;

“repurchase price” means the price at which the purchased securities are transferred from buyer to seller upon termination of a transaction, which will be determined in each case (including transactions terminable upon demand) as the sum of the purchase price and the price differential as of the date of such determination, increased by any amount determined by the application of the provisions of section 10 hereof;

“repurchase rate” or “repo rate” means the per annum percentage rate for the determination of the price differential;

“seller’s margin amount” means, with respect to any transaction as of any date, the amount obtained by application of a percentage (which may be equal to the percentage that is agreed to as the buyer’s margin amount) agreed to by buyer and seller prior to entering into the transaction to the repurchase price for such transaction as of such date;

3. INITIATION; CONFIRMATION; TERMINATION

- (a) A transaction may be entered into orally or in writing at the initiation of the buyer.
- (b) Upon agreeing to enter into a transaction hereunder buyer and seller (or both), as shall have been agreed, shall promptly deliver to the buyer written confirmation of such transaction (“confirmation”).

The confirmation shall describe the purchased securities, identify the buyer and the seller and shall set forth –

- (i) the purchase date;
 - (ii) the purchase price;
 - (iii) the repurchase date, unless the transaction is to be terminable on demand (in which case the confirmation shall state that it is terminable on demand);
 - (iv) the repo rate applicable to the transaction;
 - (v) in respect of each party the details of the bank account(s) to which payments to be made hereunder are to be credited;
 - (vi) any additional terms or conditions of the transaction not inconsistent with this agreement;
- (c) The confirmation relating to a transaction shall, together with this agreement, constitute prima facie evidence of the terms agreed between the buyer and the seller for that transaction, unless objection is made with respect to the

confirmation promptly after receipt thereof. In the event of any conflict between the terms of such confirmation and this agreement, the confirmation shall prevail in respect of that transaction and those terms only.

- (d) On the purchase date for a transaction, the seller shall transfer the purchased securities to the buyer against the payment of the purchase price by the buyer.
- (e) Termination of a transaction will be effected, in the case of on demand transactions, on the date specified for termination in such demand, and, in the case of fixed term transactions, on the date fixed for termination.
- (f) In the case of on demand transactions, demand for termination shall be made by the buyer on seller, no later than 10:30 a.m. by telephone, facsimile transmission, electronic mail or as may otherwise be agreed between seller and buyer, on or prior to the business day on which such termination will be effective. On the date specified in such demand, termination of the transaction will be effected by transfer to seller of the purchased securities against the concurrent transfer of the repurchase price to the buyer.
- (g) On the repurchase date, the buyer shall transfer to the seller equivalent securities against the payment of the repurchase price by the seller (less any amount then payable and unpaid by buyer to seller pursuant to paragraph 5 regarding income payments).

4. MARGIN MAINTENANCE

If at any time the aggregate market value of all purchased securities subject to all repurchase transactions is less than the aggregate repurchase price (such difference a "margin deficit"), then the seller shall transfer to the bank "additional purchased securities", so that the aggregate margin value of the purchased securities, including any such additional purchased securities, will thereupon equal or exceed the aggregate repurchase price.

5. INCOME PAYMENTS

With respect to repurchase transactions, the seller shall be entitled to receive all income paid or distributed on or in respect of the purchased securities that is not otherwise received, to the full extent it would be so entitled to if the purchased securities had not been transferred to the buyer. The buyer shall on the date such income is paid or distributed, with respect to income paid in cash, apply the income payment or payments to reduce the purchase price with respect to that transaction. The buyer shall not be obligated to take any action pursuant to the preceding sentence if an event of default with respect to the seller has occurred and is then continuing at the time such income is paid or distributed.

6. PAYMENT

Unless otherwise agreed, all monies paid hereunder shall be in immediately available freely convertible funds. All securities to be transferred hereunder shall be transferred through the book-entry system of the Trinidad and Tobago Central Depository.

- (b) Unless otherwise agreed in writing, all monies payable by one party to the other in respect of any transaction shall be paid free and clear of, and without withholding or deduction for any taxes or duties of whatsoever nature imposed, levied, collected, withheld or assessed by any authority having power to tax, unless the withholding or deduction of such taxes or duties is required by law. In that event, unless otherwise agreed, the paying party shall pay such additional amounts as will result in the net amounts receivable by the other party (after taking account of such withholding or deduction) being equal to such amounts as would have been received by it had no such taxes or duties been required to be withheld or deducted.

8. SUBSTITUTION ²

9. REPRESENTATIONS

Each party represents and warrants to the other that –

- (i) it is duly authorized to execute and deliver this agreement, to enter into the transactions contemplated hereunder and to perform its obligations hereunder and thereunder and has taken all necessary action to authorize such execution, delivery and performance;
- (ii) it will engage in this agreement and the transactions contemplated hereunder as principal;
- (iii) the person signing this agreement on its behalf is, and any person representing it in entering into a transaction will be, duly authorized to do so on its behalf;
- (iv) it has obtained all necessary authorizations of any governmental or regulatory body required in connection with this agreement and the transactions contemplated hereunder and such authorizations are in full force and effect;
- (v) the execution, delivery and performance of this agreement and the transactions contemplated hereunder will not violate any law, ordinance, charter, by-law or rule applicable to it or any agreement by which it is bound or by which its assets are affected;
- (vi) its obligations under this agreement are, and its obligations under any transaction will be legal, valid and binding;
- (vii) at the time of transfer to the other party of any securities it will have full and unqualified right to make such transfer and that upon such transfer of securities the other party will receive all right, title and

² Parties will be able to determine their own terms

interest in and to those securities free of any lien, claim, charge or encumbrance.

- (viii) On the date on which any transaction is entered into pursuant hereto, and on each day on which securities, equivalent securities, margin securities or equivalent margin securities are to be transferred under any transaction, buyer and seller shall each be deemed to repeat all the foregoing representations. For the avoidance of doubt and notwithstanding any arrangements which the seller or the buyer may have with any third party, each party will be liable as a principal for its obligations under this agreement and each transaction.

10. EVENTS OF DEFAULT

- (a) If any of the following events (each an “event of default”) occurs in relation to either party (the “Defaulting Party”, the other party being the “non-defaulting party”) whether acting as seller or buyer –
 - (i) buyer fails to pay the purchase price upon the applicable purchase date or seller fails to pay the repurchase price upon the applicable repurchase date, and the non-defaulting party serves a default notice on the defaulting party;
 - (ii) seller fails to comply with paragraph 4 and the non-defaulting party serves a default notice on the defaulting party;
 - (iii) an act of insolvency occurs with respect to seller or buyer and (except in the case of an act of insolvency which is the presentation of a petition for winding up or any analogous proceeding or the appointment of a liquidator or analogous officer of the defaulting party in which case no such notice shall be required) the non-defaulting party serves a default notice on the defaulting party;
 - (iv) any representations made by the seller or the buyer are incorrect or untrue in any material respect when made or repeated or deemed to have been made or repeated, and the non-defaulting party serves a default notice on the defaulting party;
 - (v) the seller or the buyer admits to the other that it is unable to, or intends not to, perform any of its obligations hereunder and/or in respect of any transaction, and the non-defaulting party serves a notice on the defaulting party;
 - (vi) the seller or the buyer fails to perform any other of its obligations hereunder and does not remedy such failure within 30 days after notice is given by the non-defaulting party requiring it to do so, and the non-defaulting party serves a default notice on the defaulting party;

then sub-paragraphs (b) below shall apply.

- (b) The repurchase date for each transaction hereunder shall be deemed immediately to occur and, subject to the following provisions, all case (including interest accrued) shall be immediately repayable and equivalent margin securities shall be immediately deliverable and so that, where this sub-paragraph applies, performance of the respective obligations of the parties

with respect to the delivery of securities, the payment of the repurchase prices for any equivalent securities and the repayment of any cash shall be effected.

11. SINGLE AGREEMENT

Each party acknowledges that, and has entered into this agreement and will enter into each transaction hereunder in consideration of and in reliance upon the fact that all transactions hereunder constitute a single business and contractual relationship and are made in consideration of each other. Accordingly each party agrees -

- (i) to perform all of its obligations in respect of each transaction hereunder, and that a default in the performance of any such obligations shall constitute a default by it in respect of all transactions hereunder; and
- (ii) that payments, deliveries and other transactions made by either of them in respect of any transaction shall be deemed to have been made in consideration of payments, deliveries and other transfers in respect of any transactions hereunder.

12. NOTICES AND SPECIAL DEFAULT NOTICES

- (a) Any notice or other communication to be given under this agreement –
 - (i) shall be in the English language, and except where expressly otherwise provided in this agreement, shall be in writing;
 - (ii) may be given in any manner described in sub-paragraphs (b) and (c) below;
 - (iii) shall be sent to the party to whom it is to be given at the address or number, or in accordance with the electronic messaging details, set out in Annex 1 hereto.
- (b) Subject to sub-paragraph (c) below, any such notice or other communication shall be effective –
 - (i) if in writing and delivered in person by courier, at the time when it is delivered;
 - (ii) if sent by facsimile transmission, at the time when the transmission is received by a responsible employee, or the party if an individual, in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);
 - (iii) if sent by certified or registered mail (airmail if overseas) or the equivalent (return receipt requested), at the time when that mail is delivered or its delivery is attempted;
 - (iv) if sent by electronic messaging system, at the time that electronic message is received;

except that any notice or communication which is received, or delivery of which is attempted, after close of business on the date of receipt or attempted delivery or on a day which is not a day on which commercial banks are open for business in the place where that notice or other communication is to be given shall be treated as given at the opening of business on the next following day which is such a day.

(c) If –

- (i) there occurs in relation to either party an event which, upon service of a default notice, would be an event of default; and
- (ii) the non-defaulting party, having made all practicable efforts to do so, including having attempted to use at least two of the methods specified in sub-paragraph (b)(ii), (iii) or (iv), has been unable to serve a default notice by one of the methods specified in those sub-paragraphs (or such of those methods as are normally used by the non-defaulting party when communicating with the defaulting party),

the non-defaulting party may sign a written notice (“special default notice”) which –

- (aa) specifies the relevant event referred to in paragraph 10(a) which has occurred in relation to the defaulting party;
- (bb) states that the non-defaulting party, having made all practicable efforts to do so, including having attempted to use at least two of the methods specified in sub-paragraph (b) (ii), (iii) or (iv), has been unable to serve a default notice by one of the methods specified in those sub-paragraphs (or such of those methods as are normally used by the non-defaulting party when communicating with the defaulting party);
- (cc) specifies the date on which, and the time at which, the special default notice is signed by the non-defaulting party; and
- (dd) states that the event specified in accordance with sub-paragraph (aa) above shall be treated as an event of default with effect from the date and time so specified.

On the signature of a special default notice the relevant event shall be treated with effect from the date and time so specified as an event of default in relation to the defaulting party, and accordingly references in paragraph 10 to a default notice shall be treated as including a special default notice. Where the non-defaulting party has not been able to serve the special default notice, having taken all reasonable steps to serve the said notice in keeping with these provisions, then the special default notice is deemed to have been served afterdays³ from the date of service by the non defaulting party on the defaulting party.

- (d) Either party may by notice to the other change the address, facsimile number or electronic messaging details at which notices or other communications are to be given to it.

³ Number of days to be inserted by parties.

13. ENTIRE AGREEMENT AND SEVERABILITY

This agreement shall supersede any existing agreements between the parties containing general terms and conditions for repurchase transactions. Each provision and agreement herein shall be treated as separate from any other provision or agreement herein and shall be enforceable notwithstanding the unenforceability of any such other provision or agreement.

14. NON-ASSIGNABILITY AND TERMINATION

- (a) Neither party may assign, charge or otherwise deal with (including without limitation any dealing with any interest in the creation of any interest in) its rights or obligations under this agreement or under any transaction without the prior written consent of the other party.
- (b) Subject to the foregoing paragraph 14(a), this agreement and any transactions shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.
- (c) Either party may terminate this agreement by giving written notice to the other, except that this agreement shall, notwithstanding such notice, remain applicable to any transaction then outstanding.
- (d) All remedies hereunder shall survive termination in respect of the relevant transaction and termination of this agreement.

15. GOVERNING LAW

This agreement shall be governed by and construed in accordance with the laws of Trinidad and Tobago.

16. NO WAIVER

No express or implied waiver of any event of default by either party shall constitute a waiver of any other event of default and no exercise of any remedy hereunder by any party shall constitute a waiver of its rights to exercise any other remedy hereunder. No modification or waiver of any provision of this agreement and no consent by any party to a departure hereunder shall be effective unless and until such modification, waiver or consent shall be made in writing and duly executed by both parties hereto.

17. WAIVER OF IMMUNITY

- 17.1 Each party hereto hereby waives, to the fullest extent permitted by applicable law, all immunity (whether on the basis of sovereignty or otherwise) from jurisdiction, attachment (both before and after judgment) and execution to

which it might otherwise be entitled in any action or proceeding in the courts of Trinidad and Tobago or of any other country of jurisdiction, relating in any way to this agreement or any transaction and agrees that it will not raise, claim or cause to be pleaded any such immunity at or in respect of any such action or proceeding.

IN WITNESS whereof the parties have hereunto set their hands the day and year first hereinabove written.

For Party "X")
In the presence of:-)

For Party "Y")
In the presence of:-)

DRAFT