

DATED 18 SEPTEMBER 2016

ABENGOA CONCESSIONS INVESTMENTS LIMITED
AS BORROWER

ABENGOA S.A. AND CERTAIN OF ITS SUBSIDIARIES AS GUARANTORS

LAJEDOSA INVESTMENTS S.À R.L.
AS ARRANGER

GLOBAL LOAN AGENCY SERVICES LIMITED
AS AGENT

GLOBAL LOAN AGENCY SERVICES LIMITED
AS CALCULATION AGENT

GLAS TRUST CORPORATION LIMITED
AS SECURITY AGENT

AND

ARVO INVESTMENT HOLDINGS S.À R.L.
CCP CREDIT ACQUISITION HOLDINGS LUXCO S.À R.L.
LAJEDOSA INVESTMENTS S.À R.L.
OCM LUXEMBOURG ABG DEBT S.À R.L.
POTTER NETHERLANDS COÖPERATIEF U.A.
AND
SPV CAPITAL FUNDING LUXEMBOURG S.À R.L.
AS ORIGINAL LENDERS

SECURED TERM FACILITY AGREEMENT

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THIS AGREEMENT is dated 18 September 2016 and made

BETWEEN:

- (1) **ABENGOA S.A.**, a Spanish company with its registered office in Seville, at Campus Palmas Altas, calle Energía Solar, nº 1, registered with the Commercial Registry of Seville, and bearing tax identification code (C.I.F.) A-41002288 (the "**Parent**");
- (2) **ABENGOA CONCESSIONS INVESTMENTS LIMITED**, a private limited company incorporated in England with company number 08818214 and its registered office at St Martin's House, 1 Lyric Square, London, England, W6 0NB (the "**Borrower**");
- (3) **LAJEDOSA INVESTMENTS S.À R.L.** as mandated lead arranger (the "**Arranger**");
- (4) **THE FINANCIAL INSTITUTIONS** listed in Part I (*The Original Lenders*) of Schedule 1 as original lenders (the "**Original Lenders**");
- (5) **GLOBAL LOAN AGENCY SERVICES LIMITED** with registered address at 45 Ludgate Hill, London EC4M 7JU as agent of the other Finance Parties (the "**Agent**");
- (6) **GLOBAL LOAN AGENCY SERVICES LIMITED** with registered address at 45 Ludgate Hill, London EC4M 7JU as calculation agent (the "**Calculation Agent**"); and
- (7) **GLAS TRUST CORPORATION LIMITED** a limited liability company registered in England and Wales with number 07927175 and address at 45 Ludgate Hill, London EC4M 7JU as security trustee for the Secured Parties (the "**Security Agent**").

IT IS AGREED as follows:

SECTION 1 INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"**2014 Syndicated Facility**" means the Spanish law governed Spanish language syndicated facility agreement (*Contrato de Financiación Sindicada*) originally dated 30 September 2014 between, *inter alios*, Abengoa Concessions Investments Limited as guarantor and Abengoa S.A., as amended from time to time

"**ABY Group**" means the Company and its Subsidiaries for the time being.

"**ABY Term Sheet**" means the term sheet dated 3 August 2016 between, among others, the Company, the Borrower and the Parent, in relation to certain matters in

connection with the Restructuring Agreement, in its form at the date of this Agreement (other than any minor administrative or technical amendments).

"ACBH Dividend Deferral Arrangements" means the arrangements entered into pursuant to:

(a)

- (i) a deed dated as of 13 June 2014 (as amended from time to time, including by deed dated 30 June 2015) between, among others the Borrower and the Company; and
- (ii) a parent support agreement entered into as of 9 December 2014 between the Parent, the Company and Abengoa Concessoes Brasil Holding, S.A.,

each in its form at the date of this Agreement (other than any minor administrative or technical amendments) under which the Borrower has agreed to subordinate its right to receive distributions from the Company in certain circumstances; and

(b) the ABY Term Sheet.

"Accession Letter" means a document substantially in the form set out in Schedule 6 (*Form of Accession Letter*).

"Account Bank" means HSBC Bank plc.

"Adjustment Failure" means, following a Share Capital Change:

- (a) the Calculation Agent (acting reasonably) determines pursuant to paragraph (a)(ii) of Clause 20.4 (*Share Capital Change*) that no adjustment it could make pursuant to paragraph (a)(i) of Clause 20.4 (*Share Capital Change*) will produce a commercially reasonable result;
- (b) the Borrower does not consent to an adjustment pursuant to Clause 20.4 (*Share Capital Change*) on or before the third Business Day after notice is given by the Calculation Agent under that Clause; or
- (c) the Borrower does not enter into the amendment or documentation proposed by the Agent to give effect to an adjustment pursuant to Clause 20.4 (*Share Capital Change*) on or before the fifth Business Day after the proposed amendment or documentation was sent to the Borrower under that Clause.

"Additional Guarantor" means a company which becomes an Additional Guarantor in accordance with Clause 25 (*Changes to the Obligors*).

"Affiliate" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

"Appropriation" means the appropriation (or similar process) of assets which are subject to the Transaction Security by the Security Agent (or any Receiver or

Delegate) which is effected (to the extent permitted under the relevant Security Document and applicable law) by enforcement of the Transaction Security.

"Assignment Agreement" means an agreement substantially in the form set out in Schedule 5 (*Form of Assignment Agreement*) or any other form agreed between the relevant assignor and assignee.

"Auditors" means Deloitte Touche Tohmatsu Limited or any other firm appointed by the Parent or the Borrower to act as its statutory auditors.

"Authorisation" means an authorisation, consent, approval, resolution, licence, permit, exemption, filing, notarisation or registration.

"Availability Period" means the period from and including the date of this Agreement to and including the date falling ten Business Days after the date of this Agreement.

"Available Commitment" means a Lender's Commitment minus the amount of its participation in the Loan.

"Available Facility" means the aggregate for the time being of each Lender's Available Commitment.

"Break Costs" means the amount (if any) by which:

- (a) the interest (excluding any PIK Margin) which a Lender should have received for the period from the date of receipt of all or any part of its participation in the Loan or Unpaid Sum to the last day of the current Interest Period in respect of the Loan or Unpaid Sum, had the principal amount or Unpaid Sum received been paid or accrued on the last day of that Interest Period;

exceeds:

- (b) the amount which that Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in London and Madrid and (in relation to any date for payment or purchase of dollars) New York.

"Business Plan" means a business plan for the Group prepared by or on behalf of the Group delivered to the Agent pursuant to paragraph 8(m) of Part I (*Conditions precedent to initial Utilisation*) of Schedule 2.

"Cash Collateral Account" means the bank account which is held in the name of the Borrower with the Account Bank under the account number specified in the Security Over Cash Agreement which is subject to the Transaction Security and from which no withdrawals may be made by the Borrower at any time during the Security Period as the same may be redesignated, substituted or replaced from time to time.

"Change of Control" means the Parent and/or one or more Affiliates of the Parent together cease, directly or indirectly, to control the Borrower.

For the purposes of this definition, **"control"** of the Borrower means the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:

- (a) cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the Borrower; and
- (b) appoint or remove all, or the majority, of the directors or other equivalent officers of the Borrower.

"Charged Property" means all of the assets which from time to time are, or are expressed to be, the subject of the Transaction Security.

"Closing Price" has the meaning given to it in Clause 20.1 (*Additional Definitions*).

"Code" means the US Internal Revenue Code of 1986 (or any successor legislation thereto) as amended from time to time, and the regulations promulgated and rulings issued thereunder, all as the same may be in effect at such date.

"Collateral" has the meaning attributed thereto in Clause 20.1 (*Additional Definitions*).

"Commitment" means:

- (a) in relation to an Original Lender, the amount set out opposite its name in Part I of Schedule 1 (*The Original Parties*) and the amount of any other Commitment transferred to it under this Agreement; and
- (b) in relation to any other Lender, the amount in dollars of any Commitment transferred to it under this Agreement,

to the extent in each case not cancelled, reduced or transferred by it under this Agreement.

"Company" means Atlantica Yield plc, a public limited company incorporated in England with company number 08818211 having its registered office at Great West House (GW1), Great West Road, Brentford, Middlesex, Greater London, United Kingdom, TW8 9DF.

"Completion" has the meaning given to that term in the Escrow Agreement.

"Confidential Information" means all information relating to the Parent, the Borrower, the Company and/or any other member of the Group, the Finance Documents or the Facility of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Finance Documents or the Facility from:

- (a) the Parent, the Borrower, any other member of the Group or any of their respective advisers; or

- (b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group or any of its advisers,

in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

- (i) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 39 (*Confidentiality*); or
- (ii) is identified in writing at the time of delivery as non-confidential by the Borrower or any of its advisers; or
- (iii) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraph (a) or (b) above or is lawfully obtained by that Finance Party after that date from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

"Confidentiality Undertaking" means a confidentiality undertaking substantially in a recommended form of the LMA or in any other form agreed between the Borrower and the Agent.

"CTA" means the Corporation Tax Act 2009.

"Custodian" means HSBC Bank plc.

"Custody Account" means the segregated securities deposit account held in the name of the Borrower with the Custodian pursuant to the Custody Agreement including any present and future related sub-deposits in relation to the Reference Shares as the same may be redesignated, substituted or replaced from time to time.

"Custody Account Security Agreement" means the English law agreement entered into on or about the date of this Agreement between the Borrower as security provider and the Security Agent as secured party relating to the Borrower's right, title and interest in and to the Custody Account and to the securities standing to the credit of such account.

"Custody Agreement" means the English law agreement dated on or about the date of this Agreement between the Borrower as account holder and the Custodian relating to the Custody Account together with any other document entered into by the Borrower and the Custodian in relation to the opening or operation of the Custody Account.

"December 2015 Facility" means the Spanish law governed facility agreement (*Contrato de Préstamo*) dated 24 December 2015 between, amongst others, the Borrower and Agensynd, S.L., as agent.

"Default" means an Event of Default or any event or circumstance specified in Clause 23 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

"Delegate" means any delegate, agent, attorney or co-trustee appointed by the Calculation Agent or the Security Agent (as the context requires).

"Disposal Proceeds" has the meaning given to that term in Clause 7.5 (*Disposals*).

"Disruption Event" means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or
- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:
 - (i) from performing its payment obligations under the Finance Documents; or
 - (ii) from communicating with other Parties in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.

"Dutch Guarantor" means a Guarantor incorporated in The Netherlands.

"Environmental Claim" means any claim, proceeding or investigation by any person in respect of any Environmental Law.

"Environmental Law" means any applicable law in any jurisdiction in which any member of the Group conducts business which relates to the pollution or protection of the environment or harm to or the protection of human health or the health of animals or plants.

"Environmental Permits" means any permit, licence, consent, approval and other authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of any member of the Group conducted on or from the properties owned or used by the relevant member of the Group.

"ERISA" means, at any date, the United States Employee Retirement Income Security Act of 1974 (or any successor legislation thereto), as amended from time to time, and the regulations promulgated and rulings issued thereunder, all as the same may be in effect at such date.

"Escrow Agreement" means the escrow agreement, entered into on or about the date hereof, between Global Loan Agency Services Limited as escrow agent, the Agent, Talos Capital Designated Activity Company (formerly named Talos Capital Limited) and the Borrower.

"Event of Default" means any event or circumstance specified as such in Clause 23 (*Events of Default*).

"Excluded Assets" has the meaning given to that term in Clause 7.5 (*Disposals*).

"Existing Bond Documentation" means all documentation relating to the issuance of the following bonds:

- (a) the €500,000,000 8.50% notes due 2016 with ISIN XS0498817542 issued by the Parent;
- (b) the \$650,000,000 8.875% senior notes due 2017 with ISIN USE0002VAC84 / US00289RAA05 issued by Abengoa Finance, S.A.U.;
- (c) the €550,000,000 8.875% senior notes due 2018 with ISIN XS0882237729 / XS0882238024 issued by Abengoa Finance, S.A.U.;
- (d) the €265,000,000 5.50% senior notes due 2019 with ISIN XS1113021031 / XS1113024563 issued by Abengoa Greenfield, S.A.;
- (e) the \$300,000,000 6.50% senior notes due 2019 with ISIN USE00020AA01 / US00289WAA99 issued by Abengoa Greenfield, S.A.;
- (f) the \$450,000,000 7.75% senior notes due 2020 with ISIN USE0000TAE13 / US00289VAB99 issued by Abengoa Finance, S.A.U.;
- (g) the €375,000,000 7.00% senior notes due 2020 with ISIN XS1219438592 / XS1219439137 issued by Abengoa Finance, S.A.U.; and
- (h) the €500,000,000 6.00% senior notes due 2021 with ISIN XS1048657800 / XS1048658105 issued by Abengoa Finance, S.A.U..

"Existing Syndicated Facility Agreements" means:

- (a) the 2014 Syndicated Facility;
- (b) the September 2015 Facility;
- (c) the December 2015 Facility; and
- (d) the March 2016 Facility.

"Facility" means the term loan facility made available under this Agreement as described in Clause 2 (*The Facility*).

"Facility Office" means the office or offices notified by a Lender to the Agent in writing on or before the date it becomes a Lender (or, following that date, by not less

than five Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement.

"FATCA" means:

- (a) sections 1471 to 1474 of the Code or any associated regulations or other official guidance;
- (b) any treaty, law, regulation or other official guidance enacted in any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of paragraph (a) above; or
- (c) any agreement pursuant to the implementation of paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

"FATCA Application Date" means:

- (a) in relation to a "withholdable payment" described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014;
- (b) in relation to a "withholdable payment" described in section 1473(1)(A)(ii) of the Code (which relates to "gross proceeds" from the disposition of property of a type that can produce interest from sources within the US), 1 January 2019; or
- (c) in relation to a "passthru payment" described in section 1471(d)(7) of the Code not falling within paragraphs (a) or (b) above, 1 January 2019,

or, in each case, such other date from which such payment may become subject to a deduction or withholding required by FATCA as a result of any change in FATCA after the date of this Agreement.

"FATCA Deduction" means a deduction or withholding from a payment under a Finance Document required by FATCA.

"FATCA Exempt Party" means a Party that is entitled to receive payments free from any FATCA Deduction.

"Fee Letter" means any letter or letters dated on or about the date of this Agreement between any Finance Party and the Borrower setting out any fees payable to a Finance Party.

"Finance Document" means:

- (a) this Agreement;
- (b) any Fee Letter;
- (c) each Security Document;

- (d) any Accession Letter, any Resignation Letter and any Utilisation Request; and
- (e) any other document designated as a "Finance Document" by the Agent and the Borrower.

"Finance Party" means the Arranger, the Agent, the Calculation Agent, the Security Agent or a Lender.

"Financial Adviser" means any:

- (a) independent internationally recognised investment bank;
- (b) independent internationally recognised accountancy firm; or
- (c) other independent internationally recognised professional services firm which is regularly engaged in providing valuations of businesses or financial assets or, where applicable, advising on competitive sales processes.

"Financial Indebtedness" means any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP, be treated as a finance or capital lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement and any confirming line with any bank or financial institution) having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price;
- (h) any counter-indemnity or reimbursement obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (i) (without double counting) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraph (a) to (h) above.

"Funding Rate" means any individual rate notified by a Lender to the Agent pursuant to paragraph (a)(ii) of Clause 10.2 (*Cost of funds*).

"GAAP" means generally accepted accounting principles in the United Kingdom and including IFRS.

"Group" means the Parent and its Subsidiaries for the time being.

"Group Structure Chart" means the group structure chart showing:

- (a) all members of the Group, including each member's name; and
- (b) any person in which any member of the Group holds a material proportion of shares in its issued share capital or equivalent ownership interest of such person,

in each case, as at 31 March 2016.

"Guarantor" means the Parent or an Additional Guarantor, unless it has ceased to be a Guarantor in accordance with Clause 25 (*Changes to the Obligors*).

"Holding Company" means, in relation to a person, any other person in respect of which it is a Subsidiary.

"Homologated Standstill" means the standstill agreement dated 18 March 2016 which was notarised (*intervenido*) by the Notary of Madrid Mr. José Miguel García Lombardía, with number 726 of his official records and which was judicially homologated pursuant to the Fourth Additional Provision of the Spanish Insolvency Law through a judicial decision (*auto*) issued by the Mercantile Judge of Seville on 6 April 2016.

"IFRS" means international accounting standards within the meaning of the IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.

"Impaired Agent" means the Agent at any time when:

- (a) it has failed to make (or has notified a Party that it will not make) a payment required to be made by it under the Finance Documents by the due date for payment;
- (b) the Agent otherwise rescinds or repudiates a Finance Document;
- (c) an Insolvency Event has occurred and is continuing with respect to the Agent;
- (d) unless, in the case of paragraph (a) above:
 - (i) its failure to pay is caused by:
 - (A) administrative or technical error; or
 - (B) a Disruption Event; andpayment is made within 3 Business Days of its due date; or
 - (ii) the Agent is disputing in good faith whether it is contractually obliged to make the payment in question.

"Independent Director" means Anders Christian Digemose, or such other director of the Borrower as may be appointed with the prior written consent of the Agent (acting on the instructions of the Majority Lenders).

"Insolvency Event" in relation to an entity means that the entity:

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) institutes or files or has instituted or filed against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official;
- (e) has instituted or filed against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition is instituted or presented by a person or entity not described in paragraph (d) above and:
 - (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or
 - (ii) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof;
- (f) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (g) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets (other than for so long as it is required by law or regulation not to be publicly disclosed, any such appointment which is to be made, or is made, by a person or entity described in paragraph (d) above);
- (h) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter;

- (i) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (h) above; or
- (j) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

"Intellectual Property" means any patents, trade marks, service marks, designs, business and trade names, copyrights, database rights, design rights, moral rights, inventions, confidential information, knowhow and other intellectual property rights and interests, whether registered or unregistered, and the benefit of all applications and rights to use such assets in which each Obligor may from time to time have an interest.

"Interest Period" means, in relation to the Loan, each period determined in accordance with Clause 9 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 8.2 (*Default interest*).

"Interpolated Screen Rate" means, in relation to the Loan, the rate (rounded to the same number of decimal places as the two relevant Screen Rates) which results from interpolating on a linear basis between:

- (a) the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period of the Loan; and
- (b) the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of the Loan,

each as of the Specified Time for dollars.

"ITA" means the Income Tax Act 2007.

"Lender" means:

- (a) any Original Lender; and
- (b) any entity which has become a Lender in accordance with Clause 24 (*Changes to the Lenders*),

which in each case has not ceased to be a Lender in accordance with the terms of this Agreement.

"LIBOR" means, in relation to the Loan:

- (a) the applicable Screen Rate as of the Specified Time for dollars and for a period equal in length to the Interest Period of the Loan; or
- (b) as otherwise determined pursuant to Clause 10.1 (*Unavailability of Screen Rate*),

and if, in either case, that rate is less than zero, LIBOR shall be deemed to be zero.

"Listing Event" means:

- (a) any Shares cease (or will cease) to be listed, freely traded or publicly quoted on the Reference Exchange or the Reference Exchange makes an announcement to that effect;
- (b) trading in any Shares is suspended by the Reference Exchange (or the Reference Exchange announces this) for more than three Valuation Days; or
- (c) any event occurs (other than anything already referred to in paragraph (a) or (b) of this definition) which disrupts or impairs (as determined by the Calculation Agent (acting reasonably)) the ability of market participants in general to effect transactions in, or obtain market values for, any Shares on the Reference Exchange for more than one Valuation Day.

"LMA" means the Loan Market Association.

"Loan" means the loan made or to be made under the Facility or the principal amount outstanding for the time being of that loan.

"Loan to Value Ratio" has the meaning attributed thereto in Clause 20.1 (*Additional Definitions*).

"LTV Event" has the meaning given to such term in Clause 20.2 (*LTV Event*).

"Majority Lenders" means a Lender or Lenders whose Commitments aggregate more than 50% of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 50% of the Total Commitments immediately prior to the reduction).

"Make-Whole Amount" means with respect to the Loan or part of the Loan repaid or prepaid (or required to be repaid or prepaid):

- (a) on or before the date falling three Months after the date of this Agreement, an amount equal to 8% of the Loan or part of the Loan;
- (b) from (but excluding) the date falling three Months after the date of this Agreement to (and including) the date falling six Months after the date of this Agreement, an amount equal to 7% of the Loan or part of the Loan;
- (c) from (but excluding) the date falling six Months after the date of this Agreement to (and including) the date falling nine Months after the date of this Agreement, an amount equal to 6% of the Loan or part of the Loan; and
- (d) from (but excluding) the date falling nine Months after the date of this Agreement, an amount equal to 5% of the Loan or part of the Loan,

plus, if a Default is continuing, an amount equal to 5% of the Loan or part of the Loan.

"March 2016 Custody Agreement" means the custody agreement entered into by the Borrower in connection with the March 2016 Facility.

"March 2016 Facility" means the secured term facility agreement dated 21 March 2016 between, amongst others, the Borrower as borrower, Global Loan Agency Services Limited as agent and calculation agent, GLAS Trust Corporation Limited as security agent and the financial institutions listed therein as original lenders.

"Margin Stock" means margin stock or "margin security" within the meaning of Regulations T, U and X.

"Material Adverse Effect" means a material adverse effect on:

- (a) the business, operations, property or condition (financial or otherwise) of the Group taken as a whole;
- (b) the ability of an Obligor to perform its obligations under the Finance Documents; or
- (c) the validity or enforceability of the Finance Documents or the rights or remedies of any Finance Party under the Finance Documents.

"Maturity Date" means, subject to Clause 6.2 (*Adjustment to Maturity Date*), the date falling 12 Months after the date of this Agreement.

"Merger Event" means in respect of any Share, any:

- (a) reclassification or change (but solely in respect of any Reference Share) that results in a transfer of or an irrevocable commitment to transfer all outstanding Reference Shares to another entity or person;
- (b) consolidation, amalgamation, merger or binding share exchange of the Company with or into another entity or person (other than a consolidation, amalgamation, merger or binding share exchange in which the Company is the continuing entity and which does not result in a reclassification or change of any of the Shares and of that type then outstanding or otherwise prejudice the Transaction Security);
- (c) takeover offer, scheme of arrangement, exchange offer, solicitation, proposal or other event by any entity or person to purchase or otherwise obtain 100% of the outstanding Shares of that type that results in a transfer of or an irrevocable commitment to transfer all Shares of that type (other than the Shares of that type owned or controlled by such other entity or person); or
- (d) consolidation, amalgamation, merger or binding share exchange of the Company with or into another entity in which the Company is the continuing entity and which does not result in a reclassification or change of the outstanding Shares and of that type but results in the outstanding Shares of that type (other than Shares of that type owned or controlled by such other entity) immediately prior to such event collectively representing less than fifty per cent. of the outstanding Shares of that type immediately following such event.

"Mexican Guarantor" means any Guarantor incorporated in the United Mexican States.

"Month" means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (a) subject to paragraph (c) below, if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- (c) if a period begins on the last Business Day of a calendar month, that period shall end on the last Business Day of the calendar month in which that period is to end.

The above rules will only apply to the last Month of any period.

"Nationalisation Event" means:

- (a) all or substantially all of the Shares or any of the Reference Shares or all or substantially all of the assets of the Company are nationalised, expropriated or are otherwise required to be transferred to any governmental agency, authority, entity or instrumentality thereof; or
- (b) the authority or ability of any person to deal in, or transact in, all or substantially all of the Shares, any of the Reference Shares or all or substantially all of the assets of the Company is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental regulatory or other authority or other person in relation to that person or all or any of the Reference Shares or all or substantially all of the assets of the Company.

"New Lender" has the meaning given to that term in Clause 24 (*Changes to the Lenders*).

"Obligor" means the Borrower or a Guarantor.

"Obligors' Agent" means the Parent, appointed to act on behalf of each Obligor in relation to the Finance Documents pursuant to Clause 2.3 (*Obligors' Agent*).

"Original Financial Statements" means, in relation to the Borrower, its audited financial statements for its financial year ended 2015.

"Original Jurisdiction" means, in relation to an Obligor, the jurisdiction under whose laws the Obligor is incorporated as at the date of this Agreement or, in the case of an Additional Obligor, as at the date on which that Additional Obligor becomes Party as a Borrower or a Guarantor (as the case may be).

"Original Obligor" means the Borrower and the Parent.

"Participating Member State" means any member state of the European Union that has the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

"Party" means a party to this Agreement.

"Permitted Financial Indebtedness" means Financial Indebtedness:

- (a) arising under any of the Existing Bond Documentation, the Existing Syndicated Facilities Agreements in each case as in force on the date of this Agreement (or, in the case of the September 2015 Facility, the December 2015 Facility or the March 2016 Facility, as amended only to postpone the maturity date of the relevant facility) and subject always to the terms of this Agreement;
- (b) on and before Completion, arising under the TCI Margin Loan;
- (c) arising under a foreign exchange transaction for spot or forward delivery entered into in connection with protection against fluctuation in currency rates where that foreign exchange exposure arises in the ordinary course of trade, but not a foreign exchange transaction for investment or speculative purposes;
- (d) arising under a Permitted Loan or a Permitted Guarantee;
- (e) any other non-recourse (including non-recourse factoring) indebtedness incurred by the companies in the Group, **provided that** it is used to fund working capital;
- (f) required to fulfil payment obligations which are approved by the Majority Lenders and validated by Houlihan Lokey; or
- (g) listed in the list of existing debt delivered to the Finance Parties pursuant to Part I of Schedule 2 (*Conditions Precedent*).

"Permitted Guarantee" means:

- (a) the endorsement of negotiable instruments in the ordinary course of trade;
- (b) any performance or similar bond guaranteeing performance by a member of the Group under any contract entered into in the ordinary course of trade;
- (c) any guarantee given in respect of the netting or set-off arrangements permitted pursuant to paragraph (c)(iii) of Clause 22.3 (*Negative pledge*) of the definition of "Permitted Security";
- (d) any guarantee permitted under Clause 22.23 (*Financial Indebtedness*); or
- (e) any guarantee given in respect of:
 - (i) the credit agreement dated 6 July 2015 between, among others, the Parent as borrower and the European Investment Bank as lender; or

- (ii) the credit agreement dated 30 July 2015 between, among others, the Parent as borrower and Instituto de Crédito Oficial as lender.

"Permitted Loan" means:

- (a) any trade credit extended by any member of the Group to its customers on normal commercial terms and in the ordinary course of its trading activities; or
- (b) a loan made by a member of the Group to another member of the Group.

"Permitted Security" has the meaning given to it in Clause 22.3 (*Negative pledge*).

"Permitted Share Issue" means an issue of:

- (a) ordinary shares by the Parent, paid for in full in cash upon issue and which by their terms are not redeemable and where such shares are of the same class and on the same terms as those initially issued by the Parent;
- (b) shares by a member of the Group which is a Subsidiary of the Parent to its immediate Holding Company; and
- (c) shares by the Parent as a result of the conversion of convertible bonds issued as at the date of this Agreement.

"Permitted Transaction" means:

- (a) any disposal required, Financial Indebtedness incurred, guarantee, indemnity or Security or Quasi-Security given, or other transaction arising, under the Finance Documents;
- (b) transactions (other than (i) any sale, lease, license, transfer or other disposal and (ii) the granting or creation of Security or the incurring or permitting to subsist of Financial Indebtedness) conducted in the ordinary course of trading on arm's length terms and including any conversion of shares of the Parent into another class of shares of the Parent; or
- (c) any transaction, including any disposal or winding up or any member of the Group, specifically identified in the Business Plan and approved in writing by the Agent (acting on behalf of all of the Lenders).

"PIK Margin" means 12.5% per annum.

"Quasi-Security" has the meaning given to that term in Clause 22.3 (*Negative pledge*).

"Quotation Day" means, in relation to any period for which an interest rate is to be determined, two Business Days before the first day of that period unless market practice differs in the Relevant Market, in which case the Quotation Day will be determined by the Agent in accordance with market practice in the Relevant Market (and if quotations would normally be given on more than one day, the Quotation Day will be the last of those days).

"Receiver" means a receiver or receiver and manager or administrative receiver of the whole or any part of the Charged Property.

"Reference Exchange" means the Nasdaq Global Select Market.

"Reference Shares" has the meaning attributed thereto in Clause 20.1 (*Additional Definitions*).

"Regulation" has the meaning attributed thereto in Clause 18.32 (*Centre of main interest*).

"Regulations T, U and X" means, respectively, Regulations T, U and X of the Board of Governors of the Federal Reserve System of the United States (or any successor).

"Related Fund" in relation to a fund (the **"first fund"**), means a fund which is managed or advised by the same investment manager or investment adviser as the first fund or, if it is managed by a different investment manager or investment adviser, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the first fund.

"Relevant Jurisdiction" means:

- (a) the Original Jurisdiction of each Obligor;
- (b) the jurisdiction of incorporation of each other member of the Group;
- (c) the jurisdiction in which any publicly traded shares or securities subject to the Transaction Security are listed; and
- (d) the jurisdiction where any asset subject to or intended to be subject to the Transaction Security is situated.

"Relevant Market" means the London interbank market.

"Repeating Representations" means each of the representations set out in Clause 18.1 (*Status*) to 18.7 (*Non-US Person*), 18.10 (*Insolvency*), 18.12 (*Taxation*), Clause 18.14 (*No misleading information*), 18.26 (*Reference Shares*), 18.27 (*Material Contracts*), 18.31 (*Federal Reserve Regulations*), 18.32 (*Centre of main interests and establishments*) other than paragraph (j) thereto, 18.33 (*ERISA*) and 18.34 (*Investment Company Act*).

"Representative" means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.

"Resignation Letter" means a letter substantially in the form set out in Schedule 7 (*Form of Resignation Letter*).

"Restructuring" means:

- (a) an agreement to restructure, refinance, repay, reschedule or extend (for a term of at least 12 Months) at least €5,000,000,000 (or its currency equivalent) of

the Group's Financial Indebtedness, whether as a single transaction or a series of related transactions; or

- (b) the entry into a lock-up or standstill agreement, or the taking of any other formal action, to facilitate the restructuring, refinancing, repayment, rescheduling or extension (for a term of at least 12 Months) of at least €5,000,000,000 (or its currency equivalent) of the Group's Financial Indebtedness, whether as a single transaction or a series of related transactions,

and including without limitation, any court order or court sanctioned action or process.

"Restructuring Agreement" means the restructuring agreement that the Parent and some of its Subsidiaries are currently negotiating with their financial creditors for the purposes of restructuring the financial indebtedness of the Group on the terms described in the Restructuring Term Sheet.

"Restructuring Term Sheet" means the Restructuring Term Sheet attached as annex 2 to the letter from Abengoa, S.A. dated 10 August 2016 entitled "New Money Financing Commitment Letter".

"Sanctions" means:

- (a) United Nations sanctions imposed pursuant to United Nations Security Council Resolution;
- (b) U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("**OFAC**");
- (c) EU restrictive measures implemented pursuant to any EU Council or Commission Regulation or Decision adopted pursuant to a Common Position in furtherance of the EU's Common Foreign and Security Policy;
- (d) UK sanctions enacted by statutory instrument pursuant to the United Nations Act 1946 or the European Communities Act 1972; and
- (e) any other sanctions laws and regulations in any Relevant Jurisdiction.

"Screen Rate" means the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant period displayed (before any correction, recalculation or republication by the administrator) on pages LIBOR01 or LIBOR02 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters. If such page or service ceases to be available, the Agent may specify another page or service displaying the relevant rate after consultation with the Borrower.

"SEC" means the United States Securities and Exchange Commission or any successor thereto.

"Secured Obligations" means all obligations at any time due, owing or incurred by the Borrower to any Secured Party under the Finance Documents, whether present or future, actual or contingent (and whether incurred solely or jointly and whether as principal or surety or in some other capacity).

"Security Over Cash Agreement" means the English law agreement dated on or about the date of this Agreement between the Borrower as grantor and the Security Agent relating to the Borrower's right, title and interest in and to the Cash Collateral Account.

"Secured Parties" means the Security Agent, any Receiver or Delegate, the Agent, the Calculation Agent and each Lender from time to time party to this Agreement.

"Security" means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"Security Documents" means each of:

- (a) the Custody Account Security Agreement; and
- (b) the Security Over Cash Agreement,

together with any other document entered into by any Obligor creating or expressed to create any Security over all or any part of its assets in respect of the Secured Obligations.

"Security Period" means the period from the date of this Agreement until:

- (a) the Secured Obligations are fully and unconditionally discharged (and **provided that** each of the Agent and Security Agent are reasonably satisfied that it will not have to account to any official receiver, liquidator or security agent in bankruptcy for any person (other than a Finance Party) for any amounts paid in or towards such discharge); and
- (b) the Finance Parties are under no actual or contingent liability to the Borrower under the Finance Documents or otherwise required to provide financial accommodation to the Borrower thereunder.

"September 2015 Facility" means the syndicated facility agreement dated 23 September 2015 between Abengoa, S.A. as borrower, certain companies of its group as guarantors, certain financial entities as lenders and Banco Popular, S.A. as agent for a maximum amount of €165,000,000 which was raised on the same date to the status of Spanish public document before the Notary of Madrid, Mr Fernando Molina Stranz with number 1,320 of his records.

"Share Capital Change" means any new share issue, rights issue, bonus issue, redenomination, consolidation, share buy-back, share for share exchange or other similar alteration in the capital structure of the Company or any other event that may have a diluting or concentrative effect on the value of the Shares.

"Share Event" means any of the following occurs or the Calculation Agent receives information that such event has occurred (either from the Borrower, as matter of public knowledge or from any other sources which it in its good faith opinion believes to be genuine and reliable):

- (a) an Adjustment Failure;
- (b) an Insolvency Event in respect of the Company;
- (c) a Listing Event;
- (d) a Merger Event;
- (e) a Nationalisation Event; and/or
- (f) a Tender Offer Event.

"Shares" means the ordinary shares of the Company listed on the Reference Exchange and trading under the symbol "ABY".

"Shortfall Value" has the meaning attributed thereto in Clause 20.1 (*Additional Definitions*).

"Spanish Guarantor" means a Guarantor incorporated in Spain.

"Special Distribution" means a dividend or other form of distribution made by the Company in cash or in kind which is not in accordance with guidance previously given to the market and the Company's shareholders in connection with ordinary course dividend payments and which constitutes a dividend or other form of distribution which is of a special, one-off or extraordinary nature.

"Specified Time" means a day or time determined in accordance with Schedule 8 (*Timetable*).

"Standstill Agreement" means the standstill agreement dated on or about the date of this Agreement between, among others, GLAS Trust Corporation Limited as September 2016 security agent, Global Loan Agency Services Limited as September 2016 agent, AgenSynd, S.L. as December agent and Banco Popular Español, S.A. as September agent.

"Subsidiary" means any person (referred to as the "**first person**") in respect of which another person (referred to as the "**second person**"):

- (a) holds (directly or indirectly) a majority of the voting rights in that first person or has the ability to control or the right to direct the overall policy of the first person or alter the terms of its constitution; or
- (b) is a member of that first person and has the right to appoint or remove a majority of its board of directors or equivalent administration, management or supervisory body; or

- (c) has (directly or indirectly) the power to exercise, or actually exercises, dominant influence or control over the first person,

and, for the purposes of this definition, a person shall be treated as a member of another person if any of that person's Subsidiaries is a member of that other person or if any shares in that other person are held by a person acting on behalf of it or any of its Subsidiaries. A Subsidiary shall include any person the shares or ownership interests in which are subject to Security and where the legal title to the shares or ownership interests so secured are registered in the name of the secured party or its nominee pursuant to such Security.

"Tax" means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

"TCI Margin Loan" means the secured term facility agreement dated 22 October 2015 between the Borrower as borrower and Talos Capital Designated Activity Company (formerly named Talos Capital Limited) as agent, calculation agent, security agent and original lender.

"Tender Offer" means a takeover offer, tender offer, exchange offer, solicitation, proposal or other event by any person which would result in such person purchasing or otherwise obtaining, having or having the right to obtain, by conversion or other means, thirty per cent. or more of the outstanding Shares, based upon a filing made, or required to be made, with any governmental, listing or regulatory agencies or such other information as the Calculation Agent, acting in good faith, deems relevant.

"Tender Offer Event" means acceptance by the Borrower of any Tender Offer which comprises any Reference Shares.

"Total Commitments" means the aggregate of the Commitments, being \$211,000,000 at the date of this Agreement.

"Transaction Security" means the Security created or expressed to be created in favour of the Security Agent pursuant to the Security Documents.

"Transfer Certificate" means a certificate substantially in the form set out in Schedule 4 (*Form of Transfer Certificate*) or any other form agreed between the Agent and the Borrower.

"Transfer Date" means, in relation to an assignment or a transfer, the later of:

- (a) the proposed Transfer Date specified in the relevant Assignment Agreement or Transfer Certificate; and
- (b) the date on which the Agent executes the relevant Assignment Agreement or Transfer Certificate.

"Unpaid Sum" means any sum due and payable but unpaid by an Obligor under the Finance Documents.

"Uruguayan Guarantor" means a Guarantor incorporated in Uruguay.

"US" and "United States" means the United States of America, its territories, possessions and other areas subject to the jurisdiction of the United States of America.

"US Tax Obligor" means:

- (a) a Borrower which is resident for tax purposes in the US; or
- (b) an Obligor some or all of whose payments under the Finance Documents are from sources within the US for US federal income tax purposes.

"Utilisation" means the utilisation of the Facility.

"Utilisation Date" means the date of the Utilisation, being the date on which the Loan is to be made.

"Utilisation Request" means a notice substantially in the form set out in Schedule 3 (*Utilisation Request*).

"VAT" means:

- (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere.

"Valuation Day" has the meaning attributed thereto in Clause 20.1 (*Additional Definitions*).

"Veto Share" means the class "B share" (as detailed in the articles of association of the Borrower) in the Borrower held by the Agent from time to time.

1.2 Construction

- (a) Unless a contrary indication appears any reference in this Agreement to:
 - (i) the "Agent", the "Borrower", the "Calculation Agent", the "Custodian", the "Security Agent", any "Finance Party", any "Lender", any "Secured Party", or any "Party" or other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with this Agreement;
 - (ii) a transaction between a person (the first person) and another person (the second person) being on "arm's length" terms means a transaction on terms that are fair and reasonable to the first person and no more or less favourable to the second person than could reasonably be expected to be obtained in a comparable transaction between the second person and a person which is not an Affiliate of the first person;

- (iii) "**assets**" includes present and future properties, revenues and rights of every description;
 - (iv) a "**Finance Document**" or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended, replaced or restated;
 - (v) a "**group of Lenders**" includes all the Lenders;
 - (vi) "**guarantee**" includes any guarantee, letter of credit, bond, indemnity, or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
 - (vii) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - (viii) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
 - (ix) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
 - (x) a provision of law is a reference to that provision as amended or re-enacted; and
 - (xi) a time of day is a reference to London time.
- (b) The determination of the extent to which a rate is "**for a period equal in length**" to an Interest Period shall disregard any inconsistency arising from the last day of that Interest Period being determined pursuant to the terms of this Agreement.
 - (c) Section, Clause and Schedule headings are for ease of reference only.
 - (d) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
 - (e) A Default (other than an Event of Default) is "**continuing**" if it has not been remedied or waived and an Event of Default is "**continuing**" if it has not been waived.

1.3 Currency Symbols and Definitions

- (a) "\$", "USD" and "dollars" denote the lawful currency of the United States of America.
- (b) "€", "EUR" and "euro" denote the single currency of the Participating Member States.

1.4 Dutch Terms

In this Agreement, where it relates to a Dutch entity, a reference to:

- (a) a necessary action to authorise, where applicable, includes without limitation:
 - (i) any action required to comply with the Dutch Works Council Act (*Wet op de ondernemingsraden*); and
 - (ii) obtaining unconditional positive advice (*advies*) from each competent works council;
- (b) a winding-up, administration or dissolution includes a Dutch entity being:
 - (i) declared bankrupt (*failliet verklaard*);
 - (ii) dissolved (*ontbonden*);
- (c) a moratorium includes *surseance van betaling* and granted a moratorium includes *surseance verleend*;
- (d) a liquidator includes a curator;
- (e) an administrator includes a *bewindvoerder*;
- (f) a receiver or an administrative receiver does not include a curator or *bewindvoerder*; and
- (g) an attachment includes a *beslag*.

1.5 Third party rights

- (a) Unless expressly provided to the contrary in a Finance Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

SECTION 2 THE FACILITY

2. THE FACILITY

2.1 The Facility

Subject to the terms of this Agreement, the Lenders make available to the Borrower a dollar term loan facility in an aggregate amount equal to the Total Commitments.

2.2 Finance Parties' rights and obligations

- (a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor is a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with paragraph (c) below. The rights of each Finance Party include any debt owing to that Finance Party under the Finance Documents and, for the avoidance of doubt, any part of the Loan or other amount owed by an Obligor which relates to a Finance Party's participation in the Facility or its role under a Finance Document (including any such amount payable to the Agent on its behalf) is a debt owing to that Finance Party by that Obligor.
- (c) A Finance Party may, except as specifically provided in the Finance Documents, separately enforce its rights under or in connection with the Finance Documents.

2.3 Obligors' Agent

- (a) Each Obligor (other than the Parent) by its execution of this Agreement or an Accession Letter irrevocably appoints the Parent (acting through one or more authorised signatories) to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:
 - (i) the Parent on its behalf to supply all information concerning itself contemplated by this Agreement to the Finance Parties and to give all notices and instructions, to execute on its behalf any Accession Letter, to make such agreements and to effect the relevant amendments, supplements and variations capable of being given, made or effected by any Obligor notwithstanding that they may affect the Obligor, without further reference to or the consent of that Obligor; and
 - (ii) each Finance Party to give any notice, demand or other communication to that Obligor pursuant to the Finance Documents to the Parent,

and in each case the Obligor shall be bound as though the Obligor itself had given the notices and instructions or executed or made the agreements or effected the amendments, supplements or variations, or received the relevant notice, demand or other communication.

- (b) Every act, omission, agreement, undertaking, settlement, waiver, amendment, supplement, variation, notice or other communication given or made by the Obligors' Agent or given to the Obligors' Agent under any Finance Document on behalf of another Obligor or in connection with any Finance Document (whether or not known to any other Obligor and whether occurring before or after such other Obligor became an Obligor under any Finance Document) shall be binding for all purposes on that Obligor as if that Obligor had expressly made, given or concurred with it. In the event of any conflict between any notices or other communications of the Obligors' Agent and any other Obligor, those of the Obligors' Agent shall prevail.

3. **PURPOSE**

3.1 **Purpose**

The Borrower shall apply all amounts borrowed by it under the Facility towards the prepayment of the TCI Margin Loan and/or the general corporate and working capital purposes of the Group, including the payment of restructuring and advisory fees, but excluding any repayment, prepayment, purchase or defeasance of any Financial Indebtedness of the Group (other than the TCI Margin Loan), the payment of any distribution to any person other than a member of the Group and any acquisitions of companies, businesses or undertakings.

3.2 **Monitoring**

No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

4. **CONDITIONS OF UTILISATION**

4.1 **Initial conditions precedent**

- (a) The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to the Loan if, by the Specified Time, the Agent has received all of the documents and other evidence listed in Part I of Schedule 2 (*Conditions Precedent to Initial Utilisation*) in form and substance satisfactory to the Lenders (and for the avoidance of doubt delivery of any of the documents or evidence required by Schedule 2 Part I (*Conditions Precedent to Initial Utilisation*) may not be waived except with the consent of all the Lenders). The Agent shall notify the Borrower and the Lenders promptly upon being so satisfied. Notwithstanding the foregoing, neither the Agent nor any Lender may, without the prior written consent of the Borrower, waive delivery of any of the documents or evidence required by sub-paragraph (a) of paragraph 7 (*Other financing arrangements*) of Schedule 2 Part I (*Conditions Precedent to Initial Utilisation*).

- (b) Other than to the extent that a Lender notifies the Agent in writing to the contrary before the Agent gives the notification described in paragraph (a) above, the Lenders authorise (but do not require) the Agent to give that notification. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

4.2 Further conditions precedent

The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) if:

- (a) on the date of the Utilisation Request and on the proposed Utilisation Date:
 - (i) no Default is continuing or would result from the proposed Loan;
 - (ii) no Share Event is continuing or would result from the proposed Loan; and
 - (iii) the representations to be made by each Obligor under Clause 18 (*Representations*) are true in all material (save where already qualified by materiality) respects; and
- (b) by 11.00 a.m. on the date that is one Business Day prior to the Utilisation Date, the Agent has received evidence satisfactory to the Lenders that the unpaid sums giving rise to the proceedings and steps referred to in paragraph (c) of Clause 18.11 (*No default*) together with any interest, default interest, fee, penalty or other amount arising as a result of such sums being unpaid have been fully paid and discharged.

Neither the Agent nor any Lender may waive any of the further conditions precedent set out in this Clause 4.2 without the prior written consent of all of the Lenders.

4.3 Maximum number of Loans

The Borrower may not deliver a Utilisation Request if, as a result of the proposed Utilisation, more than one Loan would be outstanding under the Facility.

SECTION 3 UTILISATION

5. UTILISATION

5.1 Delivery of a Utilisation Request

- (a) The Borrower may utilise the Facility by delivery to the Agent of a duly completed Utilisation Request, subject to paragraph (b) below, not later than the Specified Time.
- (b) The Borrower may request that the Utilisation Date occurs on a date (the "**Early Utilisation Date**") earlier than the proposed Utilisation Date specified in the Utilisation Request if the Agent has received each Lender's participation in the Loan by the Early Utilisation Date and the other conditions to Utilisation of the Facility set out in this Agreement are satisfied on or prior to the Early Utilisation Date, notwithstanding that Utilisation on the Early Utilisation Date would mean that the Utilisation Request was delivered later than the Specified Time. In such circumstances, the Early Utilisation Date will be the Utilisation Date for the purposes of this Agreement.

5.2 Completion of a Utilisation Request

- (a) A Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:
 - (i) the proposed Utilisation Date is a Business Day within the Availability Period;
 - (ii) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*);
 - (iii) it permits the Agent to withhold an amount equal to \$125,000 (the "**Security Agent Replacement Amount**") from the proceeds of the Utilisation and deposit such amount into the Cash Collateral Account, in accordance with, and subject to, the terms of the Security Over Cash Agreement; and
 - (iv) the proposed Interest Period complies with Clause 9 (*Interest Periods*).
- (b) Only one Loan may be requested in a Utilisation Request.
- (c) Without prejudice to the obligations of the Borrower under Clause 16 (*Costs and expenses*) and paragraph (d) of Clause 27.12 (*Resignation of the Security Agent*) or any similar provisions in any Finance Document, the Security Agent is irrevocably authorised and instructed to withdraw the Security Agent Replacement Amount from the Cash Collateral Account and apply it in payment or reimbursement of any fees, costs or expenses incurred by it or any other Finance Party (including the successor Security Agent) in connection with the replacement of the Security Agent required by the Majority Lenders.

5.3 Currency and amount

- (a) The currency specified in the Utilisation Request must be dollars.
- (b) The amount of the proposed Loan must be an amount which is equal to the Available Facility.

5.4 Lenders' participation

- (a) If the conditions set out in this Agreement have been met, each Lender shall make its participation in the Loan available by the Specified Time through its Facility Office.
- (b) The amount of each Lender's participation in the Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to making the Loan.
- (c) The Agent shall notify each Lender of the amount of the Loan and the amount of its participation in the Loan, in each case by the Specified Time.

5.5 Cancellation of Commitments

The Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period.

SECTION 4

REPAYMENT, PREPAYMENT AND CANCELLATION

6. REPAYMENT

6.1 Repayment on the Maturity Date

The Borrower shall repay the Loan in full on the Maturity Date.

6.2 Adjustment to Maturity Date

In the event that, prior to 29 March 2017, the Borrower has not provided to the Agent evidence satisfactory to the Agent that the maturity dates of the September 2015 Facility, the December 2015 Facility and the March 2016 Facility have been extended to a date falling on or after the date falling 12 Months after the date of this Agreement, the Maturity Date for the purposes of this Agreement shall be 29 March 2017.

6.3 No reborrowing

The Borrower may not reborrow any part of the Facility which is repaid.

7. PREPAYMENT AND CANCELLATION

7.1 Illegality

(a) If, in any applicable jurisdiction, at any time, it becomes unlawful for any Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in any Utilisation or it becomes unlawful for any Affiliate of a Lender for that Lender to do so:

- (i) that Lender shall promptly notify the Agent upon becoming aware of that event;
- (ii) upon the Agent notifying the Borrower, the Commitment of that Lender will be immediately cancelled; and
- (iii) the Borrower shall repay that Lender's participation in the Loan on the last day of the Interest Period for the Loan occurring after the Agent has notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law).

(b) No Make-Whole Amount is payable in respect of any repayment effected by the Borrower pursuant to the terms of paragraph (a) above.

7.2 Exit

(a) For the purposes of this Clause 7.2, an "**Exit Event**" means:

- (i) a Change of Control; or

- (ii) the sale of all or substantially all of the assets of the Group whether in a single transaction or a series of related transactions.
- (b) Upon the occurrence of an Exit Event:
 - (i) the Borrower shall promptly notify the Agent upon becoming aware of that event and:
 - (ii) a Lender shall not be obliged to fund the Utilisation; and
 - (iii) if a Lender so requires and notifies the Agent (on or before the date falling 30 days after the occurrence of the Exit Event), the Agent shall, by written notice to the Borrower, cancel the Commitments of that Lender and declare the participations of that Lender in any outstanding Utilisations, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the Commitments of that Lender will be cancelled and any outstanding Utilisations and all such amounts will become immediately due and payable.

7.3 Share Event

If a Share Event occurs:

- (a) the Borrower shall promptly notify the Agent upon becoming aware of that event;
- (b) no Lender shall be obliged to fund the Utilisation; and
- (c) if a Lender so requires and notifies the Agent (on or before the date falling 30 days after the occurrence of the Share Event), the Agent shall, by written notice to the Borrower, cancel the Commitments of that Lender and declare the participations of that Lender in the Loan, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the Commitments of that Lender will be cancelled and any outstanding Utilisations and all such amounts will become immediately due and payable.

7.4 Restructuring

On the date a Restructuring becomes effective, the Facility will be cancelled and the Loan, together with accrued interest and all other amounts accrued under the Finance Documents, shall become immediately due and payable.

7.5 Disposals

- (a) For the purposes of this Clause 7.5:

"Disposal" means a sale, lease, licence, transfer, loan or other disposal by a person of any asset, undertaking or business (whether by a voluntary or involuntary single transaction or series of transactions);

"Disposal Proceeds" means the consideration receivable by any member of the Group (including any amount receivable in repayment of intercompany debt) for any Disposal made by any member of the Group except for Excluded Disposal Proceeds and after deducting:

- (i) any reasonable expenses which are incurred by any member of the Group with respect to that Disposal to persons who are not members of the Group; and
- (ii) any Tax incurred and required to be paid by the seller in connection with that Disposal (as reasonably determined by the seller, on the basis of existing rates and taking account of any available credit, deduction or allowance).

"Excluded Disposal Proceeds" means an individual Disposal of any assets set out in the list of excluded assets delivered pursuant to Part I of Schedule 2 (*Conditions Precedent*) (the **"Excluded Assets"**) where the Disposal Proceeds are an amount which, when aggregated with the Disposal Proceeds from other Disposals of Excluded Assets made by it and any other member of the Group, do not exceed €135,000,000 (or its currency equivalent).

"Pro Rata Share" means, with respect to any Disposal Proceeds, a *pro rata* share of those Disposal Proceeds determined with reference to the proportion borne by the amount of the Loan then outstanding to the aggregate amount of the Loan and all principal amounts outstanding under the March 2016 Facility, September 2015 Facility and the December 2015 Facility.

- (b) The Borrower shall prepay the Loan, and thereafter cancel Available Commitments, in an amount equal to the Pro Rata Share of the amount of any Disposal Proceeds.
- (c) A prepayment under this Clause 7.5 shall be applied first in cancellation of any Available Commitments, and thereafter shall be applied to prepay the Loan.
- (d) Unless all the Lenders to be prepaid agree not to require Break Costs on the relevant prepayment, the Borrower may elect that any prepayment under this Clause 7.5 be applied in prepayment of the Loan on the last day of the Interest Period relating to the Loan.
- (e) All prepayments to be made under this Clause are subject to permissibility under local law including, without limitation, financial assistance, corporate benefit restrictions on up streaming of cash intra group and the fiduciary and statutory duties of the directors of the relevant members of the Group. The Obligors will use all reasonable endeavours to overcome any such restrictions as soon as reasonably practicable.

7.6 Dividends

- (a) If, on or before 30 September 2016, the Borrower receives any dividend or other distribution (including Special Distributions) in respect of the Reference

Shares, the Borrower shall, on the date of receipt of such dividend or other distribution, prepay the Loan, and thereafter cancel Available Commitments, in an amount equal to the dividend or other distribution received by it.

- (b) If the Company declares, or the directors of the Company resolve to pay or make (and do not rescind their resolution), a dividend or other distribution (including Special Distributions) in respect of the Reference Shares, in each case where the date for the payment or making of that dividend or other distribution falls on or after 1 October 2016, the Borrower shall, on the date for the payment or making of that dividend or other distribution, prepay the Loan, and thereafter cancel Available Commitments, in an amount equal to the amount of the dividend or other distribution which is due to (or would, but for the ACBH Dividend Deferral Arrangements or any other arrangement entered into between the Company and the Borrower, have been due to) the Borrower, whether or not the Borrower actually receives all or any of that dividend or other distribution from the Company.

7.7 Right of replacement or repayment and cancellation in relation to a single Lender

- (a) If:
 - (i) any sum payable to any Lender by an Obligor is required to be increased under paragraph (c) of Clause 12.2 (*Tax gross-up*); or
 - (ii) any Lender claims indemnification from the Borrower under Clause 12.3 (*Tax indemnity*) or Clause 13 (*Increased Costs*),

the Borrower may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Agent notice of cancellation of the Commitments of that Lender and its intention to procure the repayment of that Lender's participation in the Loan or give the Agent notice of its intention to replace that Lender in accordance with paragraph (d) below.

- (b) On receipt of a notice of cancellation referred to in paragraph (a) above, the Commitments of that Lender shall immediately be reduced to zero.
- (c) On the last day of each Interest Period which ends after the Borrower has given notice of cancellation under paragraph (a) above (or, if earlier, the date specified by the Borrower in that notice), the Borrower shall repay that Lender's participation in the Loan.
- (d) The Borrower may, in the circumstances set out in paragraph (a) above, on ten Business Days' prior notice to the Agent and that Lender, replace that Lender by requiring that Lender to (and to the extent permitted by law, that Lender shall) transfer pursuant to Clause 24 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement to a Lender or other bank, financial institution, trust, fund or other entity selected by the Borrower which confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with Clause 24 (*Changes to the*

Lenders) for a purchase price in cash or other cash payment payable at the time of the transfer equal to the outstanding principal amount of such Lender's participation in the Loan and all accrued interest, the Make-Whole Amount (including, where the Lender is being replaced rather than prepaid, the Make-Whole Amount calculated as if the Lender was being prepaid), Break Costs and other amounts payable in relation thereto under the Finance Documents.

- (e) The replacement of a Lender pursuant to paragraph (d) above shall be subject to the following conditions:
 - (i) the Borrower shall have no right to replace the Agent;
 - (ii) none of the Agent, the Security Agent or any Lender shall have any obligation to find a replacement Lender;
 - (iii) in no event shall the Lender replaced under paragraph (d) above be required to pay or surrender any of the fees received by such Lender pursuant to the Finance Documents; and
 - (iv) the Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (d) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer.
- (f) A Lender shall perform the checks described in paragraph (e)(iv) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (d) above and shall notify the Agent and the Borrower when it is satisfied that it has complied with those checks.

7.8 Voluntary prepayment of Loan

- (a) The Borrower may, if it gives the Agent not less than three Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of the Loan (but, if in part, being an amount that reduces the amount of the Loan by a minimum amount of \$10,000,000 (and integral multiples of \$5,000,000 thereafter)).
- (b) The Loan may only be prepaid after the last day of the Availability Period (or, if earlier, the day on which the Available Facility is zero).

7.9 Non-completion

- (a) In the event that the Escrow Agreement is terminated pursuant to clause 5.3 (*Termination*) of the Escrow Agreement ("**Escrow Termination**"), the Agent shall, as soon as reasonably practicable upon receipt of funds by the Agent from the Escrow Agent (as defined in the Escrow Agreement) pursuant to clause 5.3 (*Termination*) of the Escrow Agreement, refund to each Lender (without any set off for any fee or cost owed to any Finance Party by any Obligor or any other Finance Party) an amount equal to the amount made available by that Lender to the Agent pursuant to paragraph (a) of Clause 5.4 (*Lenders' participation*).

- (b) The receipt by each Lender of the refund by the Agent under paragraph (a) above shall constitute prepayment in full of that Lender's participation in the Loan that was made on the Utilisation Date.
- (c) The Borrower shall, as soon as reasonably practicable following (but in any event not later than on the day falling one Business Day after the date of) the Escrow Termination, pay to the Agent (for the account of each Lender) accrued interest on the Loan from the Utilisation Date to the date of Escrow Termination.
- (d) The Borrower shall pay each Lender its Break Costs (if any) attributable to a prepayment under this Clause 7.9 in accordance with Clause 10.5 (*Break Costs*).

7.10 Restrictions

- (a) Any notice of cancellation or prepayment given by any Party under this Clause 7 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.
- (b) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs and Clause 7.12 (*Make-Whole Amount*), without premium or penalty.
- (c) The Borrower may not reborrow any part of the Facility which is prepaid.
- (d) The Borrower shall not repay or prepay all or any part of the Loan or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.
- (e) No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
- (f) If the Agent receives a notice under this Clause 7 it shall promptly forward a copy of that notice to either the Borrower or the affected Lender, as appropriate.
- (g) If all or part of the Loan under the Facility is repaid or prepaid, an amount of the Commitments (equal to the amount of the Loan which is repaid or prepaid) in respect of the Facility will be deemed to be cancelled on the date of repayment or prepayment. Any cancellation under this paragraph (g) shall reduce the Commitments of the Lenders rateably under the Facility.

7.11 Application of prepayments

Any prepayment of the Loan pursuant to Clause 7.5 (*Disposals*), Clause 7.6 (*Dividends*) and Clause 7.8 (*Voluntary prepayment of Loan*) shall be applied *pro rata* to each Lender's participation in the Loan.

7.12 **Make-Whole Amount**

If the whole or any part of the Loan is repaid or prepaid (or required to be repaid or prepaid) other than on the Final Maturity Date for any reason (including, without limitation, as a result of any action taken pursuant to Clause 23.22 (*Acceleration*) or in connection with a Restructuring (whether or not any Lender is participating in such Restructuring)) other than pursuant to Clause 7.1 (*Illegality*) or Clause 7.9 (*Non-completion*) then, in addition to all other amounts payable under the Finance Documents, the Borrower will pay to the Agent for the account of the Lenders *pro rata* to the participation of each Lender in the Loan the Make-Whole Amount.

SECTION 5 COSTS OF UTILISATION

8. INTEREST

8.1 PIK interest

Interest shall, commencing on the Utilisation Date of the Loan, accrue daily on the Loan at a rate equal to the aggregate of:

- (a) the PIK Margin; and
- (b) LIBOR,

and such interest shall be automatically capitalised and shall be added to the outstanding principal amount of the Loan on the last day of each Interest Period such that each Lender's participation in the Loan shall increase by an amount of such accrued interest which is equal to the proportion borne by its Commitment to the relevant Total Commitments immediately prior to such capitalisation. Any accrued interest that is capitalised shall, after being so capitalised, be treated as part of the principal amount of the Loan, shall bear interest in accordance with this Clause 8 (*Interest*) and shall be payable in accordance with the repayment or prepayment provisions of this Agreement.

8.2 Default interest

- (a) If the Borrower fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is five per cent. per annum higher than the rate which would have accrued under Clause 8.1 (*PIK interest*) if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Agent (acting reasonably). Any interest accruing under this Clause 8.2 shall be immediately payable by the Borrower on demand by the Agent.
- (b) If any overdue amount consists of all or part of the Loan which became due on a day which was not the last day of an Interest Period relating to the Loan:
 - (i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to the Loan; and
 - (ii) the rate of interest applying to the overdue amount during that first Interest Period shall be five per cent. per annum higher than the rate which would have accrued under Clause 8.1 (*PIK interest*) if the overdue amount had not become due.
- (c) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

8.3 Notification of rates of interest

- (a) The Agent shall promptly notify the Lenders and the Borrower of the determination of a rate of interest under this Agreement.
- (b) The Agent shall promptly notify the Borrower of each Funding Rate relating to the Loan.

9. INTEREST PERIODS

9.1 Duration

- (a) Subject to paragraph (d) below, each Interest Period will be one Month.
- (b) An Interest Period for the Loan shall not extend beyond the Maturity Date.
- (c) Subject to paragraph (d) below, the Interest Period for the Loan shall start on the Utilisation Date for the Loan or (if already made) on the last day of its preceding Interest Period.
- (d) If any Lender advances an amount equal to its participation in any proposed Loan to the Agent prior to a Utilisation Date but after the submission of a Utilisation Request, such amount will accrue interest on the same terms as it would had it been a Loan under the Facility from the date of receipt by the Agent, with:
 - (i) an Interest Period starting on the date of such advance to the Agent and ending on the same date as the first Interest Period under the Facility; and
 - (ii) LIBOR in respect of such advance being the same as that for the first Interest Period under the Facility.

9.2 Non-Business Days

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

10. CHANGES TO THE CALCULATION OF INTEREST

10.1 Unavailability of Screen Rate

- (a) *Interpolated Screen Rate:* If no Screen Rate is available for LIBOR for the Interest Period of the Loan, LIBOR shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of the Loan.
- (b) *Costs of funds:* If no Screen Rate is available for LIBOR for:
 - (i) dollars; or

- (ii) the Interest Period of the Loan and it is not possible to calculate the Interpolated Screen Rate,

there shall be no LIBOR for the Loan and Clause 10.2 (*Cost of funds*) shall apply to the Loan for that Interest Period.

10.2 Cost of funds

- (a) If this Clause 10.2 applies, the rate of interest on of the relevant Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:
 - (i) the PIK Margin; and
 - (ii) the rate notified to the Agent by that Lender as soon as practicable and in any event within 5 Business Days of the first day of that Interest Period, to be that which expresses as a percentage rate per annum the cost to the relevant Lender of funding its participation in that Loan from whatever source it may reasonably select.
- (b) If this Clause 10.2 applies and the Agent or the Borrower so requires, the Agent and the Borrower shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.
- (c) Any alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Borrower, be binding on all Parties.
- (d) If this Clause 10.2 applies pursuant to Clause 10.3 (*Market disruption*) and:
 - (i) a Lender's Funding Rate is less than LIBOR; or
 - (ii) a Lender does not supply a quotation by the time specified in paragraph (a)(ii) above,

the cost to that Lender of funding its participation in the Loan for that Interest Period shall be deemed, for the purposes of paragraph (a) above, to be LIBOR.

10.3 Market disruption

If before close of business in London on the Quotation Day for the relevant Interest Period the Agent receives notifications from a Lender or Lenders (whose participations in the Loan exceed 35% of the Loan) that the cost to it of funding its participation in the Loan from whatever source it may reasonably select would be in excess of LIBOR then there shall be no LIBOR for the Loan and Clause 10.2 (*Cost of funds*) shall apply to the Loan for the relevant Interest Period.

10.4 Notification to Borrower

If Clause 10.2 (*Cost of funds*) applies, the Agent shall, as soon as is practicable, notify the Borrower.

10.5 Break Costs

- (a) The Borrower shall, within three Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of the Loan or Unpaid Sum being paid by that Borrower on a day other than the last day of an Interest Period for the Loan or Unpaid Sum.
- (b) Each Lender shall, as soon as reasonably practicable after a demand by the Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

11. FEES

11.1 Arrangement fee

The Borrower will pay to the Arranger a fee in the amount of \$3,165,000 on or before the date of first Utilisation.

11.2 Participation fee

- (a) For the purposes of this Clause 11.2:

"CVA Approval Date" means, in relation to a company voluntary arrangement under Part I of the Insolvency Act 1986 in relation to the Borrower (and in connection with the restructuring of the financial indebtedness of the Group on the terms described in the Restructuring Term Sheet), the date on which notice is filed with the court of the approval of the CVA by the required majority of the creditors of the Borrower;

"Homologation Approval Date" means the date of *auto de homologación judicial* pursuant the Fourth Additional Disposition of the Spanish Insolvency Law (*Ley 22/2003, de 9 de julio, Concursal*) declaring the *homologación judicial* of the Restructuring Agreement;

"Participation Fee" means the fee referred to in this Clause 11.2; and

"Relevant Date" means the first date on which both the CVA Approval Date and the Homologation Approval Date have occurred.

- (b) Subject to this Clause 11.2, the Borrower shall, if the Utilisation Date occurs, pay to the Agent (for the account of each Lender pro rata to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) on or before 31 December 2017 a fee in an amount equal to:
 - (i) (subject to paragraph (e) below) an amount equal to the applicable percentage (being the percentage set opposite the period during which payment is made in the table below) of the Total Commitments (as at the date of this Agreement):

Period during which Participation Fee is paid	Applicable percentage
From the date of this Agreement to 28 February 2017 (both inclusive)	2.50%
From 1 March 2017 to 30 April 2017 (both inclusive)	3.00%
From 1 May 2017 to 30 June 2017 (both inclusive)	3.50%
From 1 July 2017 to 31 August 2017 (both inclusive)	4.00%
From 1 September 2017 to 31 October 2017 (both inclusive)	4.50%
From 1 November 2017 to 31 December 2017 (both inclusive)	5.00%

less:

(ii) \$500,000,

provided that if any event or circumstance referred to in Clause 23.8 (*Insolvency*) or Clause 23.9 (*Insolvency proceedings*) occurs in relation to the Parent or the Borrower (the "**Participation Fee Ratchet Event**") before the Participation Fee has been paid, the applicable percentage for the purposes of paragraph (b)(i) above shall be 5 per cent and the Participation Fee shall be immediately due and payable.

- (c) Subject to paragraph (d) below, the payment of the Participation Fee shall be made by the Borrower in cash.
- (d) Following receipt by the Agent of evidence satisfactory to it of the occurrence of the Relevant Date on or prior to 31 December 2017, the Borrower may, at its sole discretion, by no less than ten Business Days' notice to the Agent, discharge its obligation to make the payment of the fee referred to in paragraph (b) above by procuring that an entity (other than the Borrower) approved by the Agent and each Lender (such approval not to be unreasonably withheld or delayed) assume an obligation to pay an amount equal to the Participation Fee due from the Borrower which obligation:
 - (i) shall rank prior to the "Old Money" claims and at least pari passu with the claims of all the Borrower's or, as applicable, of such entity's unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law; and
 - (ii) may be subordinated to the claims of "New Money Tranche 3", "New Bonding Facilities", "New Money Tranche 2" and "New Money Tranche 1",

in each case as contemplated in the Restructuring Term Sheet.

(e) Notwithstanding the foregoing, if:

- (i) the Loan and all other amounts under the Finance Documents, other than the Participation Fee, have been repaid or prepaid (the date of such repayment or prepayment a "**Loan Repayment Date**") before the date set out in the table below; and
- (ii) the Participation Fee has been paid (the date of such payment a "**Participation Fee Payment Date**") before the date set out in the table below,

then, unless a Participation Fee Ratchet Event has occurred, the applicable percentage for the purposes of paragraph (b)(i) above shall be reduced by the percentage reduction set out in the table below opposite those dates:

Loan Repayment Date	Participation Fee Payment Date	Percentage reduction
On or before 16 December 2016	On or before 30 April 2017	1.00%
On or before 15 January 2017	On or before 30 April 2017	0.50%

11.3 Agency Fee

The Borrower will pay to the Agent (for its own account) an agency fee in the amount and at the times agreed in a Fee Letter.

11.4 Security Agency Fee

The Borrower will pay to the Security Agent (for its own account) a security agency fee in the amount and at the times agreed in a Fee Letter.

11.5 Calculation Agency Fee

The Borrower will pay to the Calculation Agent (for its own account) a calculation agency fee in the amount and at the times agreed in a Fee Letter.

SECTION 6
ADDITIONAL PAYMENT OBLIGATIONS

12. TAX GROSS-UP AND INDEMNITIES

12.1 Definitions

(a) In this Agreement:

"Borrower DTTP Filing" means an HM Revenue & Customs' Form DTTP2 duly completed and filed by the Borrower, which:

- (i) where it relates to a Treaty Lender that is an Original Lender, contains the scheme reference number and jurisdiction of tax residence stated opposite that Lender's name in Part I of Schedule 1 (*The Original Parties*), and is filed with HM Revenue & Customs within 30 days of the date of this Agreement; or
- (ii) where it relates to a Treaty Lender that is a New Lender, contains the scheme reference number and jurisdiction of tax residence stated in respect of that Lender in the relevant Transfer Certificate or Assignment Agreement, and is filed with HM Revenue & Customs within 30 days of that Transfer Date.

"Protected Party" means a Finance Party which is or will be subject to any liability, or required to make any payment, for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document.

"Qualifying Lender" means:

- (i) a Lender which is beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document and is:

(A) a Lender:

- (1) which is a bank (as defined for the purpose of section 879 of the ITA) making an advance under a Finance Document and is within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance or would be within such charge as respects such payments apart from section 18A of the CTA; or
- (2) in respect of an advance made under a Finance Document by a person that was a bank (as defined for the purpose of section 879 of the ITA) at the time that that advance was made and within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance; or

- (B) a Lender which is:
 - (1) a company resident in the United Kingdom for United Kingdom tax purposes;
 - (2) a partnership each member of which is:
 - (a) a company so resident in the United Kingdom; or
 - (b) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or
 - (3) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company; or
- (C) a Treaty Lender; or
- (ii) a Lender which is a building society (as defined for the purpose of section 880 of the ITA) making an advance under a Finance Document.

"Tax Confirmation" means a confirmation by a Lender that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:

- (i) a company resident in the United Kingdom for United Kingdom tax purposes;
- (ii) a partnership each member of which is:
 - (A) a company so resident in the United Kingdom; or
 - (B) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or
- (iii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and

which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.

"Tax Credit" means a credit against, relief or remission for, or repayment of any Tax.

"Tax Deduction" means a deduction or withholding for or on account of Tax from a payment under a Finance Document, other than a FATCA Deduction.

"Tax Payment" means either the increase in a payment made by an Obligor to a Finance Party under Clause 12.2 (*Tax gross-up*) or a payment under Clause 12.3 (*Tax indemnity*).

"Treaty Lender" means a Lender which:

- (i) is treated as a resident of a Treaty State for the purposes of the Treaty;
- (ii) does not carry on a business in the United Kingdom through a permanent establishment with which that Lender's participation in the Loan is effectively connected; and
- (iii) fulfils any other conditions which must be fulfilled under the Treaty by residents of that Treaty State for such residents to obtain full exemption from taxation on interest imposed by the United Kingdom, subject to the completion of procedural formalities.

"Treaty State" means a jurisdiction having a double taxation agreement (a **"Treaty"**) with the United Kingdom which makes provision for full exemption from tax imposed by the United Kingdom on interest.

"UK Non-Bank Lender" means:

- (i) where a Lender becomes a Party on the day on which this Agreement is entered into, a Lender listed in Part I of Schedule 1 (*The Original Parties*); and
 - (ii) where a Lender becomes a Party after the day on which this Agreement is entered into, a Lender which gives a Tax Confirmation in the Assignment Agreement or Transfer Certificate which it executes on becoming a Party.
- (b) Unless a contrary indication appears, in this Clause 12 a reference to **"determines"** or **"determined"** means a determination made in the absolute discretion of the person making the determination.

12.2 Tax gross-up

- (a) Each Obligor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.

- (b) Each Obligor shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Agent accordingly. Similarly, a Lender shall notify the Agent on becoming so aware in respect of a payment payable to that Lender. If the Agent receives such notification from a Lender it shall notify the Borrower and that Obligor.
- (c) If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) A payment shall not be increased under paragraph (c) above by reason of a Tax Deduction on account of Tax imposed by the United Kingdom, if on the date on which the payment falls due:
 - (i) the payment could have been made to the relevant Lender without a Tax Deduction if the Lender had been a Qualifying Lender, but on that date that Lender is not or has ceased to be a Qualifying Lender other than as a result of any change after the date it became a Lender under this Agreement in (or in the interpretation, administration, or application of) any law or Treaty or any published practice or published concession of any relevant taxing authority; or
 - (ii) the relevant Lender is a Qualifying Lender solely by virtue of paragraph (i)(B) of the definition of "Qualifying Lender" and:
 - (A) an officer of HM Revenue & Customs has given (and not revoked) a direction (a "**Direction**") under section 931 of the ITA which relates to the payment and that Lender has received from the Obligor making the payment or from the Borrower a certified copy of that Direction; and
 - (B) the payment could have been made to the Lender without any Tax Deduction if that Direction had not been made; or
 - (iii) the relevant Lender is a Qualifying Lender solely by virtue of paragraph (i)(B) of the definition of "Qualifying Lender"; and
 - (A) the relevant Lender has not given a Tax Confirmation to the Borrower; and
 - (B) the payment could have been made to the Lender without any Tax Deduction if the Lender had given a Tax Confirmation to the Borrower, on the basis that the Tax Confirmation would have enabled the Borrower to have formed a reasonable belief that the payment was an "excepted payment" for the purpose of section 930 of the ITA; or
 - (iv) the relevant Lender is a Treaty Lender and the Obligor making the payment is able to demonstrate that the payment could have been made

to the Lender without the Tax Deduction had that Lender complied with its obligations under paragraph (g) or (h) (as applicable) below.

- (e) If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
 - (f) Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making the payment shall deliver to the Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.
 - (g)
 - (i) Subject to paragraph (ii) below, a Treaty Lender and each Obligor which makes a payment to which that Treaty Lender is entitled shall co-operate in completing any procedural formalities necessary for that Obligor to obtain authorisation to make that payment without a Tax Deduction.
 - (ii)
 - (A) A Treaty Lender which becomes a Party on the day on which this Agreement is entered into that holds a passport under the HMRC DT Treaty Passport scheme, and which wishes that scheme to apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence; and
 - (B) a New Lender that is a Treaty Lender that holds a passport under the HMRC DT Treaty Passport scheme, and which wishes that scheme to apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence in the Transfer Certificate or Assignment Agreement which it executes,
- and, having done so, that Lender shall be under no obligation pursuant to paragraph (i) above.
- (h) If a Lender has confirmed its scheme reference number and its jurisdiction of tax residence in accordance with paragraph (g)(ii) above and:
 - (i) the Borrower has not made a Borrower DTTP Filing in respect of that Lender; or
 - (ii) the Borrower has made a Borrower DTTP Filing in respect of that Lender but:
 - (A) that Borrower DTTP Filing has been rejected by HM Revenue & Customs; or

- (B) HM Revenue & Customs has not given the Borrower authority to make payments to that Lender without a Tax Deduction within 60 days of the date of the Borrower DTTP Filing,

and in each case, the Borrower has notified that Lender in writing, that Lender and the Borrower shall co-operate in completing any additional procedural formalities necessary for the Borrower to obtain authorisation to make that payment without a Tax Deduction.

- (iii) If a Lender has not confirmed its scheme reference number and jurisdiction of tax residence in accordance with paragraph (g)(ii) above, the Borrower shall not make a Borrower DTTP Filing or file any other form relating to the HMRC DT Treaty Passport scheme in respect of that Lender's Commitment(s) or its participation in the Loan unless the Lender otherwise agrees.
- (i) The Borrower shall, promptly on making a Borrower DTTP Filing, deliver a copy of that Borrower DTTP Filing to the Agent for delivery to the relevant Lender.
- (j) A UK Non-Bank Lender which becomes a Party on the day on which this Agreement is entered into gives a Tax Confirmation to the Borrower by entering into this Agreement.
- (k) A UK Non-Bank Lender shall promptly notify the Borrower and the Agent if there is any change in the position from that set out in the Tax Confirmation.

12.3 Tax indemnity

- (a) The Borrower shall (within three Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.
- (b) Paragraph (a) above shall not apply:
- (i) with respect to any Tax assessed on a Finance Party:
- (A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or
- (B) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or

- (ii) to the extent a loss, liability or cost:
 - (A) is compensated for by an increased payment under Clause 12.2 (*Tax gross-up*);
 - (B) would have been compensated for by an increased payment under Clause 12.2 (*Tax gross-up*) but was not so compensated solely because one of the exclusions in paragraph (d) of Clause 12.2 (*Tax gross-up*) applied; or
 - (C) relates to a FATCA Deduction required to be made by a party.
- (c) A Protected Party making, or intending to make a claim under paragraph (a) above shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Borrower.
- (d) A Protected Party shall, on receiving a payment from the Borrower under this Clause 12.3, notify the Agent.

12.4 **Tax Credit**

If an Obligor makes a Tax Payment and the relevant Finance Party determines that:

- (a) a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and
- (b) that Finance Party has obtained and utilised that Tax Credit,

the Finance Party shall pay an amount to the Obligor which that Finance Party determines will leave it (after that payment) in the same after Tax position as it would have been in had the Tax Payment not been required to be made by the Obligor.

12.5 **Lender status confirmation**

Each Lender which becomes a Party to this Agreement after the date of this Agreement shall indicate, in the Transfer Certificate or Assignment Agreement which it executes on becoming a Party, and for the benefit of the Agent and without liability to any Obligor, which of the following categories it falls in:

- (a) not a Qualifying Lender;
- (b) a Qualifying Lender (other than a Treaty Lender); or
- (c) a Treaty Lender.

If a New Lender fails to indicate its status in accordance with this Clause 12.5 then such New Lender shall be treated for the purposes of this Agreement (including by each Obligor) as if it is not a Qualifying Lender until such time as it notifies the Agent which category applies (and the Agent, upon receipt of such notification, shall inform the Borrower). For the avoidance of doubt, a Transfer Certificate or Assignment

Agreement shall not be invalidated by any failure of a Lender to comply with this Clause 12.5.

12.6 Stamp taxes

- (a) The Borrower shall pay and, promptly, and in any event within three Business Days of demand, indemnify each Finance Party against any cost, loss or liability that Finance Party incurs in relation to all stamp duty, registration, excise and other similar Taxes payable in respect of any Finance Document or the transactions occurring under any of them.
- (b) The Borrower is not required to pay any cost, loss or liability pursuant to (a) of this Clause 12.6 in respect of any assignment or transfer of any rights or obligations by any Lender pursuant to Clause 24 (*Changes to the Lenders*).

12.7 VAT

- (a) All amounts expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).
- (b) If VAT is or becomes chargeable on any supply made by any Finance Party (the "**Supplier**") to any other Finance Party (the "**Recipient**") under a Finance Document, and any Party other than the Recipient (the "**Relevant Party**") is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):
 - (i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
 - (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.

- (c) Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (d) Any reference in this Clause 12.7 to any Party shall, at any time when such Party is treated as a member of a group or unity (or fiscal unity) for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the person who is treated as making the supply, or (as appropriate) receiving the supply, under the grouping rules (provided for in Article 11 of Council Directive 2006/112/EC (or as implemented by the relevant member state of the European Union) or any other similar provision in any jurisdiction which is not a member of the European Union).
- (e) In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Finance Party's VAT reporting requirements in relation to such supply.

12.8 **FATCA Information**

- (a) Subject to paragraph (c) below, each Party shall, within ten Business Days of a reasonable request by another Party:
 - (i) confirm to that other Party whether it is:
 - (A) a FATCA Exempt Party; or
 - (B) not a FATCA Exempt Party;
 - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA;
 - (iii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.
- (b) If a Party confirms to another Party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.

- (c) Paragraph (a) above shall not oblige any Finance Party to do anything, and paragraph (a)(iii) above shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:
 - (i) any law or regulation;
 - (ii) any fiduciary duty; or
 - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (a)(i) or (ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.

12.9 FATCA Deduction

- (a) Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.
- (b) Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the Party to whom it is making the payment and, in addition, shall notify the Borrower and the Agent and the Agent shall notify the other Finance Parties.

12.10 Survival of Obligations

Without prejudice to the survival of any other section of this Agreement, the agreements and obligations of each Obligor and each Finance Party contained in this Clause 12 shall survive the payment in full by the Obligors of all obligations under the Finance Documents and the termination of this Agreement, for the avoidance of doubt with respect to events occurring prior to the date of such payment in full and/or termination.

13. INCREASED COSTS

13.1 Increased costs

- (a) Subject to Clause 13.3 (*Exceptions*) the Borrower shall, within three Business Days of a demand by the Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of:
 - (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation after the date of this Agreement;
 - (ii) compliance with any law or regulation made after the date of this Agreement; or
 - (iii) the implementation or application of, or compliance with, Basel III, CRD IV or Dodd-Frank or any law or regulation that implements or applies Basel III, CRD IV or Dodd-Frank.

- (b) In this Agreement:

"Increased Costs" means:

- (i) a reduction in the rate of return from the Facility or on a Finance Party's (or its Affiliate's) overall capital;
- (ii) an additional or increased cost; or
- (iii) a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document;

- (iv) **"Basel III"** means:

- (A) the agreements on capital requirements, a leverage ratio and liquidity standards contained in "Basel III: A global regulatory framework for more resilient banks and banking systems", "Basel III: International framework for liquidity risk measurement, standards and monitoring" and "Guidance for national authorities operating the countercyclical capital buffer" published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;
- (B) the rules for global systemically important banks contained in "Global systemically important banks: assessment methodology and the additional loss absorbency requirement – Rules text" published by the Basel Committee on Banking

Supervision in November 2011, as amended, supplemented or restated; and

- (C) any further guidance or standards published by the Basel Committee on Banking Supervision relating to "Basel III"; and
- (v) "**CRD IV**" means:
 - (A) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms; and
 - (B) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC; and
- (vi) "**Dodd-Frank**" means the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith.

13.2 Increased cost claims

- (a) A Finance Party intending to make a claim pursuant to Clause 13.1 (*Increased costs*) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Borrower.
- (b) Each Finance Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount of its Increased Costs.

13.3 Exceptions

- (a) Clause 13.1 (*Increased costs*) does not apply to the extent any Increased Cost is:
 - (i) attributable to a Tax Deduction required by law to be made by the Borrower;
 - (ii) attributable to a FATCA Deduction required to be made by a Party;
 - (iii) compensated for by Clause 12.3 (*Tax indemnity*) (or would have been compensated for under Clause 12.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 12.3 (*Tax indemnity*) applied); or
 - (iv) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.
- (b) In this Clause 13.3, a reference to a "**Tax Deduction**" has the same meaning given to that term in Clause 12.1 (*Definitions*).

14. OTHER INDEMNITIES

14.1 Currency indemnity

- (a) If any sum due from an Obligor under the Finance Documents (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:
 - (i) making or filing a claim or proof against that Obligor;
 - (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

that Obligor shall as an independent obligation, within three Business Days of demand, indemnify each Finance Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

- (b) Each Obligor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

14.2 Other indemnities

The Borrower shall (or shall procure that an Obligor will), within three Business Days of demand, indemnify each Finance Party against any cost, loss or liability incurred by it as a result of:

- (a) the occurrence of any Event of Default or Share Event;
- (b) a failure by an Obligor to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 29 (*Sharing among the Finance Parties*);
- (c) funding, or making arrangements to fund, its participation in the Loan (including, without limitation, pursuant to paragraph (d) of Clause 9.1 (*Duration*)) but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence (or in the case of the Security Agent, gross negligence or wilful default) by that Finance Party alone); or
- (d) the Loan (or part of the Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower.

14.3 Indemnity to the Agent

The Borrower shall promptly indemnify the Agent against:

- (a) any cost, loss or liability incurred by the Agent (acting reasonably) as a result of:
 - (i) investigating any event which it reasonably believes is a Default or a Share Event;
 - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
 - (iii) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement; and
- (b) any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) or in the case of any cost, loss or liability pursuant to Clause 30.11 (*Disruption of Payment Systems etc.*) notwithstanding the Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) in acting as Agent under the Finance Documents, including, without limitation:
 - (i) becoming the registered holder of the Veto Share and ceasing to be the registered holder of the Veto Share (whether pursuant to 26.13 (*Resignation of Agent or Calculation Agent*), 26.21 (*Veto Share*) or otherwise);
 - (ii) taking or omitting to take (in each case acting on the instructions of the Majority Lenders or otherwise as prescribed by the Finance Documents) any action in connection with the Veto Share; and/or
 - (iii) without prejudice to the generality of paragraph (ii) above, exercising (on the instructions of the Majority Lenders or otherwise as prescribed by the Finance Documents) any rights granted to the Agent as holder of the Veto Share.

14.4 Indemnity to the Calculation Agent

The Borrower shall promptly indemnify the Calculation Agent and every Delegate of the Calculation Agent against any cost, loss or liability incurred by the Calculation Agent or such Delegate (in each case acting reasonably but excluding any incurrence as a consequence of the Calculation Agent or such Delegate's gross negligence or wilful misconduct)) as a result of acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised.

14.5 Indemnity to the Security Agent

- (a) Each Obligor jointly and severally shall promptly indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability incurred by any of them (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful default) as a result of:
 - (i) any failure by an Obligor to comply with its obligations under Clause 16 (*Costs and Expenses*);
 - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
 - (iii) the taking, holding, protection or enforcement of all or any part of the Transaction Security;
 - (iv) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent and each Receiver and Delegate by the Finance Documents or by law;
 - (v) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement;
 - (vi) acting as Security Agent, Receiver or Delegate under the Finance Documents or which otherwise relates to any of the Charged Property; and
 - (vii) any default by any Obligor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents.
- (b) The indemnity set out in paragraph (a) above shall remain in full force and effect notwithstanding the discharge of any of the Finance Documents unless specifically provided otherwise in any such discharge.
- (c) The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 14.5 and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all moneys payable to it.

15. MITIGATION BY THE LENDERS

15.1 Mitigation

- (a) Each Finance Party shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (*Illegality*), Clause 12 (*Tax Gross-Up and Indemnities*) or Clause 13 (*Increased Costs*), including (but not limited to)

transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.

- (b) Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.

15.2 Limitation of liability

- (a) The Borrower shall promptly indemnify each Finance Party for all costs and expenses reasonably (or in the case of the Security Agent, properly) incurred by that Finance Party as a result of steps taken by it under Clause 15.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under Clause 15.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

16. COSTS AND EXPENSES

16.1 Transaction expenses

The Borrower shall promptly on demand pay the Agent, the Security Agent, the Calculation Agent and the Original Lenders the amount of all costs and expenses (including legal fees and advisory fees, in each case only of advisers and fee arrangements approved by the Borrower and subject to any cap agreed with the Borrower where applicable and including, for the avoidance of doubt, the fees detailed in the expense reimbursement order dated on or about the date of this Agreement from the Borrower to the Agent) reasonably (or in the case of the Security Agent, properly) incurred by any of them (and, in the case of the Security Agent, by any Receiver or Delegate) in connection with the negotiation, preparation, printing, execution, syndication and perfection of:

- (a) this Agreement and any other documents referred to in this Agreement and the Transaction Security; and
- (b) in the case of the Agent, the Security Agent and the Calculation Agent only, any Finance Documents executed after the date of this Agreement.

16.2 Amendment costs

If:

- (a) an Obligor requests an amendment, waiver or consent; or
- (b) an amendment is required pursuant to Clause 30.10 (*Change of currency*),

the Borrower shall, within three Business Days of demand, reimburse each of the Agent, the Security Agent and the Calculation Agent for the amount of all costs and expenses (including, but not limited to, legal fees, subject to any cap agreed with the Borrower where applicable) reasonably (or in the case of the Security Agent, properly) incurred by the Agent and the Security Agent and the Calculation Agent

(and in the case of the Security Agent, by any Receiver or Delegate) in responding to, evaluating, negotiating or complying with that request or requirement.

16.3 Enforcement and preservation costs

The Borrower shall promptly, and in any event within three Business Days of demand, pay to the Agent, the Security Agent and each other Secured Party the amount of all losses, liabilities, claims, damages, costs and expenses (including legal fees and Taxes including, without limitation, all stamp duty, registration, excise and other similar Taxes), incurred by it in connection with or arising out of the enforcement of or the preservation of any rights, including (but not limited to) the further assurance undertakings set out in paragraph (d) of Clause 22.37 (*Conditions subsequent*) or in connection with or arising out of any offer, sale or resale of all or any portion of the Reference Shares, under any Finance Document and the Transaction Security and any proceedings instituted by or against the Agent, the Security Agent or any Secured Party as a consequence of taking or holding the Transaction Security or enforcing these rights.

SECTION 7 GUARANTEE

17. GUARANTEE AND INDEMNITY

17.1 Guarantee and indemnity

Each Guarantor irrevocably and unconditionally jointly and severally:

- (a) guarantees to each Finance Party punctual performance by the Borrower of all the Borrower's obligations under the Finance Documents;
- (b) undertakes with each Finance Party that whenever the Borrower does not pay any amount when due under or in connection with any Finance Document, that Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and
- (c) agrees with each Finance Party that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal it will, as an independent and primary obligation, indemnify that Finance Party immediately on demand against any cost, loss or liability it incurs as a result of a Borrower not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by a Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 17 if the amount claimed had been recoverable on the basis of a guarantee.

17.2 Continuing guarantee

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Obligor under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

17.3 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is made by a Finance Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Guarantor under this Clause 17 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

17.4 Waiver of defences

The obligations of each Guarantor under this Clause 17 will not be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under this Clause 17 (without limitation and whether or not known to it or any Finance Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Obligor or other person;

- (b) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;
- (e) any amendment, novation, supplement, extension (whether of maturity or otherwise), restatement (in each case however fundamental and of whatsoever nature, and whether or not more onerous) or replacement of any Finance Document or any other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

17.5 Guarantor Intent

Without prejudice to the generality of Clause 17.4 (*Waiver of defences*), each Guarantor expressly confirms that it intends that this guarantee shall extend from time to time to any (however fundamental and of whatsoever nature and whether or not more onerous) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

17.6 Immediate recourse

Each Guarantor waives any right it may have of first requiring any Finance Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under this Clause 17. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

17.7 Appropriations

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full, each Finance Party (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Guarantor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from any Guarantor or on account of any Guarantor's liability under this Clause 17.

17.8 Deferral of Guarantors' rights

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Agent otherwise directs, no Guarantor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 17:

- (a) to be indemnified by an Obligor;
- (b) to claim any contribution from any other guarantor of any Obligor's obligations under the Finance Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Finance Party;
- (d) to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which any Guarantor has given a guarantee, undertaking or indemnity under Clause 17.1 (*Guarantee and indemnity*);
- (e) to exercise any right of set-off against any Obligor; and/or
- (f) to claim or prove as a creditor of any Obligor in competition with any Finance Party.

If a Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Finance Parties by the Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Finance Parties and shall promptly pay or transfer the same to the Agent or as the Agent may direct for application in accordance with Clause 30 (*Payment Mechanics*).

17.9 Release of Guarantors' right of contribution

If any Guarantor (a "**Retiring Guarantor**") ceases to be a Guarantor in accordance with the terms of the Finance Documents for the purpose of any sale or other disposal of that Retiring Guarantor then on the date such Retiring Guarantor ceases to be a Guarantor:

- (a) that Retiring Guarantor is released by each other Guarantor from any liability (whether past, present or future and whether actual or contingent) to make a contribution to any other Guarantor arising by reason of the performance by any other Guarantor of its obligations under the Finance Documents; and
- (b) each other Guarantor waives any rights it may have by reason of the performance of its obligations under the Finance Documents to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under any Finance Document or of any other security taken pursuant to, or in connection with, any Finance Document where such rights or security are granted by or in relation to the assets of the Retiring Guarantor.

17.10 Additional security

This guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by any Finance Party.

17.11 Guarantee Limitations – Mexico

- (a) Notwithstanding anything to the contrary provided for hereunder or in any other Finance Document, the obligations of each Mexican Guarantor under this Clause 17 or in any other Finance Document will be limited to an aggregate amount equal to the largest amount payable by the Borrower under the Finance Documents as the principal Obligor thereunder.
- (b) Each Mexican Guarantor hereby expressly waives the benefits of *orden*, *excusión*, *division*, and any other rights provided for in Articles 2813, 2814, 2815, 2816, 2817, 2818, 2819, 2820, 2821, 2822, 2823, 2826, 2840, 2844 and 2845 of the Mexican Federal Civil Code, and the corresponding Articles of the federal entities of the United Mexican States, which Articles are not reproduced herein inasmuch as each Mexican Guarantor hereby represents to be familiar with the contents thereof.
- (c) In the event the Finance Parties grant an extension of time, stay or grace period to the Borrower, or waive compliance of any obligation for any reason, without the Mexican Guarantors' consent, the obligations of each Mexican Guarantor hereunder shall not be reduced or settled notwithstanding that deriving from such waiver the obligations may be the subject of new guarantees or conditions and, therefore, each Mexican Guarantor hereby waives the rights and benefits that in connection with the foregoing derive from Articles 2846, 2847, 2848 and 2849 of the Mexican Federal Civil Code, and the corresponding Articles of the federal entities of the United Mexican

States, which Articles are not reproduced herein inasmuch as the Guarantor hereby represents to be familiar with the contents thereof.

17.12 Guarantee Limitations – Uruguay

- (a) Notwithstanding anything to the contrary provided for hereunder or in any other Finance Document, the obligations of each Guarantor incorporated in Uruguay under this Clause 17 or in any other Finance Document will be limited to an aggregate amount equal to the largest amount that would be payable by the Borrower under the Finance Documents as the principal Obligor thereunder.
- (b) Each Uruguayan Guarantor hereby expressly waives any right to the benefit of the prior prosecution and to any other rights under Sections 611, 612, 613 and 624 of the Uruguayan Commercial Code, Section 1542 of the Uruguayan Civil Code and other related provisions. Each Uruguayan Guarantor accepts that the guarantee includes and ensures renewals, extensions or refinancing of the Borrower's obligations secured hereby, even in case of novation of the debt without the need to obtain the Uruguayan Guarantors consent.

SECTION 8

REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

18. REPRESENTATIONS

Each Obligor makes the representations and warranties set out in this Clause 18 to each Finance Party on the date of this Agreement and the first Utilisation Date.

18.1 Status

- (a) It is a corporation, duly incorporated and validly existing under the law of its Original Jurisdiction.
- (b) It and each of its Subsidiaries has the power to own its assets and carry on its business as it is being conducted.

18.2 Binding obligations

The obligations expressed to be assumed by it in each Finance Document are, subject to any general principles of law as at the date of this Agreement limiting its obligations which are specifically referred to in any legal opinion delivered pursuant to Clause 4 (*Conditions of Utilisation*) or Clause 25 (*Changes to the Obligors*), legal, valid, binding and enforceable obligations.

18.3 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, the Finance Documents (including any transfer of the Reference Shares on creation or enforcement of the Security constituted by the Custody Account Security Agreement) do not and will not conflict with:

- (a) any law or regulation applicable to it, to any Reference Share or to the Transaction Security in any material respect;
- (b) its constitutional documents;
- (c) the Custody Agreement; or
- (d) any agreement or instrument binding upon it or any of its assets to an extent or in a manner which has or is likely to have a Material Adverse Effect.

18.4 Power and authority

It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Finance Documents to which it is a party and the transactions contemplated by those Finance Documents.

18.5 **Validity and admissibility in evidence**

All Authorisations required or desirable:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party; and
- (b) to make the Finance Documents to which it is a party admissible in evidence in each Relevant Jurisdiction,

have been obtained or effected and are in full force and effect.

18.6 **Governing law and enforcement**

- (a) The choice of governing law of each of the Finance Documents will be recognised and enforced in each Relevant Jurisdiction.
- (b) Any judgment obtained in England in relation to a Finance Document will be recognised and enforced in each Relevant Jurisdiction.

18.7 **Non-US Person**

The Borrower is not (a) a "United States person" or (b) a "Foreign person controlled by a United States person", within the meaning of Regulation X.

18.8 **Deduction of Tax**

It is not required to make any Tax Deduction (as defined in Clause 12.1 (*Definitions*)) from any payment it may make under any Finance Document to a Lender which is:

- (a) a Qualifying Lender:
 - (i) falling within paragraph (i)(A) of the definition of "Qualifying Lender"; or
 - (ii) except where a Direction has been given under section 931 of the ITA in relation to the payment concerned, falling within paragraph (i)(B) of the definition of "Qualifying Lender"; or
 - (iii) falling within paragraph (ii) of the definition of "Qualifying Lender"; or
- (b) a Treaty Lender and the payment is one specified in a direction given by the Commissioners of Revenue & Customs under Regulation 2 of the Double Taxation Relief (Taxes on Income) (General) Regulations 1970 (SI 1970/488).

18.9 **No filing or stamp taxes**

Other than in respect of any assignment or transfer of any rights or obligations by any Lender under Clause 24 (*Changes to the Lenders*), under the law of its Original Jurisdiction it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp,

registration or similar tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents.

18.10 **Insolvency**

Other than as part of a Permitted Transaction, no:

- (a) corporate action, legal proceeding or other procedure or step described in paragraph (a) of Clause 23.9 (*Insolvency proceedings*); or
- (b) creditors' process described in Clause 23.10 (*Creditors' process*),

has been taken in relation to a member of the Group and none of the circumstances described in Clause 23.8 (*Insolvency*) applies to a member of the Group **provided that** in relation to each member of the Group which is not an Obligor such circumstances might reasonably be expected to have a Material Adverse Effect and further **provided that** this Clause 18.10 shall not apply to:

- (i) the notice foreseen in article 5 bis of the Spanish Insolvency Law filed by the Parent and each other applicable member of the Group in each case prior to the date of this Agreement;
- (ii) the Homologated Standstill;
- (iii) the negotiations in respect of any restructuring, refinancing or other rescheduling of any part of the Group's creditors (including the Finance Parties), including but not limited to any such negotiation that may form part of any Restructuring; and
- (iv) any insolvency or analogous proceedings in relation to a member of the Group listed in Schedule 9 (*Entities subject to insolvency proceedings*) instituted in its applicable jurisdiction of incorporation.

18.11 **No default**

- (a) Subject to paragraphs (b) and (c):
 - (i) no Default is continuing or might reasonably be expected to result from the making of any Utilisation; and
 - (ii) no other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or any of its Subsidiaries') assets are subject which might have a Material Adverse Effect.
- (b) Until the Specified Time referred to in paragraph (a) of Clause 4.1 (*Initial conditions precedent*), paragraph (a) of this Clause 18.11 does not apply to any default under the September 2015 Facility which is continuing on the date of this Agreement and which has occurred solely as a result of a failure to pay amounts of interest and fees, in an aggregate amount of €6,366,239.58, which were due on 26 April 2016 under the September 2015 Facility.

- (c) Paragraph (a) of this Clause 18.11 does not apply to any default under the September 2015 Facility, the December 2015 Facility or the March 2016 Facility which is continuing on the date of this Agreement and which has occurred solely as a result of any formal request or step being taken in relation to a winding up, administration, dissolution, or declaration of bankruptcy (or any other procedure, step, event or circumstance described in Clause 23.8 (*Insolvency*) or paragraphs (a) to (e) of Clause 23.9 (*Insolvency proceedings*) or any analogous procedure, step, event or circumstance) in relation to Abengoa Bioenergy Trading Europe B.V.

18.12 Taxation

- (a) It has duly and punctually paid and discharged all Taxes imposed upon it or its assets within the time period allowed without incurring penalties except:
 - (i) to the extent that (A) payment is being contested in good faith and/or deferrals (or set off of tax credits) have been requested from the relevant authority, and, it has maintained adequate reserves or a contingency plan is prepared by the Parent for those Taxes or (B) payment can be lawfully withheld;
 - (ii) a penalty in an amount of \$14,040 communicated by the US IRS to Abengoa US LLC due to late filing of the partnership return corresponding to 2014; and
 - (iii) a delinquency penalty in an amount of approximately \$300 in respect of the notification to Abengoa Water Holding USA Inc by the Florida Department of Revenue of late filing of the 2014 tax return.
- (b) It is not materially overdue in the filing of any Tax returns other than in respect of Tax returns for an amount lower than €2,000,000 on an individual basis and €8,000,000 on an aggregate basis.
- (c) No claims are being or are reasonably likely to be asserted against it with respect to Taxes which is reasonably likely to have a Material Adverse Effect.
- (d) No notice under Article 36 Tax Collection Act (*Invorderingswet 1990*) has been given by any member of the Group.

18.13 Insurance

Each Obligor shall (and the Borrower shall ensure that each member of the Group will) maintain insurances on and in relation to its business and assets with reputable underwriters or insurance companies against those risks and to the extent as is usual for companies carrying on the same or substantially similar business.

18.14 No misleading information

- (a) All information supplied by or on behalf of the Parent or any member of the Group to a Finance Party or its advisers in respect of the Finance Documents is true, complete and accurate in all material respects as at the date it was given and is not misleading in any respect.

- (b) Any opinions, calculations and projections supplied by or on behalf of the Parent or any member of the Group to a Finance Party or its advisers, and the assumptions and factors on which they are based, are reasonable and have been provided in good faith and following due and prudent consideration and consultation by the Parent or member of the Group.
- (c) There are no facts or omissions that make the information provided to a Finance Party or its advisers prior to the date of this Agreement misleading or facts or circumstances regarding any member of the Group or contingencies (whatever the nature thereof) which have not been disclosed to the Lenders or their advisers prior to the date of this Agreement which, if they had been disclosed to the Lenders or their advisers prior to the date of this Agreement, would have been or are reasonably likely to have affected a Lender's decision to make the Loan.

18.15 Holding Company

The Borrower is a holding company and does not trade, carry on any business, own any assets or incur any liabilities or commitments (actual or contingent, present or future) other than those expressly permitted pursuant to Clause 22.6 (*Holding Companies*).

18.16 Financial statements

- (a) Its Original Financial Statements were prepared in accordance with GAAP consistently applied.
- (b) Its Original Financial Statements fairly represent its financial condition as at the end of the relevant financial year and operations during the relevant financial year.

18.17 Pari passu ranking

- (a) The payment obligations of each Obligor under the Finance Documents rank at least *pari passu* with the claims of all other present and future unsecured and unsubordinated creditors of that Obligor.
- (b) No Obligor is under an obligation to create any Security or Quasi-Security in all or any part of the present or future property, revenues, rights or assets of the Obligors other than the Permitted Security.

18.18 No proceedings

- (a) No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect has or have (to the best of its knowledge and belief) been started or threatened against any member of the Group (or against the directors of any member of the Group) other than the challenges (*impugnaciones*) that have been published on 18 July 2016 in the Boletín Oficial del Estado which were submitted by certain creditors in respect of the Homologated Standstill.

- (b) No judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body which is reasonably likely to have a Material Adverse Effect has (to the best of its knowledge and belief (having made due and careful enquiry)) been made against any member of the Group or its assets (or against the directors of any member of the Group).

18.19 No breach of laws

- (a) It has not (and no member of the Group has) breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.
- (b) No labour disputes are current or, to the best of its knowledge and belief (having made due and careful enquiry), threatened against any member of the Group which have or are reasonably likely to have a Material Adverse Effect.

18.20 Ranking

The Transaction Security when created or expressed to be created has or will have first ranking priority and it is not (subject to any Security arising by operation of law) subject to any prior ranking or *pari passu* ranking Security.

18.21 No Immunity

In any proceedings taken in a Relevant Jurisdiction in relation to the Finance Documents, it will not be entitled to claim for itself or any of its assets immunity from suit, execution, attachment or other legal process.

18.22 Good title to assets

It has good, valid and marketable title to, or valid leases or licences of, and all appropriate Authorisations to use, the assets necessary to carry on its business as presently conducted.

18.23 Transaction Security

- (a) Each Security Document validly creates, or when entered into, will validly create, the Security which is expressed to be created by that Security Document and evidences the Security it is expressed to evidence.
- (b) All Shares that are subject to or are expressed to be subject to the Transaction Security are or will, on and from the date of creation of the relevant Transaction Security, freely transferable, fully paid and not subject to any overriding trust, option to purchase, pre-emption or similar rights.

18.24 Legal and beneficial owner

The Borrower is, or will, on and from the date of creation of the relevant Transaction Security, be:

- (a) subject only to the Security created or expressed to be created pursuant to the Security Over Cash Agreement, the sole absolute legal and beneficial owner of the assets subject to the Security Over Cash Agreement; and
- (b) the sole beneficial owner (legal title being held by the Custodian pursuant to the Custody Agreement) of the assets subject to the relevant Transaction Security constituted by the Custody Account Security Agreement,

in each case (but subject to any Security arising by operation of law) free from any other Security (save, in the case of the assets subject to the relevant Transaction Security constituted by the Custody Account Security Agreement or judicial order (arrest) and (subject to the terms of the Custody Agreement in respect of the Shares) trust or third party claims.

18.25 Lock up Period

All contractual lock-up periods to which the Borrower is subject in connection with the listing of the Company's ordinary shares on the Reference Exchange have expired.

18.26 Reference Shares

- (a) The Reference Shares:
 - (i) are duly vested in the Borrower as sole beneficial owner (legal title being held by the Custodian pursuant to the Custody Agreement) and are not subject to any risk that any transfer of such Shares from the Borrower will or may be avoided or restored on insolvency, liquidation, administration or otherwise;
 - (ii) are fully paid and not subject to any option to purchase, trust or similar rights;
 - (iii) are freely transferable and capable of being settled by book entry in the records of the Custodian without the need for any document of transfer of any kind or any notification to any person (other than the Custodian); and
 - (iv) are free and clear of any Security, liens, claims, charges or encumbrances or judicial order (arrest) or (subject to the terms of the Custody Agreement) trust or third party claims other than:
 - (A) pursuant to the Finance Documents; and
 - (B) on and before Completion, pursuant to the TCI Margin Loan.

- (b) On and from the date of creation of the relevant Transaction Security, neither the creation nor the enforcement of Transaction Security over any Shares would (and could not reasonably be expected to):
 - (i) constitute a breach by the Borrower of any shareholders' (or similar) agreement;
 - (ii) cause any person to be in breach of its obligations under any rules or regulations applicable in any Relevant Jurisdiction;
 - (iii) oblige any person to make a mandatory offer for any Shares;
 - (iv) inhibit the Company from exercising control over any of its Subsidiaries; or
 - (v) otherwise have a material adverse effect on the business, operations, property or condition (financial or otherwise) of the Company.
- (c) On and from the date of creation of the relevant Transaction Security, the creation of the Transaction Security over any Shares would not (and could not reasonably be expected to) trigger any right of any person to request that any Financial Indebtedness of the Borrower or the Company be prepaid or declare Financial Indebtedness of the Borrower or the Company due and payable prior to its specified maturity.
- (d) The Borrower has beneficially owned the Reference Shares for more than one year.
- (e) The Borrower is not, and, to the best of its knowledge and belief no member of the ABY Group is, party to any agreement or arrangements (other than the ACBH Dividend Deferral Arrangements) which could reasonably be expected to prevent or reduce the amount of, or defer or delay the payment of, all or any part of the dividends payable by the Company to the Borrower in respect of the Reference Shares.
- (f) The ownership or rights of a holder of the Reference Shares are not affected by any agreement or arrangement (other than the ACBH Dividend Deferral Arrangements, pursuant to the Finance Documents, the September 2015 Facility, the December 2015 Facility, the March 2016 Facility and, on and before Completion, the TCI Margin Loan).
- (g) It could not reasonably be expected that any member of the ABY Group would be liable for any material Tax liabilities in the event of any disposal at any time of all or some of the Reference Shares by way of enforcement of the Transaction Security.
- (h) The ACBH Deferred Dividend Arrangement automatically ceases to apply in respect of any Reference Shares at any time at which they cease to be owned by a member of the Group.

18.27 Material Contracts

To the best of the Borrower's knowledge and belief (having made due and careful enquiry) and subject to all waivers granted in favour of the ABY Group under such documents neither the enforcement of the Transaction Security nor the occurrence of an Insolvency Event in respect of the Borrower would cause the Company to default on any material commercial contract or licence.

18.28 Sanctions

To the best knowledge of the Borrower, no Obligor, and neither the Company, any other member of the Group nor any director, officer, agent, employee or Affiliate thereof is a designated target of, or is otherwise a subject of Sanctions, nor has transacted business in violation of Sanctions.

18.29 Anti-corruption law

The Obligors, the Company, the other members of the Group and their respective Affiliates have, to the best of the Borrower's knowledge and belief having made due and careful enquiry, conducted their businesses in compliance with applicable anti-corruption laws and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

18.30 Security and Financial Indebtedness

- (a) No Security or Quasi-Security exists over all or any of the present or future assets of any member of the Group other than as permitted by this Agreement.
- (b) No member of the Group has any Financial Indebtedness outstanding other than as permitted by this Agreement.

18.31 Federal Reserve Regulations

- (a) No Obligor is engaged or will engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock or extending credit for the purpose of purchasing or carrying Margin Stock.
- (b) None of the proceeds of the Loan or other extensions of credit under this Agreement will be used, directly or indirectly, for the purpose of buying or carrying any Margin Stock, for the purpose of reducing or retiring any Financial Indebtedness that was originally incurred to buy or carry any Margin Stock or for any other purpose which might cause the Loan or other extensions of credit under this Agreement to be considered a "purpose credit" within the meaning of Regulation U or Regulation X.
- (c) The Borrower shall provide, upon a Lender's request, a Statement of Purpose for an Extension of Credit Secured by Margin Stock (Federal Reserve Form U-1).

18.32 Centre of main interests and establishments

- (a) For the purposes of The Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings (the "**Regulation**"), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in its Original Jurisdiction and it has no "establishment" (as that term is used in Article 2(h) of the Regulation) in any other jurisdiction.
- (b) The Borrower is incorporated in England and Wales.
- (c) The Borrower's registered office is located in England and Wales and it has not at any time had a registered office located outside of England and Wales.
- (d) The Borrower's secretarial functions are located in England and Wales and its secretarial functions have not at any time been located outside of England and Wales.
- (e) The Borrower's statutory books are, and have at all times been, held at its registered office in England and Wales.
- (f) The Borrower's accounts are, and have at all times been, filed at Companies House in England and Wales.
- (g) The Borrower's auditor, Deloitte LLP, is located in England and Wales and it has not at any time appointed, instructed or mandated an auditor outside of England and Wales.
- (h) The Borrower is, and has at all times been, tax resident in England and Wales.
- (i) The Borrower's principal business is holding Shares.
- (j) At the date of this Agreement, the Company is incorporated in England and Wales and has its registered office in England and Wales.

18.33 ERISA

No Obligor has established, maintains, contributes or has liability with respect to any employee benefit plan that is covered by Title IV of ERISA.

18.34 Investment Company Act

No Obligor, person controlling an Obligor (other than a person controlling the Parent) or Subsidiary of an Obligor is, nor will it be after the execution, delivery and performance of each Finance Document, required to register as an "investment company" under the Investment Company Act of 1940 (the "**1940 Act**"), as amended, and the rules and regulations promulgated thereunder.

18.35 Group Structure Chart

- (a) The Group Structure Chart delivered to the Agent pursuant to Part I of Schedule 2 (*Conditions Precedent*) is true, complete and accurate as of 31

March 2016 and true, complete and accurate in all material respects as at the date of this Agreement.

- (b) As at the date of delivery of the Group Structure Chart, there have been no material changes to the Group Structure Chart delivered to the Agent pursuant to Part I of Schedule 2 (*Conditions Precedent*) other than as disclosed to the Finance Parties in the certificate of the Borrower delivered to the Agent pursuant to Part I of Schedule 2 (*Conditions Precedent*).

18.36 No adverse consequences

- (a) It is not necessary under the laws of its Relevant Jurisdictions:
 - (i) in order to enable any Finance Party to enforce its rights under any Finance Document; or
 - (ii) by reason of the execution of any Finance Document or the performance by it of its obligations under any Finance Document,that any Finance Party should be licensed, qualified or otherwise entitled to carry on business in any of its Relevant Jurisdictions.
- (b) No Finance Party is or will be deemed to be resident, domiciled or carrying on business in its Relevant Jurisdictions by reason only of the execution, performance and/or enforcement of any Finance Document.

18.37 Competitive Process

The TCI Margin Loan and March 2016 Facility were entered into on arms' length terms following a competitive process in respect of which the Borrower received independent financial advice.

18.38 Existing Debt and Existing Security

- (a) The list of outstanding Security granted by the Obligors contained in the list of existing security delivered to the Finance Parties pursuant to Part I of Schedule 2 (*Conditions Precedent*) is true, complete and accurate as of 1 August 2016 and, as at the date of this Agreement, there have been no material changes to that list.
- (b) The list of outstanding Financial Indebtedness of the relevant Obligors contained in the list of existing debt delivered to the Finance Parties pursuant to Part I of Schedule 2 (*Conditions Precedent*) is true, complete and accurate as of 30 June 2016 and, as at the date of this Agreement, there have been no material changes to that list.

18.39 ABY Group representations

- (a) Subject to paragraph (d) below, no material claims (whether in respect of any law, pursuant to any indemnity or otherwise) have been made, commenced or threatened by a member of the Group against the Borrower or any member of

the ABY Group and it is not aware of any potential material claims by a member of the Group against any member of the ABY Group.

- (b) All arrangements between any member of the Group and any member of the ABY Group have been entered into on arms' length terms for all parties.
- (c) Subject to paragraph (d) below, no member of the ABY Group has any material actual or contingent liabilities to any member of the Group (other than pursuant to arms' length operation and maintenance contracts with customary termination provisions) including, without limitation, in relation to non-payment (other than pursuant to the ABY Term Sheet) of a dividend or other distribution relating to share capital or in connection with the acquisition by any member of the ABY Group of any assets or businesses from the Group.
- (d) Paragraphs (a) and (c) above shall not apply to any material claim or material actual or contingent liabilities set out in the list of material claims and liabilities delivered pursuant to Part I of Schedule 2 (*Conditions Precedent*).

18.40 Repetition

The Repeating Representations are deemed to be made by each Obligor (by reference to the facts and circumstances then existing) on the date of the Utilisation Request, the Utilisation Date and the first day of each Interest Period.

19. INFORMATION UNDERTAKINGS

The undertakings in this Clause 19 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

19.1 Financial information

The Borrower shall supply to the Agent in sufficient copies for all the Lenders:

- (a) as soon as the same become available, but in any event within 120 days after the end of each of its financial years, its and the Parent's audited consolidated financial statements for that financial year together with, if requested by the Agent, the audited consolidated financial statements for that financial year of any other Subsidiary of the Parent; and
- (b) as soon as the same become available, but in any event within 90 days after the end of each half of each of its financial years, its and the Parent's financial statements for that financial half year together with, if requested by the Agent, the financial statements for that financial half year of any other Subsidiary of the Parent.

19.2 Requirements as to financial statements

- (a) Each set of financial statements delivered by the Borrower pursuant to paragraphs (a) and (b) of Clause 19.1 (*Financial information*) shall be certified by a director of the relevant company as fairly representing its financial condition as at the date at which those financial statements were drawn up.

- (b) The Borrower shall procure that each set of financial statements delivered pursuant to paragraphs (a) and (b) of Clause 19.1 (*Financial information*) is prepared using GAAP.

19.3 **Information: miscellaneous**

Subject to Clause 19.6 (*Inside Information*), the Borrower shall supply to the Agent (in sufficient copies for all the Lenders, if the Agent so requests):

- (a) copies of all documents dispatched by the Borrower to its creditors (excluding any member of the Group which is a creditor of the Borrower) and/or such creditors' respective advisers (including, without limitation, KPMG) and/or by the Parent to its shareholders, in each case at the same time as they are dispatched;
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group (or against the directors of any member of the Group) and which might, if adversely determined, have a Material Adverse Effect;
- (c) promptly upon becoming aware of them, the details of any judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body which is made against any member of the Group or its assets (or against the directors of any member of the Group) and which is reasonably likely to have a Material Adverse Effect;
- (d) weekly account statements from the Custodian and the Account Bank with respect to the Custody Account and the Cash Collateral Account;
- (e) promptly, such information as the Security Agent may reasonably require about the Charged Property and compliance of the Borrower with the terms of any Security Documents;
- (f) promptly, details of any event or circumstances that may require a prepayment under Clause 7 (*Prepayment and Cancellation*);
- (g) promptly, such further information regarding the financial condition, assets, business and operations of any member of the Group as any Finance Party (through the Agent) may reasonably request; and
- (h) promptly, such further information as any member of the Group provides pursuant to the terms of the September 2015 Facility, the December 2015 Facility or the March 2016 Facility to any party thereto in its capacity as a party thereto and not in any other capacity.

19.4 **Meetings with Chairman**

- (a) The Parent shall ensure that at least every two weeks the Chairman and/or the Chief Executive Officer of the Group attends a meeting with the Lenders and/or the Lenders' financial advisers to provide the Lenders and/or the

Lenders' financial advisers with a reasonably detailed update on the Group's business plan and financial position.

- (b) Without prejudice to paragraph (a) of this Clause 19.4, the Chairman or the Chief Executive Officer (or both the Chairman and the Chief Executive Officer) may attend each meeting **provided that** the Chairman shall be required to attend at least one in every two meetings.

19.5 Notification of default

- (a) Each Obligor shall notify the Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.
- (b) Each Obligor shall notify the Agent promptly upon becoming aware of any circumstances which might give rise to a repayment or prepayment under Clause 7.2 (*Exit*), Clause 7.3 (*Share Event*), Clause 7.4 (*Restructuring*) or Clause 7.5 (*Disposals*).
- (c) Promptly upon a request by the Agent, the Borrower shall supply to the Agent a certificate signed by two of its directors or senior officers on its behalf certifying that no Default is continuing (or, if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

19.6 Inside Information

- (a) Subject to paragraph (c) below, the Borrower shall not (and the Parent shall procure that no member of the Group shall) provide any Finance Party with any non-public information, however defined under all applicable laws and regulations in each Relevant Jurisdiction regarding the Shares ("**Inside Information**"). The Borrower and the Parent shall use all reasonable endeavours to ensure that any information provided under this Clause 19 does not contain Inside Information. To the extent that there is a conflict between the obligations in this paragraph (a) and any obligation to provide information elsewhere in the Finance Documents, compliance with the obligations in this paragraph shall be deemed not to result in a breach of the obligation of the Borrower to provide such information (**provided that** any failure by the Borrower to comply with an express instruction given to it by a Finance Party pursuant to paragraph (c) of this Clause 19.6 shall constitute a breach).
- (b) Concurrently with the delivery of any document or notice required to be delivered pursuant to the Finance Documents by the Borrower or communication by the Borrower in connection with the Finance Documents (each a "**Communication**"), the Borrower shall be deemed to have represented that such document, notice or other communication contains no Inside Information.
- (c) If at any time the Borrower is unable to make the representation required under paragraph (b) above, it shall inform the Agent of the fact that the relevant document or notice contains Inside Information and the Borrower shall provide the Agent with the relevant Inside Information. The Agent will only provide the Inside Information to Lenders who have expressly requested

such Inside Information. The Borrower shall use all reasonable efforts to put itself in a position of being able to provide the representation set out in paragraph (b) above as promptly as is practicable.

19.7 **ABY Term Sheet**

If expressly requested by a Lender (through the Agent), the Borrower shall provide a copy of the ABY Term Sheet to that Lender (through the Agent). For the avoidance of doubt, the provisions of Clause 19.6 (*Inside Information*) apply to this Clause 19.7.

19.8 **Use of websites**

(a) The Borrower may satisfy its obligation under this Agreement to deliver any information in relation to those Lenders (the "**Website Lenders**") who accept this method of communication by posting this information onto an electronic website designated by the Borrower and the Agent (the "**Designated Website**") if:

- (i) the Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;
- (ii) both the Borrower and the Agent are aware of the address of and any relevant password specifications for the Designated Website; and
- (iii) the information is in a format previously agreed between the Borrower and the Agent.

If any Lender (a "**Paper Form Lender**") does not agree to the delivery of information electronically then the Agent shall notify the Borrower accordingly and the Borrower shall supply the information to the Agent (in sufficient copies for each Paper Form Lender) in paper form. In any event the Borrower shall supply the Agent with at least one copy in paper form of any information required to be provided by it.

(b) The Agent shall supply each Website Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by the Borrower and the Agent.

(c) The Borrower shall promptly upon becoming aware of its occurrence notify the Agent if:

- (i) the Designated Website cannot be accessed due to technical failure;
- (ii) the password specifications for the Designated Website change;
- (iii) any new information which is required to be provided under this Agreement is posted onto the Designated Website;
- (iv) any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or

- (v) the Borrower becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.

If the Borrower notifies the Agent under paragraph (c)(i) or paragraph (c)(v) above, all information to be provided by the Borrower under this Agreement after the date of that notice shall be supplied in paper form unless and until the Agent and each Website Lender is satisfied that the circumstances giving rise to the notification are no longer continuing.

- (d) Any Website Lender may request, through the Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Borrower shall comply with any such request within ten Business Days.

19.9 **"Know your customer" checks**

- (a) If:
 - (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
 - (ii) any change in the status of an Obligor or the composition of the shareholders of an Obligor after the date of this Agreement;
 - (iii) a proposed assignment or transfer by a Lender of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer; or
 - (iv) the opening of an account over which Transaction Security is proposed to be taken,

obliges the Agent or any Lender (or, in the case of paragraph (iii) above, any prospective new Lender) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, each Obligor shall, promptly upon the request of the Agent or any Lender, supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or, in the case of the event described in paragraph (iii) above, on behalf of any prospective new Lender) in order for the Agent, such Lender or, in the case of the event described in paragraph (iii) above, any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

- (b) Each Lender shall promptly upon the request of the Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself) in order for the Agent to carry out and be satisfied it has complied with all necessary "know your customer" or other

similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

- (c) The Borrower shall, by not less than ten Business Days' prior written notice to the Agent, notify the Agent (which shall promptly notify the Lenders) of its intention to request that one of the Parent's Subsidiaries becomes an Additional Guarantor pursuant to Clause 25.2 (*Additional Guarantors*).
- (d) Following the giving of any notice pursuant to paragraph (c) above, if the accession of such Additional Guarantor obliges the Agent or any Lender to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Borrower shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or on behalf of any prospective new Lender) in order for the Agent or such Lender or any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the accession of such Subsidiary to this Agreement as an Additional Guarantor.

20. COLLATERAL ARRANGEMENTS

20.1 Additional Definitions

In this Agreement:

"Calculation Date" means each London Business Day falling after the date of this Agreement.

"Cash for Collateral" means, at any time, the aggregate of the amount of cash denominated in dollars then standing to the credit of the Cash Collateral Account subject to validly created first ranking Transaction Security (subject to any Security arising by operation of law).

"Cash Shortfall" has the meaning given to it in Clause 20.3 (*Cure*).

"Closing Price" means, in relation to a Valuation Day, the closing price quoted on the Reference Exchange (using, if at any time Shares are trading ex dividends, the ex dividend price) of Shares of the same class as the applicable Reference Shares on that Valuation Day as displayed on the relevant Bloomberg or Reuters page (or such other source of information as the Calculation Agent may determine (acting reasonably)). If any such closing price is not available for any reason, the Closing Price shall be deemed to be the last available closing price in respect of such Shares.

"Closing Price Value" in respect of the Reference Shares and any Calculation Date, shall be established by reference to the mean of the Closing Price on each of the two Valuation Days immediately preceding that Calculation Date, **provided that**, in circumstances where trading in any Shares has been suspended by the Reference Exchange, the Calculation Agent may, acting in good faith, use any other Closing Price it determines is appropriate in the circumstances.

"Collateral" means Reference Shares or Cash for Collateral.

"Loan to Value Ratio" means, at any time, the ratio (expressed as a percentage) of:

(a) the aggregate of:

- (i) the principal amount of the Loan outstanding at that time (or, in respect of any Calculation Date falling on or before the Utilisation Date, the amount of the Total Commitments); plus
- (ii) all accrued or capitalised interest (and any applicable fees, costs and expenses) that at that time have not been paid in cash under the Finance Documents (assuming for this purpose only that the PIK Margin is five per cent. (5%) per annum and interest capitalises at the end of each one Month period),

to

(b)

- (i) the aggregate Closing Price Value of all of the Reference Shares (or, in respect of any Calculation Date falling on or before the Utilisation Date, the aggregate Closing Price Value of 16,000,000 Shares); plus
- (ii) the aggregate par value of Cash for Collateral.

"London Business Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in London.

"Reference Shares" means, at any time, Shares that at such time are standing to the credit of the Custody Account and are subject to validly created first ranking Transaction Security (subject to any Security arising by operation of law).

"Required Ratio" means 80%.

"Valuation Day" means a day on which the Reference Exchange is open for business and the trading of securities listed thereon.

20.2 LTV Event

- (a) The Calculation Agent will calculate the Loan to Value Ratio on each Calculation Date, **provided that** for any Valuation Day prior to the Utilisation Date, the amount of any interest accruing prior to the Utilisation Date shall be ignored.

- (b) If, on any Calculation Date, the Calculation Agent calculates that the Loan to Value Ratio is greater than the Required Ratio, this shall be an "**LTV Event**".

20.3 **Cure**

- (a) If an LTV Event occurs on a Calculation Date, the Calculation Agent will notify the Borrower and the Finance Parties of the amount by which the Cash for Collateral would need to increase in order to ensure that the Loan to Value Ratio as at that Calculation Date was equal to the Required Ratio (the "**Cash Shortfall**").
- (b) If the Borrower deposits cash in dollars in immediately available cleared funds in an amount equal to or greater than the Cash Shortfall in the Cash Collateral Account on that Calculation Date and such cash deposit is not and will not be subject to any risk of avoidance on insolvency, liquidation, administration or otherwise, that LTV Event shall be deemed cured for all purposes under this Agreement (but without prejudice to any other LTV Event or Default that may occur, may have occurred or be continuing).
- (c) The Agent (acting on the instructions of all the Lenders) may allow the Borrower to grant Transaction Security over alternative assets in order to cure an LTV Event.

20.4 **Share Capital Change**

- (a) If a Share Capital Change occurs, the Calculation Agent may:
 - (i) adjust the terms of any Finance Document in such manner as in its reasonable opinion is necessary to put the Parties into a position which is commercially equivalent to the position in which they would have been had no such Share Capital Change occurred; or
 - (ii) if the Calculation Agent (acting reasonably) determines that no adjustment it could make pursuant to paragraph (a)(i) of this Clause 20.4 will produce a commercially reasonable result, it shall notify the Borrower and the Agent.
- (b) Any adjustment under paragraph (a)(i) above may include:
 - (i) the definition and/or calculation of Shares, Reference Shares or any price in respect of the Shares or Reference Shares (including the Closing Price);
 - (ii) the minimum or maximum number of Reference Shares which can be provided as Collateral; and/or
 - (iii) extending the existing Security or creating new Security in favour of the Security Agent over any additional shares, securities, rights or other assets of any kind owned by or accruing to the Borrower as a result of a Share Capital Change.

- (c) Upon the Calculation Agent giving notice of any such adjustment to the Agent and the Borrower:
 - (i) if the Borrower consents to the adjustment on or before the third Business Day after notice is given by the Calculation Agent, the adjustment shall be binding on the Parties (and the Parties shall, at the request of the Agent or the Borrower, enter into a written amendment of this Agreement or such other documentation as the Agent may require to reflect that adjustment); and
 - (ii) if the Borrower does not consent to the adjustment on or before the third Business Day after notice is given by the Calculation Agent or if the Borrower does not enter into any such amendment or documentation, the adjustment shall not take effect and the Agent may give notice to the Borrower pursuant to Clause 7.3 (*Share Event*).

20.5 Further Transaction Security

If, upon a request by the Borrower, the Agent (acting on the instructions of all the Lenders) agrees to the provision of Security by the Borrower over assets not expressly contemplated by the provisions of this Clause 20 in addition to or in lieu of Collateral, the Borrower and the Agent shall enter into discussions with a view to agreeing the form and scope of any relevant Security Document(s) and any amendments required to be made to the Finance Documents on account of such Security.

20.6 Determinations

- (a) Save for the Reference Shares and any amounts deposited in the Cash Collateral Account in accordance with Clause 20.3 (*Cure*), no other collateral credited to the Custody Account or the Cash Collateral Account shall be used in the calculation of the Loan to Value Ratio.
- (b) Any determination in good faith by the Calculation Agent pursuant to this Clause 20 (including of the Loan to Value Ratio and the Cash Shortfall from time to time) shall, in the absence of manifest error, be conclusive and binding on all Parties.
- (c) The Calculation Agent shall provide to the Borrower its latest calculation of the Loan to Value Ratio promptly upon receipt of a request from the Borrower.

21. CUSTODY ACCOUNT AND CASH COLLATERAL ACCOUNT

21.1 Maintenance of Accounts

- (a) Promptly following the date of this Agreement and, in any event, prior to Completion:
 - (i) the Borrower shall open and maintain the Custody Account in its name with the Custodian;
 - (ii) the Borrower shall maintain the Cash Collateral Account in its name with the Account Bank;

- (iii) the Borrower shall ensure that the Custody Account and the Cash Collateral Account is subject to validly created first ranking (subject to any Security arising by operation of law) Transaction Security in favour of the Security Agent
- (b) The Borrower shall at all times maintain the Cash Collateral Account (once opened) free from any Security (subject to any Security arising by operation of law) or similar impediment (including any right of set-off) other than the Transaction Security.
- (c) The Borrower shall at all times maintain the Custody Account (once opened) and all Reference Shares free from any Security (subject to any Security arising by operation of law) or similar impediment (including any right of set off), in each case subject to the terms of the Custody Agreement and other than:
 - (i) pursuant to the Finance Documents; and
 - (ii) before Completion, pursuant to the TCI Margin Loan.
- (d) The Cash Collateral Account shall be denominated in dollars.

21.2 Information regarding the Accounts

The Borrower shall procure that, on each Calculation Date, each of the Account Bank and the Custodian provides the Calculation Agent with a statement of the balance of the Cash Collateral Account and the Custody Account (as applicable) as at close of business on the immediately preceding Valuation Day (including all relevant details of deposits, transfers, withdrawals and the accrual of interest) **provided that** (and in respect of the Custody Account only), there shall be no such obligation to so provide in circumstances where the Calculation Agent has access to the statement of the balance of the Custody Account by electronic means permitted by the Custodian.

21.3 Dealings with the Accounts

- (a) The Borrower agrees and acknowledges that:
 - (i) it shall not be entitled to make any withdrawal or transfer of any amount standing to the credit of the Cash Collateral Account during the Security Period without the consent of the Security Agent;
 - (ii) it shall not be entitled to make any withdrawal or transfer of any securities standing to the credit of the Custody Account during the Security Period without the consent of the Security Agent; and
 - (iii) any amount standing to the credit of the Cash Collateral Account or the Custody Account may be released by the Security Agent only in accordance with clause 4.8 (*Release*) of the Custody Account Security Agreement, clause 17 (*Release of Security*) of the Security Over Cash Agreement, Clause 27.23 (*Winding up of Trust*) or otherwise as is expressly permitted pursuant to the terms of the Finance Documents.

- (b) The Borrower agrees that no transfer will be made to the Custody Account or the Cash Collateral Account except as required by the Finance Documents.
- (c) While an Event of Default is continuing, the Borrower irrevocably authorises the Agent and the Security Agent to apply amounts credited to the Cash Collateral Account to pay amounts due and payable under the Finance Documents.

22. GENERAL UNDERTAKINGS

The undertakings in this Clause 22 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

22.1 Authorisations

Each Obligor shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply certified copies to the Agent of,

any Authorisation required under any law or regulation of the Relevant Jurisdictions to enable it to perform its obligations under the Finance Documents and to ensure the legality, validity, enforceability or admissibility in evidence in each Relevant Jurisdiction of any Finance Document.

22.2 Compliance with laws and regulations

Each Obligor shall comply in all material respects with all laws and regulations and any similar rules applicable in any Relevant Jurisdiction) to which it may be subject.

22.3 Negative pledge

In this Clause 22.3, "**Quasi-Security**" means an arrangement or transaction described in paragraph (b) below.

- (a) No Obligor shall (and the Parent shall ensure that no other member of the Group will) create or permit to subsist any Security over any of its assets.
- (b) No Obligor shall (and the Parent shall ensure that no other member of the Group will):
 - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by an Obligor or any other member of the Group;
 - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;

- (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
 - (iv) enter into any other preferential arrangement having a similar effect,
- in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.
- (c) Paragraphs (a) and (b) above do not apply to any Security or (as the case may be) Quasi-Security, listed below ("**Permitted Security**"):
- (i) Security with respect to Financial Indebtedness required to fulfil payment obligations which is approved by the Majority Lenders and validated by Houlihan Lokey;
 - (ii) any Security or Quasi-Security included in the list of existing security delivered to the Finance Parties pursuant to Part I of Schedule 2 (*Conditions Precedent*) except to the extent the principal amount secured by that Security or Quasi-Security exceeds the amount secured or able to be secured by such Security or Quasi-Security on the date of this Agreement **provided that** any such Security or Quasi-Security created in respect of the Reference Shares is released and discharged in full on or before Completion;
 - (iii) any netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;
 - (iv) any payment or close out netting or set-off arrangement pursuant to any hedging transaction entered into by a member of the Group for the purpose of:
 - (A) hedging any risk to which any member of the Group is exposed in its ordinary course of trading; or
 - (B) its interest rate or currency management operations which are carried out in the ordinary course of business and for non-speculative purposes only,
 excluding, in each case, any Security or Quasi-Security under a credit support arrangement in relation to a hedging transaction;
 - (v) any lien arising by operation of law and in the ordinary course of trading;
 - (vi) the Transaction Security;
 - (vii) any Security or Quasi-Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a member of the Group in

the ordinary course of trading and on the supplier's standard or usual terms and not arising as a result of any default or omission by any member of the Group; or

- (viii) any Security or Quasi-Security arising pursuant to the March Security Documents or September Security Documents (each as defined in the Standstill Agreement),

except, in the case of paragraphs (i), (iii), (iv), (v), (vii) and (viii), in respect of the Reference Shares.

22.4 Pari Passu

Each Obligor shall ensure that at all times its payment obligations under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law.

22.5 Application of FATCA

No Obligor shall become a US Tax Obligor.

22.6 Holding Companies

The Borrower shall not trade, carry on any business, own any assets or incur any liabilities except for:

- (a) the provision of administrative services (excluding treasury services) to other members of the Group of a type customarily provided by a holding company to its Subsidiaries;
- (b) ownership of shares in the Company, intra- Group debit balances, intra-Group credit balances and other credit balances in bank accounts and cash;
- (c) any activities carried out or any assets owned by the Borrower as at the date of this Agreement; and
- (d) any liabilities incurred under the Finance Documents, the Existing Bond Documentation and the Existing Syndicated Facility Agreements; and
- (e) professional fees and administration costs in the ordinary course of business as a holding company.

22.7 Arm's length basis

No Obligor shall enter into any transaction with any person except on arm's length terms and for full market value.

22.8 Constitutional documents

- (a) The Borrower shall not, without the prior written consent of the Agent and in its capacity as shareholder of the Company, vote to approve any amendment to the constitutional documents of the Company if it could be reasonably be

expected that any such amendment may have a detrimental effect on the Reference Shares (in the form they exist as at the date of this Agreement and insofar as any beneficial owner of the Reference Shares is concerned including, without limitation, the value of the Reference Shares and all economic rights attaching thereto), a material adverse effect on the Transaction Security and/or the ability of any Finance Party to exercise its rights and/or remedies pursuant to the Finance Documents.

- (b) The Parent shall ensure that no member of the Group which legally or beneficially holds shares in the Borrower from time to time shall, without the prior written consent of the Agent (acting on the instructions of all of the Lenders) and in its capacity as shareholder of the Borrower, vote to approve any amendment, variation, waiver or termination to the constitutional documents of the Borrower if such amendment would have the effect of changing or relate to:
 - (i) the rights relating to any Veto Share;
 - (ii) article 41A (*B Shares*) of the Borrower's articles of association;
 - (iii) article 41B (*Independent Director*) of the Borrower's articles of association; or
 - (iv) any new article added to the Borrower's articles of association as contemplated by sub-paragraph (j) of paragraph 8 (*Other documents and evidence*) of Schedule 2 Part I (*Conditions Precedent to Initial Utilisation*).

22.9 Transaction Security

- (a) The Borrower shall not:
 - (i) take or consent to the taking of any action which may result in:
 - (A) any terms of issue or other rights attaching to the Reference Shares (or other collateral over which Transaction Security is created or purported to be created by any Security Document then in force) being altered;
 - (B) there being restrictions on the transferability of, or on the voting rights attached to all or part of, the Reference Shares (or other collateral over which Transaction Security is created or purported to be created by any Security Document then in force); or
 - (C) there being restrictions on the form or divisibility of the Reference Shares; or
 - (ii) otherwise do or permit to be done any act or thing which might jeopardise the rights of the Security Agent in the Charged Property or which might adversely affect or diminish the value of the Charged Property.

- (b) On and from the date of the Custody Agreement, the Borrower shall promptly comply with its obligations under the Custody Agreement and shall not, without the Security Agent's prior written consent, permit or agree to any variation of the rights attaching to the Custody Account or vary, rescind or amend the Custody Agreement (by reference to that agreement in the form delivered by the Borrower to the Agent pursuant to Clause 4.1 (*Initial conditions precedent*)).

22.10 Anti-corruption law

- (a) The Obligors shall not directly or indirectly use the proceeds of the Facility for any purpose which would breach the Bribery Act 2010, the United States Foreign Corrupt Practices Act of 1977, as amended, or other similar legislation in other jurisdictions.
- (b) The Obligors shall:
 - (i) conduct their businesses and/or business interests, including, for the avoidance of doubt, the Borrower's interests in the Company, in compliance with applicable anti-corruption laws; and
 - (ii) maintain policies and procedures designed to promote and achieve compliance with such laws.

22.11 Sanctions

No Obligor will, directly or indirectly, use the proceeds of the Loan (or lend, contribute or otherwise make available such proceeds to any person, entity or body):

- (a) to fund or facilitate any activities or business of, with or related to (or otherwise make funds available to or for the benefit of) any person, entity or body who is a designated target of or who is otherwise the subject of Sanctions; or
- (b) in any manner that is prohibited by Sanctions applicable to any Party or under the law of any Relevant Jurisdiction or that would result in a violation of Sanctions by any such Party.

22.12 Special Distributions

The Borrower shall promptly notify the Agent of any Special Distribution made (or intended to be made) promptly upon becoming aware of the same.

22.13 Further Assurance

- (a) Each Obligor shall, to the extent permitted under applicable law, promptly and duly do, or permit to be done, all such acts and execute and deliver, or permit the execution and delivery of, all such instruments and documents as the Security Agent may reasonably consider necessary for the purpose of procuring the full and complete performance by the Obligor of the obligations expressed to be assumed by it under the Finance Documents and of the rights and powers thereby granted to the Security Agent for the purpose of creating,

perfecting, preserving, protecting or enforcing the interests and rights of the Security Agent under the Finance Documents, including, without limitation:

- (i) to create or to perfect the Security created or intended to be created under or evidenced by each Security Document (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Transaction Security or the issue, re-issue, division or consolidation of any document of title or evidence of title, including any share certificates) or for the exercise of any rights, powers and remedies of the Security Agent or the Finance Parties provided by or pursuant to the Finance Documents or by law;
 - (ii) to confer on the Security Agent or to confer on the Finance Parties Security over the Cash for Collateral and Reference Shares equivalent or similar to the Security intended to be conferred by or pursuant to the Security Documents; and/or
 - (iii) following actual or putative enforcement of any Transaction Security, to facilitate the realisation of the assets which are, or are intended to be, the subject of the Transaction Security.
- (b) Each Obligor shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Finance Parties by or pursuant to the Finance Documents.

22.14 Exchange notifications

The Borrower shall procure that any notification or disclosure which is required to be made in relation to the conclusion, existence or performance by the Borrower of, or the transactions contemplated by, any Finance Document will be made at the required time and in the required manner.

22.15 Taxation

Each Obligor shall (and the Parent shall ensure that each member of the Group will) duly and punctually pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties except:

- (a) to the extent that (i) payment is being contested in good faith and/or deferrals (or set off of tax credits) have been requested from the relevant authority, and, it has maintained adequate reserves or a contingency plan is prepared by the Parent for those Taxes or (ii) payment can be lawfully withheld;
- (b) a penalty in an amount of \$14,040 communicated by the US IRS to Abengoa US LLC due to late filing of the partnership return corresponding to 2014; and
- (c) a delinquency penalty in an amount of approximately \$300 in respect of the notification to Abengoa Water Holding USA Inc by the Florida Department of Revenue of late filing of the 2014 tax return.

22.16 Merger

- (a) No Obligor shall (and the Parent shall ensure that no other member of the Group will) enter into any amalgamation, demerger, merger or corporate reconstruction.
- (b) Paragraph (a) above does not apply to any sale, lease, transfer or other disposal permitted pursuant to Clause 22.19 (*Disposals*).

22.17 Change of business

The Borrower shall procure that no substantial change is made to the general nature of the business of the Borrower or the Group from that carried on at the date of this Agreement.

22.18 Acquisitions and Joint Ventures

No Obligor shall (and the Parent shall ensure that no other member of the Group will):

- (a) acquire any company, business, assets or undertaking;
- (b) enter into, invest in or acquire (or agree to acquire) any shares, stocks, securities or other interest in any Joint Venture; or
- (c) transfer any assets or lend to or guarantee or give an indemnity for or give Security for the obligations of a Joint Venture or maintain the solvency of or provide working capital to any Joint Venture (or agree to do any of the foregoing),

other than in the ordinary course of its day to day business.

22.19 Disposals

- (a) No Obligor shall (and the Parent shall ensure that no other member of the Group will), enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset.
- (b) Paragraph (a) above does not apply to any sale, lease, transfer or other disposal (other than a sale, lease, transfer or other disposal of Charged Property):
 - (i) of stock in trade made in the ordinary course of trading and on arm's length terms of the disposing entity, including those resulting from the discounting or factoring of loans or accounts receivable;
 - (ii) of assets in exchange for other assets comparable or superior as to type, value and quality;

- (iii) for cash on arm's length terms of any obsolete assets not required for the efficient operation of the business of the Group by any member of the Group;
- (iv) of cash where that disposal is not otherwise prohibited by the Finance Documents;
- (v) of any Excluded Assets where the proceeds from that sale, lease, transfer or other disposal are:
 - (A) an amount which when aggregated with the proceeds of all other sales, leases, transfers or other disposals of any Excluded Assets do not exceed €135,000,000; and
 - (B) applied to satisfy any payment obligation of an Obligor which has been approved by the financial advisers to the Lenders (acting on the instructions of the Majority Lenders); or
- (vi) of assets made exclusively between Obligors (other than the Borrower, except disposals made by or to the Borrower of cash or loan receivables to any other Obligor or of Shares (other than the Reference Shares) to the Parent);
- (vii) of assets made on arms' length terms for cash where the proceeds are applied in accordance with Clause 7.5 (*Disposals*);
- (viii) that is a Permitted Transaction.

22.20 Preservation of assets

Each Obligor shall maintain and preserve all of its assets that are necessary or desirable, in the opinion of the Agent, for the conduct of its business, as conducted at the date of this Agreement, in good working order and condition, ordinary wear and tear excepted.

22.21 Loans or credit

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no other member of the Group will) be a creditor in respect of any Financial Indebtedness.
- (b) Paragraph (a) above does not apply to:
 - (i) a Permitted Loan; or
 - (ii) a Permitted Transaction.

22.22 No Guarantees or indemnities

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no other member of the Group will) incur or allow to remain outstanding any guarantee in respect of any obligation of any person.

(b) Paragraph (a) does not apply to a guarantee which is:

- (i) a Permitted Guarantee; or
- (ii) a Permitted Transaction.

22.23 Financial Indebtedness

(a) Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no other member of the Group will) incur or allow to remain outstanding any Financial Indebtedness.

(b) Paragraph (a) above does not apply to Financial Indebtedness which is:

- (i) Permitted Financial Indebtedness; or
- (ii) a Permitted Transaction.

22.24 Share capital

No Obligor shall (and the Parent shall ensure that no other member of the Group will) issue any shares except pursuant to:

- (a) a Permitted Share Issue; or
- (b) a Permitted Transaction.

22.25 Dividends and share redemption

(a) Except as permitted under paragraph (b) below, no Obligor shall:

- (i) declare, make or pay any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital);
- (ii) repay or distribute any dividend or share premium reserve;
- (iii) pay or allow any member of the Group to pay any management, advisory or other fee to or to the order of any of the shareholders of the Parent; or
- (iv) redeem, repurchase, defease, retire or repay any of its share capital or resolve to do so.

(b) Paragraph (a) above does not apply to:

- (i) a Permitted Transaction; or
- (ii) the payment of a dividend or the lawful distribution of share premium reserve or the redemption, defeasement, retirement or repayment of share capital to the Parent or any of its wholly-owned Subsidiaries.

22.26 Centre of main interest

- (a) The Borrower and each Obligor shall ensure that the "centre of main interest" (as that term is used in Article 3(1) of the Regulation) of the Borrower is in England and Wales.
- (b) The Borrower and each Obligor shall not move or attempt to move the "centre of main interest" (as that term is used in the Regulation) of the Borrower from England and Wales or assert or argue that the centre of main interest of the Borrower is or has been located in any jurisdiction other than England and Wales.
- (c) The Borrower shall (and the Parent shall ensure that the Borrower shall) at all times have its offices or premises in England and Wales.
- (d) The Borrower shall not (and the Parent shall ensure that the Borrower shall not) move or attempt to move its secretarial functions outside of England and Wales.
- (e) The Borrower shall (and the Parent shall ensure that the Borrower shall) at all times ensure that all formal communications (including but not limited to letters, invoices, contracts and emails) sent by the Borrower include the address of the registered office of the Borrower in England and Wales.
- (f) The Borrower shall (and the Parent shall ensure that the Borrower shall) at all times ensure that its statutory books are held at its registered office in England and Wales.
- (g) The Borrower's auditor shall be at all times located in England and Wales and the Borrower shall not (and the Parent shall ensure that the Borrower shall not) appoint or attempt to appoint, instruct or mandate an auditor outside of England and Wales.
- (h) The Borrower's principal business shall at all times be holding Shares.
- (i) The Borrower shall (and the Parent shall ensure the Borrower shall) ensure that at all times all or substantially all of its managerial and administrative functions are carried out in England and Wales.
- (j) The Borrower shall (and the Parent shall ensure that the Borrower shall) ensure that all meetings of its board of directors and all meetings of the shareholders of the Borrower are held in England and Wales.
- (k) The Borrower shall (and the Parent shall ensure that the Borrower shall) ensure that at all times at least one director of the Borrower is resident in England and Wales.
- (l) Each of the Borrower and each Obligor shall use its best endeavours to ensure that:
 - (i) the "centre of main interest" (as that term is used in Article 3(1) of the Regulation) of the Company is in England and Wales; and

- (ii) the Company shall not move or attempt to move its "centre of main interest" (as that term is used in Article 3(1) of the Regulation) from England and Wales or assert or argue that its centre of main interest is or has been located in any jurisdiction other than England and Wales.
- (m) The Borrower shall (and the Parent shall ensure that the Borrower shall) use its best endeavours to ensure that at all times the Company's offices or premises are in England and Wales.
- (n) The Borrower will ensure that the Agent is notified in writing at least 2 clear Business Days prior to any date on which a resolution is proposed by the directors to resolve to take any steps which could reasonably be expected to move, or with the intention of moving, the "centre of main interest" (as that term is used in Article 3(1) of the Regulation) of the Borrower from England and Wales.

22.27 Access

The Borrower shall promptly upon request provide the Lenders' advisors with access to any project or other financing documentation and any other documentation reasonably requested by the Lenders' advisors in order to carry out due diligence in connection with the Restructuring.

22.28 Insurance

Each Obligor shall (and the Parent shall ensure that each member of the Group shall) maintain insurances on and in relation to its business and assets with reputable underwriters or insurance companies against those risks and to the extent as is usual for companies carrying on the same or substantially similar business.

22.29 Insolvency Proceedings against the Borrower

- (a) No Obligor (other than the Borrower) shall take any of the actions described in Clause 23.9 (*Insolvency proceedings*) in relation to the Borrower in any jurisdiction.
- (b) Each Obligor shall give notice to the Agent promptly upon becoming aware of any creditor of the Borrower considering or taking any of the actions, or having taken any of the actions, described in Clause 23.9 (*Insolvency proceedings*) in relation to the Borrower in any jurisdiction.
- (c) From the date of appointment of the Independent Director, the Borrower shall not take any action that would constitute a Default under Clause 23.9 (*Insolvency Proceedings*) without the prior written consent of the Independent Director.

22.30 Waivers of automatic stay and defaults

Unless otherwise instructed by the Majority Lenders, the Borrower shall waive its right to the enforcement of any automatic stay in the event that any moratorium of any indebtedness arises as a result of any of the actions described in Clause 23.9 (*Insolvency Proceedings*) being taken in any jurisdiction.

22.31 US assets and filings

- (a) The Parent and the Borrower will ensure that the Agent is notified in writing at least 2 clear Business Days prior to any date on which a resolution is proposed by the directors to resolve to:
 - (i) make a filing or take any corporate action, procedure or step in Spain, the United States or England and Wales to commence:
 - (A) a suspension of payments or a moratorium of any indebtedness of the Company (including, without limitation, any filing pursuant to Chapter 11 of the US Bankruptcy Code); or
 - (B) a winding up, dissolution, administration or *concurso* of the Company or any reorganisation having a similar effect to the foregoing (or any analogous procedure in Spain, the United States or England and Wales).
- (b) The Parent shall actively monitor all information regarding the presence or absence of an "ownership change", as defined in Section 382(g) of the Code (an "**Ownership Change**") with respect to any Guarantor or other Subsidiary that is treated as a corporation for U.S. federal income tax purposes. The Parent shall promptly notify the Agent, who shall in turn notify the Lenders, if and when it has determined that there are reasonable grounds to believe an Ownership Change has occurred. The Parent shall promptly furnish any Lender with information, documents and other materials reasonably requested by such Lender in connection with a Lender's evaluation of the presence or absence of an Ownership Change and the determination of whether an Ownership Change has occurred.

22.32 Compliance with ERISA

No Obligor will establish, become party to or incur any liability under any employee benefit plan of the type referred to in Clause 18.33 (*ERISA*).

22.33 Federal Reserve Regulations

Each Borrower will use the Facilities without violating Regulations T, U and X.

22.34 Compliance with US Regulations

No Obligor shall (and the Parent shall ensure that no other member of the Group will) become an "investment company," or an "affiliated person" of, or "promoter" or "principal underwriter" for, an "investment company," as such terms are defined in the 1940 Act. Neither the making of the Loan, or the application of the proceeds or repayment of the Loan by any Obligor nor the consummation of the other transactions contemplated by this agreement will violate any provision of such act or any rule, regulation or order of the SEC under the 1940 Act.

22.35 Use of Proceeds

No Obligor shall cause or permit the proceeds of any Utilisation to be used, directly or indirectly, to make a loan or other advance to, invest in or contribute to or otherwise support the activities or business of any person, entity, country or governmental authority that is subject of sanctions administered by the U.S. Treasury Department's Office of Foreign Assets Control.

22.36 Reference Shares

Other than the agreements and arrangements entered into on or prior to the date of this Agreement and referred to in paragraph (f) of Clause 18.26 (*Reference Shares*), the Borrower shall not enter into any agreement or arrangement which could reasonably be expected to affect the ownership or rights of a holder of the Reference Shares or the rights of the Borrower and/or the Finance Parties in relation to the Reference Shares.

22.37 Conditions subsequent

- (a) The Parent shall procure that each of the entities listed in Part II (*Initial Guarantors*) of Schedule 1 accedes to this Agreement as an Additional Guarantor on or before the date falling 45 days after the date of this Agreement provided that Abengoa Bioenergy Trading Europe B.V. shall not be required to accede as an Additional Guarantor pursuant to this paragraph (a) until such time as the proceedings referred to in paragraph (c) of Clause 18.11 (*No default*) are dismissed or discharged.
- (b) The Parent will use its best endeavours to ensure that any waivers required in order to remove from any document entered into by any member of the Group or by any member of the ABY Group:
 - (i) any obligation for the Group or any member of the Group to maintain a minimum level of shareholding in the Company;
 - (ii) any prepayment, repurchase or termination event or default, however described, occurring as a result of a failure by the Group or any member of the Group to have or maintain a minimum level of shareholding in the Company; or
 - (iii) any term of any agreement to which any member of the ABY Group is a party which has been or could be breached as a result of any events or circumstances relating to a member of the Group including, but not limited to, any cross default or cross acceleration provisions or any provisions which might be breached as a result of any member of the Group taking any of the actions described in paragraphs (a) to (f) of Clause 23.9 (*Insolvency proceedings*),are obtained by 28 October 2016.
- (c) The Parent will use its best endeavours to ensure that any Authorisations of members of the ABY Group are amended, waived or modified to the extent necessary on or before 28 October 2016 to ensure that they are not and could

not reasonably be expected to be adversely affected as a result of any events or circumstances relating to a member of the Group.

- (d) In order to facilitate the public resale or other public disposition of the Reference Shares by or on behalf of the Secured Parties following any appropriation of the Transaction Security by the Security Agent, the Borrower agrees that it will, at its own expense:
 - (i) execute and deliver, and use commercially reasonable efforts to cause the Company and the directors and officers thereof to execute and deliver, all such instruments and documents, and do or cause to be done all such other acts and things, as may be necessary to register the resale or other disposition of the Reference Shares by or on behalf of the Lenders under the provisions of the United States Securities Act of 1933, as from time to time amended (the "**Securities Act**") (whether or not Form F-3 or Form S-3 is available therefor), and to cause the registration statement relating thereto (the "**Registration Statement**") to become effective as soon as reasonably practicable, and to remain effective for such period as prospectuses are required by law to be furnished, and to make all amendments and supplements thereto and to the related prospectus which are necessary or advisable, all in conformity with the requirements of the Securities Act and the rules and regulations of the SEC applicable thereto;
 - (ii) use commercially reasonable efforts to cause the Company to make available to its security holders, as soon as practicable, an earning statement which will satisfy the provisions of Section 11(a) of the Securities Act;
 - (iii) bear all costs and expenses of carrying out its obligations under this paragraph (d) (including, without limitation, the reasonable costs and expenses of the Company related to registering the resale or other disposition of the Reference Shares); and
 - (iv) do or cause to be done all such other acts and things as may be necessary and within its control, and use commercially reasonable efforts to cause the Company to do or cause to be done all such things as may be necessary and within the Company's control, to make such sale of the Reference Shares or any part thereof valid and binding and in compliance with applicable law.

Nothing in this paragraph (d) shall in any way alter the rights of the Secured Parties under the Custody Account Security Agreement.

- (e) The Parent will use its best endeavours to procure that the proceedings and steps referred to in paragraph (c) of Clause 18.11 (*No default*) are discharged or dismissed as soon as possible and, in any event, on or prior to 11 October 2016. The Parent will promptly provide the Agent with any information the Agent may request with respect to such proceedings and steps and any and all actions taken or to be taken in connection therewith including, without

limitation, in connection with the discharge or dismissal of such proceedings and steps and any communications with the applicant of such proceedings.

22.38 ABY Group undertakings

No Obligor shall (and the Parent shall procure that no member of the Group will) enter into any arrangement with any member of the ABY Group except on arms' length terms for all parties.

22.39 ABY Term Sheet

Each Obligor acknowledges that the inclusion in this Agreement or any other Finance Document of a reference to the ABY Term Sheet does not constitute, and should not be implied as constituting, approval by any Finance Party of any term of the ABY Term Sheet. No Obligor will argue that the inclusion in this Agreement or any other Finance Document of a reference to the ABY Term Sheet precludes any Finance Party from commenting on or requesting any deletion of or amendment to any term of, or the addition of any new term to, the ABY Term Sheet (or any amendment, novation, supplement, replacement or restatement to or of the ABY Term Sheet), in the context of the participation of that Finance Party (in any capacity) in negotiations on the Restructuring Agreement or otherwise.

23. EVENTS OF DEFAULT

Each of the events or circumstances set out in this Clause 23 is, subject to Clause 23.24 (*Restructuring implementation*), an Event of Default (except for Clause 23.22 (*Acceleration*), Clause 23.23 (*Automatic acceleration*) and Clause 23.24 (*Restructuring implementation*)).

23.1 Non-payment

An Obligor does not pay on the due date any amount payable pursuant to a Finance Document at the place and in the currency in which it is expressed to be payable unless:

- (a) its failure to pay is caused by:
 - (i) administrative or technical error; or
 - (ii) a Disruption Event; and
- (b) payment is made within three Business Days of its due date.

23.2 Financial covenant

Subject to Clause 20.3 (*Cure*), an LTV Event occurs.

23.3 Breach of obligations

An Obligor does not comply with the terms of Clause 19 (*Information Undertakings*), Clause 21 (*Custody Account and Cash Collateral Account*), Clause 22.3 (*Negative pledge*), Clause 22.9 (*Transaction Security*), Clause 22.13 (*Further Assurance*), Clause 22.26 (*Centre of main interest*), Clause 22.29 (*Insolvency proceedings against the Borrower*) or Clause 22.31 (*US assets and filings*).

23.4 Other obligations

- (a) An Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 23.1 (*Non-payment*), Clause 23.2 (*Financial covenant*) or Clause 23.3 (*Breach of obligations*).
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within five Business Days of the earlier of (A) the Agent giving notice to the Borrower and (B) an Obligor becoming aware of the failure to comply.

23.5 Misrepresentation

- (a) Any representation or statement made or deemed to be made by an Obligor in any Finance Document or any other document delivered by or on its behalf under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within five Business Days of the earlier of (A) the Agent giving notice to the Borrower and (B) an Obligor becoming aware of the failure to comply.

23.6 Cross default

- (a) Any Financial Indebtedness of the Borrower or any other Obligor is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (b) Any Financial Indebtedness of the Borrower or any other Obligor is not paid when due or within any originally applicable grace period.
- (c) Any commitment for any Financial Indebtedness of the Borrower or any other Obligor is cancelled or suspended by a creditor of any such person as a result of an event of default (however described).
- (d) Any creditor of the Borrower or any other Obligor becomes entitled to declare any Financial Indebtedness of the Borrower due and payable prior to its specified maturity as a result of an event of default (however described).
- (e) The Events of Default in Clauses 23.6(a) to (d) shall also apply to indebtedness incurred by any member of the Group if a breach of any term of

such indebtedness entails, or might entail, a claim or any type of recourse against the Borrower.

- (f) No Event of Default will occur under:
 - (i) paragraphs (b) to (d) above in respect of any event of default outstanding as at the date of this Agreement under any Financial Indebtedness of the Borrower or any other Obligor, unless and until the earlier of:
 - (A) paragraph (a) above applies in respect of such Financial Indebtedness; or
 - (B) clause 2.10 (*Standstill*) of the Standstill Agreement ceases to apply pursuant to clause 2.11 (*Cessation of standstill*) of the Standstill Agreement; and
 - (ii) this Clause 23.6 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than \$15,000,000 (or its equivalent in any other currency or currencies).

23.7 Existing Syndicated Facility Agreements and Existing Bond Documentation

- (a) Any Financial Indebtedness of the Borrower pursuant to the Existing Bond Documentation or the Existing Syndicated Facility Agreements is declared to be or otherwise becomes due and payable.
- (b) Any payment is made in respect of any Financial Indebtedness of any member of the Group pursuant to the Existing Bond Documentation or the Existing Syndicated Facility Agreements, save for any prepayment of the September 2015 Facility, the December 2015 Facility and the March 2016 Facility from Disposal Proceeds, **provided that** the Loan is prepaid at the same time in accordance with paragraph (b) of Clause 7.5 (*Disposals*).

23.8 Insolvency

- (a) Other than as contemplated pursuant to any Permitted Transaction, a member of the Group:
 - (i) is unable or admits inability to pay its debts as they fall due;
 - (ii) suspends making payments on any of its debts; or
 - (iii) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (excluding any Finance Party in its capacity as such) with a view to rescheduling any of its indebtedness,

provided that, in relation to each member of the Group which is not an Obligor, such circumstances might reasonably be expected to have a Material Adverse Effect.

- (b) The value of the assets of any member of the Group is less than its liabilities (taking into account contingent and prospective liabilities) and, as a consequence, there is a mandatory requirement for the Borrower to file for insolvency **provided that**, in relation to each member of the Group which is not an Obligor, such circumstances might reasonably be expected to have a Material Adverse Effect.
- (c) A moratorium is declared in respect of any indebtedness of the Borrower.
- (d) No Event of Default will occur under paragraphs (a) to (c) above in respect of any circumstances falling within any of paragraphs (a), (b) or (c) above as at the date of this Agreement unless and until clause 2.10 (*Standstill*) of the Standstill Agreement ceases to apply pursuant to clause 2.11 (*Cessation of standstill*) of the Standstill Agreement.

23.9 Insolvency proceedings

Any corporate action, legal proceedings or other procedure or step is taken in relation to:

- (a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any member of the Group other than a solvent liquidation or reorganisation of any member of the Group which is not an Obligor;
- (b) a composition, compromise, assignment or arrangement with any creditor of any member of the Group;
- (c) the appointment of a liquidator (other than in respect of a solvent liquidation of any member of the Group which is not an Obligor), receiver, administrative receiver, administrator, compulsory manager, custodian or other similar officer in respect of any member of the Group or any of its assets; or
- (d) enforcement of any Security over any assets of any member of the Group;
- (e) relief of any member of the Group as contemplated by *Title 11* of the US Code or any similar federal or state law; or
- (f) any analogous procedure or step is taken in any jurisdiction,

provided that, in relation to each member of the Group which is not an Obligor, such circumstances might reasonably be expected to have a Material Adverse Effect and further **provided that** the following shall not constitute an Event of Default under this Clause 23.9:

- (i) the notice foreseen in article 5 bis of the Spanish Insolvency Law filed by the Parent and each other applicable member of the Group in each case prior to the date of this Agreement;
- (ii) the Homologated Standstill;

- (iii) any insolvency or analogous proceedings in relation to a member of the Group listed in Schedule 9 (*Entities subject to insolvency proceedings*) instituted in its applicable jurisdiction of incorporation;
- (iv) the negotiations in respect of any restructuring, refinancing or other rescheduling of any part of the Group's creditors (including the Finance Parties), including but not limited to any such negotiation that may form part of any Restructuring; and
- (v) a Permitted Transaction.

This Clause 23.9 shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within fourteen days of commencement.

23.10 Creditors' process

Any expropriation, attachment, sequestration, distress or execution affects any material asset or assets of any Obligor and is not discharged within fourteen days.

23.11 Unlawfulness

- (a) It is or becomes unlawful for the Borrower or any party to a Finance Document (other than a Finance Party) to perform any of its obligations under the Finance Documents or any Transaction Security created or expressed to be created or evidenced by the Security Documents ceases to be effective or any ranking.
- (b) Any obligation or obligations of the Borrower or any other party to a Finance Document (other than a Finance Party) under any Finance Documents are not or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Finance Parties under the Finance Documents.
- (c) Any Finance Document ceases to be in full force and effect or any Transaction Security ceases to be legal, valid, binding, enforceable or effective or is alleged by a party to it (other than a Finance Party) to be ineffective.

23.12 Litigation

- (a) Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or formally threatened in writing which are not frivolous or vexatious in nature and which relate to the Finance Documents or the transactions contemplated by the Finance Documents and which, if adversely determined, might reasonably be expected to have a Material Adverse Effect.
- (b) Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened against any Obligor or their respective assets and which, if adversely determined, might reasonably be expected to have a Material Adverse Effect.

- (c) The Mercantile Judge of Seville decides in favour of any of the challenges (*impugnaciones*) that have been published on 18 July 2016 in the Boletín Oficial del Estado which were submitted by certain creditors in respect of the Homologated Standstill and such decision might reasonably be expected to have a Material Adverse Effect.

23.13 Repudiation

The Borrower or any party to a Finance Document (other than a Finance Party) repudiates a Finance Document or any of the Transaction Security or evidences an intention to repudiate a Finance Document or any of the Transaction Security.

23.14 Governmental Intervention

By or under the authority of any government:

- (a) the management of any Obligor is wholly or partially displaced or the authority of any member of the Group in the conduct of its business is wholly or partially curtailed; or
- (b) all or a majority of the issued shares of any Obligor or the whole or any material part of its revenues or assets is seized, nationalised, expropriated or compulsorily acquired.

23.15 Transaction Security

- (a) The Borrower fails to perform or comply with any of the obligations assumed by it in the Transaction Security.
- (b) At any time any of the Transaction Security is or becomes unlawful or is not, or ceases to be legal, valid, binding or enforceable or otherwise ceases to be effective.
- (c) At any time, any Reference Share is not held through The Depository Trust Company.
- (d) At any time, any of the Transaction Security fails to have first ranking priority or is subject to any prior ranking or *pari passu* ranking Security.

23.16 Cessation of business

Any Obligor suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business except as a result of a Disposal permitted under paragraph (b) of Clause 22.19 (*Disposals*) or a Permitted Transaction.

23.17 Material adverse change

Any event or circumstance occurs which has or is reasonably likely to have a Material Adverse Effect.

23.18 **Audit qualification**

The Auditors qualify the audited financial statements of the Borrower or the Parent.

23.19 **Dutch Tax Status**

A notice under Article 36 Tax Collection Act (*Invorderingswet 1990*) has been given by any member of the Group.

23.20 **Independent Director**

If an Independent Director ceases to be a director of the Borrower for any reason and the Agent has given notice in writing proposing that a person (who has indicated that he/she is willing to be so appointed) be appointed as Independent Director and that person has not been appointed as a director of the Borrower within 5 Business Days of the notice unless:

- (a) that person is not legally capable of serving as a director of the Borrower; or
- (b) the Borrower has objected in writing, on reasonable grounds and providing reasonable detail of those grounds, to the appointment of that person as a director of the Borrower on the basis:
 - (i) that such person does not have the relevant experience necessary in the context of complex cross-border restructurings or has an irreconcilable conflict of interest; or
 - (ii) of the terms and conditions of the proposed appointment (including with regard to any fees, benefits, indemnities or any insurance coverage protection) only to the extent that those terms and conditions differ materially from the terms and conditions of the appointment of the previous Independent Director.

23.21 **Notice of board resolution**

- (a) The Borrower gives a notice to the Agent as holder of the Veto Share pursuant to article 41A of the articles of association of the Borrower.
- (b) A resolution is proposed by the directors of the Borrower to resolve to:
 - (i) make a filing or take any corporate action, procedure or step in Spain, the United States or England and Wales to commence:
 - (A) a suspension of payments or a moratorium of any indebtedness of the Company (including, without limitation, any filing pursuant to Chapter 11 of the US Bankruptcy Code); or
 - (B) a winding up, dissolution, administration or *concurso* of the Company or any reorganisation having a similar effect to the foregoing (or any analogous procedure in Spain, the United States or England and Wales); or

- (ii) take any steps which could reasonably be expected to move, or with the intention of moving, the "centre of main interest" (as that term is used in Article 3(1) of the Regulation) of the Borrower from England and Wales.

23.22 Acceleration

- (a) Subject to paragraph (b) below, on and at any time after the occurrence of an Event of Default which is continuing, the Agent may, and shall if so directed by the Majority Lenders, by notice to the Borrower:
 - (i) cancel all or part of the Total Commitments, at which time they shall immediately be cancelled;
 - (ii) declare that all or part of the Loan, together with accrued interest, and all other amounts accrued, outstanding or payable under the Finance Documents be immediately due and payable, at which time they shall become immediately due and payable;
 - (iii) declare that all or part of the Loan be payable on demand, at which time they shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders; and/or
 - (iv) exercise, or direct the Security Agent to exercise, any or all of its rights, remedies, powers or discretions under any of the Finance Documents.
- (b) If any Secured Obligations remain outstanding at any time after the Maturity Date, the Agent may, and shall if so directed by a Lender, by notice to the Borrower exercise, or direct the Security Agent to exercise, any or all of its rights, remedies, powers or discretions under any of the Finance Documents.

23.23 Automatic acceleration

If an Event of Default under Clause 23.8 (*Insolvency*) or Clause 23.9 (*Insolvency proceedings*) shall occur in respect of the Borrower in a US jurisdiction or in a US court of competent jurisdiction, then without notice to the Borrower or any other act by the Agent or any other person, the Loan, interest thereon, the Make-Whole Amount and all other amounts owed by the Borrower under the Finance Documents shall become immediately due and payable without presentment, demand, protest or notice of any kind, all of which are expressly waived.

23.24 Restructuring implementation

Notwithstanding any other term of this Agreement, any event or circumstance that occurs or arises solely as part of the proper implementation of the Restructuring Agreement in accordance with its terms, once the Restructuring Agreement is effective (but only if it has been entered into by each of the Lenders), shall not constitute a Default.

SECTION 10 CHANGES TO PARTIES

24. CHANGES TO THE LENDERS

24.1 Assignments and transfers by the Lenders

Subject to this Clause 24, a Lender (the "**Existing Lender**") may:

- (a) assign any of its rights; or
- (b) transfer by novation any of its rights and obligations,

to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (the "**New Lender**").

24.2 Conditions of assignment or transfer

- (a) An assignment will only be effective on:
 - (i) receipt by the Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that the New Lender will assume the same obligations to the other Finance Parties as it would have been under if it was an Original Lender; and
 - (ii) performance by the Agent and the Security Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Agent and the Security Agent (respectively) shall promptly notify to the Existing Lender and the New Lender.
- (b) A transfer will only be effective if the procedure set out in Clause 24.5 (*Procedure for transfer*) is complied with.
- (c) The amount of any Existing Lender's Commitment assigned or transferred must be a minimum of \$5,000,000 and in integral multiples of \$5,000,000 unless the assignment or transfer is:
 - (i) to another Lender or an Affiliate of a Lender;
 - (ii) if the Existing Lender is a fund, to a fund which is a Related Fund of the Existing Lender;
 - (iii) made at a time when an Event of Default is continuing; or
 - (iv) is an assignment or transfer of all, but not part, of the Existing Lender's Commitment.

- (d) If:
- (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
 - (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 12 (*Tax Gross-Up and Indemnities*) or Clause 13 (*Increased Costs*),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred. This paragraph (d) shall not apply:

- (A) in respect of an assignment or transfer made in the ordinary course of the primary syndication of the Facility;
 - (B) in relation to Clause 12.2 (*Tax gross-up*), to a Treaty Lender that has included a confirmation of its scheme reference number and its jurisdiction of tax residence in accordance with sub-paragraph (g)(ii)(B) of Clause 12.2 (*Tax gross-up*) if the Obligor making the payment has not made a DTTP Filing in respect of that Treaty Lender; or
- (e) Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

24.3 Assignment or transfer fee

The New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Agent (for its own account) a fee of \$3,500.

24.4 Limitation of responsibility of Existing Lenders

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
- (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents, the Transaction Security or any other documents;
 - (ii) the financial condition of any Obligor or the Company;

- (iii) the performance and observance by any Obligor of its obligations under the Finance Documents or any other documents; or
 - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,

and any representations or warranties implied by law are excluded.
- (b) Each New Lender confirms to the Existing Lender and the other Finance Parties that it:
 - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender in connection with any Finance Document; and
 - (ii) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.
- (c) Nothing in any Finance Document obliges an Existing Lender to:
 - (i) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 24; or
 - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under the Finance Documents or otherwise.

24.5 Procedure for transfer

- (a) Subject to the conditions set out in Clause 24.2 (*Conditions of assignment or transfer*) a transfer is effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate.
- (b) The Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once each of the Agent and the Security Agent is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender. The Security Agent shall promptly notify to the Agent, the Existing Lender and the New Lender the completion of all "know your customer" or other similar checks required to be carried out by it for the purposes of this paragraph (b).

- (c) On the Transfer Date:
- (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents and in respect of the Transaction Security each of the Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and in respect of the Transaction Security and their respective rights against one another shall be cancelled (being the "**Discharged Rights and Obligations**");
 - (ii) each of the Obligors and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as each of the Obligors and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;
 - (iii) the Agent, the Security Agent, the Calculation Agent, the New Lender and the other Lenders shall acquire the same rights and assume the same obligations between themselves and in respect of the Transaction Security as they would have acquired and assumed had the New Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Agent, the Security Agent, the Calculation Agent and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and
 - (iv) the New Lender shall become a Party as a "Lender".

24.6 Procedure for assignment

- (a) Subject to the conditions set out in Clause 24.2 (*Conditions of assignment or transfer*) an assignment may be effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.
- (b) The Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assignment to such New Lender. The Security Agent shall promptly notify to the Agent, the Existing Lender and the New Lender the completion of all "know your customer" or other similar checks required to be carried out by it for the purposes of this paragraph (b).

- (c) On the Transfer Date:
- (i) the Existing Lender will assign absolutely to the New Lender the rights under the Finance Documents expressed to be the subject of the assignment in the Assignment Agreement;
 - (ii) the Existing Lender will be released by each Obligor and the other Finance Parties from the obligations owed by it (the "**Relevant Obligations**") and expressed to be the subject of the release in the Assignment Agreement; and
 - (iii) the New Lender shall become a Party as a "Lender" and will be bound by obligations equivalent to the Relevant Obligations.
 - (iv) Lenders may utilise procedures other than those set out in this Clause 24.6 to assign their rights under the Finance Documents (but not, without the consent of the relevant Obligor or unless in accordance with Clause 24.5 (*Procedure for transfer*), to obtain a release by that Obligor from the obligations owed to that Obligor by the Lenders nor the assumption of equivalent obligations by a New Lender) **provided that** they comply with the conditions set out in Clause 24.2 (*Conditions of assignment or transfer*).

24.7 Copy of Transfer Certificate and Assignment Agreement to Borrower

The Agent shall, as soon as reasonably practicable after it has executed a Transfer Certificate or an Assignment Agreement send to the Borrower a copy of that Transfer Certificate or Assignment Agreement.

24.8 Security over Lenders' rights

In addition to the other rights provided to Lenders under this Clause 24, each Lender may without consulting with or obtaining consent from any Obligor at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

- (a) any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and
- (b) in the case of any Lender which is a fund, any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as Security for those obligations or securities,

except that no such charge, assignment or Security shall:

- (i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security for the Lender as a party to any of the Finance Documents; or

- (ii) require any payments to be made by an Obligor or grant to any person any more extensive rights than those required to be made or granted to the relevant Lender under the Finance Documents.

25. CHANGES TO THE OBLIGORS

25.1 The Obligors

No Obligor may assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

25.2 Additional Guarantors

- (a) Subject to compliance with the provisions of paragraphs (c) and (d) of Clause 19.9 ("*Know your customer*" checks), the Borrower may request that any of its Subsidiaries become an Additional Guarantor. That Subsidiary shall become an Additional Guarantor if:
 - (i) the Borrower delivers to the Agent a duly completed and executed Accession Letter; and
 - (ii) the Agent has received all of the documents and other evidence listed in Part II of Schedule 2 (*Conditions Precedent*) in relation to that Additional Guarantor, each in form and substance satisfactory to the Agent.
- (b) The Agent shall notify the Borrower and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in:
 - (i) in the case of the accession of an Additional Guarantor listed in Part II (*Initial Guarantors*) of Schedule 1, Part II (*Conditions precedent to be delivered by an Initial Guarantor*) of Schedule 2; or
 - (ii) otherwise, Part III (*Conditions precedent to be delivered by an Additional Guarantor*) of Schedule 2.
- (c) Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent gives the notification described in paragraph (b) above, the Lenders authorise (but do not require) the Agent to give that notification. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.
- (d) If any entity becomes a guarantor in respect of the December 2015 Facility then the Parent shall ensure that such entity accedes to this Agreement as an Additional Guarantor.

25.3 Repetition of Representations

Delivery of an Accession Letter constitutes confirmation by the relevant Subsidiary that the Repeating Representations are true and correct in relation to it as at the date of delivery as if made by reference to the facts and circumstances then existing.

25.4 **Resignation of a Guarantor**

- (a) The Borrower may request that a Guarantor ceases to be a Guarantor by delivering to the Agent a Resignation Letter.
- (b) The Agent shall accept a Resignation Letter and notify the Borrower and the Lenders of its acceptance if:
 - (i) no Default is continuing or would result from the acceptance of the Resignation Letter (and the Borrower has confirmed this is the case); and
 - (ii) the Guarantor is being disposed of pursuant to a Permitted Transaction or a disposal under paragraph (b)(vii) of Clause 22.19 (*Disposals*), in each case to a person other than a member of the Group, all the Lenders have consented to the Borrower's request,

whereupon that company shall cease to be a Guarantor and shall have no further rights or obligations under the Finance Documents.

SECTION 11

THE FINANCE PARTIES

26. ROLE OF THE AGENT AND OTHERS

26.1 Appointment of the Agent

- (a) Each other Finance Party (other than the Security Agent) appoints the Agent to act as its agent under and in connection with the Finance Documents.
- (b) Each other Finance Party (other than the Security Agent) authorises the Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

26.2 Appointment and Duties of the Calculation Agent

- (a) Each other Finance Party (other than the Security Agent) appoints the Calculation Agent to act as calculation agent under and in connection with the Finance Documents.
- (b) Each other Finance Party (other than the Security Agent) authorises the Calculation Agent to exercise the rights, powers, authorities and discretions specifically given to the Calculation Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.
- (c) The Calculation Agent's duties under the Finance Documents are as principal and are solely mechanical and administrative in nature.

26.3 Instructions

- (a) The Agent shall:
 - (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by:
 - (A) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision; and
 - (B) in all other cases, the Majority Lenders; and
 - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above.
- (b) The Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Lender or group of Lenders, from that Lender or group of Lenders) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or

discretion. The Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.

- (c) Save in the case of decisions stipulated to be a matter for any other Lender or group of Lenders under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties save for the Security Agent.
- (d) The Agent may refrain from acting in accordance with any instructions of any Lender or group of Lenders (other than the instructions of the Majority Lenders or any Lender (as applicable) under Clause 23.22 (*Acceleration*), the instructions of any Lender or group of Lenders in relation to the enforcement of any Transaction Security or the instructions of the Majority Lenders in connection with the exercise of any rights granted to the Agent as holder of the Veto Share) until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability which it may incur in complying with those instructions.
- (e) The Agent shall act in accordance with the instructions of the Majority Lenders or any Lender (as applicable) under Clause 23.22 (*Acceleration*), the instructions of any Lender or group of Lenders in relation to the enforcement of any Transaction Security and the instructions of the Majority Lenders in connection with the exercise of any rights granted to the Agent as holder of the Veto Share, and shall be indemnified under Clause 26.12 (*Lenders' indemnity to the Agent and Calculation Agent*) for any cost, loss or liability which it may incur as Agent in complying with those instructions.
- (f) In the absence of instructions, the Agent may act (or refrain from acting) as it considers to be in the best interest of the Lenders.
- (g) The Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (g) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Security Documents or enforcement of the Transaction Security or Security Documents.

26.4 Duties of the Agent

- (a) Subject to paragraph (b) and (c) below, the Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party.
- (b) Without prejudice to Clause 24.7 (*Copy of Transfer Certificate and Assignment Agreement to Borrower*), paragraph (a) above shall not apply to any Transfer Certificate or to any Assignment Agreement.

- (c) Notwithstanding the terms of paragraph (a) above, the Agent shall promptly forward the original or a copy of any document which is delivered to the Agent under paragraph (a) of Clause 19.3 (*Information: miscellaneous*) to, following a written request from any Lender, to that Lender or (subject to Clause 39 (*Confidentiality*)) its advisers.
- (d) Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (e) If the Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (f) If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Agent or the Security Agent) under this Agreement it shall promptly notify the other Finance Parties.
- (g) The Agent shall provide to the Borrower, within 5 Business Days of a request by the Borrower (but no more frequently than once per calendar month), a list (which may be in electronic form) setting out the names of the Lenders as at that Business Day, their respective Commitments, the address and fax number (and the department or officer, if any, for whose attention any communication is to be made) of each Lender for any communication to be made or document to be delivered under or in connection with the Finance Documents, the electronic mail address and/or any other information required to enable the transmission of information by electronic mail or other electronic means to and by each Lender to whom any communication under or in connection with the Finance Documents may be made by that means and the account details of each Lender for any payment to be distributed by the Agent to that Lender under the Finance Documents.
- (h) The Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (i) The Agent shall promptly forward to the Security Agent a copy of all notices issued pursuant to Clause 23.22 (*Acceleration*).

26.5 **Delegation**

- (a) The Calculation Agent may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any of the rights, powers and discretions vested in it by any of the Finance Documents.
- (b) The delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions that the Calculation Agent may think fit in the interests of the Finance Parties and it shall not be bound to supervise, or be in any way responsible for any loss incurred by reason of any misconduct or default on the part of any delegate or sub-delegate.

26.6 **No fiduciary duties**

- (a) Nothing in this Agreement constitutes the Agent or the Calculation Agent as a trustee or fiduciary of any other person.
- (b) None of the Agent or the Calculation Agent shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

26.7 **Business with the Group**

The Agent and the Calculation Agent may accept deposits from, lend money to and generally engage in any kind of banking or other business with the Group.

26.8 **Rights and discretions of the Agent and the Calculation Agent**

- (a) The Agent and the Calculation Agent may:
 - (i) rely on any representation, notice or document believed by it to be genuine, correct and appropriately authorised;
 - (ii) assume that:
 - (A) any instructions received by it from the Majority Lenders, any Lenders or any group of Lenders are duly given in accordance with the terms of the Finance Documents; and
 - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
 - (iii) rely on a certificate from any person:
 - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
 - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,

as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) Each of the Agent and the Calculation Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:
 - (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 23.1 (*Non-payment*));
 - (ii) any right, power, authority or discretion vested in any Party or any group of Lenders has not been exercised; and

- (iii) any notice or request made by the Borrower (other than a Utilisation Request) is made on behalf of and with the consent and knowledge of all the Obligors.
- (c) The Agent and Calculation Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Agent (and so separate from any lawyers instructed by the Lenders) if the Agent in its reasonable opinion deems this to be desirable.
- (e) The Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) The Agent and Calculation Agent may act in relation to the Finance Documents through its personnel and agents and the Agent and the Calculation Agent shall not:
 - (i) be liable for any error of judgment made by any such person; or
 - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,

unless such error or such loss was directly caused by the Agent's or Calculation Agent's gross negligence or wilful misconduct.
- (g) Unless a Finance Document expressly provides otherwise, the Agent and the Calculation Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.
- (h) Without prejudice to the generality of paragraph (g) above, the Agent:
 - (i) may disclose; and
 - (ii) on the written request of the Borrower, or the Majority Lenders shall, as soon as reasonably practicable, disclose,

the identity of a Defaulting Lender to the Borrower and to the other Finance Parties.
- (i) Notwithstanding any other provision of any Finance Document to the contrary, none of the Agent or the Calculation Agent is obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such

funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

26.9 Responsibility for documentation

Neither the Agent nor the Calculation Agent is responsible for:

- (a) the adequacy, accuracy and/or completeness of any information (whether oral or written) provided by the Agent, the Calculation Agent, an Obligor or any other person given in or in connection with any Finance Document or the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Finance Document or the Transaction Security; or
- (c) any determination as to whether any information provided or to be provided to any Finance Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

26.10 No duty to monitor

Neither the Agent nor the Calculation Agent shall be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Party of its obligations under any Finance Document; or
- (c) whether any other event specified in any Finance Document has occurred.

26.11 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to the provisions of paragraph (e) of Clause 30.11 (*Disruption to Payment Systems etc.*), neither the Agent nor the Calculation Agent will be liable (including, without limitation, for negligence or any other category of liability whatsoever) for:
 - (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document or the Transaction Security, unless directly caused by its gross negligence or wilful misconduct;
 - (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Finance Document, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in

connection with, any Finance Document or the Transaction Security other than by reason of its gross negligence or wilful misconduct; or

(iii) without prejudice to the generality of paragraphs (i) and (ii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:

(A) any act, event or circumstance not reasonably within its control; or

(B) the general risks of investment in, or the holding of assets in, any jurisdiction,

including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

- (b) No Party (other than the Agent or Calculation Agent respectively) may take any proceedings against any officer, Delegate, employee or agent of the Agent or Calculation Agent in respect of any claim it might have against the Agent or the Calculation Agent or in respect of any act or omission of any kind by that officer, Delegate, employee or agent in relation to any Finance Document and any officer, Delegate, employee or agent of the Agent or Calculation Agent respectively may rely on this Clause subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.
- (c) The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Agent if the Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Agent to carry out any "know your customer" or other checks in relation to any person on behalf of any Lender and each Lender confirms to the Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent.
- (e) Without prejudice to any provision of any Finance Document excluding or limiting the Agent's or the Calculation Agent's liability, any liability of the Agent or Calculation Agent arising under or in connection with any Finance Document or the Transaction Security shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Agent or the Calculation

Agent (as applicable) or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Agent or Calculation Agent (as applicable) at any time which increase the amount of that loss. In no event shall the Agent or Calculation Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Agent or Calculation Agent has been advised of the possibility of such loss or damages.

26.12 Lenders' indemnity to the Agent and Calculation Agent

- (a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent and the Calculation Agent, within five Business Days of demand, against any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Agent or the Calculation Agent (otherwise than by reason of the gross negligence or wilful misconduct of such Agent or Calculation Agent) (or, in the case of any cost, loss or liability pursuant to Clause 30.11 (*Disruption to Payment Systems etc.*) notwithstanding the Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) in acting as Agent or Calculation Agent under the Finance Documents (unless the Agent or Calculation Agent has been reimbursed by the Borrower pursuant to a Finance Document) and, in the case of the Agent:
 - (i) becoming the registered holder of the Veto Share and ceasing to be the registered holder of the Veto Share (whether pursuant to 26.13 (*Resignation of Agent or Calculation Agent*), 26.21 (*Veto Share*) or otherwise);
 - (ii) taking or omitting to take (in each case acting on the instructions of the Majority Lenders or otherwise as prescribed by the Finance Documents) any action in connection with the Veto Share; and/or
 - (iii) without prejudice to the generality of paragraph (ii) above, exercising (on the instructions of the Majority Lenders or otherwise as prescribed by the Finance Documents) any rights granted to the Agent as holder of the Veto Share,(unless the Agent has been reimbursed by the Borrower pursuant to a Finance Document).
- (b) Subject to paragraph (c) below, the Borrower shall immediately on demand reimburse any Lender for any payment that Lender makes to the Agent or Calculation Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Agent or Calculation Agent to an Obligor.

26.13 Resignation of the Agent or Calculation Agent

- (a) The Agent may resign and appoint one of its Affiliates acting through an office in the United Kingdom as successor by giving notice to the other Finance Parties and the Borrower.
- (b) Alternatively, the Agent may resign by giving five Business Days' notice to the other Finance Parties and the Borrower, in which case the Majority Lenders (after consultation with the Borrower) may appoint a successor Agent.
- (c) If the Majority Lenders have not appointed a successor Agent in accordance with paragraph (b) above within twenty days after notice of resignation was given, the retiring Agent (after consultation with the Borrower) may appoint a successor Agent acting through an office in the United Kingdom.
- (d) If the Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Agent is entitled to appoint a successor Agent under paragraph (c) above, the Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Agent to become a party to this Agreement as Agent) agree with the proposed successor Agent amendments to this Clause 26 and any other term of this Agreement dealing with the rights or obligations of the Agent consistent with then current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to the agency fee payable under this Agreement which are consistent with the successor Agent's normal fee rates and those amendments will bind the Parties.
- (e) The retiring Agent shall make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents. Without prejudice to the generality of the foregoing, the retiring Agent shall do, or permit to be done, all such acts (including making filings and registrations) and execute and deliver all such documents (including stock transfer forms) as the successor Agent may specify for the purpose of transferring the Veto Share to the successor Agent. The Borrower irrevocably consents to the transfer of the Veto Share to any successor Agent appointed pursuant to the terms of this Clause 26.13 and shall ensure that any such transfer of the Veto Share is promptly recorded, and the successor Agent duly registered as the shareholder of the Veto Share, in the Borrower's register of members in accordance with the Borrower's articles of association. Pending registration of the transfer, the retiring Agent shall exercise any right it may have, by virtue of continuing to be registered as the shareholder of the Veto Share, to cast a vote in relation to the Borrower, in accordance with the instructions of the successor Agent. The Borrower shall, within three Business Days of demand, reimburse the retiring Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records, providing such assistance and transfer of the Veto Share.
- (f) The Agent's resignation notice shall only take effect upon the appointment of a successor and the transfer of the Veto Share to such successor.

- (g) Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (e) above) but shall remain entitled to the benefit of Clause 14.3 (*Indemnity to the Agent*) and this Clause 26 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (h) After consultation with the Borrower, the Majority Lenders may, by notice to the Agent, require it to resign in accordance with paragraph (b) above. In this event, the Agent shall resign in accordance with paragraph (b) above.
- (i) The foregoing provisions shall apply with equal effect, *mutatis mutandis*, to the Calculation Agent as if each reference in paragraph (a) to (h) above to the Agent was to the Calculation Agent.
- (j) The Agent shall resign in accordance with paragraph (b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Agent pursuant to paragraph (c) above) if on or after the date which is three months before the earliest FATCA Application Date relating to any payment to the Agent under the Finance Documents, either:
 - (i) the Agent fails to respond to a request under Clause 12.8 (*FATCA Information*) and the Borrower or a Lender reasonably believes that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
 - (ii) the information supplied by the Agent pursuant to Clause 12.8 (*FATCA Information*) indicates that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
 - (iii) the Agent notifies the Borrower and the Lenders that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

and (in each case) the Borrower or a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Agent were a FATCA Exempt Party, and the Borrower or that Lender, by notice to the Agent, requires it to resign.

26.14 Replacement of the Agent

- (a) After consultation with the Borrower, the Majority Lenders may, by giving 30 days notice to the Agent (or at any time the Agent is an Impaired Agent, by giving any shorter notice determined by the Majority Lenders), replace the Agent by appointing a successor Agent.
- (b) The retiring Agent shall (at its own cost if it is an Impaired Agent and otherwise at the expense of the Lenders) make available to the successor

Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents. Without prejudice to the generality of the foregoing, the retiring Agent shall do, or permit to be done, all such acts (including making filings and registrations) and execute and deliver all such documents (including stock transfer forms) as the successor Agent may specify for the purpose of transferring the Veto Share to the successor Agent. The Borrower irrevocably consents to the transfer of the Veto Share to any successor Agent appointed pursuant to the terms of this Clause 26.14 and shall ensure that any such transfer of the Veto Share is promptly recorded, and the successor Agent duly registered as the shareholder of the Veto Share, in the Borrower's register of members in accordance with the Borrower's articles of association. Pending registration of the transfer, the retiring Agent shall exercise any right it may have, by virtue of continuing to be registered as the shareholder of the Veto Share, to cast a vote in relation to the Borrower, in accordance with the instructions of the successor Agent.

- (c) The appointment of the successor Agent shall take effect on the date specified in the notice from the Majority Lenders to the retiring Agent. As from this date, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (e) above) but shall remain entitled to the benefit of Clause 14.3 (*Indemnity to the Agent*) and this Clause 26 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date).
- (d) Any successor Agent and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

26.15 Replacement of the Calculation Agent

- (a) After consultation with the Borrower, the Majority Lenders may, by giving two Business Days' notice to the Calculation Agent, replace the Calculation Agent by appointing a successor Calculation Agent.
- (b) The retiring Calculation Agent shall (at the expense of the Lenders) make available to the successor Calculation Agent such documents and records and provide such assistance as the successor Calculation Agent may reasonably request for the purposes of performing its functions as Calculation Agent under the Finance Documents.
- (c) The appointment of the successor Calculation Agent shall take effect on the date specified in the notice from the Majority Lenders to the retiring Calculation Agent. As from this date, the retiring Calculation Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (e) above) but shall remain entitled to the benefit of Clause 14.4 (*Indemnity to the Calculation Agent*) and this Clause 26 (and any agency fees for the account of the retiring Calculation Agent shall cease to accrue from (and shall be payable on) that date).

- (d) Any successor Calculation Agent and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

26.16 Confidentiality

- (a) In acting as agent for the Finance Parties, each of the Agent and the Calculation Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by another division or department of the Agent or Calculation Agent, it may be treated as confidential to that division or department and the Agent or Calculation Agent shall not be deemed to have notice of it.
- (c) Notwithstanding any other provision of any Finance Document to the contrary, the Agent is not obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty.

26.17 Relationship with the Lenders

- (a) The Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office:
 - (i) entitled to or liable for any payment due under any Finance Document on that day; and
 - (ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,

unless it has received not less than five Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.

- (b) Any Lender may by notice to the Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender under the Finance Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under Clause 34.6 (*Electronic communication*)) electronic mail address and/or any other information required to enable the sending and receipt of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address, department and officer by that Lender for the purposes of Clause 34.2 (*Addresses*) and paragraph (a)(ii) of Clause 34.6 (*Electronic communication*) and the Agent shall be entitled to

treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.

26.18 Credit appraisal by the Lenders

Without affecting the responsibility of the Borrower for information supplied by him or on his behalf in connection with any Finance Document, each Lender confirms to the Agent that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- (a) the financial condition, creditworthiness, condition, affairs, status and nature of the Borrower and the Company;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;
- (c) whether that Lender has recourse, and the nature and extent of that recourse, against any Party or any of its assets under or in connection with any Finance Document, the Transaction Security, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;
- (d) the adequacy, accuracy and/or completeness of any information provided by the Agent, the Calculation Agent, the Security Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property.

26.19 Deduction from amounts payable by the Agent

If any Party owes an amount to the Agent under the Finance Documents the Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

26.20 Agent's management time

Any amount payable to the Agent under Clause 14.3 (*Indemnity to the Agent*), Clause 16 (*Costs and expenses*) and Clause 26.12 (*Lenders' indemnity to the Agent and Calculation Agent*) shall include the cost of utilising the Agent's management time or

other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Agent may notify to the Company and the Lenders, and is in addition to any fee paid or payable to the Agent under Clause 11 (*Fees*).

26.21 Veto Share

Upon the expiry of the Security Period, the Agent shall, at the request and cost of the Borrower and subject to the Borrower providing such information relating to the transfer or the transferee as the Agent may reasonably require, take such steps as may be reasonably required to transfer the Veto Share to the Borrower's nominee and relinquish its rights as the holder of the Veto Share.

27. THE SECURITY AGENT

27.1 Security Agent as trustee

- (a) The Security Agent declares that it holds the Transaction Security on trust for the Secured Parties on the terms contained in this Agreement.
- (b) Each of the Secured Parties authorises the Security Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Security Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

27.2 Instructions

- (a) The Security Agent shall:
 - (i) subject to paragraphs (c) and (d) below, exercise or refrain from exercising any right, power, authority or discretion vested in it as Security Agent in accordance with any instructions given to it by the Agent (acting on behalf of the Majority Lenders or, as the case may be, all the Lenders); and
 - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above.
- (b) The Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Agent as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Security Agent may refrain from acting unless and until it receives those instructions or that clarification.
- (c) Paragraph (a) above shall not apply:
 - (i) where a contrary indication appears in this Agreement;
 - (ii) where this Agreement requires the Security Agent to act in a specified manner or to take a specified action;

- (iii) in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role of Security Agent for the Secured Parties including, without limitation, Clause 27.5 (*No duty to account*) to Clause 27.10 (*Exclusion of liability*), Clause 27.13 (*Confidentiality*) to Clause 27.19 (*Custodians and nominees*) and Clause 27.22 (*Acceptance of title*) to Clause 27.267 (*Disapplication of Trustee Acts*);
 - (iv) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:
 - (A) Clause 32.1 (*Order of application*);
 - (B) Clause 32.2 (*Order of Application – Appropriation*); and
 - (C) Clause 32.5 (*Permitted Deductions*).
- (d) If giving effect to instructions given by the Agent (acting on the instructions of the Majority Lenders) would (in the Security Agent's opinion) have an effect equivalent to an amendment or waiver which is subject to Clause 38.2 (*Exceptions*), the Security Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Security Agent) whose consent would have been required in respect of that amendment or waiver.
- (e) In exercising any discretion to exercise a right, power or authority under the Finance Documents where either:
 - (i) it has not received any instructions as to the exercise of that discretion; or
 - (ii) the exercise of that discretion is subject to paragraph (c)(iv) above,

the Security Agent shall do so having regard to the interests of all the Secured Parties.
- (f) Notwithstanding anything to the contrary in this Agreement or any other Finance Document, any reference in the Finance Documents to the Security Agent acting "**in its discretion**", "**in its absolute discretion**", "**as it sees fit**" or any analogous term shall not oblige the Security Agent to exercise any such discretion and the Security Agent shall, subject to being indemnified and/or secured and/or prefunded to its satisfaction (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) (together with any applicable VAT) against all costs, losses or liabilities and except insofar as such determination is for the purpose of enabling the Security Agent to protect its own interests or receive sums for its own account (whereby it shall be entitled to act on its own discretion), act solely in accordance with any written instructions given to it by or on behalf of the Agent in accordance with the terms of this Agreement, and in doing so the Security Agent shall be acting in a purely mechanical and administrative capacity.

- (g) At any time after receipt by the Security Agent of notice from the Agent directing the Security Agent to exercise all or any of its rights, remedies, powers or discretions under any of the Finance Documents, the Security Agent may, and shall if so directed by the Agent, take any action as in its sole discretion it thinks fit to enforce the Transaction Security.
- (h) The Secured Parties shall not have any independent power to enforce or have recourse to, any of the Transaction Security or to exercise any right, power, authority or discretion arising under the Security Documents except through the Security Agent.

27.3 Duties of the Security Agent

- (a) The Security Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) The Security Agent shall promptly forward to the Agent a copy of any document received by the Security Agent from any Obligor under any Finance Document.
- (c) Except where a Finance Document specifically provides otherwise, the Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) If the Security Agent receives notice from a Party referring to any Finance Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Agent.
- (e) The Security Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

27.4 No fiduciary duties to Obligors

Nothing in this Agreement constitutes the Security Agent as an agent, trustee or fiduciary of any Obligor.

27.5 No duty to account

The Security Agent shall not be bound to account to any other Secured Party for any sum or the profit element of any sum received by it for its own account.

27.6 Business with the Group

The Security Agent may accept deposits from, lend money to and generally engage in any kind of banking or other business with any member of the Group.

27.7 Rights and discretions

- (a) The Security Agent may:
 - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
 - (ii) assume that:
 - (A) any instructions received by it from the Agent, any Lenders or any group of Lenders are duly given in accordance with the terms of the Finance Documents;
 - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
 - (C) if it receives any instructions to act in relation to the Transaction Security, that all applicable conditions under the Finance Documents for so acting have been satisfied; and
 - (iii) rely on a certificate from any person:
 - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
 - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Security Agent shall be entitled to carry out all dealings with the Lenders through the Agent and may give to the Agent any notice or other communication required to be given by the Security Agent to the Lenders.
- (c) The Security Agent may assume (unless it has received notice to the contrary in its capacity as security trustee for the Secured Parties) that:
 - (i) no Default has occurred;
 - (ii) any right, power, authority or discretion vested in any Party, any Lenders or any group of Lenders has not been exercised; and
 - (iii) any notice made by the Borrower is made on behalf of and with the consent and knowledge of all the Obligors.
- (d) The Security Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.

- (e) Without prejudice to the generality of paragraph (d) above or paragraph (f) below, the Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Security Agent (and so separate from any lawyers instructed by any Finance Party) if the Security Agent in its reasonable opinion deems this to be desirable.
- (f) The Security Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Security Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (g) The Security Agent, any Receiver and any Delegate may act in relation to the Finance Documents and the Transaction Security through its officers, employees and agents and shall not:
 - (i) be liable for any error of judgment made by any such person; or
 - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,
 unless such error or such loss was directly caused by the Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct.
- (h) Unless this Agreement expressly specifies otherwise, the Security Agent may disclose to any other Party any information it reasonably believes it has received as security trustee under this Agreement.
- (i) Notwithstanding any other provision of any Finance Document to the contrary, the Security Agent is not obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of any fiduciary duty or duty of confidentiality.
- (j) Notwithstanding any provision of any Finance Document to the contrary, the Security Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

27.8 Responsibility for documentation

None of the Security Agent, any Receiver nor any Delegate is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Security Agent, an Obligor or any other person in or in connection with any Finance Document or the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; or

- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security; or
- (c) any determination as to whether any information provided or to be provided to any Secured Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

27.9 **No duty to monitor**

The Security Agent shall not be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Party of its obligations under any Finance Document; or
- (c) whether any other event specified in any Finance Document has occurred.

27.10 **Exclusion of liability**

- (a) Without limiting paragraph (d) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate), none of the Security Agent, any Receiver nor any Delegate will be liable for:
 - (i) any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document or the Transaction Security unless directly caused by its gross negligence or wilful misconduct;
 - (ii) exercising or not exercising any right, power, authority or discretion given to it by or in connection with any Finance Document, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document or the Transaction Security;
 - (iii) any shortfall which arises on the enforcement or realisation of the Transaction Security; or
 - (iv) without prejudice to the generality of paragraphs (i) to (iii) above, any damages, costs, losses, any diminution in value or any liability whatsoever arising as a result of:
 - (A) any act, event or circumstance not reasonably within its control; or
 - (B) the general risks of investment in, or the holding of assets in, any jurisdiction,

including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets; breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

- (b) No Party (other than the Security Agent, that Receiver or that Delegate (as applicable)) may take any proceedings against any officer, employee or agent of the Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Security Agent, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or any Transaction Security and any officer, employee or agent of the Security Agent, a Receiver or a Delegate may rely on this Clause subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.
- (c) Nothing in this Agreement shall oblige the Security Agent to carry out:
 - (i) any "know your customer" or other checks in relation to any person; or
 - (ii) a check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Secured Party (other than the Security Agent),

on behalf of any Secured Party (other than the Security Agent) and each Secured Party (other than the Security Agent) confirms to the Security Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Security Agent.

- (d) Without prejudice to any provision of any Finance Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate, any liability of the Security Agent, any Receiver or Delegate arising under or in connection with any Finance Document or the Transaction Security shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Security Agent, Receiver or Delegate (as the case may be) or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Security Agent, Receiver or Delegate (as the case may be) at any time which increase the amount of that loss. In no event shall the Security Agent, any Receiver or Delegate be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Security Agent, Receiver or Delegate (as the case may be) has been advised of the possibility of such loss or damages.

27.11 Lenders' indemnity to the Security Agent

- (a) Each Lender shall in proportion to its share of the Total Commitments (or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero), indemnify the Security Agent and every Receiver and every Delegate, within three Business Days of demand, against any cost, loss or liability incurred by any of them (otherwise than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct) in acting as Security Agent, Receiver or Delegate under, or exercising any authority conferred under, the Finance Documents (unless the relevant Security Agent, Receiver or Delegate has been reimbursed by an Obligor pursuant to a Finance Document).
- (b) Subject to paragraph (c) below, the Obligors shall immediately on demand reimburse any Lender for any payment that Lender makes to the Security Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Security Agent to an Obligor.

27.12 Resignation of the Security Agent

- (a) The Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the Obligors' Agent and to the Agent on behalf of the Lenders.
- (b) Alternatively the Security Agent may resign by giving 30 days' notice to the other Parties (or the Agent on behalf of the Lenders), in which case the Majority Lenders may appoint a successor Security Agent.
- (c) If the Majority Lenders have not appointed a successor Security Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Security Agent (after consultation with the Agent) may appoint a successor Security Agent.
- (d) The retiring Security Agent shall make available to the successor Security Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Finance Documents. The Borrower shall, within three Business Days of demand, reimburse the retiring Security Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
- (e) The Security Agent's resignation notice shall only take effect upon:
 - (i) the appointment of a successor; and
 - (ii) the transfer of all the Transaction Security to that successor.

- (f) Upon the appointment of a successor, the retiring Security Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) of Clause 27.23 (*Winding up of trust*) and paragraph (d) above) but shall remain entitled to the benefit of this Clause 27.12 and Clause 14.5 (*Indemnity to the Security Agent*) (and any Security Agent fees for the account of the retiring Security Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.
- (g) The Majority Lenders may, by notice to the Security Agent, require it to resign in accordance with paragraph (b) above. In this event, the Security Agent shall resign in accordance with paragraph (b) above.

27.13 Confidentiality

- (a) In acting as trustee for the Secured Parties, the Security Agent shall be regarded as acting through its trustee division which shall be treated as a separate entity from any of its other divisions or departments.
- (b) If information is received by another division or department of the Security Agent, it may be treated as confidential to that division or department and the Security Agent shall not be deemed to have notice of it.
- (c) Notwithstanding any other provision of any Finance Document to the contrary, the Security Agent is not obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of any fiduciary duty.

27.14 Information from the Lenders

Each Lender shall supply the Security Agent with any information that the Security Agent may reasonably specify as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent.

27.15 Credit appraisal by the Secured Parties

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Secured Party confirms to the Security Agent that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document, the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;

- (c) whether that Secured Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the Transaction Security, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;
- (d) the adequacy, accuracy or completeness of any information provided by the Security Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property.

27.16 Security Agent's management time and additional remuneration

- (a) Any amount payable to the Security Agent under Clause 11 (*Fees*), Clause 14.5 (*Indemnity to the Security Agent*), Clause 16 (*Costs and Expenses*) and this Clause 27 shall include the cost of utilising the Security Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Security Agent may notify to the Borrower and the Lenders, and is in addition to any other fee paid or payable to the Security Agent.
- (b) Without prejudice to paragraph (a) above, in the event of:
 - (i) a Default; or
 - (ii) the Security Agent being requested by an Obligor or the Lenders to undertake duties which the Security Agent and the Borrower agree to be of an exceptional nature or outside the scope of the normal duties of the Security Agent under the Finance Documents; or
 - (iii) the Security Agent and the Obligor's Agent agreeing that it is otherwise appropriate in the circumstances,

the Borrower shall pay to the Security Agent any additional remuneration (together with any applicable VAT) that may be agreed between them or determined pursuant to paragraph (c) below.

- (c) If the Security Agent and the Borrower fail to agree upon the nature of the duties or upon the additional remuneration referred to in paragraph (b) above or whether additional remuneration is appropriate in the circumstances, any dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Security Agent and approved by the Borrower or, failing approval, nominated (on the application of the Security Agent) by

the President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Borrower) and the determination of any investment bank shall be final and binding upon the Parties.

27.17 No responsibility to perfect Transaction Security

The Security Agent shall not be liable for any failure to:

- (a) require the deposit with it of any deed or document certifying, representing or constituting the title of any Obligor to any of the Charged Property;
- (b) obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any Finance Document or the Transaction Security;
- (c) register, file or record or otherwise protect any of the Transaction Security (or the priority of any of the Transaction Security) under any law or regulation or to give notice to any person of the execution of any Finance Document or of the Transaction Security;
- (d) take, or to require any Obligor to take, any step to perfect its title to any of the Charged Property or to render the Transaction Security effective or to secure the creation of any ancillary Security under any law or regulation; or
- (e) require any further assurance in relation to any Security Document.

27.18 Insurance by Security Agent

- (a) The Security Agent shall not be obliged:
 - (i) to insure any of the Charged Property;
 - (ii) to require any other person to maintain any insurance; or
 - (iii) to verify any obligation to arrange or maintain insurance contained in any Finance Document,

and the Security Agent shall not be liable for any damages, costs or losses to any person as a result of the lack of, or inadequacy of, any such insurance.

- (b) Where the Security Agent is named on any insurance policy as an insured party, it shall not be liable for any damages, costs or losses to any person as a result of its failure to notify the insurers of any material fact relating to the risk assumed by such insurers or any other information of any kind, unless the Agent requests it to do so in writing and the Security Agent fails to do so within fourteen days after receipt of that request.

27.19 Custodians and nominees

The Security Agent may appoint and pay any person to act as a custodian or nominee on any terms in relation to any asset of the trust as the Security Agent may determine,

including for the purpose of depositing with a custodian this Agreement or any document relating to the trust created under this Agreement and the Security Agent shall not be responsible for any loss, liability, expense, demand, cost, claim or proceedings incurred by reason of the misconduct, omission or default on the part of any person appointed by it under this Agreement or be bound to supervise the proceedings or acts of any person.

27.20 Delegation by the Security Agent

- (a) Each of the Security Agent, any Receiver and any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any right, power, authority or discretion vested in it in its capacity as such.
- (b) That delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions that the Security Agent, that Receiver or that Delegate (as the case may be) may, in its discretion, think fit in the interests of the Secured Parties.
- (c) No Security Agent, Receiver or Delegate shall be bound to supervise, or be in any way responsible for any damages, costs or losses incurred by reason of any misconduct, omission or default on the part of, any such delegate or sub-delegate.

27.21 Additional Security Agents

- (a) The Security Agent may at any time appoint (and subsequently remove) any person to act as a separate trustee or as a co-trustee jointly with it:
 - (i) if it considers that appointment to be in the interests of the Secured Parties;
 - (ii) for the purposes of conforming to any legal requirement, restriction or condition which the Security Agent deems to be relevant; or
 - (iii) for obtaining or enforcing any judgment in any jurisdiction,and the Security Agent shall give prior notice to the Borrower and the Secured Parties of that appointment.
- (b) Any person so appointed shall have the rights, powers, authorities and discretions (not exceeding those given to the Security Agent under or in connection with the Finance Documents) and the duties, obligations and responsibilities that are given or imposed by the instrument of appointment.
- (c) The remuneration that the Security Agent may pay to that person, and any costs and expenses (together with any applicable VAT) incurred by that person in performing its functions pursuant to that appointment shall, for the purposes of this Agreement, be treated as costs and expenses incurred by the Security Agent.

27.22 Acceptance of title

The Security Agent shall be entitled to accept without enquiry, and shall not be obliged to investigate, any right and title that any Obligor may have to any of the Charged Property and shall not be liable for, or bound to require any Obligor to remedy, any defect in its right or title.

27.23 Winding up of trust

If the Security Agent, with the approval of the Majority Lenders, determines that:

- (a) all of the Secured Obligations and all other obligations secured by the Security Documents have been fully and finally discharged; and
- (b) no Secured Party is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Obligor pursuant to the Finance Documents,

then:

- (i) the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Security Documents; and
- (ii) any Security Agent which has resigned pursuant to Clause 27.12 (*Resignation of the Security Agent*) shall release, without recourse or warranty, all of its rights under each Security Document.

27.24 Releases

Upon a disposal of any of the Charged Property or the resignation of a Guarantor in accordance with Clause 25 (*Changes to the Obligors*):

- (a) pursuant to the enforcement of the Transaction Security by a Receiver or the Security Agent;
- (b) if that disposal is permitted under the Finance Documents; or
- (c) if the Security Agent is instructed to release the Transaction Security granted by the resigning Guarantor under the terms of Clause 25 (*Changes to the Obligors*),

the Security Agent shall (at the cost of the Obligors) release that property from the Transaction Security or the Transaction Security given by that Obligor and is authorised to execute, without the need for any further authority from the Secured Parties, any release of the Transaction Security or other claim over that asset or Obligor and to issue any certificates of non-crystallisation of floating charges that may be required or desirable.

27.25 Powers supplemental to Trustee Acts

The rights, powers, authorities and discretions given to the Security Agent under or in connection with the Finance Documents shall be supplemental to the Trustee Act 1925 and the Trustee Act 2000 and in addition to any which may be vested in the Security Agent by law or regulation or otherwise.

27.26 Disapplication of Trustee Acts

Section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Agent in relation to the trusts constituted by this Agreement. Where there are any inconsistencies between the Trustee Act 1925 or the Trustee Act 2000 and the provisions of this Agreement, the provisions of this Agreement shall, to the extent permitted by law and regulation, prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of this Agreement shall constitute a restriction or exclusion for the purposes of that Act.

28. CONDUCT OF BUSINESS BY THE FINANCE PARTIES

No provision of this Agreement will:

- (a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (c) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

29. SHARING AMONG THE FINANCE PARTIES

29.1 Payments to Finance Parties

If a Finance Party (a "**Recovering Party**") receives or recovers any amount from an Obligor other than in accordance with Clause 30 (*Payment Mechanics*) or Clause 32 (*Application of Proceeds*) (a "**Recovered Amount**") and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Party shall, within three Business Days, notify details of the receipt or recovery, to the Agent;
- (b) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause 30 (*Payment Mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Party shall, within three Business Days of demand by the Agent, pay to the Agent an amount (the "**Sharing Payment**") equal to such receipt or recovery less any amount which the Agent determines may be

retained by the Recovering Party as its share of any payment to be made, in accordance with Clause 30.6 (*Partial payments*).

29.2 **Redistribution of payments**

The Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Lenders (other than the Recovering Party) (the "**Sharing Parties**") in accordance with Clause 30.6 (*Partial payments*) towards the obligations of that Obligor to the Sharing Parties.

29.3 **Recovering Party's rights**

On a distribution by the Agent under Clause 29.2 (*Redistribution of payments*) of a payment received by a Recovering Party from an Obligor as between the relevant Obligor and the Recovering Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by that Obligor.

29.4 **Reversal of redistribution**

If any part of the Sharing Payment received or recovered by a Recovering Party becomes repayable and is repaid by that Recovering Party, then:

- (a) each Sharing Party shall, upon request of the Agent, pay to the Agent for the account of that Recovering Party an amount equal to the appropriate part of its share of the Sharing Payment (together with such amount as is necessary to reimburse that Recovering Party for its proportion of any interest on the Sharing Payment which that Recovering Party is required to pay) (the "**Redistributed Amount**"); and
- (b) as between the relevant Obligor and each relevant Sharing Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Obligor.

29.5 **Exceptions**

- (a) This Clause 29 shall not apply to the extent that the Recovering Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Obligor.
- (b) A Recovering Party is not obliged to share with any other Finance Party any amount which the Recovering Party has received or recovered as a result of taking legal or arbitration proceedings, if:
 - (i) it notified that other Finance Party of the legal or arbitration proceedings; and
 - (ii) that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

SECTION 12 ADMINISTRATION

30. PAYMENT MECHANICS

30.1 Payments to the Agent

- (a) On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, that Obligor or that Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency (or, in relation to euro, in a principal financial centre in such Participating Member State or London, as specified by the Agent) with such bank as the Agent specifies.

30.2 Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 30.3 (*Distributions to an Obligor*), Clause 30.4 (*Clawback*) and Clause 26.19 (*Deduction from amounts payable by the Agent*) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five Business Days' notice with a bank in the principal financial centre of the country of that currency (or, in relation to euro, in a principal financial centre in such Participating Member State or London, as specified by that Party).

30.3 Distributions to an Obligor

The Agent may (with the consent of the Obligor or in accordance with Clause 31 (*Set-off*)) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

30.4 Clawback

- (a) Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) If the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.

30.5 Impaired Agent

- (a) If, at any time, the Agent becomes an Impaired Agent, an Obligor or a Lender which is required to make a payment under the Finance Documents to the Agent in accordance with Clause 30.1 (*Payments to the Agent*) may instead either:
 - (i) pay that amount direct to the required recipient(s); or
 - (ii) if in its absolute discretion it considers that it is not reasonably practicable to pay that amount direct to the required recipient(s), pay that amount or the relevant part of that amount to an interest-bearing account held with an Acceptable Bank and in relation to which no Insolvency Event has occurred and is continuing, in the name of the Obligor or the Lender making the payment (the "**Paying Party**") and designated as a trust account for the benefit of the Party or Parties beneficially entitled to that payment under the Finance Documents (the "**Recipient Party**" or "**Recipient Parties**").

In each case such payments must be made on the due date for payment under the Finance Documents.

- (b) All interest accrued on the amount standing to the credit of the trust account shall be for the benefit of the Recipient Party or the Recipient Parties *pro rata* to their respective entitlements.
- (c) A Party which has made a payment in accordance with this Clause 30.6 shall be discharged of the relevant payment obligation under the Finance Documents and shall not take any credit risk with respect to the amounts standing to the credit of the trust account.
- (d) Promptly upon the appointment of a successor Agent in accordance with Clause 26.14 (*Replacement of the Agent*), each Paying Party shall (other than to the extent that that Party has given an instruction pursuant to paragraph (e) below) give all requisite instructions to the bank with whom the trust account is held to transfer the amount (together with any accrued interest) to the successor Agent for distribution to the relevant Recipient Party or Recipient Parties in accordance with Clause 30.2 (*Distributions by the Agent*).
- (e) A Paying Party shall, promptly upon request by a Recipient Party and to the extent:
 - (i) that it has not given an instruction pursuant to paragraph (d) above; and
 - (ii) that it has been provided with the necessary information by that Recipient Party,

give all requisite instructions to the bank with whom the trust account is held to transfer the relevant amount (together with any accrued interest) to that Recipient Party.

30.6 Partial payments

- (a) If the Agent receives a payment for application against amounts due in respect of any Finance Document that is insufficient to discharge all the amounts then due and payable by an Obligor under the Finance Documents, the Agent shall apply that payment towards the obligations of that Obligor under the Finance Documents in the following order:
 - (i) *first*, in or towards payment *pro rata* of any unpaid fees, costs and expenses of the Agent, the Calculation Agent and the Security Agent (including of any Receiver or any Delegate of the Security Agent) under the Finance Documents;
 - (ii) *secondly*, in or towards payment *pro rata* of any accrued interest, fee or commission due but unpaid under this Agreement;
 - (iii) *thirdly*, in or towards payment *pro rata* of any principal due but unpaid under this Agreement; and
 - (iv) *fourthly*, in or towards payment *pro rata* of any other sum due but unpaid under the Finance Documents.
- (b) The Agent shall, if so directed by the Majority Lenders, vary the order set out in paragraph (a)(ii) to (iv) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by an Obligor.

30.7 No set-off by an Obligor

All payments to be made by an Obligor under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

30.8 Business Days

- (a) Any payment under any Finance Document which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

30.9 Currency of account

- (a) Subject to paragraphs (b) and (c) below, dollars is the currency of account and payment for any sum due from an Obligor under any Finance Document.
- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.

- (c) Any amount expressed to be payable in a currency other than dollars shall be paid in that other currency.

30.10 Change of currency

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
 - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Agent (after consultation with the Borrower); and
 - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Market and otherwise to reflect the change in currency.

30.11 Disruption to Payment Systems etc.

If either the Agent determines (in its discretion) that a Disruption Event has occurred or the Agent is notified by the Borrower that a Disruption Event has occurred:

- (a) the Agent may, and shall if requested to do so by the Borrower, consult with the Borrower with a view to agreeing with the Borrower such changes to the operation or administration of the Facility as the Agent may deem necessary in the circumstances;
- (b) the Agent shall not be obliged to consult with the Borrower in relation to any changes mentioned in paragraph (a) if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) the Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- (d) any such changes agreed upon by the Agent and the Borrower shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 38 (*Amendments and Waivers*);
- (e) the Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without

limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 30.11; and

- (f) the Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

31. **SET-OFF**

A Finance Party may set off any matured obligation due from an Obligor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to that Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

32. **APPLICATION OF PROCEEDS**

32.1 **Order of Application**

Subject to Clause 32.2 (*Order of Application – Appropriation*), all amounts from time to time received or recovered by the Security Agent pursuant to the terms of any Finance Document or in connection with the realisation or enforcement of all or any part of the Transaction Security ("**Recoveries**") shall be held by the Security Agent on trust to apply them at such times as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law, in the following order of priority:

- (a) in discharging any sums owing to the Security Agent (in its capacity as trustee), any Receiver or any Delegate;
- (b) in discharging all costs and expenses incurred by any Secured Party in connection with any realisation or enforcement of the Transaction Security taken in accordance with the terms of this Agreement;
- (c) in payment to the Agent, on behalf of the Secured Parties, for application towards the discharge of all sums due and payable by any Obligor under any of the Finance Documents in accordance with Clause 30.6 (*Partial payments*);
- (d) if none of the Obligors is under any further actual or contingent liability under any Finance Document, in payment or distribution to any person to whom the Security Agent is obliged to pay in priority to any Obligor; and
- (e) the balance, if any, in payment to the relevant Obligor.

32.2 **Order of Application – Appropriation**

- (a) On an Appropriation the Secured Obligations will be discharged, in full or, as the case may be, in part up to the value of the assets subject to the Appropriation (as determined in accordance with the relevant Security Document), in the following order:

- (i) first, any sums owing to the Security Agent (in its capacity as trustee), any Receiver or any Delegate;
 - (ii) second, any costs and expenses incurred by any Secured Party in connection with any realisation or enforcement of the Transaction Security taken in accordance with the terms of this Agreement; and
 - (iii) third, in the order contemplated by paragraphs (a)(i) to (iv) of Clause 30.6 (*Partial payments*) (as if those paragraphs referred to discharge rather than payment).
- (b) All amounts from time to time received or recovered by the Security Agent pursuant to the enforcement of all or any part of the Transaction Security by way of Appropriation ("**Appropriation Recoveries**") shall be held by the Security Agent on trust to apply them at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law and subject to the provisions of Clause 33 (*Enforcement of Security*), in the following order of priority:
- (i) in discharging any sums owing to the Security Agent (in its capacity as trustee), any Receiver or any Delegate;
 - (ii) in discharging all costs and expenses incurred by any Secured Party in connection with any realisation or enforcement of the Transaction Security taken in accordance with the terms of this Agreement;
 - (iii) in payment or distribution to the Agent on its own behalf and on behalf of the Secured Parties whose Secured Obligations were discharged in connection with such Appropriation (or, if instructed by the Majority Lenders, to those Secured Parties directly),

and any obligation to account to the Obligor shall be discharged in payment or distribution to the Obligor.

32.3 Investment of Proceeds

Prior to the application of the proceeds of the Transaction Security in accordance with Clause 32.1 (*Order of Application*) or Clause 32.2 (*Order of Application – Appropriation*) the Security Agent may, subject to any instruction from the Majority Lenders but otherwise at its discretion, hold all or part of those proceeds in one or more interest bearing suspense or impersonal account(s) in the name of the Security Agent or Agent with any financial institution (including itself) and for so long as the Security Agent thinks fit (the interest being credited to the relevant account) pending the application from time to time of those monies at the Security Agent's discretion in accordance with the provisions of this Clause 32.

32.4 Currency Conversion

- (a) For the purpose of or pending the discharge of any of the Secured Obligations the Security Agent may convert any moneys received or recovered by the Security Agent from one currency to another, at the spot rate at which the

Security Agent is able to purchase the currency in which the Secured Obligations are due with the amount received.

- (b) The obligations of any Obligor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

32.5 Permitted Deductions

The Security Agent shall be entitled in its discretion (a) to set aside by way of reserve amounts required to meet and (b) to make and pay, any deductions and withholdings (on account of Tax or otherwise) which it is or may be required by any applicable law to make from any distribution or payment made by it under this Agreement, and to pay all Tax which may be assessed against it in respect of any of the Charged Property, or as a consequence of performing its duties, or by virtue of its capacity as Security Agent under any of the Finance Documents or otherwise (except in connection with its remuneration for performing its duties under this Agreement).

32.6 Discharge of Secured Obligations

- (a) Any payment to be made in respect of the Secured Obligations by the Security Agent may be made to the Agent on behalf of the Lenders and that payment shall be a good discharge to the extent of that payment, to the Security Agent.
- (b) The Security Agent is under no obligation to make payment to the Agent in the same currency as that in which any Unpaid Sum is denominated.

32.7 Sums received by Obligors

If any of the Obligors receives any sum which, pursuant to any of the Finance Documents, should have been paid to the Security Agent, that sum shall promptly be paid to the Security Agent for application in accordance with this Clause.

33. ENFORCEMENT OF SECURITY

Each Lender agrees that, unless otherwise agreed by the Majority Lenders, any enforcement of the Security over the Reference Shares under the Custody Account Security Agreement will be by way of appropriation of the Reference Shares with the commercially reasonable value determined in accordance with clause 9.5 (*Right of Appropriation*) of the Custody Account Security Agreement, and such that each Lender (acting through the Agent) will be entitled, following appropriation, to elect either to instruct the Security Agent to sell the share of the Charged Portfolio (as defined in the Custody Account Security Agreement) to which it is entitled under Clause 32.2 (*Order of Application - Appropriation*) (its "**Pro Rata Share**") or have its Pro Rata Share transferred to it or its nominee. For the avoidance of doubt, no approval from any Obligor will be required to vary the manner of enforcement of the Transaction Security described in this Clause 33.

34. NOTICES

34.1 Communications in writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

34.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

- (a) in the case of the Borrower, that identified with its name below;
- (b) in the case of each Lender (other than the Original Lender) or any other Obligor, that notified in writing to the Agent on or prior to the date on which it becomes a Party; and
- (c) in the case of the Agent, the Original Lender, the Calculation Agent and Security Agent, that identified with its name below,

or any substitute address or fax number or department or officer as the Party may notify to the Agent (or the Agent may notify to the other Parties, if a change is made by the Agent) by not less than five Business Days' notice.

34.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
 - (i) if by way of fax, when received in legible form; or
 - (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 34.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Agent or to the Security Agent will be effective only when actually received by the Agent or the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Agent's or the Security Agent's signature below (or any substitute department or officer as the Agent (or as applicable, the Security Agent) shall specify for this purpose).
- (c) All notices from or to an Obligor shall be sent through the Agent.

- (d) Any communication or document made or delivered to the Borrower in accordance with this Clause will be deemed to have been made or delivered to each of the Obligors.
- (e) All notices to a Lender from the Security Agent or Calculation Agent shall be sent through the Agent.
- (f) Any communication or document which becomes effective, in accordance with paragraphs (a) to (e) above, after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

34.4 Notification of address and fax number

Promptly upon receipt of notification of an address and fax number or change of address or fax number pursuant to Clause 34.2 (*Addresses*) or changing its own address or fax number, the Agent shall notify the other Parties.

34.5 Communication when Agent is Impaired Agent

If the Agent is an Impaired Agent the Parties may, instead of communicating with each other through the Agent, communicate with each other directly and (while the Agent is an Impaired Agent) all the provisions of the Finance Documents which require communications to be made or notices to be given to or by the Agent shall be varied so that communications may be made and notices given to or by the relevant Parties directly. This provision shall not operate after a replacement Agent has been appointed.

34.6 Electronic communication

- (a) Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication and if those two Parties:
 - (i) notify each other in writing of their electronic mail address (and the email address(es) identified with its name below shall constitute such notification by each relevant Party) and/or any other information required to enable the sending and receipt of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any electronic communication made between those two Parties will be effective only when actually received in readable form and in the case of any electronic communication made by a Party to the Agent only if it is addressed in such a manner as the Agent shall specify for this purpose.

- (c) Any electronic communication which becomes effective, in accordance with paragraph (b) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

34.7 English language

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

35. CALCULATIONS AND CERTIFICATES

35.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are *prima facie* evidence of the matters to which they relate.

35.2 Certificates and determinations

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

35.3 Day count convention

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days or, in any case where the practice in the Relevant Market differs, in accordance with that market practice.

36. PARTIAL INVALIDITY

If, at any time, any provision of the Finance Documents is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

37. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of any Secured Party, any right or remedy under the Finance Documents shall operate as a waiver of any

such right or remedy or constitute an election to affirm any of the Finance Documents. No election to affirm any of the Finance Documents on the part of any Secured Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

38. AMENDMENTS AND WAIVERS

38.1 Required consents

- (a) Subject to Clause 38.2 (*Exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Borrower and any such amendment or waiver will be binding on all Parties.
- (b) The Agent, or in respect of the Security Documents the Security Agent, may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause.

38.2 Exceptions

- (a) An amendment or waiver of any term of any Finance Document that has the effect of changing or which relates to:
 - (i) the definition of "Majority Lenders" in Clause 1.1 (*Definitions*);
 - (ii) an extension to the date of payment of any amount under the Finance Documents;
 - (iii) a reduction in the PIK Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;
 - (iv) an increase in any Commitment, an extension of the Availability Period or any requirement that a cancellation of Commitments reduced the Commitment of the Lenders rateably under the Facility;
 - (v) a change to the Borrower or Guarantors (other than, for the avoidance of doubt, a change to the Parties pursuant to the operation of Clause 25 (*Changes to the Obligors*));
 - (vi) any provision which expressly requires the consent of all the Lenders;
 - (vii) Clause 2.2 (*Finance Parties' rights and obligations*), Clause 7.2 (*Exit*), Clause 7.3 (*Share Event*), Clause 7.4 (*Restructuring*), Clause 7.5 (*Disposals*), Clause 7.11 (*Application of prepayments*), Clause 20 (*Collateral Arrangements*), paragraph (b) of Clause 23.22 (*Acceleration*), Clause 24 (*Changes to the Lenders*), Clause 25 (*Changes to the Obligors*), Clause 29 (*Sharing among the Finance Parties*), this Clause 38, Clause 43 (*Governing Law*) or Clause 44.2 (*Jurisdiction*);

- (viii) the nature and scope of the guarantee and indemnity granted under Clause 17 (*Guarantee and Indemnity*);
- (ix) the nature or scope of the Charged Property;
- (x) the manner in which the proceeds of enforcement of the Transaction Security are distributed; or
- (xi) the Escrow Agreement,

shall not be made without the prior consent of all the Lenders.

- (b) An amendment or waiver which relates to the rights or obligations of the Agent, the Calculation Agent or the Security Agent (each in their capacity as such) may not be effected without the consent of the Agent, the Calculation Agent or the Security Agent (as the case may be).

39. **CONFIDENTIALITY**

39.1 **Confidential Information**

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 39.2 (*Disclosure of Confidential Information*) and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

39.2 **Disclosure of Confidential Information**

Any Finance Party may disclose:

- (a) to any of its Affiliates and Related Funds and any of its or their officers, members, directors, employees, professional advisers, auditors, partners, investment managers and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person(s):
 - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents and to any of that person's Affiliates, Related Funds, Representatives and professional advisers (including, without limitation, any Financial Adviser or investment bank, valuer or other professional that may be appointed in connection with preservation and/or enforcement of the Transaction Security and/or the exercise of

any rights in relation thereto pursuant to the terms of any Security Document);

- (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Obligors and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
- (iii) appointed by any Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph (b) of Clause 26.17 (*Relationship with the Lenders*));
- (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;
- (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body or the rules of any relevant stock exchange, listing authority or pursuant to any applicable law or regulation;
- (vi) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 24.8 (*Security over Lenders' rights*);
- (vii) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
- (viii) who is a Party; or
- (ix) with the consent of the Borrower,

in each case, such Confidential Information as that Finance Party shall consider appropriate if:

- (A) in relation to paragraphs (b)(i), (b)(ii) and (b)(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
- (B) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a

Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;

- (C) in relation to paragraphs (b)(v), (b)(vi) and (b)(vii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;
- (c) to any person appointed by that Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Borrower and the relevant Finance Party;
- (d) to the Account Bank, the Custodian, any Delegate or Representative of the Calculation Agent or the Security Agent, any Receiver, any security agent or co-security trustee or co-security agent and to any such person's Affiliates and any of their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (d) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (e) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Borrower if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information; and
- (f) on and at any time after the occurrence of an Event of Default which is continuing, to the public markets such of the Confidential Information as a Finance Party considers reasonably necessary in order for any Finance Party to

enforce the Transaction Security, market the Reference Shares and/or carry out a sale or purchase of the Reference Shares without being in breach of any and all applicable laws or regulations or principles of conduct of any relevant jurisdiction (including, without limitation, the fact that an Event of Default has occurred and is continuing).

39.3 Entire agreement

This Clause 39 constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

39.4 Inside information

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

39.5 Notification of disclosure

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Borrower:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 39.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 39.

39.6 Continuing obligations

The obligations in this Clause 39 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of twelve months from the earlier of:

- (a) the date on which all amounts payable by the Obligors under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) the date on which such Finance Party otherwise ceases to be a Finance Party.

40. **CONFIDENTIALITY OF FUNDING RATES**

40.1 **Confidentiality and disclosure**

- (a) The Agent and each Obligor agree to keep each Funding Rate confidential and not to disclose it to anyone, save to the extent permitted by paragraphs (b) and (c) below.
- (b) The Agent may disclose:
 - (i) any Funding Rate to the relevant Borrower pursuant to Clause 8.3 (*Notification of rates of interest*); and
 - (ii) any Funding Rate to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Agent and the relevant Lender.
- (c) The Agent may disclose any Funding Rate, and each Obligor may disclose any Funding Rate, to:
 - (i) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives if any person to whom that Funding Rate is to be given pursuant to this paragraph (i) is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of that Funding Rate or is otherwise bound by requirements of confidentiality in relation to it;
 - (ii) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances;
 - (iii) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes if the person to whom that Funding Rate is to be given is informed in writing of its confidential nature and that it may be price-sensitive information

except that there shall be no requirement to so inform if, in the opinion of the Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances; and

- (iv) any person with the consent of the relevant Lender.

40.2 Related obligations

- (a) The Agent and each Obligor acknowledge that each Funding Rate is or may be price-sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Agent and each Obligor undertake not to use any Funding Rate for any unlawful purpose.
- (b) The Agent and each Obligor agree (to the extent permitted by law and regulation) to inform the relevant Lender:
 - (i) of the circumstances of any disclosure made pursuant to paragraph (c)(ii) of Clause 40.1 (*Confidentiality and disclosure*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
 - (ii) upon becoming aware that any information has been disclosed in breach of this Clause 40.

40.3 No Event of Default

No Event of Default will occur under Clause 23.4 (*Other obligations*) by reason only of an Obligor's failure to comply with this Clause 40.

41. USA PATRIOT ACT

Each Lender hereby notifies each Obligor that pursuant to the requirements of the USA PATRIOT Act, such Lender is required to obtain, verify and record information that identifies such Obligor, which information includes the name and address of such Obligor and other information that will allow such Lender to identify such Obligor in accordance with the USA PATRIOT Act.

42. COUNTERPARTS

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

SECTION 13 GOVERNING LAW AND ENFORCEMENT

43. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

44. ENFORCEMENT

44.1 **Jurisdiction in relation to actions brought against parties organised or incorporated in Mexico**

In relation to actions brought by or against any Party organised or incorporated in the United Mexican States:

- (a) each such Party agrees that the courts of England have exclusive jurisdiction in connection with any legal action or proceeding by or against such Party hereto with respect to or arising out of this Agreement, and to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or the consequences of its nullity or any non-contractual obligations arising out of or in connection with this Agreement), and such legal actions and proceedings shall be brought exclusively in the courts of England.
- (b) by execution and delivery of this Agreement, each such Party hereby:
 - (i) accepts and expressly submits to the jurisdiction of the English courts (and courts of appeals therefrom) for any legal proceedings arising out of or in connection with this Agreement; and
 - (ii) irrevocably waives the right to the jurisdiction of any other courts that could apply by virtue of its present or future domicile or for any other reason.

44.2 **Jurisdiction**

Subject to Clause 44.1 (*Jurisdiction in relation to actions brought against parties organised or incorporated in the United Mexican States*):

- (a) the courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or the consequences of its nullity or any non-contractual obligations arising out of or in connection with this Agreement) (a "**Dispute**").
- (b) Each Obligor agrees that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Obligor will argue to the contrary.

44.3 **Service of Process**

Each Obligor agrees that the documents which start any proceedings in relation to any Finance Document, and any other documents required to be served in connection with those proceedings, may be served on it by being delivered to the Borrower at its registered office or place of business in England and Wales, or to such other address in England and Wales as each such Obligor may specify by notice in writing to the Agent. Nothing in this Clause 44.3 shall affect the right of any Finance Party to serve process in any other manner permitted by law. This Clause 44.3 applies to proceedings in England and proceedings elsewhere

45. **WAIVER OF JURY TRIAL**

EACH OF THE PARTIES TO THIS AGREEMENT AGREES TO WAIVE IRREVOCABLY ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE DOCUMENTS REFERRED TO IN THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED IN THIS AGREEMENT. This waiver is intended to apply to all Disputes. Each party acknowledges that (a) this waiver is a material inducement to enter into this Agreement, (b) it has already relied on this waiver in entering into this Agreement and (c) it will continue to rely on this waiver in future dealings. Each party represents that it has reviewed this waiver with its legal advisers and that it knowingly and voluntarily waives its jury trial rights after consultation with its legal advisers. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

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

**SCHEDULE 1
PARTIES**

**PART I
THE ORIGINAL LENDERS**

Original Lender	Commitment (USD)	Treaty Passport scheme reference number (if applicable)	Jurisdiction of tax residence	UK Non- Bank Lender
ARVO INVESTMENT HOLDINGS S.À R.L.	15,093,750	48/A/350740/DTTP	Luxembourg	No
CCP CREDIT ACQUISITION HOLDINGS LUXCO S.À R.L.	15,093,750	48/C/358143/DTTP	Luxembourg	No
LAJEDOSA INVESTMENTS S.À R.L.	90,562,500	48/L/0360485/DTTP	Luxembourg	No
OCM LUXEMBOURG ABG DEBT S.À R.L.	40,250,000	In the process of being applied for.	Luxembourg	No
POTTER NETHERLANDS COÖPERATIEF U.A.	9,750,000	In the process of being applied for.	The Netherlands	No
SPV CAPITAL FUNDING LUXEMBOURG S.À R.L.	40,250,000	48/S/357923/DTTP	Luxembourg	No
Total:	<u>211,000,000</u>			

PART II INITIAL GUARANTORS

Entities to be Spanish Guarantors	Registration number
Abeinsa Asset Management, S.L.	Spain, B 78654597
Abeinsa Infraestructuras Medio Ambiente, S.A.	Spain, A-41290792
Abeinsa Inversiones Latam	Spain, B 85719680
Abeinsa, Ingeniería y Construcción Industrial, S.A.	Spain, A-91251355
Abencor Suministros, S.A.	Spain, A-41002312
Abener Energía, S.A.	Spain, A-41679788
Abengoa Bioenergía, S.A.	Spain, A-91213249
Abengoa Concessions, S.L.	Spain, B-90108044
Abengoa Solar España, S.A.	Spain, A-91185314
Abengoa Solar New Technologies, S.A.	Spain, A-91492116
Abengoa Solar, S.A.	Spain, A-91609982
Abengoa Water, S.L.	Spain, B-91826958
Abentel Telecomunicaciones, S.A.	Spain, A-41980178
ASA Desulfuración, S.A.	Spain, A-48090823
Bioetanol Galicia, S.A.	Spain, A-36822146
Ecoagrícola, S.A.	Spain, A-30751986
Europea De Construcciones Metálicas, S.A.	Spain, A-41031303
Instalaciones Inabensa, S.A.	Spain, A-41694266
Negocios Industriales y Comerciales, S.A.	Spain, A-41008640
Siema Technologies, S.L.	Spain, B-84023340
Teyma Gestion De Contratos de Construcción E Ingeniería, S.A.	Spain, A-91735852
Entity to be Dutch Guarantor	Registration number
Abengoa Bioenergy Trading Europe B.V.	24405409

Entities to be Mexican Guarantors	Commercial number
Abeima Teyma Zapotillo S. de R.L. de C.V.	470142-1 (<i>folio mercantil electrónico</i>)
Construcciones Metálicas Mexicanas Comemsa, S.A. de C.V.	238697 (<i>folio mercantil</i>)
Nicsamex, S.A. de C.V.	319997 (<i>folio mercantil</i>)

Entities to be Uruguayan Guarantors	Registration number
Teyma Internacional, S.A.	215380520010
Teyma Uruguay Zf, S.A.	215120880017

SCHEDULE 2
CONDITIONS PRECEDENT

PART I
CONDITIONS PRECEDENT TO INITIAL UTILISATION

1. Obligors

- (a) A copy of the constitutional documents of each Original Obligor.
- (b) A copy of a resolution of the board of directors of the Borrower:
 - (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute the Finance Documents to which it is a party;
 - (ii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
 - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.
- (c) In relation to:
 - (i) the Borrower, a copy of a power of attorney authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
 - (ii) the Parent, a copy of the public deed of appointment of Mr. Joaquín Fernández de Pierola as managing director (*consejero delegado*) of Abengoa, S.A. duly registered with the relevant Commercial Registry, together with a Registry excerpt evidencing the registration of such appointment.
- (d) In respect of each Original Obligor, a specimen of the signature of each person authorised by the documents referred to in paragraph (b) or paragraph (c) above (or equivalent corporate authority, if any) and who has signed any Finance Document.
- (e) A certificate of each Original Obligor (in the case of the Borrower, signed by a director and in the case of the Parent, signed by an authorised signatory):
 - (i) confirming that borrowing or guaranteeing (and, as applicable, granting Security in respect of) the Total Commitments would not cause any borrowing, guarantee or security limit binding on it pursuant to its constitutional documents to be exceeded; and
 - (ii) certifying that each copy document relating to it specified in this Schedule is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement

- (f) A certificate of the Parent (signed by an authorised signatory) and the Borrower (signed by a director) confirming that subject to the Transaction Security, there subsists no Security or Quasi-Security over the Custody Account or the Custody Agreement.
- (g) A certificate of the Parent (signed by an authorised signatory) confirming that none of the circumstances set out in Clauses 23.8 (*Insolvency*), 23.9 (*Insolvency proceedings*) or Clause 23.10 (*Creditors' process*) (other than any of the circumstances set out in paragraphs (i) and (ii) of Clause 23.9 (*Insolvency proceedings*)) applies to any Obligor or any entity listed in Part II (*Initial Guarantors*) of Schedule 1 or would be likely to apply as a consequence of borrowing and guaranteeing (and granting Security in respect of) the Total Commitments.
- (h) A copy of the resolutions of the shareholders of the Borrower approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute the Finance Documents to which it is a party.

2. **Finance Documents**

The following agreements duly executed by the Obligors party to them:

- (a) this Agreement;
- (b) the Fee Letter;
- (c) the Custody Account Security Agreement; and
- (d) the Security Over Cash Agreement.

3. **Perfection of Transaction Security**

Evidence that any Security created by a Security Document has been validly created and perfected in a manner satisfactory to the Agent and the Agent has received duly executed copies of any notice, acknowledgement, document, recording, filing, notification, registration, notarisation or other evidence required, in the reasonable opinion of the Agent, for the creation, validity, perfection or priority thereof for onward delivery to the Security Agent, excluding registration of the same with Companies House but including, in particular but without limitation:

- (a) in relation to the Custody Account Security Agreement, evidence of delivery of any notice of assignment to the Custodian required pursuant to the terms of the Custody Account Security Agreement and the corresponding acknowledgment from the Custodian; and
- (b) in relation to the Security Over Cash Agreement, evidence of delivery of any notice of assignment to the Account Bank required pursuant to the terms of the Security Over Cash Agreement and the corresponding acknowledgment from the Account Bank.

4. **Accounts**

Evidence that the Cash Collateral Account, the Custody Account and the Cash Account (as defined in the Custody Agreement) are open and fully operational.

5. **Legal opinions**

- (a) A legal opinion of Clifford Chance, legal advisers to the Original Lenders as to English law.
- (b) A legal opinion of Cortes Abogados, legal advisers to the Borrower as to Spanish law.
- (c) Memorandum issued by Cortés Abogados referring to the existing debt of the Obligors and the entities listed in Part II (*Initial Guarantors*) of Schedule 1, (the memorandum shall include an annex with an identification of all existing financing agreements, whether under Spanish or foreign law, to which the Obligors or any entity listed in Part II (*Initial Guarantors*) of Schedule 1 are a party) (the "**Existing Debt**") (other than the New York law governed notes referred to in paragraph (b) to (h) of the definition of Existing Bond Documentation) and that must attest to the following:
 - (i) No conflict: the formalization of the Finance Documents (and particularly the disbursement of the Loan and the formalization of the pledge of the shares of the Company) is permitted in the Existing Debt and Existing Bond Documentation and the execution thereof does not conflict with the provisions of the financing agreements making up such Existing Debt and Existing Bond Documentation of the Group;
 - (ii) Project Company: the Company meets the criteria provided by the Existing Debt to be deemed a "Project Company" (or "*Sociedad de Proyecto*" or other similar definitions regarding project companies), and therefore is a "Project Company" (or "*Sociedad de Proyecto*") for purposes of the financing agreements, and that Abengoa has consistently adopted this criteria for all financing agreements and such classification has not been subject to a different interpretation or a dispute by its counterparties or other third parties; and
 - (iii) Ratio of indebtedness: the definition of "Ratio of indebtedness" (including "*Ratio de endeudamiento*" or other similar definitions) and the concepts included therein are the same in all of the financing agreements that contain such ratio, and the "Ratio of indebtedness" has been calculated consistently among all of the financing agreements that contemplate it.

6. **Utilisation Request**

A copy of the Utilisation Request relating to the Utilisation of the Facility signed by the Borrower.

7. Other financing arrangements

- (a) Evidence that each of the September 2015 Facility, December 2015 Facility and March 2016 Facility has been amended and/or waived, as appropriate, to permit the transactions contemplated by this Agreement.
- (b) Evidence that:
 - (i) the maturity dates of the September 2015 Facility and the December 2015 Facility have been extended to a date falling on or after 29 March 2017; and
 - (ii) the maturity date of the March 2016 Facility falls on or after 29 March 2017.
- (c) Evidence that the Security relating to the TCI Margin Loan, and any claims of the creditors pursuant to the TCI Margin Loan, will be released on Completion.

8. Other documents and evidence

- (a) Evidence that, on the date of Completion, no fewer than 16,000,000 Shares are or will be credited to the Custody Account and constitute, or will constitute, Charged Property.
- (b) The Custody Agreement executed by the Borrower and the Custodian.
- (c) Evidence that the Borrower is the sole beneficial owner of the Reference Shares.
- (d) The Original Financial Statements.
- (e) The most recent audited consolidated financial statements of the Company.
- (f) The Group Structure Chart certified by the Parent as being true as at 31 March 2016, and that, other than as disclosed to the Lenders, there have been no material changes since that date.
- (g) Evidence that all fees, costs and expenses then due from the Borrower or any other member of the Group to any Finance Party (including but not limited to fees payable to the Finance Parties' legal and other advisers and any agreed on-account payments and any fees payable under any Fee Letter) have been paid or will be paid by the date of Completion.
- (h) Confirmation from the Finance Parties that all documents required for completion by the Finance Parties of all necessary "know your customer" requirements have been provided.
- (i) An agreed form announcement to the public markets (in Spanish and in English translation).

- (j) Evidence that the Borrower's articles of association have been duly amended to refer to this Agreement where appropriate in connection with the Veto Share.
- (k) Evidence that the Borrower has issued (i) one fully paid Veto Share to the Agent (or a nominee of the Agent) and (ii) a share certificate to the Agent (or a nominee of the Agent) in its capacity as a shareholder of one Veto Share, in each case in accordance with the Borrower's articles of association.
- (l) Evidence that the Agent (or a nominee on behalf of the Agent) has been duly registered in the Borrower's register of members as a shareholder of one fully paid Veto Share.
- (m) The Business Plan.
- (n) A copy of all the current documents relating to each of the September 2015 Facility, the December 2015 Facility, the March 2016 Facility and the ACBH Dividend Deferral Arrangement (other than the ABY Term Sheet), certified by the Borrower as being true, complete and up to date and including a certification by the Borrower that, other than the documents provided, there are no other documents documenting the agreement between any Obligor and the lenders under the relevant facility in respect of each of the September 2015 Facility, the December 2015 Facility and the March 2016 Facility.
- (o) Evidence that Anders Christian Digemose is a director on the board of directors of the Borrower.
- (p) The list of outstanding Financial Indebtedness of the Obligors and the entities listed in Part II (*Initial Guarantors*) of Schedule 1 as at 30 June 2016 in form and substance satisfactory to the Lenders.
- (q) The list of existing Security granted by the Obligors and the entities listed in Part II (*Initial Guarantors*) of Schedule 1 as at 1 August 2016 in form and substance satisfactory to the Lenders.
- (r) The list of existing material claims commenced or threatened by a member of the Group against the Borrower or any member of the ABY Group and any material actual or contingent liabilities of any member of the ABY Group to any member of the Group as at the date of this Agreement in form and substance satisfactory to the Lenders.
- (s) The list of excluded assets, the proceeds of disposal of which would be Excluded Disposal Proceeds, in form and substance satisfactory to the Lenders.
- (t) A copy of any other Authorisation or other document, opinion or assurance which the Agent reasonably considers to be necessary or desirable (if it has notified the Borrower accordingly prior to the date of the Utilisation Request) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.

PART II
CONDITIONS PRECEDENT
TO BE DELIVERED BY AN INITIAL GUARANTOR

1. An Accession Letter, duly executed by the Additional Guarantor and the Borrower.
2. A copy of the constitutional documents of each Additional Guarantor or, if the Additional Guarantor is a Dutch Guarantor, a copy of its articles of association (*statuten*) and deed of incorporation (*oprichtingsakte*) as well as an extract (*uittreksel*) from the Dutch Commercial Register (*Handelsregister*).
3. A copy of a resolution of the board of directors (or equivalent body) of each Additional Guarantor which is a Uruguayan Guarantor and, to the extent applicable, a Mexican Guarantor:
 - (a) approving or, as applicable, ratifying the terms of, and the transactions contemplated by, the Accession Letter and the Finance Documents and resolving that it execute the Accession Letter and any other Finance Document to which it is a party;
 - (b) authorising a specified person or persons to execute the Accession Letter and other Finance Documents on its behalf;
 - (c) authorising a specified person or persons, on its behalf, to sign and/or despatch all other documents and notices to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
 - (d) authorising the Borrower to act as its agent in connection with the Finance Documents.
4. A specimen of the signature of each person authorised by the resolution referred to in paragraph 3 above who has signed any Finance Document.
5. A copy of a resolution signed by all the holders of the issued shares of each Additional Guarantor which is a Dutch Guarantor or, to the extent applicable a Uruguayan Guarantor or Mexican Guarantor, approving or, as applicable, ratifying the terms of, and the transactions contemplated by, the Finance Documents to which such Additional Guarantor is a party.
6. A certificate of the Additional Guarantor (signed by an authorised signatory) confirming that borrowing or guaranteeing, as appropriate, the Total Commitments would not cause any borrowing, guaranteeing or similar limit binding on it pursuant to its constitutional documents to be exceeded.
7. A certificate of each authorised signatory of the Additional Guarantor certifying that each copy document listed in this Part II of Schedule 2 is correct, complete and in full force and effect as at a date no earlier than the date of the Accession Letter.
8. If applicable, a copy of the resolution of each board of supervisory directors of each Additional Guarantor which is a Dutch Guarantor approving the resolutions of the board of managing directors referred to under paragraph 5 above.

9. If applicable, a copy of (i) the request for advice from each works council, or central or European works council with jurisdiction over the transactions contemplated by this Agreement and (ii) the unconditional positive advice from such works council.
10. A copy of a power of attorney of each Additional Guarantor which is a Mexican Guarantor or Uruguayan Guarantor authorising a specified person or persons to execute the Accession Letter and the Finance Documents to which it is a party or any similar document that under the scope of its authority granted to said person or persons is authorised to execute the Accession Letter and the Finance Documents to which it is a party.
11. If available, the latest audited financial statements of the Additional Guarantor.
12. A copy of any other Authorisation or other document, opinion or assurance which the Agent reasonably considers to be necessary or desirable (if it has notified the Additional Guarantor accordingly prior to the dated of the Accession Letter) in connection with the entry into and performance of the transactions contemplated by the Accession Letter and each Finance Document to which the Additional Guarantor is a party or for the validity and enforceability of any Finance Document or of any Transaction Security created or intended to be created by the Additional Guarantor.
13. A copy of the power of attorney, notarised before a Mexican notary public, granted by each Mexican Guarantor in favour of the Borrower to act as its agent for service of process pursuant to clause 44.3 (*Service of Process*) of this Agreement
14. A legal opinion of Clifford Chance, legal advisers to the Original Lenders as to English law.
15. Legal opinions of the legal advisers to the Additional Guarantors in the jurisdictions in which the Additional Guarantor are incorporated.

PART III
CONDITIONS PRECEDENT
TO BE DELIVERED BY AN ADDITIONAL GUARANTOR

1. An Accession Letter, duly executed by the Additional Guarantor and the Borrower.
2. A copy of the constitutional documents of the Additional Guarantor or, if the Additional Guarantor is a Dutch Guarantor, a copy of its articles of association (*statuten*) and deed of incorporation (*oprichtingsakte*) as well as an extract (*uittreksel*) from the Dutch Commercial Register (*Handelsregister*).
3. To the extent required, a copy of a resolution of the board of directors (or equivalent body) of any Additional Guarantor:
 - (a) approving or, as applicable, ratifying the terms of, and the transactions contemplated by, the Accession Letter and the Finance Documents and resolving that it execute the Accession Letter and any other Finance Document to which it is a party;
 - (b) authorising a specified person or persons to execute the Accession Letter and other Finance Documents on its behalf;
 - (c) authorising a specified person or persons, on its behalf, to sign and/or despatch all other documents and notices to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
 - (d) authorising the Borrower to act as its agent in connection with the Finance Documents.
4. A specimen of the signature of each person authorised by the resolution referred to in paragraph 3 above.
5. To the extent required, a copy of a resolution signed by all the holders of the issued shares of the Additional Guarantor, approving or, as applicable, ratifying the terms of, and the transactions contemplated by, the Finance Documents to which the Additional Guarantor is a party.
6. A certificate of the Additional Guarantor (signed by a director where the Additional Guarantor is incorporated in England and Wales and otherwise by an authorised signatory) confirming that borrowing or guaranteeing, as appropriate, the Total Commitments would not cause any borrowing, guaranteeing or similar limit binding on it to be exceeded.
7. A certificate of a director, where the Additional Guarantor is incorporated in England and Wales and otherwise an authorised signatory, of the Additional Guarantor certifying that each copy document listed in this Part III of Schedule 2 is correct, complete and in full force and effect as at a date no earlier than the date of the Accession Letter.
8. If applicable, a copy of the resolution of the board of supervisory directors of each Additional Guarantor which is a Dutch Guarantor approving the resolutions of the board of managing directors referred to under paragraph 5 above.

9. If applicable, a copy of (i) the request for advice from each works council, or central or European works council with jurisdiction over the transactions contemplated by this Agreement and (ii) the unconditional positive advice from such works council.
10. If applicable, a copy of a power of attorney of the Additional Guarantor authorising a specified person or persons to execute the Accession Letter and the Finance Documents to which it is a party or any similar document that under the scope of its authority granted to said person or persons is authorised to execute the Accession Letter and the Finance Documents to which it is a party.
11. A copy of the irrevocable power of attorney, notarised before a Mexican notary public, granted by each Mexican Guarantor in favour of the Parent to act on its behalf as its agent in relation to the Finance Documents to which it is a party pursuant to clause 2.3 (*Obligors' Agent*) of this Agreement.
12. A copy of the power of attorney, notarised before a Mexican notary public, granted by each Mexican Guarantor in favour of the Borrower to act as its agent for service of process pursuant to clause 44.3 (*Service of Process*) of this Agreement.
13. If available, the latest audited financial statements of the Additional Guarantor.
14. A copy of any other Authorisation or other document, opinion or assurance which the Agent reasonably considers to be necessary or desirable (if it has notified the Additional Guarantor accordingly prior to the date of the Accession Letter) in connection with the entry into and performance of the transactions contemplated by the Accession Letter and each Finance Document to which the Additional Guarantor is a party or for the validity and enforceability of any Finance Document or of any Transaction Security created or intended to be created by the Additional Guarantor.
15. A legal opinion of Clifford Chance, legal advisers to the Original Lenders as to English law.
16. If the Additional Guarantor is incorporated in a jurisdiction other than England and Wales, a legal opinion of the legal advisers to the Additional Guarantor in the jurisdiction in which the Additional Guarantor is incorporated.
17. Either (i) a letter from the Borrower to the Agent (attaching supporting advice from the Borrower's English solicitors) confirming that no Additional Obligor is prohibited by Section 678 or Section 679 of the Companies Act 2006 from entering into the Finance Documents and/or (ii) evidence that each Additional Guarantor has done all that is necessary (including, without limitation, by re-registering as a private company) in order to enable each Additional Guarantor to enter into the Finance Documents and perform its obligations under the Finance Documents.
18. If an Additional Obligor is organised in the United States:
 - (a) a certificate in form and substance satisfactory to the Agent of the director of finance or other appropriate person of each Additional Obligor as to the solvency of such Additional Obligor; and

- (b) a copy of a good standing certificate issued as of a recent date by the Secretary of State or other appropriate official of such Additional Obligor's jurisdiction of incorporation.

**SCHEDULE 3
UTILISATION REQUEST**

From: Abengoa Concessions Investments Limited as Borrower

To: Global Loan Agency Services Limited as Agent

Dated:

Dear Sirs

**Abengoa Concessions Investments Limited – \$211,000,000 facility agreement
dated [•] September 2016 (the "Agreement")**

1. We refer to the Agreement. This is a Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to borrow a Loan on the following terms:

Proposed Utilisation Date: [•] (or, if that is not a Business Day, the next Business Day)

Amount: \$[•]
3. We confirm that each condition specified in Clause 4.2 (*Further conditions precedent*) is satisfied on the date of this Utilisation Request.
4. The proceeds of the Loan should be credited to the Escrow Account (as defined in the Escrow Agreement) and applied in accordance with the Escrow Agreement.
5. This Utilisation Request is irrevocable.

Yours faithfully

.....
authorised signatory for and on behalf of
ABENGOA CONCESSIONS INVESTMENTS LIMITED

SCHEDULE 4
FORM OF TRANSFER CERTIFICATE

To: Global Loan Agency Services Limited as Agent and
GLAS Trust Corporation Limited as Security Agent

From: [*The Existing Lender*] (the "**Existing Lender**") and [*The New Lender*] (the "**New Lender**")

Dated:

Abengoa Concessions Investments Limited – \$211,000,000 facility agreement
dated [•] September 2016 (the "Facility Agreement")

1. We refer to the Facility Agreement. This agreement (the "**Agreement**") shall take effect as a Transfer Certificate for the purpose of the Facility Agreement. Terms defined in the Facility Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to Clause 24 (*Changes to the Lenders*) of the Facility Agreement:
 - (a) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation and in accordance with Clause 24.5 (*Procedure for transfer*) all of the Existing Lender's rights and obligations under the Facility Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment(s) and participations in Utilisations under the Facility Agreement as specified in the Schedule.
 - (b) The proposed Transfer Date is [•].
 - (c) The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 34.2 (*Addresses*) of the Facility Agreement are set out in the Schedule.
3. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 24.4 (*Limitation of responsibility of Existing Lenders*) of the Facility Agreement.
4. The New Lender confirms, for the benefit of the Agent and without liability to the Borrower, that it is [a Qualifying Lender (other than a Treaty Lender)]/[a Treaty Lender]/[not a Qualifying Lender].*
5. [The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:
 - (a) a company resident in the United Kingdom for United Kingdom tax purposes;
or;
 - (b) a partnership each member of which is:
 - (i) a company so resident in the United Kingdom; or

- (ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or
 - (c) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.]**
- 6. [The New Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number [•]), and is tax resident in [•]***, so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax, and requests that it wishes that scheme to apply to the Agreement.]****
- 7. This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.
- 8. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
- 9. This Agreement has been entered into on the date stated at the beginning of this Agreement.

THE SCHEDULE

Commitment/rights and obligations to be transferred

[insert relevant details]

[Facility Office address, fax number and attention details for notices and account details for payments,]

For an on behalf of
[Existing Lender]

For an on behalf of
[New Lender]

By: By:

This Agreement is accepted as a Transfer Certificate for the purposes of the Facility Agreement by the Agent and the Transfer Date is confirmed as [•].

For an on behalf of
GLOBAL LOAN AGENCY SERVICES LIMITED as Agent

By:

For an on behalf of
GLAS TRUST CORPORATION LIMITED as Security Agent

By:

NOTES:

- * Delete as applicable – each New Lender is required to confirm which of these three categories it falls within.
- ** Include if New Lender comes within paragraph (i)(B) of the definition of Qualifying Lender in Clause 12.1 (*Definitions*).
- *** Insert jurisdiction of tax residence.
- **** Include if the New Lender holds a passport under the HMRC DT Treaty Passport scheme and wishes that scheme to apply to the Agreement.

SCHEDULE 5
FORM OF ASSIGNMENT AGREEMENT

To: Global Loan Agency Services Limited as Agent, GLAS Trust Corporation Limited as Security Agent and Abengoa Concessions Investments Limited as Borrower

From: [the Existing Lender] (the "**Existing Lender**") and [the New Lender] (the "**New Lender**")

Dated:

**Abengoa Concessions Investments Limited – \$211,000,000 facility agreement
dated [•] September 2016 (the "Facility Agreement")**

1. We refer to the Facility Agreement. This agreement (the "**Agreement**") shall take effect as an Assignment Agreement for the purpose of the Facility Agreement. Terms defined in the Facility Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to Clause 24.6 (*Procedure for assignment*) of the Facility Agreement:
 - (a) The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitments and participations in the Loan under the Agreement as specified in the Schedule.
 - (b) The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender's Commitments and participations in the Loan under the Agreement specified in the Schedule.
 - (c) The New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph (b) above.
3. The proposed Transfer Date is [•].
4. On the Transfer Date the New Lender becomes party to the Finance Documents as a Lender.
5. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 34.2 (*Addresses*) of the Facility Agreement are set out in the Schedule.
6. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 24.4 (*Limitation of responsibility of Existing Lenders*) of the Facility Agreement.
7. The New Lender confirms, for the benefit of the Agent and without liability to the Borrower, that it is [a Qualifying Lender (other than a Treaty Lender)]/[a Treaty Lender]/[not a Qualifying Lender].*

8. [The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:
- (a) a company resident in the United Kingdom for United Kingdom tax purposes; or
 - (b) a partnership each member of which is:
 - (i) a company so resident in the United Kingdom; or
 - (ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or
 - (c) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.]**
9. [The New Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number [•]), and is tax resident in [•]***, so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax, and requests that it wishes that scheme to apply to the Agreement.]****
10. This Agreement acts as notice to the Agent (on behalf of each Finance Party (other than the Security Agent)) and, upon delivery in accordance with Clause 24.7 (*Copy of Transfer Certificate and Assignment Agreement to Borrower*) of the Facility Agreement, to the Borrower of the assignment referred to in this Agreement.
11. This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.
12. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
13. This Agreement has been entered into on the date stated at the beginning of this Agreement.

THE SCHEDULE

Rights to be assigned and obligations to be released and undertaken

[insert relevant details]

[Facility Office address, fax number and attention details for notices and account details for payments,]

For and on behalf of

For and on behalf of

[Existing Lender]

[New Lender]

By: By:

This Agreement is accepted as an Assignment Agreement for the purposes of the Facility Agreement by the Agent and the Transfer Date is confirmed as [•].

Signature of this Agreement by the Agent constitutes confirmation by the Agent of receipt of notice of the assignment referred to herein, which notice the Agent receives on behalf of each Finance Party (other than the Security Agent).

For an on behalf of

GLOBAL LOAN AGENCY SERVICES LIMITED

as Agent

By:

For an on behalf of

GLAS TRUST CORPORATION LIMITED

as Security Agent

By:

NOTES:

* Delete as applicable – each New Lender is required to confirm which of these three categories it falls within.

** Include only if New Lender is a UK Non-Bank Lender – i.e. falls within paragraph (i)(B) of the definition of Qualifying Lender in Clause 12.1 (*Definitions*).

*** Insert jurisdiction of tax residence.

**** Include if the New Lender holds a passport under the HMRC DT Treaty Passport scheme and wishes that scheme to apply to the Agreement

**SCHEDULE 6
FORM OF ACCESSION LETTER**

To: Global Loan Agency Services Limited as Agent

From: [Subsidiary] and Abengoa Concessions Investments Limited

Dated:

Dear Sirs

**Abengoa Concessions Investments Limited – \$211,000,000 facility agreement
dated [•] September 2016 (the "Agreement")**

1. We refer to the Agreement. This is an Accession Letter. Terms defined in the Agreement have the same meaning in this Accession Letter unless given a different meaning in this Accession Letter.
2. [Subsidiary] agrees to become an Additional Guarantor and to be bound by the terms of the Agreement as an Additional Guarantor pursuant to Clause 25.2 (*Additional Guarantors*) of the Agreement. [Subsidiary] is a company duly incorporated under the laws of [name of relevant jurisdiction].
3. [The Borrower confirms that no Default is continuing or would occur as a result of [Subsidiary] becoming an Additional Guarantor.]
4. [Subsidiary's] administrative details are as follows:

Address:

Fax No:

Attention:
3. This Accession Letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

[This Accession Letter is entered into by deed.]¹

For and on behalf of
ABENGOA CONCESSIONS INVESTMENTS LIMITED

By:

For and on behalf of

[Subsidiary]

¹ If the facility is fully drawn there may be an issue in relation to past consideration for the proposed Additional Guarantor. This can be overcome by acceding by way of deed.

SCHEDULE 7
FORM OF RESIGNATION LETTER

To: Global Loan Agency Services Limited as Agent

From: [*resigning Obligor*] and Abengoa Concessions Investments Limited

Dated:

Dear Sirs

**Abengoa Concessions Investments Limited – \$211,000,000 facility agreement
dated [•] September 2016 (the "Agreement")**

1. We refer to the Agreement. This is a Resignation Letter. Terms defined in the Agreement have the same meaning in this Resignation Letter unless given a different meaning in this Resignation Letter.
2. Pursuant to Clause 25.4 (*Resignation of a Guarantor*), we request that [*resigning Obligor*] be released from its obligations as a Guarantor under the Agreement.
3. We confirm that:
 - (a) no Default is continuing or would result from the acceptance of this request; and
 - (b) the Guarantor is being disposed of pursuant to a Permitted Transaction or a disposal under paragraph (b)(vii) of Clause 22.19 (*Disposals*), in each case to a person other than a member of the Group, and all the Lenders have consented to the Borrower's request.
4. This Resignation Letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

For and on behalf of

ABENGOA CONCESSIONS INVESTMENTS LIMITED

By:

For and on behalf of

[*resigning Obligor*]

By:

SCHEDULE 8 TIMETABLE

Utilisation

Event	Specified Time
Delivery of a duly completed Utilisation Request (Clause 5.1 (<i>Delivery of a Utilisation Request</i>))	U-5
Agent notifies the Lenders of the Loan in accordance with paragraph (c) of Clause 5.4 (<i>Lenders' participation</i>)	U-4
Agent to have received all of the documents and other evidence listed in Part I of Schedule 2 (<i>Conditions Precedent to Initial Utilisation</i>) in form and substance satisfactory to the Lenders (see paragraph (a) of Clause 5.4 (<i>Lenders' participation</i>)).	U-4
Lenders make their participations in the Loan available to the Agent in accordance with paragraph (a) of Clause 5.4 (<i>Lenders' participation</i>)	U-1 By 5:00 p.m.

"U" = date of Utilisation

"U – X" = X Business Days prior to the date of Utilisation

SCHEDULE 9
ENTITIES SUBJECT TO INSOLVENCY PROCEEDINGS

Abengoa US Holding LLC (P1)
Abengoa Bioenergy Holdco Inc.
Abeinsa Holding Inc.
Abengoa US LLC (P2)
Abengoa US Operations LLC (P3)
Abengoa Bioenergy Technology Holding, LLC
Abengoa Bioenergy Hybrid of Kansas, LLC
Abengoa Bioenergy New Technologies, LLC
Abengoa Bioenergy Biomass of Kansas, LLC
Abengoa Bioenergy Operations, LLC
Abengoa Bioenergy Meramec Holding, Inc.
Abengoa Bioenergy Meramec Renewable, LLC
Abengoa Bioenergy Funding, LLC
Abengoa Bioenergy Maple, LLC
Abengoa Bioenergy Indiana LLC
Abengoa Bioenergy Illinois LLC
Abengoa Bioenergy US Holding LLC
Abengoa Bioenergy Trading US LLC
Abengoa Bioenergy Outsourcing LLC
Abengoa Bioenergy of Nebraska LLC
Abengoa Bioenergy Engineering & Construction LLC
Abengoa Bioenergy Company LLC
Abencor USA, LLC
Teyma Construction USA, LLC
Abeinsa EPC, LLC
Inabensa USA, LLC
Nicsa Industrial Supplies, LLC
Abener Construction Services, LLC (formerly Abener Engineering and Construction Services, LLC)
Abener North America Construction, LP
Abengoa Solar, LLC
Teyma USA & Abener Engineering and Construction Services General Partnership (Solana)
Abener Teyma Hugoton General Partnership (Hugoton)
Abeinsa Abener Teyma General Partnership (Vieste, Agrifos, Portland)
Abener Teyma Mojave General Partnership (Mojave)
Abener Teyma Inabensa JV (Mount Signal)
Abengoa Concessões Brasil Holding S.A. (formerly Abengoa Linhas do Brasil Holding, S.A.)
Abengoa Construção Brasil, Ltda (formerly Abengoa Brasil)
Abengoa Greenfield Brasil Holding, S.A. (formerly ATE XXV Transmissora de Energia S.A.)
Energoprojekt-Gliwice S.A.
Abengoa Bioenergy Netherlands B.V.
Abengoa Bioenergy Trading Europe B.V.²

² Included in this list only until such time as the proceedings referred to in paragraph (c) of Clause 18.11 (*No default*) are dismissed or discharged.

Abengoa Perú, S.A.
Abengoa México, S.A. de CV

SIGNATURES

The Parent

SIGNED by a duly authorised
representative for and on behalf of
ABENGOA S.A.

)
)
) 

Signature

Joaquin Fernandez Pierola Marin

Name

Authorised Signatory

Title

Address: C/Energia Solar, 1, 41014 Sevilla, Spain

Attention: Joaquin Fernandez Pierola Marin

Facsimile: 91 75 233 50

Email: joaquin.pierola@abengoa.com

The Borrower

SIGNED by a duly authorised
representative for and on behalf of
ABENGOA CONCESSIONS
INVESTMENTS LIMITED

)
)
)
)



..... Signature

Joaquin Fernandez Pierola Marin

..... Name

Authorised Signatory

..... Title

Address: St Martin's House, 1 Lyric Square, London, England, W6 0NB

Attention: Joaquin Fernandez Pierola Marin

Facsimile: 9175 23350

Email: joaquin.pierola@abengoa.com

The Arranger

SIGNED by a duly authorised
representative for and on behalf of
LAJEDOSA INVESTMENTS S.À R.L.

)
)
)

..... *Mart D Sklar* Signature

..... *Martin D Sklar* Name

..... *Manager* Title

Address: c/o Elliott Management Corporation, 40 West 57th Street, New York, NY 10019,
United States of America

Attention: Jeffrey Yurkovic

Facsimile: +1 212 478 2466

Email: jyurkovic@elliottmgmt.com

The Agent

SIGNED by a duly authorised
representative for and on behalf of
GLOBAL LOAN AGENCY SERVICES
LIMITED

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)
)
)



.....

Signature

.....

Iva Bardhi

Name

.....

Transaction Manager

Title

.....

Address: 45 Ludgate Hill, London EC4M 79U

Attention: Transaction Management Group

Facsimile: +44 (0) 20 3070 0113

Email: tmg@glas.agency

The Calculation Agent

SIGNED by a duly authorised
representative for and on behalf of
**GLOBAL LOAN AGENCY SERVICES
LIMITED**

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)
)
)

.....
Iva Bardhi
.....
Transaction Manager
.....

Signature
Name
Title

Address: 45 Ludgate Hill, London EC4M 7JU

Attention: Transaction Management Group

Facsimile: +44 (0) 20 3070 0113

Email: tmg@glas.agency

The Security Agent

SIGNED by a duly authorised
representative for and on behalf of
**GLAS TRUST CORPORATION
LIMITED**

)
)
)
)


..... Signature
..... **Iva Bardhi** Name
..... Transaction Manager
..... Title

Address: 45 Ludgate Hill, London EC4M 7JU

Attention: Transaction Management Group

Facsimile: +44 (0) 20 3070 0113

Email: tmg@glas.agency

The Original Lenders

SIGNED by a duly authorised
representative for and on behalf of
ARVO INVESTMENT HOLDINGS
S.À R.L.

)
)
)
)



..... Signature
Jakub Jasica
..... Name
Manager
..... Title

Address: 6C, rue Gabriel Lippmann, L-5365, Munsbach Luxembourg

Attention: Carlos Sanz Esteve / Operations

Facsimile: +352 26 15 79 20 / +1 952 893-9613

Email: csanzesteve@varde.com / operations@varde.com

SIGNED by a duly authorised)
representative for and on behalf of)
CCP CREDIT ACQUISITION)
HOLDINGS LUXCO S.À R.L.)

.......... Signature
.....**Keith Greally**..... Name
.....**Authorized Signatory**..... Title

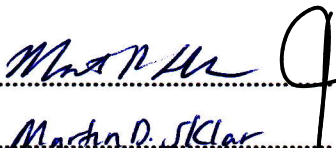


Address: 375 Park Avenue, 11th Floor, New York, NY 10152

Attention: Closing Team

Facsimile: 201-917-2118

Email: creditadmin@centerbridge.com

SIGNED by a duly authorised)
representative for and on behalf of)
LAJEDOSA INVESTMENTS S.À R.L.)


..... Signature

..... Name

..... Title

Address: c/o Intertrust, 6 Rue Eugene Ruppert, L-2453 Luxembourg

Attention: Pierre Claudel

Facsimile: + 352 26 449 167

Email: lu-team.elliott@intertrustgroup.com

SIGNED by a duly authorised
representative for and on behalf of
OCM LUXEMBOURG ABG DEBT
S.À R.L.

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		Signature
.....	
Frederik GRYsolle	Hugo NEUMAN	Name
.....	
Manager	Manager	Title
.....	

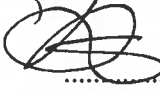
Address: 26A Boulevard Royal, L-2499, Luxembourg, Grand Duchy of Luxembourg

Attention: The Managers

Facsimile: +352 26 632599

Email: luxcosec@oaktreecapital.com

SIGNED by a duly authorised
representative for and on behalf of
POTTER NETHERLANDS
COÖPERATIEF U.A.

)
)
)
)

..... Signature
H WATKINS **D.C. Kulk** Name
DIRECTOR **DIRECTOR** Title

Address: Naritaweg 165, Telestone 8, 1043 BW, Amsterdam, The Netherlands

Attention: The Directors; Mylene Sint Jago; Hinna Nasim

Facsimile: +44 203 047 3001 (and, for notices in relation to payments/administration, +1
212 656 1052)

Email: ehoogeboom@citco.com; dkulk@citco.com; helen.watkins@etonpark.com
(and, for notices in relation to payments/administration,
James.Campion@etonpark.com; BankDebtNotices@etonpark.com)

SIGNED by a duly authorised)
representative for and on behalf of)
SPV CAPITAL FUNDING)
LUXEMBOURG, S.À R.L.)


..... Signature
GOARREY ABEL..... Name
MANAGER..... Title

Address: 6 rue Adolphe, L-1116 Luxembourg (with a copy to D. E. Shaw & Co. (London),
LLP, 55 Baker Street, London W1U 8EW, United Kingdom)

Attention: Legal

Facsimile: +44 20 7409 4375

Email: joshua.swatland@deshaw.com; kevin.krist@deshaw.com