

PARTICIPATING ASSETS ACQUISITION AGREEMENT
in respect of Transaction 3 of the Programme established by AB Finco 1 (RF) Limited

DATED 11 DECEMBER 2019

between

AB FINCO 1 (RF) LIMITED
(the **Issuer**)

and

ABSA CORPORATE AND INVESTMENT BANK, A DIVISION OF ABSA BANK LIMITED
(the **Seller and Administrator**)

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1. INTRODUCTION

- 1.1 The Issuer has established the Issuer Programme.
- 1.2 Under the Programme, the Issuer may establish one or more Transactions by signing an Applicable Transaction Supplement in respect of each relevant Transaction.
- 1.3 The Issuer has established Transaction 3 of the Issuer Programme and proposes to issue Notes in respect of such Transaction.
- 1.4 The Seller and the Borrower have entered into Loan Agreements and Related Finance Documents.
- 1.5 The Seller wishes to sell to the Issuer and the Issuer wishes to purchase from the Seller, all right, title and interest of the Seller, in its capacity as Lender in respect of Specified Loans under certain Loan Agreements and Related Finance Documents, on the terms and subject to the conditions of this Agreement.

2. DEFINITIONS AND INTERPRETATION

- 2.1 The Common Terms Agreement signed by, among others, the parties to this Agreement (as such Agreement may be amended, novated and/or substituted from time to time in accordance with its terms) is expressly and specifically incorporated into this Agreement and, accordingly, the expressions defined in, and the terms and provisions of, the Common Terms Agreement (as so amended, novated and/or substituted) shall, except where the context otherwise requires and save where otherwise defined or provided for in this Agreement, have the same meanings in this Agreement and shall form part of this Agreement.
- 2.2 All capitalised terms used in this Agreement refer to such term in respect of Transaction 3 of the Programme.
- 2.3 If there is any conflict between the provisions of the Common Terms Agreement and the provisions of this Agreement, the provisions of this Agreement shall prevail with the exception of clause 3 (*Subordination, Limited Recourse, Enforcement and Non-Petition*) of the Common Terms Agreement which shall, in any case, prevail.

3. SALE AND PURCHASE

- 3.1 On the Effective Date, the Seller sells to the Issuer, and the Issuer purchases from the Seller, each of the Participating Assets identified in Schedule 2 to this Agreement.
- 3.2 For the purposes of this Agreement, the effective date of the sale of each Participating Asset will be the Effective Date, on which date, subject to payment of the purchase consideration in terms of clause 4, the risks in and benefits of, and ownership of, such Participating Asset will pass to the Issuer.
- 3.3 The sale and purchase of each Participating Asset in terms of this clause 3, shall be subject to the terms and conditions of this Agreement and shall include, with effect from the Effective Date, a cession by the Seller to the Issuer of the Seller's right, title, interest and benefit as Lender in and to, and a delegation by the Seller to the Issuer of the Seller's obligations as Lender under, each Participating Asset.

- 3.4 It is recorded, for the avoidance of doubt, that the Seller retains its right, title and interest under the Loan Agreements and Related Finance Documents in any capacity other than its capacity as Lender under the Specified Loans, such as in its capacity as facility agent (if applicable) or as lender under other loans made available under the Loan Agreement.
- 3.5 As far as each Participating Asset is concerned, and irrespective of any disclosure to the Issuer, nothing:
- 3.5.1 shall require the Issuer to perform any obligation falling due for performance or which should have been performed before the Effective Date; or
- 3.5.2 shall make the Issuer liable for any act, neglect, default or omission of the Seller in respect of any of the Participating Assets prior to the Effective Date.
- 3.6 It is the intention of the parties to this Agreement that each sale and transfer of Participating Assets by the Seller to the Issuer pursuant to this Agreement shall constitute an absolute sale and transfer and not a loan. Neither the Seller nor the Issuer shall take any action inconsistent with the treatment of such transfers as absolute sales and transfers or with the Issuer's ownership of the Participating Assets. Each of the Seller and the Issuer shall indicate in its records that, and shall respond to any inquiries from third parties by indicating that, ownership of the Participating Assets is or will be held by the Issuer with effect from the Effective Date (upon and subject to the terms of this Agreement).

4. **CONSIDERATION**

- 4.1 The purchase consideration for each Participating Asset sold in terms of this Agreement, payable by the Issuer to the Seller, shall be the purchase consideration as set out in Schedule 3.
- 4.2 The purchase consideration shall be due and payable for value on the Effective Date, against compliance by the Seller with its obligations under clause 5.1, to the account of the Seller notified to the Issuer for the purposes of this Agreement; provided that any unpaid accrued interest outstanding and owing to the Seller, as Lender in respect of the Specified Loan, will be paid by the Issuer to the Seller from Interest Collections on each Payment Date after the Effective Date until such amount is paid in full, prior to the application of the Priority of Payments on that Payment Date.

5. **DELIVERY**

- 5.1 On:
- 5.1.1 the Effective Date the Seller will deliver to the Administrator, as agent on behalf of the Issuer, a copy of the signed Loan Agreement and Related Finance Documents in respect of each Participating Asset; and
- 5.1.2 or before the Effective Date, in respect of each Participating Asset, the Seller shall:
- (a) deliver a transfer certificate (however defined in the Loan Agreement) to the facility agent (if applicable) or the Seller, duly completed by the Seller and the Issuer, as required under the Loan Agreement in respect of that Participating Asset;

- (b) procure that the facility agent (if applicable) executes the transfer certificate, as required under the Loan Agreement in respect of that Participating Asset, no later than the Effective Date; and
 - (c) deliver such other accession agreements, other documents and notices and obtain such consents, as may be required under the Loan Agreement or Related Finance Documents in respect of that Participating Asset, to give effect to the sale and transfer of that Participating Asset to the Issuer and to require the Borrower to make all payments to the Issuer that are due under the Loan Agreement after the Effective Date into the bank account of the Issuer set out in the transfer certificate.
- 5.2 The Seller shall procure that the facility agent (if applicable) or the Seller delivers a copy of the duly completed, signed transfer certificate to the Borrower, in accordance with the provisions of the Loan Agreement in respect of the Participating Asset.
- 5.3 In respect of any Participating Assets sold by the Seller in terms of this Agreement, the Seller shall supply such information as it has at the date of signature of this Agreement and as at the Effective Date, about such Participating Assets as the Issuer, the Administrator or the Security SPV (if any) may reasonably require, including any independent technical advisor's reports.

6. WARRANTIES AND UNDERTAKINGS OF THE ISSUER

- 6.1 The Issuer represents and warrants to the Seller and the Security SPV (if any) that on the date of this Agreement and on the Effective Date, each of the warranties and representations set out below (the "**Issuer Warranties**") is true and accurate:
 - 6.1.1 it is duly incorporated as a company with limited liability under the laws of South Africa; and
 - 6.1.2 it has the necessary legal capacity to enter into and perform its obligations under this Agreement;
 - 6.1.3 it has taken all necessary corporate and/or internal action to authorise the execution and performance of this Agreement and this Agreement constitutes legal, valid, binding and enforceable obligations of the Issuer;
 - 6.1.4 the sale and transfer of the Participating Assets to the Issuer and the execution and performance by the Issuer of its obligations under this Agreement:
 - (a) do not contravene any Applicable Law;
 - (b) do not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, its memorandum of incorporation; or
 - (c) do not result in a breach of any of the terms or provisions of, or constitute a default under, any agreement, trust deed or other instrument or obligation to which the Issuer is a party or by which the Issuer or any part of its undertaking, assets, property or revenues are bound;
 - 6.1.5 all licences, consents, approvals, authorisations or other orders of all regulatory authorities required for or in connection with the execution and performance of this Agreement by the Issuer and any other matters contemplated by this

Agreement and by such licences, consents, approvals, authorisations or other orders, have been either unconditionally obtained and are in full force and effect or all the relevant applications have been made.

- 6.2 The Issuer Warranties shall be separate and independent save as expressly provided for and shall not be limited by reference to any other clause or anything in this Agreement.

7. SELLER'S WARRANTIES AND UNDERTAKINGS TO THE ISSUER AND THE SECURITY SPV (IF ANY)

- 7.1 The Seller warrants and represents to the Issuer and the Security SPV (if any) on the date of this Agreement and on the Effective Date, that each of the warranties and representations set out in Schedule 1 to this Agreement (the "**Seller Warranties**") is true and accurate.

- 7.2 The Seller Warranties shall be separate and independent save as expressly provided for and shall not be limited by reference to any other clause or anything in this Agreement.

8. SUBORDINATION, ENFORCEMENT AND NON PETITION

The Seller expressly acknowledges that it has agreed to the provisions in the Common Terms Agreement, which are deemed to be incorporated into this Agreement by reference, relating, among other things, to the subordination of its claims against the Issuer to those of higher ranking creditors in the Priority of Payments, the limitation on its rights of recourse, enforcement of claims and rights of set-off.

9. ASSIGNMENT

- 9.1 The Issuer may cede all or any of its rights in or to and/or delegate all or any of its obligations under this Agreement to the Security SPV (if any) pursuant to the Security Agreements (if any).

- 9.2 The parties acknowledge that on any assignment by the Issuer of its rights under this Agreement the assignee of such rights may enforce such rights in its own name without joining the Issuer in any such action (which right the other parties hereby waive).

- 9.3 Subject to clauses 9.1 and 9.2, no party may cede its rights or interest in or to, or transfer or delegate its obligations under, or assign this Agreement to any third party without the prior written consent of the other parties to this Agreement, which consent shall not be unreasonably withheld or delayed.

10. VAT

Any costs, expenses, charges or other amounts payable under this Agreement are stated exclusive of VAT shall be paid together with any VAT applicable to such amount subject to prior delivery by the payee of an appropriate VAT invoice.

11. PAYMENTS

- 11.1 All payments to be made pursuant to this Agreement shall be made in South African Rand in immediately available funds, whether by electronic funds transfer or otherwise,

and shall be deemed to be made when they are received by the payee and shall be accounted for accordingly.

11.2 All payments to be made pursuant to this Agreement shall be made without the cost of transfer of funds and free of exchange or other deduction and without the right of deferment or avoidance by virtue of any counterclaim or set-off.

11.3 If any payment to be made by a party pursuant to this Agreement falls due for payment on a day which is not a Business Day, then such party shall make such payment on the succeeding Business Day.

THIS AGREEMENT has been entered into on the date stated at the beginning of this Agreement.

SELLER'S WARRANTIES

1. The Seller gives the following warranties, undertakings and representations:
 - 1.1 the Seller is validly incorporated and existing as a company in South Africa;
 - 1.2 the Seller has the necessary legal capacity to enter into and perform its obligations under this Agreement;
 - 1.3 the Seller has taken all necessary corporate and/or internal action to authorise the execution and performance of this Agreement and this Agreement constitutes legal, valid, binding and enforceable obligations of the Seller;
 - 1.4 in the execution of this Agreement and the performance by the Seller of its obligations under this Agreement, it will not contravene any law or regulation to which it is subject or any provision of its constitutional documents;
 - 1.5 at all relevant times, the Seller had the necessary legal capacity to enter into and perform its obligations under the Participating Assets and had taken all necessary corporate and/or internal action to authorise the execution and performance of the Participating Assets and the Participating Assets constituted and constitute legal, valid, binding and enforceable obligations of the Seller;
 - 1.6 the Seller has sole and exclusive legal title to the Participating Assets to be sold pursuant to this Agreement, enabling the Seller to cede all of its right, title and interest as Lender in and to, and delegate its obligations as Lender under, such Participating Assets to the Issuer;
 - 1.7 the Seller has not assigned (whether by way of absolute assignment or by way of security only), transferred, mortgaged, disposed of, dealt with or otherwise created or allowed to arise or subsist any Encumbrance in respect of the Seller's right, title, interest and benefit in or to the Participating Assets, other than pursuant to this Agreement;
 - 1.8 the Seller is solvent and this position will prevail both immediately before and immediately after any sale and transfer by the Seller to the Issuer of a Participating Asset;
 - 1.9 the Seller's assets and cash flows are such that the Seller is in a position to pay its debts and other obligations as and when they fall due in the normal course of business and this position will prevail both immediately before and immediately after any sale and transfer to the Issuer of a Participating Asset;
 - 1.10 the transactions contemplated by this Agreement are being consummated by the Seller in furtherance of the Seller's ordinary business purposes and constitute a practical and reasonable course of action by the Seller designed to improve the financial position of the Seller, with no contemplation of insolvency and with no intent to hinder, delay or defraud any of its present or future creditors; and

1.11 the consideration received by the Seller, in consideration for the transfer of the Participating Assets pursuant to this Agreement, is fair and a market related consideration.

PARTICIPATING ASSETS

SCHEDULE 2

See the section of the Applicable Transaction Supplement headed "The Loan Agreement".

PURCHASE CONSIDERATION

SCHEDULE 3

The principal amount outstanding of the Specified Loan on the Effective Date plus unpaid, uncapitalised accrued interest on the Effective Date.

SIGNATURE PAGE

THE ISSUER



For and on behalf of:
AB Finco 1 (RF) Limited

Name: J. BIRWETT

Office: DIRECTOR
(who warrants his authority)

For and on behalf of:
AB Finco 1 (RF) Limited

Name: _____

Office: _____
(who warrants his authority)


SIGNATURE PAGE

THE ISSUER

For and on behalf of:
AB Finco 1 (RF) Limited

Name: _____

Office: _____
(who warrants his authority)



For and on behalf of:
AB Finco 1 (RF) Limited

Name: R. Thanthony

Office: Director
(who warrants his authority)

SIGNATURE PAGE

THE SELLER



For and on behalf of:
**Absa Corporate and Investment Bank,
a division of Absa Bank Limited**

Name: U-INCE

Office: AUTHORISED SIGNATORY
(who warrants his authority)



For and on behalf of:
**Absa Corporate and Investment Bank, a
division of Absa Bank Limited**

Name: COWIN TALENGA

Office: AUTHORISED
(who warrants his authority)

SIGNATURE PAGE

THE ADMINISTRATOR



For and on behalf of:
**Absa Corporate and Investment Bank,
a division of Absa Bank Limited**

Name: L. INCE

Office: AUTHORISED SIGNATORY
(who warrants his authority)



For and on behalf of:
**Absa Corporate and Investment Bank, a
division of Absa Bank Limited**

Name: C. TALENGA

Office: AUTHORISED
(who warrants his authority)