

EXECUTION VERSION

JUNIOR FACILITY AGREEMENT

20 AUGUST 2015

for

DENMARK HOLDCO LIMITED

with

WILMINGTON TRUST (LONDON) LIMITED
acting as Agent

and

BARCLAYS BANK PLC
acting as Security Agent

ALLEN & OVERY

Allen & Overy LLP

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THIS AGREEMENT is dated 20 August 2015 and made

BETWEEN:

- (1) **DENMARK HOLDCO LIMITED**, a private company limited by shares incorporated in England and Wales with company number 09706728 as borrower (the **Borrower**);
- (2) **DENMARK TOPCO LIMITED**, a private company limited by shares incorporated in Jersey with company number 119105 (the **TopCo**);
- (3) **THE FINANCIAL INSTITUTIONS** listed in Part 1 and Part 2 of Schedule 1 (The Original Parties) as lenders (the **Original Lenders**);
- (4) **WILMINGTON TRUST (LONDON) LIMITED** as agent of the other Finance Parties (the **Agent**);
- (5) **BARCLAYS BANK PLC** as security trustee for the Secured Parties (the **Security Agent**); and
- (6) **BARCLAYS BANK PLC** as Account Bank (the **Account Bank**).

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

Acceptable Bank means:

- (a) a bank or financial institution which has a rating for its long-term unsecured and non credit-enhanced debt obligations of A- or higher by Standard & Poor's Rating Services or Fitch Ratings Ltd or A3 or higher by Moody's Investors Service Limited or a comparable rating from an internationally recognised credit rating agency; or
- (b) any other bank or financial institution approved by the Majority Lenders.

Account Bank Mandate means any agreement entered into or to be entered into by the Account Bank with a member of the Group for the purpose of opening and/or maintaining any account or entering into any banking relationship with that member of the Group in accordance with Clause 23.33 (Bank Accounts).

Accounting Principles means generally accepted accounting principles in the United Kingdom, including IFRS.

Accounting Reference Date means 31 December.

AD Plant means the Weston anaerobic digestion plant.

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.

Annual Financial Statements has the meaning given to that term in Clause 21 (Information undertakings).

Assignment Agreement and Lender Accession Undertaking means an agreement substantially in the form set out in Schedule 4 (Form of Assignment Agreement and Lender Accession Undertaking) or any other form agreed between the relevant assignor and assignee **provided that** if that other form does not contain the undertaking set out in the form set out in Schedule 4 (Form of Assignment Agreement and Lender Accession Undertaking) it shall not be a Creditor Accession Undertaking as defined in, and for the purposes of, the Intercreditor Agreement.

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

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".

Base Reference Bank Rate means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Agent at its request by the Base Reference Banks:

- (a) (other than where paragraph (b) below applies) as the rate at which the relevant Base Reference Bank could borrow funds in the Relevant Market in the relevant currency and for the relevant period were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size in that currency and for that period; or
- (b) if different, as the rate (if any and applied to the relevant Base Reference Bank and the relevant currency and period) which contributors to the applicable Screen Rate are asked to submit to the relevant administrator.

Base Reference Banks means the principal London offices of The Hongkong and Shanghai Banking Corporation Limited and Standard Chartered Bank, or such other entities as may be appointed by the Agent in consultation with the Borrower.

Board means the board of directors of each of the Company and the Borrower (as the case may be).

Bond Agent means a person acceptable to the Majority Lenders appointed as an agent to the Lenders in respect of the Lender PIK Bonds, provided that such person accedes to this Agreement by delivering to the Agent an accession deed substantially in the form set out in Schedule 18 (Form of Bond Agent Accession Deed).

Borrower's Auditors means BDO or any other firm appointed by the Borrower to act as its statutory auditor.

Borrowings means, at any time, the aggregate outstanding principal (including all capitalised amounts), capital or nominal amount (and any fixed or minimum premium payable on prepayment or redemption) of any indebtedness of members of the Group for or in respect of:

- (a) moneys borrowed and debit balances at banks or other financial institutions;
- (b) any acceptances under any acceptance credit or bill discount facility (or dematerialised equivalent);
- (c) any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) any Finance Lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis and meet any requirements for de-recognition under the Accounting Principles);
- (f) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution in respect of (i) an underlying liability of an entity which is not a member of the Group, which liability would fall within one of the other paragraphs of this definition or (ii) any liabilities of any member of the Group relating to any post-retirement benefit scheme;
- (g) any amount raised by the issue of shares which are redeemable (other than at the option of the issuer) before the Termination Date or are otherwise classified as borrowings under the Accounting Principles;
- (h) any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind the entry into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question or (ii) the agreement is in respect of the supply of assets or services and payment is due more than 180 days after the date of supply;
- (i) any amount raised under any other transaction (including any forward sale or purchase agreement, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing or otherwise classified as borrowings under the Accounting Principles;
- (j) any counter-indemnity obligation in relation to a Letter of Credit (as defined in the Senior Facilities Agreement) or any letter of credit issued under a replacement letter of credit facility referred to in paragraph (g) of the definition of Permitted Financial Indebtedness;
- (k) the accreting portion of any index-linked swap; and
- (l) (without double counting) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (k) above.

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

- (a) the interest 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 that Loan or Unpaid Sum, had the principal amount or Unpaid Sum received been paid 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.

Brokerage Business means the business carried on by the consulting and brokerage division of the Group involving the provision of recycling-led waste solutions for customer sites, advanced environmental reporting, waste-auditing and the trading of recyclables on behalf of clients and the brokerage business involving the provision of skip hire and collection/disposal services across the UK to commercial and domestic clients.

Budget means:

- (a) in respect of the Financial Year ending on 31 December 2015, the budget delivered under paragraph 5(a) of Schedule 2 (Conditions precedent) as updated from time to time pursuant to Clause 21.4 (Budget); and
- (b) in respect of the Financial Years commencing on or after 1 January 2016, the budget delivered by the Borrower to the Agent (and as updated from time to time) in accordance with Clause 21.4 (Budget).

Business Acquisition has the meaning given to that term in Clause 22.1 (Financial definitions).

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

Business Plan means:

- (a) during the Financial Year ending on 31 December 2015, the Budget (as defined in the Existing Senior Facilities Agreement) prepared and delivered in respect of that Financial Year in accordance with the terms of the Existing Senior Facilities Agreement;
- (b) during the Financial Year ending on 31 December 2016, the business plan delivered by the Borrower pursuant to paragraph (a)(iii) of Clause 21.5 (Strategic Review and Business Plan) or the latest updated Business Plan delivered pursuant to paragraph (c) of Clause 21.5 (Strategic Review and Business Plan); and
- (c) on or after 1 January 2017, the latest business plan delivered by the Borrower pursuant to paragraph (b) of Clause 21.5 (Strategic Review and Business Plan) or the latest updated Business Plan delivered pursuant to paragraph (d) of Clause 21.5 (Strategic Review and Business Plan),

in each case, in the form of the Computer Model.

Capital Expenditure has the meaning given to that term in Clause 22.1 (Financial definitions).

Cash means, at any time, cash in hand or at bank and (in the latter case) credited to an account in the name of a member of the Group with the Account Bank and to which a member of the Group is alone (or together with other members of the Group) beneficially entitled and for so long as:

- (a) that cash is repayable within three days after the relevant date of calculation;

- (b) repayment of that cash is not contingent on the prior discharge of any other indebtedness of any member of the Group or of any other person whatsoever or on the satisfaction of any other condition;
- (c) there is no Security over that cash except for any Permitted Security constituted by a netting or set-off arrangement entered into by members of the Group in the ordinary course of their banking arrangements; and
- (d) the cash is freely and (except as mentioned in paragraph (a) above) immediately available to be applied in repayment or prepayment of the Facility.

Cash Equivalent Investments means at any time:

- (a) certificates of deposit maturing within one year after the relevant date of calculation and issued by an Acceptable Bank;
- (b) any investment in marketable debt obligations issued or guaranteed by the government of the United Kingdom or by an instrumentality or agency thereof having an equivalent credit rating, maturing within one year after the relevant date of calculation and not convertible or exchangeable to any other security;
- (c) commercial paper not convertible or exchangeable to any other security:
 - (i) for which a recognised trading market exists;
 - (ii) issued by an issuer incorporated in the United Kingdom;
 - (iii) which matures within one year after the relevant date of calculation; and
 - (iv) which has a credit rating of either A-1 or higher by Standard & Poor's Rating Services or F1 or higher by Fitch Ratings Ltd or P-1 or higher by Moody's Investors Service Limited, or, if no rating is available in respect of the commercial paper, the issuer of which has, in respect of its long-term unsecured and non-credit enhanced debt obligations, an equivalent rating;
- (d) sterling bills of exchange eligible for rediscount at the Bank of England and accepted by an Acceptable Bank (or their dematerialised equivalent);
- (e) any investment in money market funds which (i) have a credit rating of either A-1 or higher by Standard & Poor's Rating Services or F1 or higher by Fitch Ratings Ltd or P-1 or higher by Moody's Investors Service Limited, (ii) invest substantially all their assets in securities of the types described in paragraphs (a) to (d) above and (iii) can be turned into cash on not more than 30 days' notice; or
- (f) any other debt security approved by the Majority Lenders,

in each case, denominated in sterling and to which any member of the Group is alone (or together with other members of the Group) beneficially entitled at that time and which is not issued or guaranteed by any member of the Group or subject to any Security (other than Security referred to in paragraph (b) of the definition of Permitted Security).

Cash Pooling Arrangements means any cash pooling, net balance or balance transfer arrangement made available to any member of the Group by the Account Bank, in each case in the ordinary

course of its banking arrangements for the purpose of netting debit balances and credit balances on various accounts of members of the Group with the Account Bank.

Cash Sweep Date has the meaning given to it in Clause 7 (Cash Sweep).

CEHL means Cory Environmental Holdings Limited, a company incorporated under the laws of England and Wales with registered number 5360864.

CEHL Shares means all of the shares in respect of the share capital of CEHL.

Centre of Main Interests means the "centre of main interests" of the Borrower for the purposes of Council Regulation (EC) No 1346/2000 of 29 May 2000.

Chairman means the chair of each of the Boards.

Change of Control means any person or group of persons (other than the New Shareholders and the Affiliates and Related Funds of a New Shareholder) acting in concert:

- (a) acquiring (directly or indirectly) more than 50% of the shares in the TopCo; or
- (b) becoming legally or beneficially entitled (directly or indirectly) to appoint and/or remove or to control the appointment or removal of at least 50% of the directors of TopCo, the Borrower or the Company.

For the purposes of this definition, a shareholder together with its Affiliates and/or Related Funds shall be considered persons acting in concert.

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

Code means the U.S. Internal Revenue Code of 1986.

Collections Business means the business of providing municipal (through medium to long-term contracts with local authorities) and commercial waste collection and cleansing services carried on by Cory Environmental Municipal Services Limited across England, in the South East, the South West and the Midlands.

Commitment means:

- (a) in relation to an Original Lender, the amount set opposite its name under the heading "Commitment" in Part 1 or Part 2 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 of any Commitment transferred to it under this Agreement,

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

Company means Viking Consortium Acquisition Limited, a private company limited by shares incorporated in England and Wales with company number 06067505.

Company Share Charge and Loan Assignment means the share charge and loan assignment dated on or about the date of this Agreement between the Borrower and the Security Agent.

Compliance Certificate means a certificate substantially in the form set out in Schedule 5 (Form of Compliance Certificate) or otherwise in form and substance satisfactory to the Agent.

Computer Model means the computer model in relation to the business of the Group and audited by the Borrower's Auditor, being the Computer Model (as defined in the Existing Senior Facilities Agreement) in place under the Existing Senior Facilities Agreement as at the date of the Restructuring Effective Date.

Confidential Information means all information relating to the TopCo, 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 either:

- (a) any member of the Group or any of its 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 38 (Confidential Information); or
- (ii) is identified in writing at the time of delivery as non-confidential by any member of the Group 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 paragraphs (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 as set out in Schedule 6 (LMA Form of Confidentiality Undertaking) or in any other form agreed between the Borrower and the Agent.

Contribution Notice means a contribution notice issued by the Pensions Regulator under section 38 or section 47 of the Pensions Act 2004.

Cornwall Contract means the contract between Cornwall Council and Cory Environmental Municipal Services Limited to deliver waste and recycling collections and beach and street cleaning services throughout Cornwall dated on or about 21 November 2011.

Cornwall Pension Scheme means the defined benefit pension scheme of certain employees of Cornwall Council who, following execution of the Cornwall Contract, became on 1 April 2012 employees of the Group for the eight-year tenor of the Cornwall Contract during which time the Group will assume responsibility for the funding of such defined benefit pension scheme for such employees.

CTA means the Corporation Tax Act 2009.

Dangerous Substance means any natural or artificial substance or thing (in any form) that is capable (alone or in combination) of causing harm to man or any other living organism or capable of damaging the environment, man-made structures and/or public health, including, but not limited to, controlled, special, hazardous, polluting, toxic or dangerous substances and/or waste and/or radiation, noise, vibrations, electricity or heat.

Debt Purchase Transaction means, in relation to a person, a transaction where such person:

- (a) purchases by way of assignment or transfer;
- (b) enters into any sub-participation in respect of; or
- (c) enters into any other agreement or arrangement having an economic effect substantially similar to a sub-participation in respect of,

any Commitment or amount outstanding under this Agreement.

Deed of Security Assignment means the deed of security assignment dated 31 July 2008 between Cory Environmental Limited and The Governor and Company of the Bank of Ireland.

Default means an Event of Default or any event or circumstance specified in Clause 24 (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.

Defaulting Lender means any Lender:

- (a) which has otherwise rescinded or repudiated a Finance Document; or
- (b) with respect to which an Insolvency Event has occurred and is continuing.

Delegate means any delegate, agent, attorney or co-trustee appointed by the Security Agent.

Disposal has the meaning given to that term in Clause 9.2 (Disposal, Insurance and Riverside Proceeds).

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 Party, 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.

Distributable Amount on a Cash Sweep Date means the lower of:

- (a) the aggregate Cash and Cash Equivalent Investments as at that Cash Sweep Date; and
- (b) the maximum amount, as determined on the Testing Date in respect of that Cash Sweep Date, that can be applied for the prepayment and repayment of the Loan that will allow the Group's forecast available cash during the 12-month period commencing on that Cash Sweep Date based on the Budget and Business Plan, taking into account:
 - (i) the Group's projected operating cashflow (but excluding proceeds from any scheduled disposal of assets that would be required to be applied in prepayment under Clause 9.2 (Disposal, Insurance and Riverside Proceeds));
 - (ii) the Group's projected interest and fees payable in cash under this Agreement and the Senior Facilities Agreement; and
 - (iii) adjustments on the Group's projected operating cashflow following the scheduled disposal of assets,

not to be less than the Minimum Cash Balance.

Distributable Amount Confirmation means a certificate substantially in the form set out in Schedule 12 (Form of Distributable Amount Confirmation) signed by a director of the Borrower which includes (a) the Distributable Amount in respect of the relevant Cash Sweep Date and (in reasonable detail) computations in respect of that Distributable Amount and (b) if that Cash Sweep Date is the Senior Discharge Date, a confirmation as to the amount of the Distributable Amount in respect of that Cash Sweep Date that is required to be applied in payment and/or prepayment under the Senior Facilities Agreement.

Dormant Subsidiary means a member of the Group which does not trade (for itself or as agent for any person) and does not own, legally or beneficially, assets (including, without limitation, indebtedness owed to it) which in aggregate have a value of £5,000 or more or its equivalent in other currencies.

EBIT means, in respect of any Relevant Period, the consolidated operating profit of the Group before taxation (excluding the results from discontinued operations):

- (a) **before deducting** any Net Finance Charges;
- (b) **not including** any accrued interest owing to any member of the Group;
- (c) **before taking into account** any Exceptional Items;
- (d) **after deducting** the amount of any profit (or adding back the amount of any loss) of any member of the Group which is attributable to minority interests, provided that EBIT shall include any distributions paid from EFW ProjectCo to EFW MidCo;
- (e) **before taking into account** any unrealised gains or losses on any derivative instrument or financial instrument (other than any derivative instrument which is accounted for on a hedge accounting basis); and
- (f) **before taking into account** any gain or loss arising from an upward or downward revaluation of any other asset,

in each case, to the extent added, deducted or taken into account, as the case may be, for the purposes of determining operating profits of the Group before taxation.

EBITDAP means, in respect of any Relevant Period, EBIT for that Relevant Period **after adding back** any amount attributable to the amortisation, or depreciation of assets of members of the Group and any amount attributable to provisioning for aftercare or restoration.

EFW MidCo means Cory Riverside (Holdings) Limited.

EFW Plant means the energy-from-waste plant constructed at Belvedere in Bexley, London pursuant to the WRWA Agreement and owned by the EFW ProjectCo.

EFW ProjectCo means Riverside Resource Recovery Limited.

EFW Services means services relating to the transport of waste by river to the EFW Plant, the incineration of waste at the EFW Plant and the disposal of waste which cannot be incinerated at the EFW Plant due to lack of availability in capacity.

EFW-Only Contract means a contract solely for the provision of EFW Services by Cory Environmental Limited in circumstances where EFW ProjectCo has assumed an obligation to Cory Environmental Limited to perform all of Cory Environmental Limited's obligations under such contract and either:

- (a) such contract includes provisions which allow Cory Environmental Limited to avoid suffering a material and adverse effect if EFW ProjectCo fails to perform any or all of such obligations; or
- (b) to the extent legally capable of being the subject of a cap on liability, the maximum aggregate liability of Cory Environmental Limited under such contract is capped at an amount which is not greater than the sum of X and £7,500,000.

EFW-Plus Capped Contract means a contract for the provision of EFW Services and other waste management services by Cory Environmental Limited in circumstances where:

- (a) such contract is expected to provide gross revenues of less than £3,000,000 (indexed to RPI from 31 December 2005) per annum for that member of Cory Environmental Limited in respect of waste management services which are not EFW Services; and
- (b) EFW ProjectCo has assumed an obligation to Cory Environmental Limited to perform all of Cory Environmental Limited's obligations under such contract in respect of EFW Services,

and, either:

- (i) such contract includes provisions which allow Cory Environmental Limited to avoid suffering a material and adverse effect if EFW ProjectCo fails to perform any or all of its obligations in respect of EFW Services to be provided under such contract; or
- (ii) to the extent legally capable of being the subject of a cap on liability, the maximum aggregate liability of Cory Environmental Limited under such contract is capped at an amount which is not greater than the sum of X and £7,500,000.

EFW-Plus Ring Fenced Contract means a contract for the provision of EFW Services and other waste management services by Cory Environmental Limited in circumstances where:

- (a) such contract is expected to provide gross revenues of less than £3,000,000 (indexed to RPI from 31 December 2005) per annum for Cory Environmental Limited in respect of waste management services which are not EFW Services; and
- (b) EFW ProjectCo has assumed an obligation to Cory Environmental Limited to perform all of Cory Environmental Limited's obligations under such contract in respect of EFW Services; and
- (c) such contract provides that a failure to perform any or all of the EFW Services (not attributable to events of force majeure) shall not result in the early termination of such contract to the extent that it relates to other waste management services (and vice versa) and that no right of set-off shall be exercisable by the counterparty to such contract in respect of amounts relating to EFW Services and amounts relating to other waste management services,

and, either:

- (i) such contract includes provisions which allow Cory Environmental Limited to avoid suffering a material and adverse effect if EFW ProjectCo fails to perform any or all of its obligations in respect of EFW Services to be provided under such contract; or
- (ii) to the extent legally capable of being the subject of a cap on liability, the maximum aggregate liability of Cory Environmental Limited under such contract, in respect of EFW Services, is capped at an amount which is not greater than the sum of X and £7,500,000.

Enforcement Notice means an enforcement notice issued in respect of Environmental Law or an Environmental Permit by the Environmental Regulator.

Environment Agency means the non-departmental public body formed under the Environment Act 1995.

Environment means humans, animals, plants and all other living organisms, including the ecological systems of which they form part and the following media:

- (a) air (including, without limitation, air within natural or man-made structures, whether above or below ground);
- (b) water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and
- (c) land (including, without limitation, land under water).

Environmental Claim means any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law and/or Environmental Permit.

Environmental Law means any applicable law or regulation which relates to:

- (a) the pollution or protection of the Environment;
- (b) the conditions of the workplace; or
- (c) the generation, handling, storage, use, release or spillage of any substance which, alone or in combination with any other, is capable of causing harm to the Environment, including, without limitation, any waste.

Environmental Permits means any permit (including an EP Permit) 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 any member of the Group.

Environmental Regulator means:

- (a) the Environment Agency; and/or
- (b) a Local Authority; and/or
- (c) any other court, authority, agency, department or other person or legal entity having authority to take action and/or jurisdiction in respect of Environmental Law.

EP Permit means a permit issued under the EP Regulations.

EP Regulations means the Environmental Permitting (England and Wales) Regulations 2010 (SI 2010/675).

Event of Default means any event or circumstance specified as such in Clause 24 (Events of Default).

Exceptional Items means any exceptional, one-off, non-recurring or extraordinary items.

Excess cash cover means the aggregate amount of cash cover in place in respect of the L/C Revolving Facility (as defined the Senior Facilities Agreement) which has been provided pursuant to clauses 9 (Cash Sweep) and 11 (Mandatory prepayment and cancellation) of the Senior Facilities Agreement in excess of the Total L/C Revolving Facility Commitments (as defined in the Senior Facilities Agreement).

Existing Hedging Transactions means interest rate and inflation risk hedging arrangements entered into by the Group in connection with the Existing Senior Finance Documents and the Existing Junior Finance Documents.

Existing Junior Facilities Agreement means the junior facilities agreement dated 13 March 2007 between, among others, Viking Consortium Borrower Limited as borrower and The Bank of New York Mellon, London Branch as agent as amended and restated on 30 March 2007, 16 May 2007, 29 November 2011 and 3 February 2012 and as amended on 4 May 2012.

Existing Junior Finance Documents has the meaning given to the term "Junior Finance Documents" in the Existing Junior Facilities Agreement.

Existing Senior Facilities Agreement means the senior facilities agreement dated 13 March 2007 between, among others, Viking Consortium Finance Limited as parent and Barclays Bank PLC as agent as amended and restated on 30 March 2007, 16 May 2007, 29 November 2011 and 3 February 2012 and as amended on 4 May 2012.

Existing Senior Finance Documents has the meaning given to the term "Finance Document" in the Existing Senior Facilities Agreement.

Facility means the term facility made available under this Agreement as described in Clause 2.1 (The Facility).

Facility Office means:

- (a) in respect of a Lender, the office or offices notified by that 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; or
- (b) in respect of any other Finance Party, the office in the jurisdiction in which it is resident for tax purposes.

FATCA means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the U.S. and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the U.S. Internal Revenue Service, the U.S. 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 U.S.), 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 U.S.), 1 January 2017; 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 2017,

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.

Federated Pension Plan means the defined benefit pension scheme in which the Group participates in respect of employees transferred from public service pension schemes.

Fee Letter means any letter or letters dated on or about the date of this Agreement between one or more Finance Parties and the Company and/or the Borrower setting out any of the fees referred to in Clause 14 (Fees).

Finance Charges means, for any Relevant Period, the aggregate amount of the accrued interest, commission, fees, discounts, prepayment fees, premiums or charges and other finance payments in

respect of Borrowings whether or not paid, payable by any member of the Group (calculated on a consolidated basis) in respect of that Relevant Period:

- (a) **excluding** any upfront fees or costs;
- (b) **including** the interest (but not the capital) element of payments in respect of Finance Leases; and
- (c) **including** any commission, fees, discounts, commitment fee, letter of credit fronting fees and other finance payments payable by (and deducting any such amounts payable to) any member of the Group under any interest rate or RPI hedging arrangement.

Finance Document means this Agreement, any Lender PIK Bond, any Compliance Certificate, any Fee Letter, the Intercreditor Agreement, any Transaction Security Document, the Restructuring Agreement, the Account Bank Mandate and any other document designated as a "Finance Document" by the Agent and the Borrower.

Finance Lease has the meaning given to it in Clause 22.1 (Financial definitions).

Finance Party means the Agent, the Security Agent, a Lender or the Account Bank.

Financial Indebtedness means any indebtedness for or in respect of:

- (a) moneys borrowed and debit balances at banks or other financial institutions;
- (b) any acceptance under any acceptance credit or bill discounting facility (or dematerialised equivalent);
- (c) any note purchase facility or the issue of bonds (but not Trade Instruments), notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any Finance Lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any Treasury Transaction (and, when calculating the value of that Treasury Transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that Treasury Transaction, that amount) shall be taken into account);
- (g) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution of an entity which is not a member of the Group which liability would fall within one of the other paragraphs of this definition;
- (h) any amount raised by the issue of shares which are redeemable (other than at the option of the issuer) before the Termination Date or are otherwise classified as borrowings under the Accounting Principles;
- (i) any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind entering into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question or (ii) the agreement is in

respect of the supply of assets or services and payment is due more than 180 days after the date of supply;

- (j) any amount raised under any other transaction (including any forward sale or purchase, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing or otherwise and which is classified as borrowings under the Accounting Principles; and
- (k) the amount of any liability in respect of any guarantee for any of the items referred to in paragraphs (a) to (j) above.

Financial Support Direction means a financial support direction issued by the Pensions Regulator under section 43 of the Pensions Act 2004.

Financial Year means the annual accounting period of the Group ending on or about 31 December in each year.

Former Registered Dockworkers Pension Fund means the defined benefit pension scheme in which the Group participates in respect of certain employees along with other companies across the waste management industry.

Funding Rate means any individual rate notified by a Lender to the Agent pursuant to paragraph (a)(ii) of Clause 13.4 (Cost of funds).

Group means the Borrower and each of its Subsidiaries for the time being, excluding the Riverside Group.

Historic Screen Rate means, in relation to any Loan, the most recent applicable Screen Rate for the currency of that Loan and for a period equal in length to the Interest Period of that Loan and which is as of a day which is no more than five days before the Quotation Day.

Holding Account means an account:

- (a) held by a member of the Group with the Account Bank;
- (b) identified in a letter between the Borrower and the Agent as a Holding Account; and
- (c) subject to Security in favour of the Security Agent which Security is in form and substance satisfactory to the Security Agent,

(as the same may be redesignated, substituted or replaced from time to time).

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

IFRS means international accounting standards within the meaning of 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) (if the Agent is also a Lender) it is a Defaulting Lender under paragraph (a) or (b) of the definition of Defaulting Lender; or
- (d) an Insolvency Event has occurred and is continuing with respect to the Agent,

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; and
 payment is made within three 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 Non-Executive Director means the independent non-executive director of each of the Boards.

Initial Material Contract means each contract to which a member of the Group is a party which is listed in Schedule 9 (Initial Material Contracts) for so long as that contract is not, pursuant to the Budget most recently provided pursuant to Clause 21.4 (Budget), expected to provide gross revenues of less than £3,000,000 (indexed to RPI from 31 December 2005) per annum for that member of the Group (or, if less, over the remaining scheduled term thereof) determined by reference to the most recent Budget supplied by the Borrower.

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 has instituted 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 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.

Insurance Proceeds has the meaning given to it in Clause 9.2 (Disposal, Insurance and Riverside Proceeds).

Intellectual Property means:

- (a) any patents, trade marks, service marks, designs, business names, copyrights, database rights, design rights, domain names, moral rights, inventions, confidential information, knowhow and other intellectual property rights and interests (which may now or in the future subsist), whether registered or unregistered; and
- (b) the benefit of all applications and rights to use such assets (which may now or in the future subsist).

Intercreditor Agreement means the intercreditor agreement dated on or about the date of this Agreement and made between, among others, the Company, the Borrower, the Intra-Group Lenders (as defined in the Intercreditor Agreement), the Debtors (as defined in the Intercreditor Agreement), Barclays Bank PLC as Senior Agent and Security Trustee and the Lenders (as Junior Lenders).

Interest Payment Date means 30 June and 31 December each year.

Interest Period means:

- (a) in relation to the Loan, (i) the period beginning on the Restructuring Effective Date until the next Interest Payment Date and (ii) each subsequent period beginning and ending on an Interest Payment Date; and
- (b) in relation to an Unpaid Sum, each period determined in accordance with Clause 11.3 (Default interest).

Interpolated Historic Screen Rate means, in relation to any 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 most recent applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period of that Loan; and
- (b) the most recent applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that Loan,

each for the currency of that Loan and each of which is as of a day which is no more than five days before the Quotation Day.

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

each as of the Specified Time for the currency of that Loan.

Intra-Group Loan means a loan by a member of the Group to another member of the Group.

ITA means the Income Tax Act 2007.

Joint Venture means any joint venture entity, whether a company, unincorporated firm, undertaking, association, joint venture or partnership or any other entity.

Landfill and Gas Business means the business carried on by the Group of the operation, site management and restoration of landfill sites, the collection of gas from the landfill sites and power generation (for sale onto the grid) through both in-house and outsourced structures and the operation of an anaerobic digestion facility at Weston, North Somerset.

Legal Opinion means any legal opinion delivered to the Agent under Clause 4.1 (Conditions precedent).

Legal Reservations means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (b) the time barring of claims under the Limitation Acts, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim;
- (c) similar principles, rights and defences under the laws of any Relevant Jurisdiction; and
- (d) any other matters which are set out as qualifications or reservations as to matters of law of general application in the Legal Opinions.

Lender means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party as a Lender in accordance with Clause 25 (Changes to the Lenders),

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

Lender PIK Bond means any PIK Bonds not held by, or on behalf of, the Borrower or a tax authority.

LIBOR means, in relation to the Loan:

- (a) the applicable Screen Rate as of the Specified Time for the currency of that Loan and for a period equal in length to the Interest Period of that Loan; or
- (b) as otherwise determined pursuant to Clause 13.1 (Unavailability of Screen Rate),

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

Limitation Acts means the Limitation Act 1980 and the Foreign Limitation Periods Act 1984.

LMA means the Loan Market Association.

Loan means:

- (a) the loan made or to be made under the Facility or the principal amount outstanding for the time being of that loan (including capitalised interest); and
- (b) the principal amount outstanding for the time being under the Lender PIK Bonds.

Local Authority means any authority, agency or department established by the government of the United Kingdom including the District, London or Metropolitan Borough Council in England and the County or Borough Council in Wales.

Majority Lenders means a Lender or Lenders whose Commitments aggregate more than 66 2/3% of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 66 2/3% of the Total Commitments immediately prior to the reduction).

Management Incentive Plan means a plan setting out the incentives to be given to executive management of the Group (such executive managers to include Richard Milnes-James, Peter Gerstrom, Andrew Pike and Alistair Holl) in the form delivered to the Agent in accordance with paragraph (a) of Clause 4.1 (Conditions precedent) or, if delivery of the plan is waived for the purposes of paragraph (a) of Clause 4.1 (Conditions precedent), in accordance with the terms of the Restructuring Agreement, in such other form agreed between the executive management of the Group and the Majority Lenders.

Mandatory Prepayment Account means an interest-bearing account:

- (a) held by the Borrower with the Account Bank;
- (b) identified in a letter between the Borrower and the Agent as a Mandatory Prepayment Account;

- (c) subject to Security in favour of the Security Agent, which Security is in form and substance satisfactory to the Agent and the Security Agent; and
- (d) from which no withdrawals may be made by any members of the Group except as contemplated by this Agreement,

(as the same may be redesignated, substituted or replaced from time to time).

Margin means 3.25% per annum.

Material Adverse Effect means a material adverse effect on:

- (a) the business, operations, property, condition (financial or otherwise) or prospects of the Group taken as a whole; or
- (b) the ability of the Borrower to perform its obligations under the Finance Documents; or
- (c) the validity or enforceability of, or the effectiveness or ranking of any Security granted or purporting to be granted pursuant to any of, the Finance Documents or the rights or remedies of any Finance Party under any of the Finance Documents.

Material Company means, other than any member of the Riverside Group, at any time:

- (a) an Obligor (as defined in the Senior Facilities Agreement) until the Senior Discharge Date;
- (b) a wholly owned member of the Group that holds shares in an Obligor (as defined in the Senior Facilities Agreement) until the Senior Discharge Date;
- (c) CEHL; or
- (d) a Subsidiary of the Borrower which:
 - (i) is listed in Schedule 8 (Initial Material Companies);
 - (ii) is party to a Material Contract; or
 - (iii) has earnings before interest, tax, depreciation, amortisation and provisioning for aftercare or restoration calculated on the same basis as EBITDAP, representing 5% or more of EBITDAP, or has gross assets, net assets or turnover (excluding intra-group items) representing 5% or more of the gross assets, net assets (provided that consolidated net assets are not negative) or turnover of the Group, calculated on a consolidated basis.

Compliance with the conditions set out in paragraph (d)(iii) above shall be determined by reference to the most recent Compliance Certificate supplied by the Borrower and/or the latest audited financial statements of that Subsidiary (consolidated in the case of a Subsidiary which itself has Subsidiaries) and the latest audited consolidated financial statements of the Group.

However, if a Subsidiary has been acquired since the date as at which the latest audited consolidated financial statements of the Group were prepared, the financial statements shall be deemed to be adjusted in order to take into account the acquisition of that Subsidiary (that adjustment being certified by the Group's auditors as representing an accurate reflection of the revised EBITDAP, gross assets, net assets or turnover of the Group).

A report by the Borrower's Auditor that a Subsidiary is or is not a Material Company shall, in the absence of manifest error, be conclusive and binding on all Parties.

Material Contract means:

- (a) each Initial Material Contract; and
- (b) each contract to which a member of the Group is a party that is pursuant to the Budget most recently provided pursuant to Clause 21.4 (Budget) expected to provide gross revenues of no less than £3,000,000 (indexed to RPI from 31 December 2005) per annum for that member of the Group (or, if less, over the remaining scheduled term thereof) and which is not a Riverside Related Contract.

Material EP Permit means an EP Permit held by a Material Company.

Minimum Cash Balance means £10,000,000.

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 (b) 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 an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

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

Net Disposal Proceeds has the meaning given to it in Clause 9.2 (Disposal, Insurance and Riverside Proceeds).

Net Finance Charges means, for any Relevant Period, the Finance Charges for that Relevant Period after deducting any interest payable in that Relevant Period to any member of the Group (other than by another member of the Group) on any Cash or Cash Equivalent Investment.

New Lender has the meaning given to that term in Clause 25 (Changes to the Lenders).

New Shareholder means a Lender and/or its nominee to whom ordinary shares in TopCo are issued pursuant to the Scheme.

Non-Consenting Lender has the meaning given to that term in Clause 37.6 (Replacement of Lender).

Norfolk Group means Viking Norfolk Hold Limited and its Subsidiaries.

Norfolk Intra-Group Loan means:

- (a) a loan by a member of the Norfolk Group to another member of the Norfolk Group; or

- (b) a promissory note issued by a member of the Norfolk Group to another member of the Norfolk Group.

Original Financial Statements means:

- (a) in relation to the Borrower, its consolidated audited financial statements first delivered to the Agent as required under Clause 21.1 (Financial statements); and
- (b) in relation to CEHL, its consolidated audited financial statements for its Financial Year ended 31 December 2013.

Original Jurisdiction means, in relation to the Borrower and TopCo, the jurisdiction under whose laws it is incorporated as at the date of this Agreement.

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.

Pensions Regulator means the body corporate called the Pensions Regulator established under Part I of the Pensions Act 2004.

Permitted Acquisition means any acquisition or investment in the ordinary course of business and in accordance with the Business Plan which (when aggregated with any other such acquisitions or investments in the same Financial Year) does not exceed £2,500,000 or its equivalent in any other currency.

Permitted Disposal means any sale, lease, licence, transfer or other disposal:

- (a) which is of all or part of the Landfill and Gas Business, the Collections Business, the AD Plant and/or the Brokerage Business;
- (b) which is on arm's length terms and for fair market value as approved by a Special Majority of the members of the Board of the Borrower;
- (c) which is not to another member of the Group (other than pursuant to a Permitted Reorganisation) or the Riverside Group, a New Shareholder or an Affiliate or Related Fund of a New Shareholder;
- (d) whereby the Net Disposal Proceeds are receivable in cash;
- (e) which is not to a Joint Venture in which a member of the Group or the Riverside Group, a Shareholder or an Affiliate or Related Fund of a Shareholder is a participant and the disposal will result in the disposal of all assets and liabilities of that business disposed of to the relevant purchaser; and
- (f) whereby, on or prior to the completion of the relevant disposal, all Letters of Credit issued for the benefit of the business disposed of are cancelled in full or the relevant purchaser provides cash cover in full in respect of such Letters of Credit.

Permitted Extraordinary Amendments means an amendment or waiver that:

- (a) is being requested in connection with a refinancing of the Facility, a Permitted Riverside Refinancing, a Permitted Riverside Disposal or a Substantial Riverside Group Disposal; or
- (b) prior to the Permitted Extraordinary Amendment Event, would have required the consent of all the Lenders,

including, without limitation:

- (i) an extension to the date of payment of any amount due under the Facility, provided that the relevant payment date is not extended beyond 31 December 2021;
- (ii) a conversion of any amounts outstanding under the Facility in to equity; and
- (iii) reducing the Margin and any principal, interest, fees or commission payable under the Facility,

but excluding,

- (A) an increase in Commitments;
- (B) any change to the definition of Majority Lenders or Super Majority Lenders;
- (C) any change in the order of priority or subordination under the Intercreditor Agreement; and
- (D) any amendments to Clause 37 (Amendments and waivers).

Permitted Extraordinary Amendment Event means 31 December 2018 if a Permitted Riverside Refinancing, a Substantial Riverside Group Disposal or a disposal or transfer of the shares in the EFW MidCo has not occurred before that date.

Permitted Financial Indebtedness means Financial Indebtedness:

- (a) prior to the Restructuring Effective Date, arising under the Existing Senior Finance Documents and the Existing Junior Finance Documents;
- (b) arising under any of the Senior Finance Documents;
- (c) arising under a Permitted Loan or a Permitted Guarantee;
- (d) of any person acquired by a member of the Group after the Restructuring Effective Date which is incurred under arrangements in existence at the date of acquisition, but not incurred or increased or having its maturity date extended in contemplation of, or since, that acquisition, and outstanding only for a period of three months following the date of acquisition;
- (e) arising pursuant to any netting or set-off arrangement entered into by any member of the Group with the Account Bank or pursuant to the operation of any Cash Pooling Arrangements, but only so long as:
 - (i) the aggregate gross debit balances on such accounts of the members of the Group that participate in the Cash Pooling Arrangements do not at any time exceed £20,000,000;

- (ii) the netting of debit balances and credit balances on the accounts of members of the Group that participate in the Cash Pooling Arrangements does not at any time result in an overall balance of less than zero on those accounts; and
 - (iii) the Cash Pooling Arrangements do not permit credit balances of members of the Group to be netted or set off against debit balances of any person which is not a member of the Group;
- (f) under finance or capital leases of vehicles, plant, equipment or computers, **provided that** the aggregate capital value of all such items so leased under outstanding leases by members of the Group does not exceed £15,000,000 (or its equivalent in other currencies) at any time, but provided, further, that Financial Indebtedness permitted pursuant to this paragraph (f) shall be used only to fund Capital Expenditure in investments or development of projects of the Group;
- (g) incurred (on an unsecured basis) for the sole purpose of replacing the Financial Indebtedness under the L/C Revolving Facility (as defined in the Senior Facilities Agreement) and the outstanding amount of which does not exceed the amount of Financial Indebtedness so replaced;
- (h) arising under a Treasury Transaction permitted under Clause 23.37 (Treasury Transactions); and
- (i) not permitted by the preceding paragraphs or as a Permitted Transaction and the outstanding amount of which does not exceed £1,000,000 (or its equivalent) in aggregate for the Group at any time.

Permitted Guarantee means:

- (a) prior to the Restructuring Effective Date, any guarantee or indemnity given under the Existing Senior Finance Documents and the Existing Junior Finance Documents;
- (b) any guarantee or indemnity given under the Senior Finance Documents;
- (c) any performance or similar bond guaranteeing performance by a member of the Group under any contract entered into in the ordinary course of trade;
- (d) any guarantee permitted under Clause 23.25 (Financial Indebtedness);
- (e) any covenant on standard market terms provided by EFW MidCo in favour of the funders of the Riverside Project to pay on demand the indebtedness secured by it on the shares of EFW ProjectCo; and
- (f) any guarantee given in respect of the netting or set-off arrangements or the cash pooling, net balance or balance transfer arrangements permitted pursuant to paragraph (e) of the definition of Permitted Financial Indebtedness.

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;
- (b) a loan made by a member of the Group (other than a member of the Norfolk Group) to another member of the Group (other than a member of the Norfolk Group);
- (c) a Norfolk Intra-Group Loan;
- (d) a loan made by a member of the Group to an employee or director of any member of the Group if the amount of that loan when aggregated with the amount of all loans to employees and directors by members of the Group does not exceed £250,000 (or its equivalent) at any time;
- (e) any shareholder loans made by CEHL to EFW MidCo;
- (f) a limited recourse loan of up to £100,000 advanced on or about the Restructuring Effective Date by the Company to Viking Consortium Borrower Limited pursuant to an administration cost funding agreement; and
- (g) any loan (other than a loan made by a member of the Group to another member of the Group) so long as the aggregate amount of the Financial Indebtedness under all such loans does not exceed £250,000 (or its equivalent) at any time,

so long as in the case of paragraph (b) above, to the extent required by the Intercreditor Agreement, the creditor and (if the debtor is a member of the Group) the debtor of such Financial Indebtedness are or become party to the Intercreditor Agreement as an Intra-Group Lender and a Debtor (as defined, in each case, in the Intercreditor Agreement) respectively.

Permitted Payment means any payment made under, or a discharge in respect of, the Intra-Group Loans or the Norfolk Intra-Group Loans, provided that such payment or discharge is made when (i) no Event of Default is outstanding or would occur immediately after making of the payment or discharge (as the case may be) and (ii) such payment or discharge (as the case may be) is permitted by the Intercreditor Agreement.

Permitted Reorganisation means a transfer of assets (including, for the avoidance of doubt, the Riverside Assets) by a member of the Group (the **Disposing Company**) to another member of the Group (the **Acquiring Company**) on arm's length terms.

Permitted Riverside Disposal means a disposal of the Riverside Assets as part of a disposal of the shares in the Riverside Group, which:

- (a) prior to the Senior Discharge Date, is permitted or consented under the Senior Facilities Agreement;
- (b) on or after the Senior Discharge Date:
 - (i) results in the prepayment or repayment of the Facility in full; or
 - (ii) is approved by the Majority Lenders.

Permitted Riverside Refinancing means a refinancing of the Riverside Facilities:

- (a) prior to the Senior Discharge Date, is permitted or consented under the Senior Facilities Agreement;
- (b) on or after the Senior Discharge Date:
 - (i) where the terms of such refinancing are, as determined by the Board of the Borrower (acting reasonably and taking into account the interests of the Lenders), on terms more favourable than the Riverside Facilities; or
 - (ii) approved in writing by the Majority Lenders.

Permitted Security means:

- (a) prior to the Restructuring Effective Date, any Security or Quasi-Security granted under the Existing Senior Finance Documents and the Existing Junior Finance Documents;
- (b) any Security or Quasi-Security granted under the Senior Finance Documents;
- (c) any lien arising by operation of law and in the ordinary course of trading and not as a result of any default or omission by any member of the Group;
- (d) any netting or set-off arrangement entered into by any member of the Group with the Account Bank or any Cash Pooling Arrangements, but only so long as: (i) the aggregate gross debit balances on such accounts of members of the Group that participate in the Cash Pooling Arrangements do not at any time exceed £20,000,000; (ii) the netting of debit and credit balances on the accounts of members of the Group that participate in the Cash Pooling Arrangements does not at any time result in an overall balance of less than zero on those accounts, (iii) the Cash Pooling Arrangements do not permit credit balances of members of the Group to be netted or set off against debit balances of persons who are not members of the Group; and (iv) the Cash Pooling Arrangements do not give rise to other Security over the assets of the members of the Group in support of liabilities of persons who are not members of the Group;
- (e) any Security or Quasi-Security over or affecting any asset acquired by a member of the Group after the Restructuring Effective Date if:
 - (i) the Security or Quasi-Security was not created in contemplation of the acquisition of that asset by a member of the Group;
 - (ii) the principal amount secured has not been increased in contemplation of or since the acquisition of that asset by a member of the Group; and
 - (iii) the Security or Quasi-Security is removed or discharged within three months of the date of acquisition of such asset;
- (f) 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;
- (g) any Security or Quasi-Security (existing as at the date of this Agreement) over assets of any member of the Group so long as the Security or Quasi-Security is irrevocably removed or discharged by no later than the Restructuring Effective Date;

- (h) any Security or Quasi-Security over or affecting any asset of any company which becomes a member of the Group after the Restructuring Effective Date, where the Security or Quasi-Security is created prior to the date on which that company becomes a member of the Group if:
 - (i) the Security or Quasi-Security was not created in contemplation of the acquisition of that company;
 - (ii) the principal amount secured has not increased in contemplation of or since the acquisition of that company; and
 - (iii) the Security or Quasi-Security is removed or discharged within three months of that company becoming a member of the Group;
- (i) any Quasi-Security arising as a result of a disposal referred to in paragraphs (b)(v) to (b)(viii) of Clause 23.18 (Disposals);
- (j) any Security or Quasi-Security arising as a consequence of any finance or capital lease permitted pursuant to paragraph (f) of the definition of "Permitted Financial Indebtedness";
- (k) any Security securing indebtedness, the outstanding principal amount of which (when aggregated with the outstanding principal amount of any other indebtedness which has the benefit of Security given by any member of the Group other than any permitted under paragraphs (a) to (j) above) does not exceed £250,000 (or its equivalent in other currencies); or
- (l) any Security created or evidenced by the Transaction Security Documents or the Deed of Security Assignment.

Permitted Share Issue means an issue of:

- (a) ordinary shares by the Borrower to the TopCo, paid for in full in cash upon issue and which by their terms are not redeemable and where (i) such shares are of the same class and on the same terms as those initially issued by the Borrower and (ii) such issue does not lead to a Change of Control;
- (b) shares by the Borrower to the executive management of the Group to the extent contemplated under the Management Incentive Plan; or
- (c) shares by a member of the Group (other than Viking Norfolk Hold Limited) which is a Subsidiary of the Borrower to its immediate Holding Company, provided however that where the existing shares in the Subsidiary are the subject of the Transaction Security, the newly issued shares also become subject to the Transaction Security on the same terms.

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) the solvent liquidation or reorganisation of any member of the Group so long as any payments or assets distributed as a result of such liquidation or reorganisation are distributed to other members of the Group;

- (c) the striking-off of a member of the Norfolk Group in accordance with sections 1000 to 1011 of the Companies Act 2006, so long as any payments or assets distributed as a result of such striking-off are distributed to other members of the Group; or
- (d) transactions (other than (i) any sale, lease, license, transfer or other disposal or (ii) the granting or creation of Security or Quasi-Security or the incurring or permitting to subsist of Financial Indebtedness) conducted in the ordinary course of trading on arm's length terms.

PIK Bond means a registered bond substantially in the form set out in Schedule 17 (Form of PIK Bonds) issued under this Agreement at the option of the Borrower for the purpose of paying Interest.

PIK Bond Register has the meaning given to it in Clause 11.5(d) (PIK Bonds).

PIK Bond Selection Notice means a notice substantially in the form set out in Schedule 16 (Form of PIK Bond Selection Notice).

Preliminary Steps Completion Notice has the meaning given to it in the Restructuring Agreement.

Qualifying Lender has the meaning given to that term in Clause 15 (Tax gross-up and indemnities).

Quasi-Security has the meaning given to that term in Clause 23.17 (Negative pledge).

Quotation Day means, in relation to any period for which an interest rate is to be determined, the first day of that period (unless market practice differs in the Relevant Market for sterling, in which case the Quotation Day for that currency 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 Bank Quotation means any quotation supplied to the Agent by a Base Reference Bank.

Related Fund in relation to a fund or investment vehicle (the **first entity**), means any other fund or investment vehicle or a direct or indirect shareholder of such fund or investment vehicle which is directly or indirectly managed, controlled or advised by the same investment manager or investment adviser as the first entity or, if it is managed, controlled or advised by a different investment manager or investment adviser, a fund or investment vehicle whose direct or indirect investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the first entity. Any direct or indirect Subsidiary of a Related Fund shall also be deemed to be a Related Fund.

Relevant Jurisdiction means, in relation to the Borrower and TopCo:

- (a) its Original Jurisdiction;
- (b) any jurisdiction where any asset subject to or intended to be subject to the Transaction Security to be created by it is situated;
- (c) any jurisdiction where it conducts its business; and
- (d) the jurisdiction whose laws govern the perfection of any of the Transaction Security Documents entered into by it.

Relevant Market means the London interbank market.

Relevant Period means, in relation to any date, the period of 12 months ending on that date.

Relevant Provisions has the meaning given to it in Clause 1.3 (Sanctions).

Repeating Representations means each of the representations set out in Clause 20.2 (Status) to Clause 20.7 (Governing law and enforcement), Clause 20.13 (No default), paragraph (e) of Clause 20.15 (No misleading information), paragraphs (e), (f) and (g) of Clause 20.16 (Original Financial Statements), Clause 20.23 (Ranking) to Clause 20.25 (Legal and beneficial ownership) and Clause 23.23 (Centre of Main Interests and establishments).

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

Responding Party Offer has the meaning given to it in Schedule 13 (Right of First Refusal).

Restricted Lender has the meaning given to it in Clause 1.3 (Sanctions).

Restructuring means the restructuring of the financial indebtedness of the Borrower and certain of its Subsidiaries pursuant to the Scheme and the Restructuring Agreement.

Restructuring Agreement means the restructuring agreement dated on or about the date of this Agreement between, amongst others, the Borrower and the Lenders to be entered into pursuant to the terms of the Scheme.

Restructuring Effective Date means the date on which the last of the following events occurs:

- (a) the Agent delivers a notice to the Borrower, the Lenders and the Senior Agent pursuant to paragraph (a) of Clause 4.1 (Conditions precedent);
- (b) the Senior Agent delivers a notice to the Agent pursuant to paragraph (a) of clause 4.1 (Initial conditions precedent) of the Senior Facilities Agreement; and
- (c) the Borrower delivers the Preliminary Steps Completion Notice to the Agent pursuant to the terms of the Scheme and the Restructuring Agreement.

Revocation Notice means a revocation notice in respect of Environmental Law or an Environmental Permit issued by the Environmental Regulator.

Riverside Assets means any assets and contracts relating to the Riverside Project or the associated Thameside business owned by a member of the Group and any shares in a member of the Group which owns any assets and contracts relating to the Riverside Project or the associated Thameside business (including, for the avoidance of doubt, any assets related to the transfer stations).

Riverside Equity Release Amount means any surplus amount which is paid to a member of the Group by way of distribution, dividend and/or repayment of a Permitted Loan from a member of the Riverside Group following a Permitted Riverside Refinancing or a Riverside Group Disposal pursuant to Clause 23.38 (Riverside Refinancing and Riverside Group Disposal).

Riverside Facilities means the facilities made available in respect of the EFW Plant pursuant to the Riverside Facilities Agreement.

Riverside Facilities Agreement means the facilities agreement originally dated 31 July 2008, as amended and restated on 22 January 2010 and from time to time, between (amongst others) EFW ProjectCo and The Governor and Company of the Bank of Ireland.

Riverside Group means EFW MidCo and its Subsidiaries.

Riverside Group Disposal means a disposal (other than in the Riverside Group's ordinary course of trading) of any assets and contracts relating to the Riverside Project or the associated Thameside business owned by a member of the Riverside Group or any shares in a member of the Riverside Group (including, for the avoidance of doubt, any assets related to the transfer stations).

Riverside Project means the energy from waste PPP project developed by EFW ProjectCo.

Riverside Related Contract means each of:

- (a) an EFW-Only Contract;
- (b) an EFW-Plus Ring Fenced Contract; and
- (c) an EFW-Plus Capped Contract.

RPI means the United Kingdom All Items Retail Price Index published by the Office of National Statistics.

Scheme means a scheme of arrangement of the Borrower under Part 26 of the Companies Act 2006 pursuant to which the Restructuring will be implemented.

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 currency and 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.

SDN List means the Specially Designated Nationals List maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, or any similar list maintained by the United Nations, the European Union, Her Majesty's Treasury, any European Union member state or any other United States government entity.

Secured Parties means each Finance Party from time to time party to this Agreement, any Receiver or Delegate.

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.

Senior Agent means Barclays Bank PLC in its capacity as agent under the Senior Facilities Agreement.

Senior Discharge Date has the meaning given to it in the Intercreditor Agreement.

Senior Facilities Agreement means the senior facilities agreement dated on or about the date of this Agreement and made between, among others, the Borrower, the Company and the Senior Agent.

Senior Finance Documents has the meaning given to the term "Finance Documents" in the Senior Facilities Agreement.

Senior Management means each and both of the chief executive officer and the chief financial officer of the Borrower.

Service Contract means a service contract of each member of Senior Management.

Shareholder means any person who owns any shares in TopCo from time to time.

Shareholders' Agreement means the shareholders' agreement dated on or about the date of this Agreement and made between, among others, the Borrower and the TopCo.

Special Majority means a simple majority of the members of a Board including the Chairman and the Independent Non-Executive Director.

Specified Time means a day or time determined in accordance with Schedule 7 (Timetables).

Strategic Competitor means:

- (a) an entity which:
 - (i) operates or manages a waste treatment facility, including a landfill site, materials recycling facility and/or an energy from waste plant (whether currently operating or under construction or development); and/or
 - (ii) provides waste management services, including municipal and commercial waste collection and cleansing services, operation of transfer stations, waste brokerage services and/or recycling services,in each case, in the UK and is in direct competition with the business of the Group; or
- (b) any person who holds, directly or indirectly, an economic interest of 10% or more in any entity referred to in paragraph (a) above.

Strategic Plan means the strategic plan for the Group attached as Schedule 11 (Strategic Plan) and approved as part of the Scheme.

Strategic Review means a review of the manner in which the relevant Board intends to implement the Strategic Plan.

Subsidiary means a subsidiary within the meaning of section 1159 of the Companies Act 2006.

Substantial Riverside Group Disposal means a Riverside Group Disposal which involves a disposal of all or substantially all of the business or assets relating to the Riverside Project and the associated Thameside business or the Riverside Group.

Super Majority Lenders means a Lender or Lenders whose Commitments aggregate more than 75% of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 75% of the Total Commitments immediately prior to that reduction).

Suspension Notice means a suspension notice in respect of Environmental Law or an Environmental Permit issued by the Environmental Regulator.

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).

Termination Date means 31 December 2019.

Testing Date in respect of an Cash Sweep Date means the date falling ten Business Days prior to that Cash Sweep Date.

Total Commitments means the aggregate of the Commitments.

Trade Instruments means any performance bonds, or advance payment bonds or documentary letters of credit issued in respect of the obligations of any member of the Group arising in the ordinary course of trading of that member of the Group.

Transaction Documents means the Finance Documents, the Senior Finance Documents, the Shareholders' Agreement and any agreement documenting any Intra-Group Loan.

Transaction Security means the Security created, evidenced or expressed to be created or evidenced pursuant to the Transaction Security Documents.

Transaction Security Documents means each of the documents listed as being a Transaction Security Document in paragraph 3(e) of Schedule 2 (Conditions precedent), together with any other document entered into by any member of the Group creating, evidencing or expressed to create or evidence any Security over all or any part of its assets in respect of the obligations of any members of the Group under any of the Finance Documents.

Transfer Certificate and Lender Accession Undertaking means an agreement substantially in the form set out in Schedule 3 (Form of Transfer Certificate and Lender Accession Undertaking) 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 and Lender Accession Undertaking or Transfer Certificate and Lender Accession Undertaking; and
- (b) the date on which the Agent executes the relevant Assignment Agreement and Lender Accession Undertaking or Transfer Certificate and Lender Accession Undertaking.

Transfer Notice has the meaning given to it in Schedule 13 (Right of First Refusal).

Treasury Transactions means any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price.

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

U.S. means the United States of America.

U.S. Tax Obligor means:

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

Utilisation Date means the date on which the Loan is deemed to be made.

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.

WRWA Agreement means the waste management agreement dated 20 May 2002 (as amended from time to time) between Western Riverside Waste Authority and Cory Environmental Limited in connection with the provision of waste management services.

X means, in relation to any EFW-Only Contract, EFW-Plus Ring Fenced Contract or EFW-Plus Capped Contract, an amount equal to $5 \times Y$ where Y is equal to the difference between (a) the amount which it is anticipated will be paid to Cory Environmental Limited under such contract for the provision of EFW Services in its first complete contract year of operation (assuming that the minimum contracted quantity of waste is disposed of in such year in accordance, if applicable, with the contract and without deductions) and (b) the amount which it is anticipated will be paid by Cory Environmental Limited to EFW ProjectCo in the same period (and on the same assumptions) in respect of the performance by EFW ProjectCo of Cory Environmental Limited's obligations in respect of such EFW Services.

1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
 - (i) the **Agent**, any **Finance Party**, any **Account Bank**, any **Lender**, any **Party**, any **Secured Party**, the **Security Agent** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with the Finance Documents;
 - (ii) the term **cash cover** has the meaning given to it in the Senior Facilities Agreement;
 - (iii) a document in **agreed form** is a document which is previously agreed in writing by or on behalf of the Borrower and the Agent or, if not so agreed, is in the form specified by the Agent;
 - (iv) **assets** includes present and future properties, revenues and rights of every description;
 - (v) a **Finance Document** or a **Transaction Document** or any other agreement or instrument is a reference to that Finance Document or Transaction Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
 - (vi) a **group of Lenders** includes all the Lenders;
 - (vii) **guarantee** means 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;

- (viii) **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, and whether owed jointly or severally or in any other capacity;
 - (ix) 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);
 - (x) 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;
 - (xi) a provision of law is a reference to that provision as amended or re-enacted; and
 - (xii) 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) Clause and Schedule headings are for ease of reference only.
 - (d) Words importing the plural shall include the singular equivalent and vice versa.
 - (e) 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.
 - (f) 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 Sanctions

In relation to each Lender that notified the Agent to this effect (each a **Restricted Lender**), the representations set out in Clauses 20.20 (Anti-corruption law) and 20.21 (Sanctions) and the covenants set out in Clauses 23.5 (Anti-corruption law) and 23.6 (Sanctions) shall only apply for the benefit of that Restricted Lender to the extent that it would not result in a violation or conflict with Sect. 7 German Foreign Trade Act (*Außenwirtschaftsverordnung*), any provision of Council Regulation (EC) 2271/1996 or any other applicable anti-boycott law, regulation or statute (**Relevant Provisions**).

1.4 Currency symbols and definitions

£, **GBP** and **sterling** denote the lawful currency of the United Kingdom.

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 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.

1.6 Intercreditor Agreement

- (a) This Agreement is entered into subject to, and with the benefit of, the terms of the Intercreditor Agreement.
- (b) Notwithstanding anything to the contrary in this Agreement, the terms of the Intercreditor Agreement will prevail if there is a conflict between the terms of this Agreement and the terms of the Intercreditor Agreement.
- (c) The fact that a provision of this Agreement is expressed to be subject to the terms of the Intercreditor Agreement does not mean, and will not be taken to mean, that any other provision of this Agreement is not so subject.

1.7 No Waiver

No waiver of any Event of Default under (and as defined in) the Senior Facilities Agreement will be, or will be deemed to be, a waiver of any Event of Default under this Agreement.

2. THE FACILITY

2.1 The Facility

Subject to the terms of this Agreement, the Lenders make available to the Borrower a 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 the Borrower shall be a separate and independent debt.
- (c) A Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.

3. PURPOSE

3.1 Purpose

The amounts borrowed (or deemed to be borrowed) by the Borrower under the Facility represent amounts issued to the Lenders in consideration for the release of certain claims of those Lenders (in their capacity as Lenders and Hedge Counterparties under and as defined in the Existing Senior Facilities Agreement) under the Existing Senior Facilities Agreement and Existing Hedging Transactions pursuant to the terms of the Scheme and the Restructuring Agreement.

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 Conditions precedent

- (a) The Agent shall notify the Borrower, the Lenders and the Senior Agent promptly upon receiving all of the documents and other evidence listed in Schedule 2 (Conditions precedent) in form and substance satisfactory to it.
- (b) 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 (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 Maximum number of Loans

No more than one Loan may be outstanding and the Borrower may not request that the Loan be divided.

5. DEEMED UTILISATION

- (a) On the Restructuring Effective Date, (i) the Loan in an amount equal to the Total Commitments will be deemed to have been drawn under the Facility and (ii) each Lender will be deemed to have participated in such Loan.
- (b) The amount of each Lender's participation in the Loan will be equal to the proportion borne by its Commitment to the Total Commitments immediately prior to making the Loan.
- (c) For the purpose of this Agreement, the Utilisation Date for the Loan referred to in paragraph (a) above will be the Restructuring Effective Date.

6. REPAYMENT

- (a) The Borrower shall repay the Loan in full on the Termination Date.
- (b) The Borrower may not reborrow any part of the Facility which is repaid.

7. CASH SWEEP

- (a) In this Clause, **Cash Sweep Date** means:
 - (i) the first Interest Payment Date falling on or after the Senior Discharge Date; and
 - (ii) thereafter, each Interest Payment Date falling on the anniversary of the previous Cash Sweep Date until the Termination Date.
- (b) Subject to paragraph (c) below, on each Cash Sweep Date, the Borrower must apply an amount equal to 100% of the Distributable Amount in respect of that Cash Sweep Date (less, if the relevant Cash Sweep Date is on the Senior Discharge Date, the amount thereof required to be applied in making a prepayment or payment under the Senior Facilities Agreement) in prepayment of the Loan (including capitalised interest).
- (c) The prepayment as specified in paragraph (b) above will only be made on the Cash Sweep Date that is the Senior Discharge Date if all amounts required to be applied in making a prepayment under the Senior Facilities Agreement have been so applied.

8. ILLEGALITY, VOLUNTARY PREPAYMENT AND CANCELLATION

8.1 Illegality

If it becomes unlawful in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or to fund, issue or maintain its participation in the Loan or it becomes unlawful for any Affiliate of a Lender for that Lender to do so:

- (a) that Lender, shall promptly notify the Agent upon becoming aware of that event; and
- (b) to the extent that the Lender's participation has not been transferred pursuant to Clause 37.6 (Replacement of Lender), the Borrower shall repay that Lender's participation in the Loan on the last day of the Interest Period 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) and that Lender's Commitment shall be cancelled in the amount of the participation repaid.

8.2 Voluntary prepayment

At any time after the Senior Discharge Date, the Borrower may, if it gives the Agent not less than five Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of the Loan (including capitalised interest) (but, if in part, being an amount that reduces the amount of the Loan by a minimum amount of £5,000,000).

8.3 Right of cancellation and repayment in relation to a single Lender

- (a) If:
 - (i) any sum payable to any Lender by the Borrower is required to be increased under paragraph (c) of Clause 15.2 (Tax gross-up); or
 - (ii) any Lender claims indemnification from the Borrower under Clause 15.3 (Tax indemnity) or Clause 16.1 (Increased costs); or
 - (iii) a given Lender has not consented to a waiver or amendment requiring the consent of all Lenders and to which the Lenders holding an aggregate of at least 90% of the Total Commitments have consented,

the Borrower may (with the prior consent of the Majority Lenders and subject to the Intercreditor Agreement), while the circumstance giving rise to the requirement for that increase or indemnification continues, give the Agent notice of cancellation of the Commitment of that Lender and its intention to procure the repayment of that Lender's participation in the Loan.

- (b) On receipt of a notice referred to in paragraph (a) above in relation to a Lender, the Commitment 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 under paragraph (a) above in relation to a Lender (or, if earlier, the date specified by the Borrower in that notice), the Borrower shall repay that Lender's participation in the outstanding Loan together with all interest and other amounts accrued under the Finance Documents.

9. MANDATORY PREPAYMENT AND CANCELLATION

9.1 Exit

- (a) For the purpose of this Clause 9.1:

Flotation means:

- (i) a successful application being made for the admission of any part of the share capital of the TopCo, the Company, the Borrower or CEHL to the Official List maintained by the FCA and the admission of any part of the share capital of the TopCo, the Company, the Borrower or CEHL to trading on the London Stock Exchange plc; or
- (ii) the grant of permission to deal in any part of the issued share capital of the TopCo, the Company, the Borrower or CEHL on the Alternative Investment Market or the Main Board or the Growth Market of the ICAP Securities & Derivatives Exchange (ISDX) or on any recognised investment exchange (as that term is used in the Financial Services and Markets Act 2000) or in or on any exchange or market replacing the same or any other exchange or market in any country.

FCA means the Financial Conduct Authority acting in accordance with Part 6 of the Financial Services and Markets Act 2000.

- (b) Upon the occurrence of:

- (i) any Flotation; 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,

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.

9.2 Disposal, Insurance and Riverside Proceeds

- (a) For the purposes of this Clause 9.2, Clause 9.3 (Application of mandatory prepayments) and Clause 9.4 (Mandatory Prepayment Accounts and Holding Accounts):

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 in cash 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;
- (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);
- (iii) any amounts payable under the Management Incentive Plan; and

- (iv) in respect of a disposal of the Collections Business, but only to the extent agreed by the Super Majority Lenders, such amount to be retained by the Group in order to facilitate the disposal of the Landfill and Gas Business.

Excluded Disposal Proceeds means:

- (i) the proceeds of any Disposal which is of assets made in the ordinary course of trading of the disposing entity;
- (ii) the proceeds of any Disposal of an asset which are applied or are intended by a member of the Group to be applied to exchange the disposed asset with assets comparable or superior as to type, value or quality which is to be used in the business of the Group within 365 days of receipt of such proceeds (provided that such proceeds are committed to be so applied within 180 days of receipt); or
- (iii) an individual Disposal where the proceeds from that Disposal are an amount less than £250,000 (or its currency equivalent) which when aggregated with the proceeds of other Disposals made in the same Financial Year of the Borrower do not exceed £1,000,000.

Excluded Insurance Proceeds means any proceeds of an insurance claim which the Borrower notifies the Agent are, or are to be, applied:

- (i) to meet a third party claim;
- (ii) to cover operating losses in respect of which the relevant insurance claim was made; or
- (iii) in the replacement, reinstatement and/or repair of the assets or otherwise in amelioration of the loss in respect of which the relevant insurance claim was made,

in each case as soon as possible (but in any event within 365 days, or such longer period as the Majority Lenders may agree) after receipt, provided that such proceeds are committed to be so applied within 180 days of receipt.

Net Disposal Proceeds means:

- (i) in the case of a disposal of any asset owned by a member of the Group (other than a Permitted Riverside Disposal) an amount equal to 80% of the Disposal Proceeds; and
- (ii) in the case of a Permitted Riverside Disposal, the Disposal Proceeds less such amount as the Board of the Borrower requires for its ongoing working capital needs, provided that such deduction is approved by the Majority Lenders.

Insurance Proceeds means the proceeds of any insurance claim under any insurance maintained by any member of the Group except for Excluded Insurance Proceeds and after deducting any reasonable expenses in relation to that claim which are incurred by any member of the Group to persons who are not members of the Group.

- (b) On or after the Senior Discharge Date, the Borrower will prepay the Loan (including capitalised interest) in amounts equal to the following amounts (less the amount thereof that has or is required to be applied in making a repayment or prepayment under the Senior Facilities Agreement) at the times contemplated by Clause 9.3 (Application of mandatory prepayments):

- (i) the amount of Net Disposal Proceeds;

- (ii) the amount of Insurance Proceeds; and
 - (iii) any Riverside Equity Release Amount.
- (c) If the date of prepayment is the Senior Discharge Date, the prepayment specified in paragraph (b) above will only be made if all amounts required to be applied in making a prepayment under the Senior Facilities Agreement have been so applied.

9.3 Application of mandatory prepayments

- (a) Unless the Borrower makes an election under paragraph (b) below, the Borrower shall apply the Net Disposal Proceeds, Insurance Proceeds and Riverside Equity Release Amounts, less the amount thereof that have been or are required to be applied in making a repayment or prepayment under the Senior Facilities Agreement, in prepayment of the Loan in accordance with paragraph (b) of Clause 9.2 (Disposal, Insurance and Riverside Proceeds), promptly upon receipt of those proceeds or (if applicable) on the Senior Discharge Date.
- (b) Subject to paragraph (c) below, the Borrower may, by giving the Agent not less than ten Business Days' (or such shorter period as the Majority Lenders may agree) prior written notice, elect that any prepayment under Clause 9.2 (Disposal, Insurance and Riverside Proceeds) other than on the Senior Discharge Date be applied in prepayment of the Loan on a day falling on or prior to the next Interest Payment Date as specified in such notice. If the Borrower makes that election then a proportion of the Loan equal to the amount of the relevant prepayment will be due and payable on the date specified in such notice.
- (c) If the Borrower has made an election under paragraph (b) above but a Default has occurred and is continuing, that election shall no longer apply and a proportion of the Loan in respect of which the election was made equal to the amount of the relevant prepayment shall be immediately due and payable (unless the Majority Lenders otherwise agree in writing).

9.4 Mandatory Prepayment Accounts and Holding Accounts

- (a) After the Senior Discharge Date, the Borrower shall ensure that:
- (i) Net Disposal Proceeds, Insurance Proceeds and any Riverside Equity Release Amount in respect of which the Borrower has made an election under paragraph (b) of Clause 9.3 (Application of mandatory prepayments) are paid into a Mandatory Prepayment Account as soon as reasonably practicable after receipt by a member of the Group; and
 - (ii) all Excluded Disposal Proceeds and Excluded Insurance Proceeds which are to be applied in purchase, replacement, reinstatement or repair of assets are paid into a Holding Account as soon as reasonably practicable after receipt by a member of the Group.
- (b) After the Senior Discharge Date, the Borrower irrevocably authorises the Account Bank to:
- (i) pay:
 - (A) amounts credited to the Mandatory Prepayment Account; and
 - (B) amounts credited to the Holding Account, which have not been applied in purchase, replacement, reinstatement or repair of assets within 12 months of receipt of the relevant proceeds (or such longer time period as the Majority Lenders may agree),

to the Agent for application towards amounts due and payable under Clause 9.3 (Application of mandatory prepayments) and otherwise under the Finance Documents;

- (ii) apply amounts credited to the Holding Account, whether or not 12 months (or such longer time period as the Agent may agree) have elapsed since receipt of those proceeds, if a Default has occurred and is continuing; and
 - (iii) transfer any amounts credited to the Holding Account referred to in this paragraph (b) to the Mandatory Prepayment Account pending payment of amounts due and payable under the Finance Documents (but if all such amounts have been paid any such amounts remaining credited to the Mandatory Prepayment Account may (unless a Default has occurred) be transferred back to the Holding Account).
- (c) The Borrower is authorised to apply amounts credited to the Holding Account towards (i) the purchase of assets which are to be used in the business of the Group and are comparable or superior as to the type, value or quality to the disposed assets and (ii) the replacement, reinstatement or repair of assets or otherwise in respect of which the relevant insurance claim was made.
- (d) The Account Bank with which a Mandatory Prepayment Account or Holding Account is held acknowledges and agrees that (i) interest shall accrue at normal commercial rates on amounts credited to those accounts and that the account holder shall be entitled to receive such interest (which shall be paid in accordance with the mandate relating to such account) unless a Default is continuing and (ii) on or after the Senior Discharge Date, each such account is subject to the Transaction Security.

9.5 Excluded proceeds

Where Excluded Disposal Proceeds and Excluded Insurance Proceeds include amounts which are intended to be used for a specific purpose within a specified period (as set out in the relevant definition of Excluded Disposal Proceeds or Excluded Insurance Proceeds), the Borrower shall ensure that those amounts are used for that purpose and, if requested to do so by the Agent, shall promptly deliver a certificate to the Agent at the time of such application and at the end of such period confirming the amount (if any) which has been so applied within the requisite time periods provided for in the relevant definition.

9.6 Excess cash cover

On or after the Senior Discharge Date, if there is an Excess cash cover, the Borrower shall, as soon as reasonably practicable, apply that Excess cash cover in prepayment of the Loan (including capitalised interest).

10. RESTRICTIONS

10.1 Notices of cancellation or prepayment

Any notice of cancellation, prepayment, authorisation or other election given by any Party under Clause 8 (Illegality, voluntary prepayment and cancellation) or paragraph (b) of Clause 9.3 (Application of mandatory prepayments) shall (subject to the terms of those Clauses) 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.

10.2 Interest and other amounts

Any prepayment under this Agreement shall be made together with interest accrued but not yet capitalised on the amount prepaid and, subject to any Break Costs, without premium or penalty.

10.3 No reborrowing of the Facility

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

10.4 Prepayment in accordance with Agreement

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.

10.5 No reinstatement of Commitments

No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.

10.6 Agent's receipt of notices

If the Agent receives a notice under Clause 8 (Illegality, voluntary prepayment and cancellation) or an election under paragraph (b) of Clause 9.3 (Application of mandatory prepayments), it shall promptly forward a copy of that notice or election to either the Borrower or the affected Lender, as appropriate.

10.7 Effect of repayment and prepayment on accrued interest

To the extent a repayment or prepayment under Clause 7 (Cash Sweep) and Clause 9.2 (Disposal, Insurance and Riverside Proceeds) requires the Borrower to pay any interest (including any interest which has accrued but not yet been capitalised), the amount allocated to any mandatory prepayment shall be reduced such that sufficient funds are available from the amount originally to be prepaid to the relevant Lenders to meet such accrued interest.

10.8 Effect of repayment and prepayment on Commitments

If all or part of any Lender's participation in the Loan is repaid or prepaid, an amount of that Lender's Commitment (equal to the amount of the participation which is repaid or prepaid) will be deemed to be cancelled on the date of repayment or prepayment.

10.9 Application of prepayments

Any prepayment of the Loan (other than a prepayment pursuant to Clause 8.1 (Illegality) or Clause 8.3 (Right of cancellation and repayment in relation to a single Lender)) shall be applied pro rata to each Lender's participation in the Loan.

11. INTEREST

11.1 Calculation of interest

The rate of interest on the Loan for each Interest Period is the percentage rate per annum which is the aggregate of the applicable:

- (a) Margin; and

- (b) LIBOR.

11.2 Payment of interest

- (a) Interest accrued on the Loan will, on the last day of each applicable Interest Period:
 - (i) subject to paragraph (b) of Clause 11.5 (PIK Bonds), be settled by the Borrower issuing PIK Bonds in accordance with Clause 11.5 (PIK Bonds) in an amount equal to the interest accrued during the relevant Interest Period;
 - (ii) if not settled in accordance with paragraph (i) above, be automatically capitalised and shall constitute, and be added to the outstanding principal amount of, the Loan and will be subsequently treated for all purposes of this Agreement as part of the principal amount of the Loan.
- (b) All Lender PIK Bonds and such amounts of capitalised interest must, subject to the terms of Clauses 7 (Cash Sweep), 8 (Illegality, voluntary prepayment and cancellation) or 9 (Mandatory prepayment and cancellation), be repaid in full on the Termination Date or the earlier date on which the Loan is prepaid or repaid in full or becomes or is declared due and payable.
- (c) If part of the Loan is repaid or prepaid in accordance with Clauses 7 (Cash Sweep), 8 (Illegality, voluntary prepayment and cancellation) or 9 (Mandatory prepayment and cancellation), interest which has accrued but has not yet been capitalised at the date of that repayment or prepayment on that repaid or prepaid amount shall be paid at the same time as that repayment or prepayment.

11.3 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 1% per annum higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted the 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 11.3 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:
 - (i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period; and
 - (ii) the rate of interest applying to the overdue amount during that first Interest Period shall be 1% per annum higher than the rate which would have applied 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.

11.4 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.

11.5 PIK Bonds

- (a) Subject to paragraph (b) below, the Borrower may in its sole discretion issue one or more separate PIK Bonds to the Lenders pursuant to Clause 11.2 (Payment of interest) in respect of accrued interest (provided that in the event that the Borrower elects to issue PIK Bonds on account of its obligation to pay accrued interest for any Interest Period, PIK Bonds shall be issued to each Lender in respect of all interest accrued during that Interest Period for an amount equal to that Lender's participation in the Loan).
- (b) The Borrower may only issue PIK Bonds if a Bond Agent has been appointed and its scope of work, terms of appointment and any consequential amendments to the Finance Documents have been approved by the Agent and the Majority Lenders.
- (c) The Borrower irrevocably and unconditionally appoints the Bond Agent to be its attorney and in its name and on its behalf to complete and execute each PIK Bond. Any request for the Bond Agent to complete and execute a PIK Bond on behalf of the Borrower for any Interest Period shall be set out in a PIK Bond Selection Notice delivered to the Bond Agent and the Agent prior to the date falling ten Business Days before the last day of that Interest Period. The Borrower shall, upon request from the Bond Agent from time to time, deliver to the Bond Agent such blank executed PIK Bonds and additional authorities as the Bond Agent may reasonably request in order to complete and issue PIK Bonds on behalf of the Borrower.
- (d) The Bond Agent shall maintain a register (the **PIK Bond Register**) on which it will record the PIK Bonds issued by the Borrower, showing the principal outstanding amount of the PIK Bonds from time to time, the dates and amounts of issue, prepayments and repayments thereof and all subsequent transfers and changes of ownership thereof and the names and addresses of the holders of the PIK Bonds.
- (e) Each Lender PIK Bond shall:
 - (i) have an identifying serial number which shall be entered in the PIK Bond Register; and
 - (ii) be in registered form.
- (f) In the case of Lender PIK Bonds, subject to paragraph (g) below, title thereto shall pass upon the delivery to the Bond Agent of an executed Assignment Agreement and Lender Accession Undertaking or Transfer Certificate and Lender Accession Undertaking in relation thereto in accordance with Clause 25 (Changes to the Lenders) and the transfer of the relevant Lender PIK Bond(s) pursuant to that Assignment Agreement and Lender Accession Undertaking or a Transfer Certificate and Lender Accession Undertaking being recorded in the PIK Bond Register, whereupon the Bond Agent shall destroy the relevant Lender PIK Bond(s) and issue one or more replacement PIK Bonds reflecting that transfer.
- (g) Any transfer of a Lender PIK Bond shall be subject to the same conditions as are applicable to any other transfer made pursuant to Clause 25 (Changes to the Lenders).
- (h) Each Lender authorises the Bond Agent to retain any Lender PIK Bonds issued to it on its behalf. Should any PIK Bond be lost, stolen, mutilated, defaced or destroyed, it may be replaced at the address for delivery of notices to the Bond Agent under this Agreement on such terms as to evidence as the Borrower may reasonably require. Mutilated or defaced PIK Bonds must be surrendered before replacements will be issued.

- (i) The principal amount outstanding under any Lender PIK Bond (excluding, for the avoidance of doubt, any PIK Bond retained by the Borrower or applied in payment to any tax authority pursuant to paragraph (j) below) shall be treated as the Loan for all purposes under the Finance Documents (including, without limitation, for the purposes of Clause 11.2 (Payment of interest)) provided that the terms of Clause 3 (Purpose) and Clause 4 (Conditions of Utilisation) shall not apply to any PIK Bond. Each Lender PIK Bond shall be a Finance Document.
- (j) In the event that the Borrower is required to make a Tax Deduction in accordance with paragraph (e) of Clause 15.2 (Tax gross-up) in respect of any payment made by way of a PIK Bond, without prejudice to the provisions of paragraph (e) of Clause 15.2 (Tax gross-up), that Tax Deduction will be effected by way of issue of a PIK Bond in the amount of the relevant Tax Deduction (with the remainder of the relevant payment to be made by way of issue of a separate PIK Bond). Any PIK Bond issued in respect of a Tax Deduction may be retained by the Borrower and/or applied in payment to the relevant tax authority. If the Borrower makes a Tax Deduction by way of issue of a PIK Bond:
 - (i) in the event that the Borrower is required to make an increased payment to the relevant Lender under Clause 15.2 (Tax gross-up) in respect of that Tax Deduction, such increased payment shall be made by way of issue of an additional Lender PIK Bond; and
 - (ii) in the event that the Borrower is not required to make an increased payment to the relevant Lender under Clause 15.2 (Tax gross-up) in respect of that Tax Deduction, interest shall accrue and be payable to the relevant Lender (or, as the case may be, its successors in title, permitted assigns or permitted transferees) as if that Lender was the holder of that PIK Bond and that PIK Bond was the Loan for the purposes of the Finance Documents (notwithstanding that such PIK Bond has been retained by the Borrower or applied in payment to the relevant tax authority).
- (k) The Agent is not required to monitor or check the issue, transfer or repayment of the PIK Bonds.

12. INTEREST PERIODS

12.1 Terms

- (a) An Interest Period for the Loan shall not extend beyond the Termination Date.
- (b) Each Interest Period for the Loan shall start on the Utilisation Date or (if already made) on the last day of its preceding Interest Period.

12.2 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).

13. CHANGES TO THE CALCULATION OF INTEREST

13.1 Unavailability of Screen Rate

- (a) *Interpolated Screen Rate:* If no Screen Rate is available for LIBOR for the Interest Period, the applicable LIBOR shall be the Interpolated Screen Rate for a period equal in length to the Interest Period.
- (b) *Historic Screen Rate:* If no Screen Rate is available for LIBOR for:

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

the applicable LIBOR shall be the Historic Screen Rate.

- (c) *Interpolated Historic Screen Rate*: If paragraph (b) above applies but no Historic Screen Rate is available for the Interest Period, the applicable LIBOR shall be the Interpolated Historic Screen Rate for a period equal in length to the Interest Period.
- (d) *Base Reference Bank Rate*: If paragraph (c) above applies but it is not possible to calculate the Interpolated Historic Screen Rate, the applicable LIBOR shall be the Base Reference Bank Rate as of the Specified Time for the currency of the Loan and for a period equal in length to the Interest Period of that Loan.
- (e) *Cost of funds*: If paragraph (d) above applies but no Base Reference Bank Rate is available for the relevant currency or Interest Period, there shall be no LIBOR for that Loan and Clause 13.4 (Cost of funds) shall apply for that Interest Period.

13.2 Calculation of Base Reference Bank Rate

- (a) Subject to paragraph (b) below, if LIBOR is to be determined on the basis of a Base Reference Bank Rate but a Base Reference Bank does not supply a quotation by the Specified Time, the Base Reference Bank Rate shall be calculated on the basis of the quotations of the remaining Base Reference Banks.
- (b) If at or about noon on the Quotation Day, none or only one of the Base Reference Banks supplies a quotation, there shall be no Base Reference Bank Rate for the relevant Interest Period.

13.3 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 Clause 13.4 (Cost of funds) shall apply for the relevant Interest Period.

13.4 Cost of funds

- (a) If this Clause 13.4 applies, the rate of interest on each Lender's share of the Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:
 - (i) the Margin; and
 - (ii) the rate notified to the Agent by that Lender as soon as practicable and in any event before the earlier of (A) the date falling five Business Days after the Quotation Day in respect of that Interest Period and (B) three Business Days prior to the date on which interest is due to be paid in respect 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 the Loan from whatever source it may reasonably select.

- (b) If this Clause 13.4 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 30 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 13.4 applies pursuant to Clause 13.3 (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.

13.5 Notification to Borrower

If Clause 13.4 (Cost of funds) applies, the Agent shall, as soon as is practicable, notify the Borrower.

13.6 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 the Borrower on a day other than the last day of an Interest Period for the Loan or that 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.

14. FEES

14.1 Agency fee

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

14.2 Security Agent fee

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

14.3 Account Bank fee

The Borrower shall pay to the Account Bank (for its own account) an account bank fee in the amount and at the times agreed in a Fee Letter.

15. TAX GROSS-UP AND INDEMNITIES

15.1 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 1 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 and Lender Accession Undertaking or Assignment Agreement and Lender Accession Undertaking, 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 payment 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:
 - (aa) a company so resident in the United Kingdom; or
 - (bb) 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;
 - (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 purposes 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 the Borrower to a Finance Party under Clause 15.2 (Tax gross-up) or a payment under Clause 15.3 (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) in respect of a Lender that is a resident of the United States of America, the Lender is a "qualified person" for the purposes of Article 23 of the UK/U.S. Double Taxation Convention dated 24 July 2001 (the **UK/U.S. Treaty**) and is not party to this Agreement as part of a "conduit arrangement" as that term is defined in Article 3(1)(n) of the UK/U.S. Treaty; and

(iv) in respect of a Lender that was not a Lender on the Restructuring Effective Date and is not a resident of the United States of America, fulfils any conditions which must be fulfilled under the Treaty for residents of such Treaty State to obtain exemption from taxation imposed by the UK on interest, except that for this purpose it is assumed that there are fulfilled:

- (A) any condition contained in the Treaty which relates to the amount or terms of the Loan or to there being or not being a special relationship between the Borrower and a Finance Party or between one or more of them and another person by reason of which the amount of interest paid exceeds the amount which would have been paid in the absence of such relationship; and
- (B) any necessary 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 is or becomes a Party on the Restructuring Effective Date, a Lender identified as a UK Non-Bank Lender in Part 2 of Schedule 1 (The Original Parties); and
 - (ii) where a Lender becomes a Party after the Restructuring Effective Date, a Lender which gives a Tax Confirmation in the Assignment Agreement and Lender Accession Undertaking or Transfer Certificate and Lender Accession Undertaking which it executes on becoming a Party.
- (b) Unless a contrary indication appears, in this Clause 15 a reference to **determines** or **determined** means a determination made in the absolute discretion of the person making the determination.

15.2 Tax gross-up

- (a) The Borrower shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) The Borrower shall promptly upon becoming aware that the Borrower 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.
- (c) If a Tax Deduction is required by law to be made by the Borrower, the amount of the payment due from the Borrower 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 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 Borrower 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 the Borrower is required to make a Tax Deduction, the Borrower 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 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower shall deliver to the Agent for the Finance Party entitled to the payment a statement under section 975 of the ITA or other 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 the Borrower shall co-operate in completing any procedural formalities necessary for the Borrower 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 opposite its name in Part 1 of Schedule 1 (The Original Parties); 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 and Lender Accession Undertaking or Assignment Agreement and Lender Accession Undertaking 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.

- (i) 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.
- (j) 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.
- (k) 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.
- (l) 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.

15.3 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 15.2 (Tax gross-up); or

- (B) would have been compensated for by an increased payment under Clause 15.2 (Tax gross-up) but was not so compensated solely because one of the exclusions in paragraph (d) of Clause 15.2 (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 15.3, notify the Agent.

15.4 Tax Credit

If the Borrower 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 Borrower 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 Borrower, provided that, to the extent that the relevant Tax Credit which has been obtained and utilised is attributable to receipt by the relevant Finance Party of a PIK Bond from a tax authority, that Finance Party shall not be required to make payment to that Obligor under this Clause 15.4 in connection with that Tax Credit.

15.5 Tax refund

If the Borrower makes a Tax Deduction in respect of tax imposed by the United Kingdom on interest from a payment of interest to a Treaty Lender, and Clause 15.2 (Tax gross-up) applies to increase the amount of the payment due to that Treaty Lender from the Borrower, the Borrower shall promptly provide the Treaty Lender with an executed original certificate, in the form required by HM Revenue & Customs, evidencing the Tax Deduction. The Treaty Lender shall, within a reasonable period following receipt of such certificate, apply to HM Revenue & Customs for a refund of the amount of the Tax Deduction and, upon receipt by the Treaty Lender of such amount from HM Revenue & Customs, that refund shall (for the avoidance of doubt) be considered a Tax Credit and Clause 15.4 (Tax Credit) shall apply in relation thereto to the extent that that refund is attributable to the increase in the amount paid by the Borrower pursuant to Clause 15.2 (Tax gross-up), provided that this Clause 15.5 shall not require a Treaty Lender to apply for a refund of the amount of the Tax Deduction if that refund would not be available to that Treaty Lender or the procedural formalities required in relation to making such an application are materially more onerous or require the disclosure of materially more Information than the procedural formalities required by HM Revenue & Customs as at the date of this Agreement in relation to such an application.

15.6 Lender Status Confirmation

Each Lender which becomes a Party to this Agreement after the date of this Agreement shall indicate, in the Transfer Certificate and Lender Accession Undertaking or Assignment Agreement and Lender Accession Undertaking which it executes on becoming a Party, and for the benefit of the Agent and without liability to the Borrower, 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 15.6 then such New Lender shall be treated for the purposes of this Agreement (including by the Borrower) 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 and Lender Accession Undertaking or Assignment Agreement and Lender Accession Undertaking shall not be invalidated by any failure of a Lender to comply with this Clause 15.6.

15.7 Stamp taxes

The Borrower shall pay and, within three Business Days of demand, indemnify each Secured Party against any cost, loss or liability that Secured Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document, provided that this Clause 15.7 shall not apply in respect of any stamp duty, registration or similar Taxes which are payable in respect of an assignment, transfer or other alienation of any kind by a Lender of any of its rights and/or obligations under a Finance Document unless the assignment, transfer or other alienation of any kind is made by a Lender in order to mitigate any circumstances giving rise to a Tax Payment, Increased Cost or a right to be pre-paid and/or cancelled by reason of illegality.

15.8 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 15.8 to any Party shall, at any time when such Party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the representative member of such group at such time (the term "representative member" to have the same meaning as in the Value Added Tax Act 1994).
- (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.

15.9 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; and
 - (iii) supply to that other Party such forms, documentation and other information relating to its status 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)(ii) or (iii) 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.

- (e) If the Borrower is a U.S. Tax Obligor or the Agent reasonably believes that its obligations under FATCA or any other applicable law or regulation require it, each Lender shall, within ten Business Days of:
 - (i) where an Borrower is a U.S. Tax Obligor and the relevant Lender is an Original Lender, the date of this Agreement;
 - (ii) where the Borrower is a U.S. Tax Obligor on a Transfer Date and the relevant Lender is a New Lender, the relevant Transfer Date;
 - (iii) the date a new U.S. Tax Obligor accedes as the Borrower; or
 - (iv) where the Borrower is not a U.S. Tax Obligor, the date of a request from the Agent, supply to the Agent:
 - (A) a withholding certificate on Form W-8, Form W-9 or any other relevant form; or
 - (B) any withholding statement or other document, authorisation or waiver as the Agent may require to certify or establish the status of such Lender under FATCA or that other law or regulation.
- (f) The Agent shall provide any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) above to the Borrower.
- (g) If any withholding certificate, withholding statement, document, authorisation or waiver provided to the Agent by a Lender pursuant to paragraph (e) above is or becomes materially inaccurate or incomplete, that Lender shall promptly update it and provide such updated withholding certificate, withholding statement, document, authorisation or waiver to the Agent unless it is unlawful for the Lender to do so (in which case the Lender shall promptly notify the Agent). The Agent shall provide any such updated withholding certificate, withholding statement, document, authorisation or waiver to the Borrower.
- (h) The Agent may rely on any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) or (g) above without further verification. The Agent shall not be liable for any action taken by it under or in connection with paragraph (e), (f) or (g) above.

15.10 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.

16. INCREASED COSTS

16.1 Increased costs

- (a) Subject to Clause 16.3 (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 or (ii) compliance with any law or regulation made after the date of this Agreement.
- (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.

16.2 Increased cost claims

- (a) A Finance Party intending to make a claim pursuant to Clause 16.1 (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.

16.3 Exceptions

- (a) Clause 16.1 (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 15.3 (Tax indemnity) (or would have been compensated for under Clause 15.3 (Tax indemnity) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 15.3 (Tax indemnity) applied);
 - (iv) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation; or
 - (v) attributable to the implementation of application of or compliance with the "International Convergence of Capital Measurement and Capital Standards, a Revised Framework" published by the Basel Committee in June 2004 in the form existing on the date of this Agreement (but excluding any amendment arising out of Basel III) (**Basel II**) or any other law or regulation which implements Basel II (whether such implementation, application or compliance is by a government, regulator, Finance Party or any of its Affiliates).

- (b) In this Clause 16.3, reference to a **Tax Deduction** has the same meaning given to the term in Clause 15.1 (Definitions).

17. OTHER INDEMNITIES

17.1 Currency indemnity

- (a) If any sum due from the Borrower 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 the Borrower; or
- (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the Borrower shall as an independent obligation, within three Business Days of demand, indemnify each Secured 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) The Borrower 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.

17.2 Other indemnities

- (a) The Borrower shall, within three Business Days of demand, indemnify each Secured Party against any cost, loss or liability incurred by it as a result of:

- (i) the occurrence of any Event of Default;
- (ii) a failure by the Borrower 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 30 (Sharing among the Finance Parties);
- (iii) funding, or making arrangements to fund or make available, its participation in the Loan on the Restructuring Effective Date 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 by that Finance Party alone); or
- (iv) the Loan (or part of the Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower.

- (b) The Borrower shall, within three Business Days of demand, indemnify each Finance Party, each Affiliate of a Finance Party and each officer, director, employee, agent, adviser and representative of a Finance Party (each an **Indemnified Party**) from and against any and all claims, damages, losses, liabilities, costs and expenses (including, without limitation, fees and disbursements of legal counsel), joint or several, that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or relating to any investigation, litigation or proceeding or the preparation of any defence with respect thereto, arising out of or in connection with or relating to the Finance Documents or the transactions contemplated by the Finance Documents or any use made or proposed to be made of the proceeds of the Facility, whether or not

such investigation, litigation or proceeding is brought by a member of the Group, any shareholder or creditor of any member of the Group, an Indemnified Party or any other person, except to the extent that such claim, damage, loss, liability, cost or expense is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence or wilful misconduct. Any third party referred to in this paragraph (b) may rely on this Clause 17.2 subject to Clause 1.5 (Third party rights) and the provisions of the Third Parties Act.

17.3 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;
 - (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 31.11 (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 under the Finance Documents.

17.4 Indemnity to the Security Agent

- (a) The Borrower shall promptly indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability incurred by any of them as a result of:
 - (i) any failure by the Borrower to comply with its obligations under Clause 19 (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 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) any default by the Borrower in the performance of any of the obligations expressed to be assumed by it in the Finance Documents; or
 - (vi) acting as Security Agent, Receiver or Delegate under the Finance Documents or which otherwise relates to any of the Charged Property (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).
- (b) The Borrower expressly acknowledges and agrees that the continuation of its indemnity obligations under this Clause 17.4 will not be prejudiced by any release or disposal under clause 11 (Distressed

Disposals and Appropriation) of the Intercreditor Agreement taking into account the operation of that clause.

- (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 17.4 and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all monies payable to it.

18. MITIGATION BY THE LENDERS

18.1 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 Facility ceasing to be available or any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 8.1 (Illegality), Clause 15 (Tax gross-up and indemnities) or Clause 16 (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 the Borrower under the Finance Documents.

18.2 Limitation of liability

- (a) The Borrower shall promptly indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 18.1 (Mitigation).
- (b) A Finance Party is not obliged to take any steps under Clause 18.1 (Mitigation) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

19. COSTS AND EXPENSES

19.1 Transaction expenses

The Borrower shall, promptly on demand, pay the Agent and the Security Agent the amount of all costs and expenses (including legal fees) reasonably 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) any other Finance Documents executed after the date of this Agreement.

19.2 Amendment costs

If:

- (a) the Borrower requests an amendment, waiver or consent; or
- (b) an amendment is required pursuant to Clause 31.10 (Change of currency),

the Borrower shall, within three Business Days of demand, reimburse each of the Agent and the Security Agent for the amount of all costs and expenses (including legal fees) reasonably incurred by

the Agent and the Security 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.

19.3 Security Agent's management time and additional remuneration

- (a) Any amount payable to the Security Agent under Clause 17.4 (Indemnity to the Security Agent) and this Clause 19 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;
 - (ii) the Security Agent being requested by the Borrower or the Majority 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 Borrower agreeing that it is otherwise appropriate in the circumstances,

the Borrower shall pay to the Security Agent any additional remuneration 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.

19.4 Enforcement and preservation costs

The Borrower shall, within three Business Days of demand, pay to each Secured Party the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of or the preservation of any rights under any Finance Document and the Transaction Security and any proceedings instituted by or against the Security Agent as a consequence of taking or holding the Transaction Security or enforcing these rights.

20. REPRESENTATIONS

20.1 General

- (a) Each of the Borrower and TopCo make the representations and warranties set out in this Clause 20 to each Finance Party.
- (b) In relation to the representations and warranties made on the date of this Agreement and any other date on or before the Restructuring Effective Date, it is assumed that the Restructuring Effective Date has occurred and the Borrower has the knowledge of Senior Management.

20.2 Status

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

20.3 Binding obligations

Subject to the Legal Reservations:

- (a) the obligations expressed to be assumed by it in each Transaction Document to which it is a party are legal, valid, binding and enforceable obligations; and
- (b) (without limiting the generality of paragraph (a) above but subject to the registration of the particulars of the Company Share Charge and Loan Assignment referred to in Clause 20.11 (No filing or stamp taxes)), each Transaction Security Document to which it is a party creates the security interests which that Transaction Security Document purports to create and those security interests are valid and effective.

20.4 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, the Transaction Documents and the granting of the Transaction Security do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) the constitutional documents of any member of the Group; or
- (c) any agreement or instrument binding upon it or any member of the Group or any of its or any member of the Group's assets or constitute a default or termination event (however described) under any such agreement or instrument.

20.5 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 Transaction Documents to which it is or will be a party and the transactions contemplated by those Transaction Documents.

20.6 Validity and admissibility in evidence

- (a) All Authorisations required or desirable:
 - (i) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party; and
 - (ii) to make the Transaction Documents to which it is a party admissible in evidence in its Relevant Jurisdictions,

have been obtained or effected and are in full force and effect except any Authorisation referred to in Clause 20.11 (No filing or stamp taxes).

- (b) All Authorisations necessary for the conduct of the business, trade and ordinary activities of members of the Group have been obtained or effected and are in full force and effect if failure to obtain or effect those Authorisations has or is reasonably likely to have a Material Adverse Effect.

20.7 Governing law and enforcement

- (a) The choice of governing law of the Finance Documents will be recognised and enforced in its Relevant Jurisdictions.
- (b) Any judgment obtained in relation to a Finance Document in the jurisdiction of the governing law of that Finance Document will be recognised and enforced in its Relevant Jurisdictions.

20.8 Insolvency

Other than the Scheme, no:

- (a) corporate action, legal proceeding or other procedure or step described in Clause 24.7 (Insolvency proceedings); or
- (b) creditors' process described in Clause 24.8 (Creditors' process),

has been taken or, to its knowledge, threatened in relation to the TopCo, the Borrower or a Material Company; and none of the circumstances described in Clause 24.6 (Insolvency) applies to the TopCo, the Borrower or a Material Company.

20.9 No breach of laws

- (a) It has not (and none of its Subsidiaries 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.

20.10 EP Permits

Each member of the Group that holds a Material EP Permit is in material compliance with the terms of that Material EP Permit.

20.11 No filing or stamp taxes

Under the laws of the United Kingdom, 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, notarial or similar Taxes or fees be paid on the Finance Documents or the transactions contemplated by the Finance Documents except registration of particulars of the Company Share Charge and Loan Assignment at the Companies Registration Office in England and Wales under section 859A of the Companies Act 2006 and payment of associated fees which registrations, filings, taxes and fees will be made and paid promptly after the date of the relevant Finance Document.

20.12 Deduction of Tax

It is not required to make any deduction for or on account of Tax 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).

20.13 No default

- (a) No Event of Default and, on the date of this Agreement and the Restructuring Effective Date, no Default is continuing or is reasonably likely to result from the making of the Loan or the entry into, the performance of, or any transaction contemplated by, any Transaction Document.
- (b) No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or termination event (however described) 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 has or is reasonably likely to have a Material Adverse Effect.

20.14 Taxation

- (a) It is not (and none of its Subsidiaries is) materially overdue in the filing of any Tax returns and it is not (and none of its Subsidiaries is) overdue in the payment of any amount in respect of any amount of Tax, other than any Tax which is disputed in good faith.
- (b) No claims or investigations are being, or are reasonably likely to be, made or conducted against it (or any of its Subsidiaries) with respect to Taxes such that a material liability of, or material claim against, any member of the Group is reasonably likely to arise.
- (c) It is resident for Tax purposes only in the UK.

20.15 No misleading information

Save as disclosed in writing to the Agent prior to the date of this Agreement:

- (a) any factual information provided by any member of the Group in connection with any member of the Group or the Finance Documents (including any factual information in the Business Plan, the Strategic Plan, the Budget and the Strategic Review) was true and accurate in all material respects as at the date it was provided or (as the case may be) as at the date the information is expressed to be given;
- (b) the Business Plan, the Budget, the Strategic Review and the Strategic Plan have been prepared in accordance with the Accounting Principles as applied to the Original Financial Statements;
- (c) the expressions of opinion or intention provided by or on behalf of the Borrower were made after careful consideration and (as at the date of the relevant report or document containing the expression of opinion or intention) were fair and based on reasonable grounds;

- (d) no event or circumstance has occurred or arisen and no information has been omitted and no information has been given or withheld that results in the information, opinions, intentions, forecasts or projections provided by or on behalf of the Borrower being untrue or misleading in any material respect; and
- (e) all other written information provided by any member of the Group (including its advisers) to a Finance Party was true, complete and accurate in all material respects as at the date it was provided and is not misleading in any respect.

20.16 Original Financial Statements

- (a) The Original Financial Statements were prepared in accordance with the Accounting Principles consistently applied unless expressly disclosed to the Agent in writing to the contrary.
- (b) The audited Original Financial Statements give a true and fair view of its and CEHL's (as the case may be) financial condition and results of operations (consolidated in the case of CEHL) during the relevant Financial Year unless expressly disclosed to the Agent in writing to the contrary prior to the date of this Agreement.
- (c) Other than the changes resulting solely from the Scheme, there has been no material adverse change in its, and/or the Group's, consolidated assets, business or financial condition since the date of the Original Financial Statements.
- (d) The Original Financial Statements of CEHL do not consolidate the results, assets or liabilities of any person or business which does not form part of the Group with the exception of the EFW MidCo.
- (e) The most recent financial statements delivered pursuant to Clause 21.1 (Financial statements):
 - (i) have been prepared in accordance with the Accounting Principles as applied to the Original Financial Statements and the Business Plan, the Budget, the Strategic Review and the Strategic Plan; and
 - (ii) give a true and fair view of its and CEHL's (as the case may be) consolidated financial condition as at the end of, and consolidated results of operations for, the period to which they relate.
- (f) The output of the Business Plan, the Budget, the Strategic Review, the Strategic Plan and the budgets, projections and forecasts supplied by any member of the Group were arrived at after careful consideration and have been prepared in good faith on the basis of recent historical information, are fair and on the basis of assumptions which were reasonable as at the date they were prepared and supplied and have been approved by the Board of the Borrower.
- (g) Since the date of the most recent financial statements delivered pursuant to Clause 21.1 (Financial statements) there has been no material adverse change in the business, assets or financial condition of the Group.

20.17 Accounting Reference Date

The Accounting Reference Date of each member of the Group is 31 December.

20.18 No proceedings pending or threatened

No litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which, if adversely determined, are reasonably likely to have a Material

Adverse Effect have (to the best of its knowledge and belief (having made due and careful enquiry)) been started or threatened against it or any of its Subsidiaries.

20.19 Environmental laws

- (a) Each member of the Group is in compliance with Clause 23.3 (Environmental compliance) and to the best of its knowledge and belief (having made due and careful enquiry) no circumstances have occurred which would prevent such compliance.
- (b) No Environmental Claim has been commenced or (to the best of its knowledge and belief (having made due and careful enquiry)) is threatened against any member of the Group where that claim has or is reasonably likely, if determined against that member of the Group, to have a Material Adverse Effect.
- (c) The cost to the Group of compliance with Environmental Laws (including Environmental Permits) is (to the best of its knowledge and belief, having made due and careful enquiry) adequately provided for in the Business Plan, the Budget, the Strategic Review and the Strategic Plan.
- (d) There are no past or present acts, omissions, events or circumstances that would form, or are reasonably likely to form, the basis of any Environmental Claim (including any arising out of generation, storage, transport, disposal or release of any Dangerous Substance) against any member of the Group which, if adversely determined, would have a Material Adverse Effect.

20.20 Anti-corruption law

Neither it nor, to the best of its knowledge and belief, any other member of the Group of any of its (or their) respective members, directors, officers, employees, agents or other representatives has engaged in any activity or conduct which would violate any applicable anti-bribery or anti-corruption law or regulation including, without limitation, the U.S. Foreign Corrupt Practices of 1977 or the UK Bribery Act 2010.

20.21 Sanctions

The Borrower, or any of its subsidiaries or directors, is not:

- (a) listed, or is owned or controlled, directly or indirectly, by any person which is listed, on an SDN List;
- (b) located, organised or resident in a country which is the subject of sanctions by the United Nations, the European Union, Her Majesty's Treasury, any European Union member state or any other United States government entity; or
- (c) a governmental agency, authority, or body or state-owned enterprise of any country which is the subject of sanctions by the United Nations, the European Union, Her Majesty's Treasury, any European Union member state or any other United States government entity.

20.22 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.

20.23 Ranking

Subject to the terms of the Intercreditor Agreement, the Transaction Security has or will have the ranking in priority which it is expressed to have in the Transaction Security Documents and it is not subject to any prior ranking or *pari passu* ranking Security.

20.24 Good title to assets

It and each of its Subsidiaries has a 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.

20.25 Legal and beneficial ownership

- (a) It and each of its Subsidiaries is the sole legal and beneficial owner of the respective assets over which it purports to grant Security.
- (b) All the CEHL Shares are legally and beneficially owned by the Company free from any claims, third party rights or competing interests other than Permitted Security.

20.26 Shares

The shares of any member of the Group which are subject to the Transaction Security are fully paid and not subject to any option to purchase or similar rights. The constitutional documents of companies whose shares are subject to the Transaction Security do not and could not restrict or inhibit any transfer of those shares on creation or enforcement of the Transaction Security. There are no agreements in force which provide for the issue or allotment of, or grant any person the right to call for the issue or allotment of, any share or loan capital of any member of the Group (including any option or right of pre-emption or conversion).

20.27 Intellectual Property

Each Material Company:

- (a) is the sole legal and beneficial owner of or has licensed to it all the Intellectual Property which is material in the context of its business and which is required by it in order to carry on its business as it is being conducted and as contemplated in the Business Plan, the Budget, the Strategic Review and the Strategic Plan;
- (b) does not, in carrying on its businesses, infringe any Intellectual Property of any third party in any respect which has or is reasonably likely to have a Material Adverse Effect; and
- (c) has taken all formal or procedural actions (including payment of fees) required to maintain any material Intellectual Property owned by it.

20.28 Other documents

The Shareholders' Agreement, the Service Contracts and the constitutional documents of the Company and the Borrower (as amended to the extent permitted under this Agreement and the Intercreditor Agreement) contain all the material terms of all the agreements and arrangements between Senior Management and the Shareholders, between Senior Management and the TopCo and between Senior Management and any member of the Group.

20.29 Ownership

- (a) Except as may arise under the Transaction Documents, neither the Borrower nor the TopCo has traded or incurred any material liabilities or commitments (actual or contingent, present or future).
- (b) On and after the Restructuring Effective Date, the TopCo is the legal and beneficial owner of all of the shares in the Borrower and the Borrower is the legal and beneficial owner of all of the shares in the Company.
- (c) The Company is the legal and beneficial owner of all of the CEHL Shares.

20.30 Centre of Main Interests and establishments

It has its Centre of Main Interests in its jurisdiction of incorporation.

20.31 Pensions

Except for the Former Registered Dockworkers Pension Fund, the Federated Pension Plan and the Cornwall Pension Scheme:

- (a) neither it nor any of its Subsidiaries is or has at any time been an employer (for the purposes of sections 38 to 51 of the Pensions Act 2004) of an occupational pension scheme which is not a money purchase scheme (both terms as defined in the Pension Schemes Act 1993); and
- (b) neither it nor any of its Subsidiaries is or has at any time been "connected" with or an "associate" of (as those terms are used in sections 38 and 43 of the Pensions Act 2004) such an employer.

20.32 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.

20.33 Immunity

- (a) The entry into by it of each Finance Document constitutes, and the exercise by it of its rights and performance of its obligations under each Finance Document will constitute, private and commercial acts performed for private and commercial purposes.
- (b) It will not be entitled to claim immunity from suit, execution, attachment or other legal process in any proceedings taken in its jurisdiction of incorporation in relation to any Finance Document.

20.34 Times when representations made

- (a) All the representations and warranties in this Clause 20 are made by the Borrower and the TopCo on the date of this Agreement.
- (b) All the representations and warranties in this Clause 20 are deemed to be made by the Borrower and the TopCo on the Restructuring Effective Date.
- (c) The Repeating Representations are deemed to be made by the Borrower and the TopCo on the Restructuring Effective Date, on the first day of each Interest Period (except that those contained in paragraphs (a) to (d) of Clause 20.16 (Original Financial Statements) will cease to be so made once subsequent financial statements have been delivered under this Agreement).
- (d) Each representation or warranty deemed to be made after the date of this Agreement shall be deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made.

21. INFORMATION UNDERTAKINGS

The undertakings in this Clause 21 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.

In this Clause 21:

Annual Financial Statements means the financial statements for a Financial Year delivered pursuant to paragraphs (a) and (b) of Clause 21.1 (Financial statements).

Monthly Summarised Management Accounts means the summarised management accounts delivered pursuant paragraph (c) of Clause 21.1 (Financial statements).

21.1 Financial statements

The Borrower shall (and shall ensure that CEHL) supply to the Agent in sufficient copies for all the Lenders:

- (a) within 60 days of the date of this Agreement, the audited consolidated financial statements of the Borrower for the Financial Year ended 31 December 2014;
- (b) as soon as they are available, but in any event within 120 days after the end of each of its Financial Years:
 - (i) its audited consolidated financial statements for that Financial Year, and, if they are prepared separately; and
 - (ii) the audited financial statements of any other Subsidiary for that Financial Year if requested by the Agent; and
- (c) as soon as they are available, but in any event within 30 days after the end of each calendar month (other than January), summarised management accounts with respect to the Group.

21.2 Provision and contents of Compliance Certificate

- (a) The Borrower shall supply a Compliance Certificate to the Agent with each set of its financial statements provided in accordance with paragraph (a) of Clause 21.1 (Financial Statements).

- (b) The Compliance Certificate shall, among other things, set out (in reasonable detail) computations as to compliance with Clause 22 (Financial covenants).
- (c) Each Compliance Certificate shall be signed by authorised signatories of the Borrower and, if required to be delivered with the consolidated Annual Financial Statements of the Borrower, shall be reported on by the Borrower's Auditors in the form agreed by the Borrower and the Majority Lenders.

21.3 Requirements as to financial statements

- (a) The Borrower shall procure that:
 - (i) each set of its Annual Financial Statements shall be audited by the Borrower's Auditors; and
 - (ii) each set of Monthly Summarised Management Accounts includes the information set out in paragraph 1 of Schedule 10 (Information Packs).
- (b) Each set of financial statements delivered pursuant to Clause 21.1 (Financial statements):
 - (i) shall be certified by a director of the relevant company as giving a true and fair view of (in the case of Annual Financial Statements for any Financial Year), or fairly representing (in other cases), its financial condition and operations at the date at which those financial statements were drawn up and, in the case of the Annual Financial Statements, shall be accompanied by any letter addressed to the management of the relevant company by the auditors of those Annual Financial Statements and accompanying those Annual Financial Statements;
 - (ii) in the case of consolidated financial statements of the Group, shall be accompanied by a statement by the directors of the Borrower comparing actual performance for the period to which the financial statements relate to:
 - (A) the projected performance for that period set out in the Budget; and
 - (B) the actual performance for the corresponding period in the preceding Financial Year of the Group; and
 - (iii) shall be prepared using the Accounting Principles, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements in relation to CEHL unless, in relation to any set of financial statements, the Borrower notifies the Agent that there has been a change in the Accounting Principles or the accounting practices and the Borrower's Auditors (or, if appropriate, the auditors of CEHL) deliver to the Agent:
 - I. a description of any change necessary for those financial statements to reflect the Accounting Principles or accounting practices upon which the Business Plan, the Budget, the Strategic Review and the Strategic Plan or, as the case may be, the relevant Original Financial Statements were prepared; and
 - II. sufficient information, in form and substance as may be reasonably required by the Agent, to enable the Lenders to determine whether Clause 22 (Financial covenants) has been complied with, to determine the amount of any prepayments to be made from excess cashflow under Clause 7 (Cash Sweep) and to make an accurate comparison between the financial position indicated in those financial statements

and the Business Plan, the Budget, the Strategic Review and the Strategic Plan (in the case of the Borrower) or the relevant Original Financial Statements.

Any reference in this Agreement to any financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Business Plan, the Budget, the Strategic Review and the Strategic Plan or, as the case may be, the relevant Original Financial Statements were prepared.

- (c) If the Agent wishes to discuss the financial position of any member of the Group with the auditors of that member of the Group, the Agent may notify the Borrower, stating the questions or issues which the Agent wishes to discuss with those auditors. In this event, the Borrower must ensure that those auditors are authorised (at the expense of the Borrower):
 - (i) to discuss in the presence of the Borrower the financial position of the relevant member of the Group with the Agent on request from the Agent; and
 - (ii) to disclose to the Agent for the Finance Parties any information which the Agent may reasonably request.

21.4 Budget

- (a) The Borrower shall supply to the Agent in sufficient copies for all the Lenders an annual budget for each of its Financial Years (including forecasts of capital expenditure) as soon as the same become available but in any event within 14 days before the start of that Financial Year or, if later, on the date such annual budget is approved by the requisite majority of the Shareholders in accordance with and pursuant to the terms of the Shareholders' Agreement.
- (b) In the event that the annual budget in respect of a Financial Year is not approved by the requisite majority of Shareholders in accordance with the terms of the Shareholders' Agreement prior to the commencement of that Financial Year, the Budget that was last delivered under this Clause 21.4 shall (until the approved annual budget for that Financial Year is delivered) be adopted as the Budget for that Financial Year.
- (c) The Borrower shall ensure that each Budget (including any updates or changes made pursuant to paragraph (d) below):
 - (i) includes a projected consolidated profit and loss, balance sheet and cashflow statement for the Group, projected disposals and projected capital expenditure for the Group, projected financial covenant calculations and descriptions of the proposed activities of the Group for the Financial Year to which the Budget relates (as more particularly set out in paragraph 2 of Schedule 10 (Information Packs)). The projections shall relate to the 12-month period comprising, and each month in, that Financial Year;
 - (ii) is prepared in accordance with the Accounting Principles and the accounting practices and financial reference periods applied to financial statements under Clause 21.1 (Financial statements);
 - (iii) is in a form and substance consistent with the Business Plan; and
 - (iv) has been approved by the board of directors of the Borrower.
- (d) If the Budget is updated or changed, the Borrower shall promptly deliver to the Agent, in sufficient copies for each of the Lenders, such updated or changed Budget together with a written explanation of the main changes in that Budget.

21.5 Strategic Review and Business Plan

- (a) The Borrower shall supply to the Agent (in sufficient copies for all the Lenders, if the Agent requests):
 - (i) within 90 days from the Restructuring Effective Date, an update as to progress on the Strategic Review;
 - (ii) within 180 days from the Restructuring Effective Date, the Strategic Review;
 - (iii) within one Month of the date of delivery of the Strategic Review, a business plan of the Group:
 - (A) in the form of the Computer Model;
 - (B) in form and substance consistent with the Strategic Review;
 - (C) approved by the Board of the Borrower; and
 - (D) for the Financial Years commencing on 1 January 2016 and ending on 31 December 2020; and
 - (iv) at the time of delivery of the business plan referred to in paragraph (a)(iii) above, either (i) a confirmation from the Board of the Borrower that the projections set out in the Budget for the Financial Year ending 31 December 2016 (the **2016 Budget**) is consistent with the projections for the Financial Year ending 31 December 2016 set out in the business plan delivered under paragraph (a)(iii) above or (ii) an updated 2016 Budget which contains projections that is consistent with the projections for the Financial Year ending 31 December 2016 set out in the business plan delivered under paragraph (a)(iii) above.
- (b) For each of its Financial Years commencing on or after 1 January 2017, the Borrower shall deliver a business plan of the Group:
 - (i) within 14 days before the start of that Financial Year or, if later, on the date such business plan is approved by the requisite majority of the Shareholders in accordance with and pursuant to the terms of the Shareholders' Agreement;
 - (ii) in the form of the Computer Model;
 - (iii) in form and substance consistent with the Strategic Review;
 - (iv) approved by the Board of the Borrower; and
 - (v) for the five immediately succeeding Financial Years.
- (c) In the event that the business plan to be delivered before the start of a Financial Year is not approved by the requisite majority of Shareholders in accordance with the terms of the Shareholders' Agreement prior to the commencement of that Financial Year, the Business Plan that was last delivered under this Clause 21.5 shall (until the approved business plan is delivered) continue to be adopted as the Business Plan.
- (d) If there is a material change to the Group's business or operations since the date of the Business Plan (as determined by the Borrower, acting reasonably), the Borrower shall provide the Agent with an updated Business Plan that satisfies the conditions set out in paragraphs (b)(i) to (b)(iii) above on or prior to the Testing Date in respect of the next Cash Sweep Date together with a written explanation

of the main changes in that Business Plan, provided that the amount of the Capital Expenditure set out in an updated Business Plan shall not be increased without the prior consent of the Majority Lenders.

21.6 Presentations

On or around the date the Business Plan is delivered pursuant to paragraph (b) of Clause 21.5 (Strategic Review and Business Plan) and (if the Agent reasonably suspects a Default is continuing or may have occurred or may occur and on instructions of the Majority Lenders) on such dates requested by the Agent, the Borrower must ensure that at least two of its informed directors give a presentation to the Finance Parties about the ongoing business and financial performance of the Group.

21.7 Year-end

The Borrower shall procure that each Financial Year-end of each member of the Group falls on 31 December.

21.8 Information: miscellaneous

The Borrower shall supply to the Agent (in sufficient copies for all the Lenders, if the Agent so requests):

- (a) at the same time as they are dispatched, copies of all documents dispatched by the Borrower or TopCo to its shareholders generally (or any class of them) or dispatched by the Borrower or any Material Company to its creditors generally (or any class of them);
- (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, and which, if adversely determined, are reasonably likely to have a Material Adverse Effect;
- (c) promptly upon becoming aware of the relevant claim, details of any insurance claim which will require a prepayment under Clause 9.2 (Disposal, Insurance and Riverside Proceeds) and the amount thereof that is required to be applied in prepayment under the Senior Facilities Agreement;
- (d) promptly, details of any Disposal which will require a prepayment under Clause 9.2 (Disposal, Insurance and Riverside Proceeds) and the amount thereof that is required to be applied in prepayment under the Senior Facilities Agreement;
- (e) promptly, such information as the Security Agent may reasonably require about the Charged Property and its compliance with the terms of any Transaction Security Documents;
- (f) promptly on request, such further information regarding the Restructuring, the Facility or the financial condition, assets and operations of the Group and/or any member of the Group (including updates on planning approvals (including EP Permit approvals) and any requested amplification or explanation of any item in the financial statements, budgets or other material provided by or on behalf of the Borrower under this Agreement, any changes to Senior Management and an up-to-date copy of its shareholders' register (or equivalent in its Original Jurisdiction)) as any Finance Party through the Agent may reasonably request;
- (g) promptly upon becoming aware of them, the details of (i) any force majeure event under the terms of any contract to which a member of the Group is a party which might reasonably be

expected to give rise to a Material Adverse Effect (ii) any material legislation or regulatory change which might reasonably be expected to give rise to a Material Adverse Effect; (iii) any material insurance claim; or (iv) any Environmental Claim which is current, threatened or pending against any member of the Group which is referred to in Clause 23.4 (Environmental claims) or which would involve a potential liability or expenditure exceeding £500,000 (or its equivalent in any currency or currencies);

- (h) promptly, details of an issue or allocation of or, promptly upon becoming aware of the same, a transfer of the legal or beneficial ownership of or change of control of, any member of the Group;
- (i) promptly upon receiving them, a copy of any Enforcement Notice, Suspension Notice, Revocation Notice or any other material regulatory notices or orders (including details of any changes to an EP Permit) or promptly following the exercise of any powers by any Environmental Regulator, notice thereof;
- (j) promptly upon receiving them, a copy of any material information provided to the Environmental Regulator by the Borrower or any member of the Group; and
- (k) promptly, notify the Agent of the occurrence of a Permitted Riverside Disposal, a disposal of all or substantially all of the Riverside Assets pursuant to 23.39 (Riverside Assets) or a Substantial Riverside Group Disposal;
- (l) promptly upon its occurrence, notice of a refinancing of the facilities made available pursuant to the Riverside Facilities Agreement.

21.9 Notification of default

- (a) The Borrower 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) Promptly upon a request by the Agent, the Borrower shall supply to the Agent a certificate signed by two of its authorised signatories 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).

21.10 "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 a member of the Group or the composition of the shareholders of a member of the Group after the date of this Agreement; or
 - (iii) a proposed assignment or transfer by a Lender of any of its rights and/or obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

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, 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, 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.

21.11 Distributable Amount

The Borrower must, on the Testing Date in respect of each Cash Sweep Date, provide to the Agent a Distributable Amount Confirmation.

21.12 Senior Discharge Date

Promptly upon the occurrence of the Senior Discharge Date, the Borrower shall notify the Agent of such occurrence.

22. FINANCIAL COVENANTS

22.1 Financial definitions

In this Agreement:

Business Acquisition means the acquisition of a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them) or the incorporation of a company.

Capital Expenditure means any expenditure or obligation in respect of expenditure (other than expenditure or obligations in respect of Business Acquisitions) which, in accordance with the Accounting Principles, is treated as capital expenditure (save in respect of any amounts capitalised in respect of Finance Leases in accordance with the Accounting Principles, but including (i) the capital element of any expenditure or obligation incurred in connection with a Finance Lease) or (ii) the capital element of any expenditure or obligation incurred on other assets or equipment which the Agent acting reasonably agrees should be treated as capital expenditure for the purpose of this definition.

Finance Lease means any lease or hire purchase contract which would, in accordance with the Accounting Principles, be treated as a finance or capital lease.

22.2 Capital Expenditure

The aggregate Capital Expenditure of the Group (other than Capital Expenditure funded by the retention of the proceeds of the Insurance Proceeds (as defined in Clause 9.2 (Disposal, Insurance and Riverside Proceeds)), in respect of:

- (i) the period beginning on the Restructuring Effective Date and ending on 31 December 2015; and
- (ii) each subsequent Financial Year,

shall not exceed the amount of Capital Expenditure set out in the Business Plan for that Financial Year.

22.3 Historical financial testing

The financial covenants set out in Clause 22.2 (Capital Expenditure) shall be calculated in accordance with the Accounting Principles and tested by reference to each of the financial statements delivered pursuant to paragraph (b) of Clause 21.1 (Financial statements) and/or the relevant Compliance Certificate delivered pursuant to Clause 21.2 (Provision and contents of Compliance Certificate).

23. GENERAL UNDERTAKINGS

The undertakings in this Clause 23 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.

Authorisations and compliance with laws

23.1 Authorisations

The Borrower and the TopCo shall (and the Borrower shall ensure that each Material Company will) 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 a Relevant Jurisdiction to:

- (i) enable it to perform its obligations under the Finance Documents;
- (ii) (subject to the Legal Reservations) ensure the legality, validity, enforceability or admissibility in evidence of any Finance Document; and
- (iii) enable it to own its assets and to carry on its business, trade and ordinary activities as currently conducted where failure to obtain or comply with those Authorisations is reasonably likely to have a Material Adverse Effect.

23.2 Compliance with laws

The Borrower and the TopCo shall (and the Borrower shall ensure that each member of the Group will) comply in all respects with all laws to which it may be subject, if failure so to comply has or is reasonably likely to have a Material Adverse Effect.

23.3 Environmental compliance

The Borrower and the TopCo shall (and the Borrower shall ensure that each member of the Group will):

- (a) comply with all Environmental Law;
- (b) obtain, maintain and ensure compliance with all requisite Environmental Permits; and
- (c) implement procedures to monitor compliance with and to prevent liability under any Environmental Law; and

- (d) not do or permit anything which leads or may lead to requirements or obligations under Environmental Law (including the Environmental Properties Act 1990 and the Water Resources Act 1991) for the investigation, clean-up and/or remediation of any land or water,

where failure to do so has or is reasonably likely to have a Material Adverse Effect.

23.4 Environmental claims

The Borrower and the TopCo shall promptly upon becoming aware of the same, inform the Agent in writing of:

- (a) any Environmental Claim against any member of the Group which is current, pending or threatened; and
- (b) any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced or threatened against any member of the Group,

where the claim, if determined against that member of the Group, has or is reasonably likely to have a Material Adverse Effect.

23.5 Anti-corruption law

- (a) The Borrower and the TopCo shall not (and the Borrower shall ensure that no other member of the Group will) 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 or other similar legislation in other jurisdictions.
- (b) The Borrower shall (and the Borrower shall ensure that each other member of the Group will):
 - (i) conduct its businesses in compliance with applicable anti-corruption laws; and
 - (ii) maintain policies and procedures designed to promote and achieve compliance with such laws.

23.6 Sanctions

- (a) The Borrower and the TopCo will ensure that none of the proceeds of the Loan will, directly or indirectly, be used or paid for the purpose of any transaction related to either:
 - (i) any person which is listed on an SDN List, or is owned or controlled, directly or indirectly, by any person listed on an SDN List; or
 - (ii) any country which is the subject of sanctions by the United Nations, the European Union, Her Majesty's Treasury, any European Union member state or any other United States government entity.
- (b) The Borrower shall not engage in any conduct which might reasonably be expected to cause it to become a subject to sanctions by the United Nations, the European Union, Her Majesty's Treasury, any European Union member state or any other United States government entity.

23.7 Taxation

- (a) The Borrower and the TopCo shall (and the Borrower shall ensure that each member of the Group will) pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:

- (i) such payment is being contested in good faith;
 - (ii) adequate reserves are being maintained for those Taxes and the costs required to contest them which have been disclosed in its latest financial statements delivered to the Agent under Clause 21.1 (Financial statements); and
 - (iii) such payment can be lawfully withheld and failure to pay those Taxes does not have or is not reasonably likely to have a Material Adverse Effect.
- (b) No member of the Group may change its residence for Tax purposes.

Restrictions on business focus

23.8 Merger

The Borrower and the TopCo shall not (and the Borrower shall ensure that no other member of the Group will) enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction other than a Permitted Transaction.

23.9 Change of business

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

23.10 Acquisitions

- (a) Except as permitted under paragraph (b) below, the Borrower shall not (and shall ensure that no other member of the Group will):
- (i) acquire a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them); or
 - (ii) incorporate a company.
- (b) Paragraph (a) above does not apply to an acquisition of a company, of shares, securities or a business or undertaking (or, in each case, any interest in any of them) or the incorporation of a company which is:
- (i) a Permitted Acquisition;
 - (ii) a Permitted Reorganisation;
 - (iii) a Permitted Transaction; or
 - (iv) as otherwise approved in writing by the Majority Lenders.

23.11 Joint ventures

The Borrower shall not (and shall ensure that no other member of the Group will):

- (a) enter into, invest in or acquire (or agree to acquire) any shares, stocks, securities or other interest in any Joint Venture; or

- (b) 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).

23.12 Holding Companies

The Borrower shall not (and shall ensure that the Company does 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 its Subsidiaries, intra-group debit balances, intra-group credit balances and other credit balances in bank accounts, cash and Cash Equivalent Investments; and
- (c) any liabilities under the Transaction Documents to which it is a party and professional fees and administration costs in the ordinary course of business as a holding company.

Restrictions on dealing with assets and Security

23.13 Preservation of assets

The Borrower shall (and shall ensure that each other member of the Group will) maintain in good working order and condition (ordinary wear and tear excepted) all of its assets necessary or desirable in the conduct of its business.

23.14 No abandonment

- (a) The Borrower shall ensure that the members of the Riverside Group do not abandon all or any material part of the EFW Plant.
- (b) No Material Company shall abandon all or a material part of its business except as a result of a Permitted Disposal or Permitted Transaction.

23.15 Pari passu ranking

Subject to the terms of the Intercreditor Agreement, the Borrower shall ensure that at all times any unsecured and unsubordinated claims of a Finance Party against it under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies.

23.16 Material Contracts

The Borrower shall (and will procure that each relevant member of the Group will) exercise its rights and comply with its material obligations under each Material Contract to which it is a party.

23.17 Negative pledge

In this Clause 23.17, **Quasi-Security** means an arrangement or transaction described in paragraph (b) below.

Except as permitted under paragraph (c) below:

- (a) The Borrower shall not (and the Borrower shall ensure that no other member of the Group will) create or permit to subsist any Security over any of its assets.
- (b) The Borrower shall not (and the Borrower 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 the Borrower 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, which is:
 - (i) Permitted Security; or
 - (ii) a Permitted Transaction.

23.18 Disposals

- (a) Except as permitted under paragraph (b) below, the Borrower shall not (and 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:
 - (i) which is a Permitted Disposal;
 - (ii) which is a Permitted Transaction;
 - (iii) which is a Permitted Reorganisation;
 - (iv) which is a disposal of any of the Riverside Assets in accordance with Clause 23.39 (Riverside Assets);
 - (v) prior to the Senior Discharge Date, which is permitted or consented to under the Senior Facilities Agreement;
 - (vi) of trading stock or cash made by any member of the Group in the ordinary course of trading of the disposing entity;
 - (vii) of assets (other than shares, receivables or fixed assets) in exchange for other assets comparable or superior as to type, value or quality;
 - (viii) of obsolete or redundant vehicles, plant and equipment for cash;

- (ix) of Cash Equivalent Investments for cash or in exchange for other Cash Equivalent Investments;
 - (x) arising as a result of any Permitted Security;
 - (xi) by a member of the Norfolk Group to another member of the Norfolk Group of a Norfolk Intra-Group Loan;
 - (xii) constituting a surrender of tax losses by an Obligor in favour of another Obligor;
 - (xiii) of fixed assets where the proceeds of disposal are used within 12 months of that disposal to purchase replacement fixed assets comparable or superior as to type, value and quality;
 - (xiv) of assets (other than shares) for cash where the higher of the market value and net consideration receivable (when aggregated with the higher of the market value and net consideration receivable for any other sale, lease, licence, transfer or other disposal not allowed under the preceding paragraphs) does not exceed £5,000,000 (or its equivalent) in total during the term of this Agreement;
 - (xv) whereby amounts owed by Viking Consortium Borrower Limited under the administration cost funding agreement referred to in paragraph (f) of the definition of Permitted Loan is discharged; or
 - (xvi) on and after the Senior Discharge Date, otherwise approved in writing by the Majority Lenders.
- (c) The Borrower shall ensure that CEHL owns legally and beneficially 100% of the issued share capital of EFW MidCo and EFW MidCo owns 100% of the issued share capital of EFW ProjectCo (subject to third party security permitted under paragraph (g) of the definition of Permitted Security).

23.19 Arm's length basis

- (a) Except as permitted by paragraph (b) below, the Borrower shall not (and shall ensure that no other member of the Group will) enter into any transaction with any person except on arm's length terms and for full market value.
- (b) The following transactions shall not be a breach of this Clause 23.19:
 - (i) intra-Group loans permitted under Clause 23.20 (Loans or credit);
 - (ii) fees, costs and expenses payable under the Transaction Documents in the amounts set out in the Transaction Documents delivered to the Agent under Clause 4.1 (Conditions precedent) or agreed by the Agent;
 - (iii) the surrender of tax losses referred to in paragraph (b)(xii) of Clause 23.18 (Disposals); and
 - (iv) any Permitted Transaction.

Restrictions on movement of cash – cash out

23.20 Loans or credit

- (a) Except as permitted under paragraph (b) below, the Borrower shall not (and 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.

23.21 No guarantees or indemnities

(a) Except as permitted under paragraph (b) below, the Borrower shall not (and 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) above does not apply to a guarantee which is:

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

23.22 Dividends and share redemption

(a) Except as permitted under paragraph (b) below, the Borrower shall not (and the Borrower will ensure that no other member of the Group will):

- (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) make any payment in respect of any Financial Indebtedness owed to the TopCo;
- (iv) pay or allow any member of the Group to pay any management, advisory or other fee to or to the order of the TopCo; or
- (v) redeem, repurchase, defease, retire or repay any of its share capital or resolve to do so, other than as contemplated by the Restructuring Agreement.

(each a **Distribution**).

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

- (i) a Distribution by the Borrower permitted under paragraph (c) below;
- (ii) the one-off issuance of bonus shares by the Company to the Borrower within 90 days from the Restructuring Effective Date to be paid up by applying any capital contribution reserves, revaluation reserves or other reserves, whether existing or resulting from any waiver of the loan advanced by Viking Consortium Borrower Limited to the Company pursuant to the Scheme, provided that such bonus shares are immediately cancelled and extinguished through the capital reduction referred to in paragraph (iii) below, which is initiated within 90 days, and effected within 180 days, from the Restructuring Effective Date;
- (iii) a capital reduction of the Company by cancelling and extinguishing the bonus shares referred to in paragraph (ii) above pursuant to section 642 to 644 of the Companies Act 2006, and/or any capital reduction of another member of the Group (other than the Borrower), if necessary, preceded by a capitalisation of any non-distributable reserves of that

member of the Group or an issuance of bonus shares in order to create distributable reserves, in each case initiated within 90 days, and effected within 180 days, from the Restructuring Effective Date;

- (iv) a capital contribution by way of a gift from a member of the Group to another member of the Group in order to create distributable reserves, provided that (A) if such capital contribution comprises a transfer of an asset from an Obligor, the member of the Group receiving such asset must also be an Obligor, (B) if the transferring member of the Group had given Security over that asset, the member of the Group receiving such asset must promptly give equivalent Security over that asset in favour of the Security Agent and (C) such capital contribution is initiated within 90 days, and effected within 180 days, from the Restructuring Effective Date; or
 - (v) the payment of a dividend to the Borrower or any of its wholly-owned Subsidiaries.
- (c) The Borrower may make a Distribution from time to time in an amount not exceeding, and to enable the TopCo to pay the amount of:
- (i) fees payable (A) to the TopCo's auditors, (B) in respect of the corporate administration or maintenance of the TopCo, or (C) to such professional advisers appointed with the prior consent of the Majority Lenders;
 - (ii) any taxes or fees payable by the TopCo to a governmental authority that are necessary for the TopCo to be validly existing under its jurisdiction of incorporation; and
 - (iii) remuneration payable to the members of the Board of the TopCo to the extent permitted under the Shareholders' Agreement and set out in the Business Plan and the Budget,

if no Default has occurred and is continuing, or would be likely to occur as a result of the making of the relevant Distribution.

23.23 Centre of Main Interests

The Borrower will not cause or allow its Centre of Main Interests to be in or maintain an establishment in any jurisdiction other than its jurisdiction of incorporation.

23.24 Intra-Group Loans

- (a) Except as permitted under paragraph (b) below, the Borrower shall not (and shall ensure that no member of the Group will):
 - (i) repay or prepay any principal amount (or capitalised interest) outstanding under the Intra-Group Loans;
 - (ii) pay any interest or any other amounts payable in connection with the Intra-Group Loans; or
 - (iii) purchase, redeem, defease or discharge, exchange or enter into any sub-participation arrangements in respect of any amount outstanding with respect to the Intra-Group Loans.
- (b) Paragraph (a) does not apply to a payment, repayment, prepayment, purchase, redemption, defeasance or discharge which is a Permitted Payment.

Restrictions on movement of cash – cash in

23.25 Financial Indebtedness

- (a) Except as permitted under paragraph (b) below, the Borrower shall not (and 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.

23.26 Share capital

The Borrower shall not (and 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.

Miscellaneous

23.27 Key personnel

The Borrower shall not (and shall ensure that the Company does not) replace:

- (a) any of its Independent Non-Executive Directors; or
- (b) its Chairman,

unless such replacement director or chairman, as the case may be, is approved by the Majority Lenders in writing.

23.28 Strategic Plan and Management Incentive Plan

- (a) The Borrower shall (and shall ensure that each other member of the Group and the TopCo will):
 - (i) comply with, and meet all milestones set out in, the Strategic Plan; and
 - (ii) not make any material amendments to the Management Incentive Plan and the Strategic Plan unless otherwise approved by the Super Majority Lenders.
- (b) If delivery of the Management Incentive Plan is waived for the purposes of paragraph (a) of Clause 4.1 (Conditions precedent) in accordance with the terms of the Restructuring Agreement, the Borrower shall use reasonable endeavours to agree the form of the Management Incentive Plan with the Majority Lenders as soon as reasonably practicable following the Restructuring Effective Date.

23.29 Insurance

- (a) The Borrower shall (and shall ensure that each other member of the Group will) maintain insurances on and in relation to its business and assets against those risks and to the extent as is usual for companies carrying on the same or substantially similar business.

- (b) All insurances must be with reputable independent insurance companies or underwriters.
- (c) Without prejudice to paragraph (a) above, the Borrower shall (and shall ensure that each other Material Company will) maintain insurance against:
 - (i) business interruption, property damage, employer's liability except where such insurance is not available on reasonable commercial terms (taking into account the interests of the Finance Parties); and
 - (ii) accidental pollution and public liability, except to the extent there is no market capacity to maintain such insurances.
- (d) The Borrower shall (and shall ensure that each other Material Company will) promptly pay any premium and do anything necessary to keep on foot the material insurances required to be maintained by it under this Clause 23.29.
- (e) The Borrower shall provide to the Agent on an annual basis confirmation from a recognised insurance broker that the insurance required under this Agreement is in place (with confirmation of the renewal dates applicable thereto) and that any premiums due to insurers have been paid.

23.30 Pensions

- (a) The Borrower shall ensure that all pension schemes operated by or maintained for the benefit of members of the Group and/or any of their employees are fully funded based on the statutory funding objective under sections 221 and 222 of the Pensions Act 2004 and that no action or omission is taken by any member of the Group in relation to such a pension scheme which has or is reasonably likely to have a Material Adverse Effect (including, without limitation, the termination or commencement of winding-up proceedings of any such pension scheme or any member of the Group ceasing to employ any member of such a pension scheme).
- (b) The Borrower shall ensure that no member of the Group is or has been at any time an employer (for the purposes of sections 38 to 51 of the Pensions Act 2004) of an occupational pension scheme which is not a money purchase scheme (both terms as defined in the Pension Schemes Act 1993) or "connected" with or an "associate" of (as those terms are used in sections 38 or 43 of the Pensions Act 2004) such an employer other than Former Registered Dockworkers Pension Fund, the Federated Pension Plan and the Cornwall Pension Scheme.
- (c) The Borrower shall deliver to the Agent, at such times as those reports are prepared in order to comply with the then current statutory or auditing requirements (as applicable either to the trustees of any relevant schemes or to the Borrower), actuarial reports in relation to all pension schemes mentioned in paragraph (a) above.
- (d) The Borrower shall promptly notify the Agent of any material change in the rate of contributions to any pension schemes mentioned in (a) above paid or recommended to be paid (whether by the scheme actuary or otherwise) or required (by law or otherwise).
- (e) The Borrower shall immediately notify the Agent of any investigation or proposed investigation by the Pensions Regulator which may lead to the issue of a Financial Support Direction or a Contribution Notice to any member of the Group.
- (f) The Borrower shall immediately notify the Agent if it receives a Financial Support Direction or a Contribution Notice from the Pensions Regulator.

23.31 Intellectual Property

- (a) The Borrower shall (and shall procure that each other member of the Group will):
- (i) preserve and maintain the subsistence and validity of the Intellectual Property necessary for the business of the relevant Group member;
 - (ii) use reasonable endeavours to prevent any infringement in any material respect of the Intellectual Property;
 - (iii) make registrations and pay all registration fees and taxes necessary to maintain the Intellectual Property in full force and effect and record its interest in that Intellectual Property;
 - (iv) not use or permit the Intellectual Property to be used in a way or take any step or omit to take any step in respect of that Intellectual Property which may materially and adversely affect the existence or value of the Intellectual Property or imperil the right of any member of the Group to use such property; and
 - (v) not discontinue the use of the Intellectual Property,
- where failure to do so, in the case of paragraphs (i) and (ii) above, or, in the case of paragraphs (iv) and (v) above, such use, permission to use, omission or discontinuation, is reasonably likely to have a Material Adverse Effect.
- (b) Failure to comply with any part of paragraph (a) above shall not be a breach of this Clause 23.31 to the extent that any dealing with Intellectual Property which would otherwise be a breach of paragraph (a) above is contemplated by the definition of Permitted Transaction.

23.32 Amendments

- (a) The Borrower shall (and shall ensure that no other member of the Group will) amend, vary, novate, supplement, supersede, waive or terminate any term of a Transaction Document or any other document delivered to the Agent pursuant to Clause 4.1 (Conditions precedent) except in writing:
- (i) in respect of the Senior Finance Documents, in accordance with the terms of the Senior Facilities Agreement;
 - (ii) to the extent permitted under the Intercreditor Agreement, in accordance with Clause 37 (Amendments and waivers);
 - (iii) to the extent that that amendment, variation, novation, supplement, superseding, waiver or termination is permitted by the Intercreditor Agreement;
 - (iv) other than in respect of a Senior Finance Document or a Finance Document, in a way which could not be reasonably expected materially and adversely to affect the interests of the Lenders.
- (b) The Borrower shall promptly supply to the Agent a copy of any document relating to any of the matters referred to in paragraphs (i) to (iv) above.

23.33 Bank Accounts

The Borrower must ensure that no member of the Group opens or maintains any account or enters into any banking relationship with any branch of any bank or other financial institution providing similar services other than any account maintained with the Account Bank.

23.34 Advisers

Where, and to the extent that, this Agreement requires any member of the Group to co-operate with any of the Finance Parties, the Borrower shall ensure that such members of the Group also provide a similar level of co-operation to the advisers (including any lawyer, accountant, surveyor or other expert) of such Finance Parties where any such co-operation is reasonably requested.

23.35 Further assurance

- (a) The Borrower shall promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may reasonably specify (and in such form as the Security Agent may reasonably require in favour of the Security Agent or its nominee(s)):
 - (i) to perfect the Security created or intended to be created under or evidenced by the Transaction Security Documents (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 for the exercise of any rights, powers and remedies of the Security Agent provided by or pursuant to the Finance Documents or by law;
 - (ii) to confer on the Security Agent Security over any property and assets of the Borrower located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to the Transaction Security Documents; and/or
 - (iii) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Transaction Security.
- (b) The Borrower 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 by or pursuant to the Finance Documents.

23.36 New Business

The Borrower shall not expend or cause or permit to be expended resources of any member of the Group on investigating, evaluating or bidding for business.

23.37 Treasury Transactions

The Borrower shall not (and shall procure that no members of the Group will) enter into any Treasury Transaction, other than spot and forward delivery foreign exchange contracts:

- (a) entered into in its ordinary course of business and not for speculative purposes;
- (b) where no collateral or Security is granted in connection with such foreign exchange contracts; and

- (c) where the notional amount of such foreign exchange contracts (when aggregated with the notional amount of any other such foreign exchange contracts) does not exceed £10,000,000 in total in any Financial Year.

23.38 Riverside Refinancing and Riverside Group Disposal

- (a) The Borrower shall ensure that the facilities made available pursuant to the Riverside Facilities Agreement are not refinanced other than pursuant to a Permitted Riverside Refinancing.
- (b) If:
 - (i) the net proceeds of a refinancing of the Riverside Facilities (after deducting any reasonable expenses and Taxes incurred with respect to such refinancing) exceed the amount equal to the sum of (A) the principal outstanding under the Riverside Facilities, (B) the termination or close-out payments under any related Treasury Transaction as a result of such refinancing, (C) any amounts applied to comply with any debt service or maintenance reserve requirements under the refinancing facility in excess of those required under the Riverside Facilities and (D) a minimum cash balance of £10,000,000; or
 - (ii) the net proceeds of a Riverside Group Disposal after deducting any amounts payable by the members of the Riverside Group as a result of that Riverside Group Disposal (including reasonable expenses and Taxes incurred with respect to such disposal),

then the Borrower shall procure that any (in the case of paragraph (b)(i) above) such excess and (in the case of paragraph (b)(ii) above) net proceeds shall be paid to a member of the Group by way of distribution, dividend and/or repayment of a Permitted Loan from a member of the Riverside Group.

23.39 Riverside Assets

- (a) Except as permitted under paragraph (b) below, the Borrower shall not (and 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 Riverside Asset.
- (b) Paragraph (a) above does not apply to any sale, lease, transfer or other disposal which is:
 - (i) a Permitted Reorganisation;
 - (ii) a Permitted Riverside Disposal; or
 - (iii) as otherwise approved in writing by the Super Majority Lenders.
- (c) The Borrower Company must:
 - (i) notify the Lenders promptly of the appointment of any financial adviser or investment bank in connection with a marketing process relating to a potential Permitted Riverside Disposal (the **Marketing Process**);
 - (ii) provide the Lenders with the initial marketing materials and the opportunity to participate in the process;
 - (iii) provide the Lenders with an update in respect of the Marketing Process promptly following each round of bidding; and

- (iv) to the extent the potential Permitted Riverside Disposal would require the consent of the Majority Lenders or the Super Majority Lenders (as the case may be), provide to each Lender such other information as they may reasonably request from time to time in respect of the Marketing Process and the transactions contemplated by it provided that each such Lender has entered into a confidentiality undertaking in respect of such information in a form acceptable to the Borrower.

23.40 Right of First Refusal

The Borrower and the TopCo shall comply with the terms of Schedule 13 (Right of First Refusal).

24. EVENTS OF DEFAULT

Each of the events or circumstances set out in this Clause 24 is an Event of Default (save for Clause 24.20 (Acceleration)).

24.1 Non-payment

The Borrower or the TopCo does not pay on the due date any amount payable pursuant to a Finance Document at the place at, 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.

24.2 Financial covenants and other obligations

- (a) Any requirement of Clause 22 (Financial covenants) is not satisfied or the Borrower or the TopCo does not comply with the provisions of Clause 23 (General undertakings) other than as specified in paragraph (b) below.
- (b) The Borrower or the TopCo does not comply with any of Clause 21.5 (Strategic Review and Business Plan), Clauses 23.1 (Authorisations), Clause 23.4 (Environmental claims), Clause 23.5 (Anti-corruption law), Clause 23.6 (Sanctions), Clause 23.7 (Taxation), Clause 23.13 (Preservation of assets), Clause 23.16 (Material Contracts), Clause 23.19 (Arm's' length basis), Clause 23.27 (Key personnel), Clause 23.28 (Strategic Plan and Management Incentive Plan), Clause 23.29 (Insurance), Clause 23.30 (Pensions), Clause 23.31 (Intellectual Property), Clause 23.33 (Bank Accounts), Clause 23.34 (Advisers), Clause 23.38 (Riverside Refinancing and Riverside Group Disposal) and Clause 23.39 (Riverside Assets) unless the non-compliance:
 - (i) is capable of remedy; and
 - (ii) is remedied within 14 days of the earlier of (A) the Agent giving notice of the breach to the Borrower or the TopCo and (B) the Borrower or the TopCo becoming aware of the non-compliance.
- (c) The Borrower does not comply with any provision of any Transaction Security Document.

24.3 Other obligations

- (a) The Borrower or the TopCo does not comply with any provision of the Finance Documents (other than those referred to in Clause 24.1 (Non-payment) and Clause 24.2 (Financial covenants and other 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 21 Business Days of the earlier of (i) the Agent giving notice to the Borrower or the TopCo and (ii) the Borrower or the TopCo becoming aware of the failure to comply.

24.4 Misrepresentation

Any representation or statement made or deemed to be made by the Borrower or the TopCo in the Finance Documents or any other document delivered by or on behalf of the Borrower or TopCo under or in connection with any Finance Document is or proves to have been incorrect or misleading when made or deemed to be made.

24.5 Cross default

- (a) Any Financial Indebtedness of any member of the Group is not paid when due nor within any originally applicable grace period (or any extended grace period that may be granted in the case of Financial Indebtedness in respect of which the creditor is also a member of the Group).
- (b) Any Financial Indebtedness of any member of the Group 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).
- (c) Any commitment for any Financial Indebtedness of any member of the Group is cancelled or suspended by a creditor of any member of the Group as a result of an event of default (however described).
- (d) Any creditor of any member of the Group becomes entitled to declare any Financial Indebtedness of any member of the Group (other than Intra-Group Loans) due and payable prior to its specified maturity as a result of an event of default (however described).
- (e) No Event of Default will occur under this Clause 24.5 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than £500,000 (or its equivalent in any other currency or currencies).

24.6 Insolvency

- (a) A member of the Group:
 - (i) is unable or admits inability to pay its debts as they fall due;
 - (ii) is deemed to, or is declared to, be unable to pay its debts under applicable law;
 - (iii) suspends or threatens to suspend making payments on any of its debts; or
 - (iv) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.
- (b) The value of the assets of any member of the Group is less than its liabilities (taking into account contingent and prospective liabilities).

- (c) A moratorium is declared in respect of any indebtedness of any member of the Group. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

24.7 Insolvency proceedings

- (a) Any corporate action, legal proceedings or other procedure or step is taken in relation to:
 - (i) 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;
 - (ii) a composition, compromise, assignment or arrangement with any creditor of any member of the Group;
 - (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of any member of the Group or any of its assets; or
 - (iv) enforcement of any Security over any assets of any member of the Group,or any analogous procedure or step is taken in any jurisdiction.
- (b) Paragraph (a) shall not apply to:
 - (i) any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of commencement or, if earlier, the date on which it is advertised; or
 - (ii) any step or procedure contemplated by paragraph (b) of the definition of "Permitted Transaction".

24.8 Creditors' process

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of a Material Company having an aggregate value of £500,000 and is not discharged within 14 days.

24.9 Unlawfulness and invalidity

- (a) It is or becomes unlawful for the Borrower or any member of the Group that is a party to the Intercreditor Agreement to perform any of its obligations under the Finance Documents, the Senior Finance Documents or any Transaction Security created or expressed to be created or evidenced by the Transaction Security Documents ceases to be effective or any subordination created under the Intercreditor Agreement is or becomes unlawful.
- (b) Any obligation or obligations of the Borrower or any member of the Group under any Finance Documents or Senior Finance Documents are not (subject to the Legal Reservations) or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lenders under the Finance Documents.
- (c) Any Finance Document or the Senior Finance Documents ceases to be in full force and effect or any Transaction Security or any subordination created under the Intercreditor Agreement 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.

24.10 Intercreditor Agreement

- (a) Any party to the Intercreditor Agreement (other than a Finance Party or the Borrower) fails to comply with the provisions of, or does not perform its obligations under, the Intercreditor Agreement; or
- (b) a representation or warranty given by that party in the Intercreditor Agreement is incorrect in any material respect,

and, if the non-compliance or circumstances giving rise to the misrepresentation are capable of remedy, it is not remedied within ten days of the earlier of the Agent giving notice to that party or that party becoming aware of the non-compliance or misrepresentation.

24.11 Cessation of business

Any member of the Group 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 Permitted Disposal or a Permitted Transaction.

24.12 Change of ownership

- (a) After the Restructuring Effective Date, the Borrower ceases to be a wholly-owned Subsidiary of the TopCo; or
- (b) the Borrower ceases to own at least the same percentage of shares in a Material Company as on the Restructuring Effective Date,

except, in either case, as a result of a disposal which is a Permitted Disposal or a Permitted Transaction.

24.13 Audit qualification

The Borrower's Auditors qualify the audited annual consolidated financial statements of the Borrower.

24.14 Expropriation

The authority or ability of any member of the Group to conduct its business 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 any member of the Group or any of its assets.

24.15 Repudiation and rescission of agreements

- (a) The Borrower (or any other relevant party) rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document, a Senior Finance Document, or any of the Transaction Security or evidences an intention to rescind or repudiate a Finance Document, a Senior Finance Document or any Transaction Security.
- (b) Any party to the Restructuring Agreement, the Shareholders' Agreement or the Intercreditor Agreement rescinds or purports to rescind or repudiates or purports to repudiate any of those agreements or instruments in whole or in part where to do so has or is, in the reasonable opinion of

the Majority Lenders, likely to have a material adverse effect on the interests of the Lenders under the Finance Documents.

24.16 Litigation

- (a) Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings disputes or Environmental Claims are commenced or threatened in relation to the Transaction Documents or the transactions contemplated in the Transaction Documents or against any member of the Group or its assets which have or are reasonably likely to have a Material Adverse Effect.
- (b) A Material Contract is terminated or (other than in the case of the WRWA Agreement) becomes capable of being terminated (other than by a member of the Group), otherwise than by reason of full performance of the Material Contract or expiry of its terms.

24.17 Pensions

The Pensions Regulator issues a Financial Support Direction or a Contribution Notice to any member of the Group, unless the aggregate liability of the Borrower under all Financial Support Directions and Contribution Notices is less than £15,000,000.

24.18 Change of Control

A Change of Control occurs.

24.19 Material adverse change

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

24.20 Acceleration

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:

- (a) cancel all or any part of the Total Commitments, at which time they shall immediately be cancelled;
- (b) declare that all or part of the Loan, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, at which time they shall become immediately due and payable;
- (c) declare that all or part of the Loan be payable on demand, at which time it shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders; and/or
- (d) exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

25. CHANGES TO THE LENDERS

25.1 Definitions

Capitalised terms used in this Clause 25 shall have the meanings given to such terms in Schedule 13 (Right of First Refusal).

25.2 Assignments and transfers by the Lenders

(a) Subject to this Clause 25, a Lender (the **Existing Lender**) may:

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

under any Finance Document 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**).

(b) The consent of the Borrower is not required for an assignment or transfer by an Existing Lender, unless the assignment or transfer is to a New Lender (not being a Lender, a New Shareholder or their Affiliates) who is a Strategic Competitor.

25.3 Restricted Transactions

Subject to Clause 25.4 (Permitted Transfers), no Lender may enter into or be party to a Restricted Transaction and each Lender shall procure that (a) none of its Related Entities enters into or is a party to a Restricted Transaction and (b) each of its Related Entities complies with the terms of this Clause 25.

25.4 Permitted Transfers

Subject to Clause 25.6 (Required Transfers), a Lender may:

- (a) enter into or be a party to a Restricted Transaction:
 - (i) in respect of some or all of its Loan Assets with its Affiliate or Related Fund, provided that (A) the relevant Lender provides written notice to the Borrower and the Agent of the counterparty to that Restricted Transaction at least two Business Days prior to the date of the Restricted Transaction or, if such arrangement exists at the Restructuring Effective Date, promptly thereafter, and (B) a Lender shall not (and shall procure that its Affiliates and Related Funds do not) enter into or be party to such a Restricted Transaction for the purposes of avoiding (I) compliance with Schedule 13 (Right of First Refusal) or (II) the restriction in Clause 25.2(b) above; or
 - (ii) with the transferee or an Affiliate or Related Fund of such transferee pursuant to and in accordance with a Pre-Restructuring Transfer;
- (b) Transfer Loan Assets in accordance with paragraph (a) or paragraph (b) of Clause 25.14 (Tag Along and Drag Along under the Shareholders' Agreement);
- (c) Transfer Loan Assets in accordance with Clause 25.6 (Required Transfers) or Clause 25.7 (Unwind of Restricted Transactions);
- (d) Transfer Loan Assets if it complies with Schedule 13 (Right of First Refusal); or
- (e) Transfer Loan Assets pursuant to Clause 25.5 (Transfer to Affiliates and Related Funds).

25.5 Transfer to Affiliates and Related Funds

- (a) If (i) a Lender that has acquired the Loan Assets pursuant to a Restricted Transaction under Clause 25.4(a)(i) above, or (ii) a person party to a Restricted Transaction with a Lender which is permitted by Clause 25.4(a)(i) above is about to cease to be an Affiliate or Related Fund of the counterparty to that Restricted Transaction (the **Original Lender**), it shall, without delay and prior to it so ceasing to be an Affiliate or Related Fund of the Original Lender, notify the Borrower and the Agent that such event will occur and shall Transfer the Loan Assets to the Original Lender or to an Affiliate or Related Fund of that Original Lender or procure that the Restricted Transaction is reversed (as the case may be) within five Business Days of such notice.
- (b) If the relevant Lender fails to Transfer the Loan Assets to the Original Lender or to an Affiliate or Related Fund of the Original Lender or procure that the Restricted Transaction is Reversed (as the case may be) in accordance with paragraph (a) above, the Borrower shall serve a Transfer Notice on behalf of such Lender and its Related Entities in accordance with Schedule 13 (Right of First Refusal) in respect of the relevant Loan Assets and any Stapled Shares (and send a copy of such Transfer Notice to that Lender).

25.6 Required Transfers

- (a) If, at any time, the Borrower is notified or becomes aware that a Transfer was effected other than in accordance with Clause 25.4 (Permitted Transfers) (a **Restricted Transfer**), the Borrower shall, as soon as reasonably practicable thereafter, notify the relevant Lender and the Agent in writing that the Transfer is a Restricted Transfer (a **Restricted Transfer Notice**).
- (b) If a Restricted Transfer Notice is received by the relevant Lender, with effect from the date of the Restricted Transfer Notice:
 - (i) the relevant Lender and the counterparty to whom the Loan Assets subject to the Restricted Transfer (the **Restricted Transfer Loan Assets**) were Transferred shall immediately take all necessary and reasonable steps to procure that any Restricted Transfer Loan Assets are Transferred back to the transferring Lender, and shall notify the Borrower and the Agent once such Restricted Transfer Loan Assets have been Transferred back to the transferring Lender;
 - (ii) until such time as all the Restricted Transfer Loan Assets are Transferred back to the transferring Lender in accordance with subparagraph (i) above, any voting rights attached to such Restricted Transfer Loan Assets shall be suspended (but without prejudice to the validity of votes cast in respect of such Restricted Transfer Loan Assets prior to such date); and
 - (iii) as soon as possible following completion of the Transfer of the Restricted Transfer Loan Assets to the transferring Lender pursuant to subparagraph (i) above, the relevant Lender or counterparty to the Restricted Transfer shall (unless such a Transfer Notice has already been served) serve a Transfer Notice on behalf of itself and its Related Entities in accordance with Schedule 13 (Right of First Refusal) in respect of such Restricted Transfer Shares and any relevant Stapled Shares, and referencing the terms of the Restricted Transfer.
- (c) If a Lender or counterparty to a Restricted Transfer fails to serve a Transfer Notice in accordance with subparagraph (b)(iii) above within ten Business Days of the date of the notice in subparagraph (b)(i) above, the Borrower shall serve a Transfer Notice in accordance with the Schedule 13 (Right of First Refusal) in respect of the Restricted Transfer Loan Assets and the relevant Stapled Shares on behalf of such Lender and its Related Entities (and send a copy of such Transfer Notice to the relevant Lender).

25.7 Unwind of Restricted Transactions

- (a) Without prejudice to Clause 25.6 (Required Transfers), if the Borrower is notified or becomes aware that a Restricted Transaction was entered into (other than a Restricted Transfer, in accordance with Clauses 25.3 (Restricted Transactions) and 25.4 (Permitted Transfers)), the Borrower shall, as soon as reasonably practicable thereafter, notify the relevant Lender and the Agent in writing of the occurrence of the Restricted Transfer (a **Restricted Transaction Notice**).
- (b) If a Restricted Transaction Notice is received by the relevant Lender, with effect from the date of the Restricted Transaction Notice:
 - (i) the relevant Lender and, if applicable, its Related Entities and the counterparty to the Restricted Transaction shall immediately take all necessary and reasonable steps to procure that the Restricted Transaction is Reversed;
 - (ii) until such time as the Restricted Transaction is Reversed, any voting rights attached to the Loan Assets which are the subject of the Restricted Transaction (the **Restricted Transaction Loan Assets**) shall be suspended (but without prejudice to the validity of votes cast in respect of such Restricted Transaction Loan Assets prior to such date); and
 - (iii) as soon as possible after the Restricted Transaction is Reversed, the relevant Lender or the counterparty to the Restricted Transaction shall (unless such a Transfer Notice has already been served) serve a Transfer Notice on behalf of itself and its Related Entities and comply with the requirements under Schedule 13 (Right of First Refusal) in respect of such Restricted Transaction Loan Assets and the relevant Stapled Shares.
- (c) If the relevant Lender or the counterparty to the Restricted Transaction fail to serve a Transfer Notice in accordance with paragraph (b)(iii) above within ten Business Days of the date of the Restricted Transaction Notice, the Borrower shall serve a Transfer Notice in accordance with Schedule 13 (Right of First Refusal) in respect of the Restricted Transaction Loan Assets and any relevant Stapled Shares on behalf of the relevant Lender and its Related Entities (and send a copy of such Transfer Notice to the relevant Lender).

25.8 Conditions of assignment or transfer

- (a) A transfer in part of its Loan Assets must be in a minimum amount of £5,000,000.
- (b) The Existing Lender shall Transfer its rights and obligations in respect of the Lender PIK Bonds and the Loan on a pro rata basis as determined by, and notified between, the Bond Agent and the Agent respectively.
- (c) An assignment will only be effective on:
 - (i) receipt by the Agent (whether in the Assignment Agreement and Lender Accession Undertaking 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 and the other Secured Parties as it would have been under if it was an Original Lender;
 - (ii) the New Lender entering into the documentation required for it to accede as a party to the Intercreditor Agreement; and
 - (iii) the performance by the 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 shall promptly notify to the Existing Lender and the New Lender.

- (d) A transfer will only be effective if the New Lender enters into the documentation required for it to accede as a party to the Intercreditor Agreement and if the procedure set out in Clause 25.11 (Procedure for transfer) is complied with.
- (e) 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, the Borrower would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 16 (Increased Costs),

then unless the assignment, transfer or change is made by a Lender in order to mitigate any circumstances giving rise to a Tax Payment, Increased Cost or a right to be pre-paid and/or cancelled by reason of illegality, or (in circumstances where the Agent has complied with its obligation under Clause 25.13 (Copy of Transfer Certificate and Lender Accession Undertaking or Assignment Agreement and Lender Accession Undertaking to the Borrower)) that Tax Payment or Increased Cost is as a result of the Borrower's failure to comply with its obligations to file a duly completed form DTTP2 (or provide a copy of that filing) in accordance with this Agreement, the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under that Clause 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.

- (f) Each New Lender, by executing the relevant Transfer Certificate and Lender Accession Undertaking or Assignment Agreement and Lender Accession Undertaking, 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.

25.9 Assignment or transfer fee

Unless the Agent otherwise agrees and excluding an assignment or transfer (i) to an Affiliate of a Lender, or (ii) to a Related Fund, 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 £3,000.

25.10 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 Transaction Documents, the Transaction Security or any other documents;
 - (ii) the financial condition of any member of the Group;
 - (iii) the performance and observance by the Borrower or any other member of the Group of its obligations under the Transaction Documents or any other documents; or

- (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Transaction Document or any other document,

and any representations or warranties implied by law are excluded.

- (b) Each New Lender confirms to the Existing Lender, the other Finance Parties and the Secured 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 member of the Group 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 or any other Finance Party in connection with any Transaction Document or the Transaction Security; and
 - (ii) will continue to make its own independent appraisal of the creditworthiness of each member of the Group and its related entities while 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) subject to Clause 25.6 (Required Transfers) or Clause 25.7 (Unwind of Restricted Transactions), accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 25; or
 - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any member of the Group of its obligations under the Transaction Documents or otherwise.

25.11 Procedure for transfer

- (a) Subject to the conditions set out in Clause 25.8 (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 and Lender Accession Undertaking 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 and Lender Accession Undertaking 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 and Lender Accession Undertaking and deliver that Transfer Certificate and Lender Accession Undertaking to the Bond Agent.
- (b) The Agent shall only be obliged to execute a Transfer Certificate and Lender Accession Undertaking 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 similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.
- (c) Subject to Clause 25.16 (Pro rata interest settlement), on the Transfer Date:
 - (i) to the extent that in the Transfer Certificate and Lender Accession Undertaking the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents and in respect of the Transaction Security, the Borrower 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 under the Finance Documents and in respect of the Transaction Security shall be cancelled (being the **Discharged Rights and Obligations**);

- (ii) the Borrower 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 the Borrower and the New Lender have assumed and/or acquired the same in place of the Borrower and the Existing Lender;
- (iii) the Agent, the Bond Agent, the Security 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 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".

25.12 Procedure for assignment

- (a) Subject to the conditions set out in Clause 25.8 (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 and Lender Accession Undertaking 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 and Lender Accession Undertaking 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 and Lender Accession Undertaking and deliver that Assignment Agreement and Lender Accession Undertaking to the Bond Agent.
- (b) The Agent shall only be obliged to execute an Assignment Agreement and Lender Accession Undertaking 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 similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.
- (c) Subject to Clause 25.16 (Pro rata interest settlement), on the Transfer Date:
 - (i) the Existing Lender will assign absolutely to the New Lender its rights under the Finance Documents and in respect of the Transaction Security expressed to be the subject of the assignment in the Assignment Agreement and Lender Accession Undertaking;
 - (ii) the Existing Lender will be released from the obligations (the **Relevant Obligations**) expressed to be the subject of the release in the Assignment Agreement and Lender Accession Undertaking (and any corresponding obligations by which it is bound in respect of the Transaction Security); and
 - (iii) the New Lender shall become a Party as a "Lender" and will be bound by obligations equivalent to the Relevant Obligations.
- (d) Lenders may utilise procedures other than those set out in this Clause 25.12 to assign their rights under the Finance Documents (but not, without the consent of the Borrower or unless in accordance with Clause 25.11 (Procedure for transfer), to obtain a release by the Borrower from the obligations owed to the Borrower by the Lenders nor the assumption of equivalent obligations by a New Lender) **provided that** they comply with the conditions set out in Clause 25.8 (Conditions of assignment or transfer).

25.13 Copy of Transfer Certificate and Lender Accession Undertaking or Assignment Agreement and Lender Accession Undertaking to the Borrower

The Agent shall, as soon as reasonably practicable and in any event within ten Business Days after it has executed a Transfer Certificate and Lender Accession Undertaking, an Assignment Agreement and Lender Accession Undertaking, send to the Borrower a copy of that Transfer Certificate and Lender Accession Undertaking or Assignment Agreement and Lender Accession Undertaking.

25.14 Tag Along and Drag Along under the Shareholders' Agreement

- (a) On the date of the Transfer of Shares by a Shareholder pursuant to clause 9 (Tag Along) of the Shareholders' Agreement, that Shareholder (if it is a Lender) and each Lender who is an Affiliate or Related Fund of that Shareholder shall transfer or assign in accordance with Clause 25.8 (Conditions of assignment or transfer) all of its rights and obligations under the Finance Documents to the Proposed Buyer (as defined in the Shareholders' Agreement) for a purchase price determined in accordance with the Shareholders' Agreement.
- (b) On the date of the Transfer of Shares by a Shareholder pursuant to clause 10 (Drag Along) of the Shareholders' Agreement, that Shareholder (if it is a Lender) and each Lender who is an Affiliate or Related Fund of that Shareholder shall transfer or assign in accordance with Clause 25.8 (Conditions of assignment or transfer) all of its rights and obligations under the Finance Documents to the Drag Along Transferee (as defined in the Shareholders' Agreement) for a purchase price in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Loan and all accrued interest, Break Costs and other amounts payable in relation thereto under the Finance Documents.

25.15 Security over Lenders' rights

In addition to the other rights provided to Lenders under this Clause 25, each Lender may without consulting with or obtaining consent from the Borrower, 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 other Security for the Lender as a party to any of the Finance Documents; or
- (ii) require any payments to be made by the Borrower 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.

25.16 Pro rata interest settlement

- (a) If the Agent has notified the Lenders that it is able to distribute interest payments on a "*pro rata* basis" to Existing Lenders and New Lenders, then (in respect of any transfer pursuant to Clause

25.11 (Procedure for transfer) or any assignment pursuant to Clause 25.12 (Procedure for assignment), the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period):

- (i) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date (**Accrued Amounts**) and shall become due and payable to the Existing Lender (without further interest accruing on them) on the last day of the current Interest Period (or, if the Interest Period is longer than six Months, on the next of the dates which falls at six-Monthly intervals after the first day of that Interest Period); and
 - (ii) the rights assigned or transferred by the Existing Lender will not include the right to the Accrued Amounts so that, for the avoidance of doubt:
 - (A) when the Accrued Amounts become payable, those Accrued Amounts will be payable for the account of the Existing Lender; and
 - (B) the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 25.16, have been payable to it on that date, but after deduction of the Accrued Amounts.
- (b) In this Clause 25.16 references to "Interest Period" shall be construed to include a reference to any other period for accrual of fees.

26. DEBT PURCHASE TRANSACTIONS

The Borrower shall not, and shall procure that each other member of the Group and each member of the Riverside Group shall not enter into any Debt Purchase Transaction.

27. CHANGES TO THE BORROWER

The Borrower and the TopCo must not assign any of its rights or transfer any of their rights or obligations under the Finance Documents.

28. ROLE OF THE AGENT AND OTHERS

28.1 Appointment of the Agent

- (a) Each of the Lenders and the Account Bank appoints the Agent to act as its agent under and in connection with the Finance Documents.
- (b) Each of the Lenders and the Account Bank 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.

28.2 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;
 - (B) the Super Majority Lenders if the relevant Finance Document stipulates the matter is a Super Majority Lender decision; and
 - (C) 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 and 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 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) 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.
- (f) 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 (f) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Transaction Security Documents or enforcement of the Transaction Security or Transaction Security Documents.

28.3 Duties of the Agent

- (a) The Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) Subject to paragraph (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.
- (c) Without prejudice to Clause 25.13 (Copy of Transfer Certificate and Lender Accession Undertaking or Assignment Agreement and Lender Accession Undertaking to the Borrower), paragraph (b) above shall not apply to any Transfer Certificate and Lender Accession Undertaking or any Assignment Agreement and Lender Accession Undertaking.
- (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 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).

28.4 No fiduciary duties

- (a) Nothing in any Finance Document constitutes the Agent or the Account Bank as a trustee or fiduciary of any other person.
- (b) None of the Agent or the Account Bank 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.

28.5 Business with the Group

- (a) The Agent and the Account Bank may accept deposits from, lend money to and generally engage in any kind of banking or other business with any member of the Group without any obligation to disclose to the Lenders, or to account to them in respect of, any such arrangement or activity.
- (b) The Agent may:
 - (i) act in any agency, trustee, fiduciary or other capacity on behalf of any other banks or financial institutions providing facilities to any member of the Group, or any associated company of a member of the Group, as freely in all respects as if it had not been appointed to act as agent and/or trustee for the Lenders or the Account Bank under this Agreement and without regard to the effect on the Lenders of acting in such capacity; and
 - (ii) without prejudice to the other terms of the Finance Documents, subscribe for, hold, be beneficially entitled to or dispose of shares or securities, or options or other rights to and interests in shares or securities in any member of the Group or any associated company of a member of the Group (in each case, with liability to account).

28.6 Rights and discretions

- (a) The 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 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, 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) The 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 24.1 (Non-payment));
 - (ii) no Finance Document has been changed or amended (unless it has actual knowledge of such change or amendment);
 - (iii) any right, power, authority or discretion vested in any Party or any group of Lenders has not been exercised; and
 - (iv) any notice or request delivered or made by the Borrower is made on behalf of and with the consent and knowledge of the Borrower.
- (c) The Agent may engage and pay for 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 may act in relation to the Finance Documents through its officers, employees and agents and the 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 gross negligence or wilful misconduct.
- (g) Unless a Finance Document expressly provides otherwise, the Agent may disclose to any other Party and to any person engaged by it or through whom it acts in accordance with this Clause 28 (provided that such person 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) 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 is 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 a fiduciary duty or duty of confidentiality.
 - (j) Notwithstanding any provision of any Finance Document to the contrary, the 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.

28.7 Responsibility for documentation

The Agent is not responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Agent, the Borrower 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 or 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 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.

28.8 No duty to monitor

The 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.

28.9 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Agent, the Agent will not be liable (in the case of the Agent, 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; 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) may take any proceedings against any officer, employee or agent of the Agent, in respect of any claim it might have against the Agent 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 Document and any officer, employee or agent of the Agent may rely on this Clause 28.9 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:
 - (i) any "know your customer" or other checks in relation to any person; or
 - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Lender,

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 liability, any liability of the 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, 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 at any time which increase the amount of

that loss. In no event shall the 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 has been advised of the possibility of such loss or damages.

- (f) Notwithstanding the provisions of Clause 31 (Payment mechanics), the Agent shall not be liable to the Borrower or any Lender for the failure, or the consequences of any failure, of any cross-border payment system to effect same-day settlement to an account of the Borrower or any Lender.

28.10 Lenders' indemnity to the Agent and 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 each of the Agent and the Security Agent, within three Business Days of demand, against any cost, loss or liability (without limitation, for negligence or any other category of liability whatsoever) incurred by the Agent or the Security Agent or, in each case, any of its officers and employees (otherwise than by reason of the Agent's or the Security Agent's or any of its officer's or employee's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 31.11 (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 as Security Agent under the Finance Documents (unless the Agent or Security 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 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 to the Borrower.

28.11 Resignation of the 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 Lenders and the Borrower.
- (b) Alternatively the Agent may resign by giving 30 days' notice to the Lenders 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 20 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 28 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, at its own cost, 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. 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 and providing such assistance.
- (f) The Agent's resignation notice shall only take effect upon the appointment of a 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 17.3 (Indemnity to the Agent) and this Clause 28 (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) 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 15.9 (FATCA Information) and 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 15.9 (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) 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 that Lender, by notice to the Agent, requires it to resign.

28.12 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 (acting through an office in the United Kingdom).
- (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.
- (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 (b) above) but shall remain entitled to the benefit of Clause 17.3 (Indemnity to the Agent)

and this Clause 28 (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.

28.13 Confidentiality

- (a) In acting as agent for the Finance Parties under the Finance Documents, the 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, it may be treated as confidential to that division or department and the Agent shall not be deemed to have notice of it.

28.14 Relationship with the Lenders

- (a) Subject to Clause 25.16 (Pro rata interest settlement), 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 33.6 (Electronic communication)) electronic mail address and/or any other information required to enable the transmission 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 (or such other information), department and officer by that Lender for the purposes of Clause 33.2 (Addresses) and paragraph (a)(ii) of Clause 33.6 (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.

28.15 Credit appraisal by the Lenders

Without affecting the responsibility of the Borrower for information supplied by it or on its 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, 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 Lender 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 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.

28.16 Agent's management time

Any amount payable to the Agent under Clause 17.3 (Indemnity to the Agent), Clause 19 (Costs and expenses) and Clause 28.10 (Lenders' indemnity to the Agent and the Security 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 Borrower and the Lenders, and is in addition to any fee paid or payable to the Agent under Clause 14 (Fees).

28.17 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.

28.18 Reliance and engagement letters

Each Finance Party and Secured Party confirms that the Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by the Agent) the terms of any reliance letter or engagement letters relating to any reports or letters provided by accountants in connection with the Finance Documents or the transactions contemplated in the Finance Documents and to bind it in respect of those reports or letters and to sign such letters on its behalf, and further confirms that it accepts the terms and qualifications set out in such letters.

28.19 Role of Base Reference Banks

- (a) No Base Reference Bank is under any obligation to provide a quotation or any other information to the Agent.
- (b) No Base Reference Bank will be liable for any action taken by it under or in connection with any Finance Document, or for any Reference Bank Quotation, unless directly caused by its gross negligence or wilful misconduct.

- (c) No Party (other than the relevant Base Reference Bank) may take any proceedings against any officer, employee or agent of any Base Reference Bank in respect of any claim it might have against that Base Reference Bank or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document, or to any Reference Bank Quotation, and any officer, employee or agent of each Base Reference Bank may rely on this Clause 28 subject to Clause 1.5 (Third party rights) and the provisions of the Third Parties Act.

29. 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.

30. SHARING AMONG THE FINANCE PARTIES

30.1 Payments to Finance Parties

Subject to paragraph (b) below, if a Finance Party (a **Recovering Finance Party**) receives or recovers any amount from the Borrower other than in accordance with Clause 31 (Payment mechanics) (a **Recovered Amount**) and applies that amount to a payment due under the Finance Documents, then:

- (a) the Recovering Finance 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 that the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause 31 (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 Finance 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 Finance Party as its share of any payment to be made, in accordance with Clause 31.6 (Partial payments).

30.2 Redistribution of payments

The Agent shall treat the Sharing Payment as if it had been paid by the Borrower and distribute it between the Finance Parties (other than the Recovering Finance Party) (the **Sharing Finance Parties**) in accordance with Clause 31.6 (Partial payments) towards the obligations of the Borrower to the Sharing Finance Parties.

30.3 Recovering Finance Party's rights

On a distribution by the Agent under Clause 30.2 (Redistribution of payments) of a payment received by a Recovering Finance Party from the Borrower, as between the Borrower and the

Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by the Borrower.

30.4 Reversal of redistribution

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

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

30.5 Exceptions

- (a) This Clause 30 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the Borrower.
- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
 - (i) it notified the other Finance Party of the legal or arbitration proceedings; and
 - (ii) the 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.

31. PAYMENT MECHANICS

31.1 Payments to the Agent

- (a) On each date on which the Borrower or a Lender is required to make a payment under a Finance Document, the Borrower or 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) and with such bank as the Agent, in each case, specifies.

31.2 Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 31.3 (Distributions to the Borrower) and Clause 31.4 (Clawback and pre-funding), 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 specified by that Party in the principal financial centre of the country of that currency (or, in relation to euro, in the principal financial centre of a Participating Member State or London, as specified by that Party).

31.3 Distributions to the Borrower

The Agent may (with the consent of the Borrower or in accordance with Clause 32 (Set-off)) apply any amount received by it for the Borrower in or towards payment (on the date and in the currency and funds of receipt) of any amount due from the Borrower under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

31.4 Clawback and pre-funding

- (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) Unless paragraph (c) below applies, 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.
- (c) If the Agent has notified the Lenders that it is willing to make available amounts for the account of the Borrower before receiving funds from the Lenders then, if and to the extent that the Agent does so but it proves to be the case that it does not then receive funds from a Lender in respect of a sum which it paid to the Borrower:
 - (i) the Agent shall notify the Borrower of that Lender's identity and the Borrower shall on demand refund it to the Agent; and
 - (ii) the Lender by whom those funds should have been made available or, if that Lender fails to do so, the Borrower shall on demand pay to the Agent the amount (as certified by the Agent) which will indemnify the Agent against any funding cost incurred by it as a result of paying out that sum before receiving those funds from that Lender.

31.5 Impaired Agent

- (a) If, at any time, the Agent becomes an Impaired Agent, the Borrower or a Lender which is required to make a payment under the Finance Documents to the Agent in accordance with Clause 31.1 (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 within the meaning of paragraph (a) of the definition of "Acceptable Bank" and in relation to which no Insolvency Event has occurred and is continuing, in the name of the Borrower 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 31.5 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 28.12 (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 31.2 (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.

31.6 Partial payments

- (a) If the Agent receives a payment for application against amounts due in respect of any Finance Documents that is insufficient to discharge all the amounts then due and payable by the Borrower under those Finance Documents, the Agent shall apply that payment towards the obligations of the Borrower under the Finance Documents in the order of priority set out in the Intercreditor Agreement.
- (b) Paragraph (a) above will override any appropriation made by the Borrower.

31.7 Set-off by the Borrower

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

31.8 Business Days

- (a) Any payment under the Finance Documents 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.

31.9 Currency of account

- (a) A repayment of the Loan or Unpaid Sum or a part of the Loan or Unpaid Sum shall be made in the currency in which the Loan or Unpaid Sum is denominated, pursuant to this Agreement, on its due date.
- (b) Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated, pursuant to this Agreement, when that interest accrued.
- (c) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (d) Any amount expressed to be payable in a currency other than sterling shall be paid in that other currency.

31.10 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 that 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.

31.11 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 37 (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 31.11; and
- (f) the Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

32. SET-OFF

A Finance Party may set off any matured obligation due from the Borrower under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to the Borrower, 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.

33. NOTICES

33.1 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.

33.2 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 and the TopCo, that identified with its name below;
- (b) in the case of each Lender, 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 or the Security Agent, that identified with its name below,

or any substitute address, 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.

33.3 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 33.2 (Addresses), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Agent or the Security Agent will be effective only when actually received by the Agent or Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Agent's or Security Agent's signature below (or any substitute department or officer as the Agent or Security Agent shall specify for this purpose).
- (c) All notices from or to the Borrower shall be sent through the Agent.
- (d) Any communication or document which becomes effective, in accordance with paragraphs (a) to (c) above, after 5.00 p.m. in the place of receipt, shall be deemed only to become effective on the following day.

33.4 Notification of address and fax number

Promptly upon changing its address or fax number, the Agent shall notify the other Parties.

33.5 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.

33.6 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 (including, without limitation, by way of posting to a secure website) if those two Parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission 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 such electronic communication as specified in paragraph (a) above to be made between the Borrower and a Finance Party may only be made in that way 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.
- (c) Any such electronic communication as specified in paragraph (a) above made between any two Parties will be effective only when actually received (or made available) in readable form and, in the case of any electronic communication made by a Party to the Agent or the Security Agent, only if it is addressed in such a manner as the Agent or Security Agent shall specify for this purpose.
- (d) Any electronic communication which becomes effective, in accordance with paragraph (c) above, after 5:00 p.m. in the place in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.

- (e) Any reference in a Finance Document to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 33.6.

33.7 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 at its own cost supply the information to the Agent (in sufficient copies for each Paper Form Lender) in paper form. In any event the Borrower shall at its own cost 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 at its own cost comply with any such request within ten Business Days.

33.8 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.

34. CALCULATIONS AND CERTIFICATES

34.1 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.

34.2 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.

34.3 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 365 days or, in any case where the practice in the Relevant Market differs, in accordance with that market practice.

35. PARTIAL INVALIDITY

If, at any time, any provision of a Finance Document 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.

36. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of any Finance Party or Secured Party, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any Finance Document. No election to affirm any Finance Document on the part of any Finance Party or 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 each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

37. AMENDMENTS AND WAIVERS

37.1 Intercreditor Agreement

This Clause 37 is subject to the terms of the Intercreditor Agreement.

37.2 Required consents

- (a) Subject to Clause 37.3 (All Lender matters) and Clause 37.4 (Other 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 may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 37.
- (c) Without prejudice to the generality of paragraphs (c), (d) and (e) of Clause 28.6 (Rights and discretions), the Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement.

37.3 All Lender matters

Subject to paragraph (b) of Clause 37.4 (Other exceptions), an amendment, waiver or (in the case of a Transaction Security Document) a consent of, or in relation to, any term of any Finance Document that has the effect of changing or which relates to:

- (a) the definition of "Majority Lenders", "Super Majority Lenders", "Permitted Extraordinary Amendment" and "Permitted Extraordinary Amendment Event" in Clause 1.1 (Definitions);
 - (b) an amendment to, or waiver of, the date of payment of any amount under the Finance Documents (other than in relation to Clause 9 (Mandatory prepayment and cancellation) and except for an extension granted by a creditor who is a member of the Group to another member of the Group);
 - (c) an change in the Margin or an amendment in the amount of any payment of principal, interest, fees or commission payable;
 - (d) an increase in any Commitment or the Total Commitments or any requirement that a cancellation of Commitments reduces the Commitments of the Lenders rateably;
 - (e) any provision which expressly requires the consent of all the Lenders;
 - (f) Clause 2.2 (Finance Parties' rights and obligations), Clause 9 (Mandatory prepayment and cancellation), Clause 10.9 (Application of prepayments), Clause 25 (Changes to the Lenders), this Clause 37, Clause 42 (Governing law), Clause 43.1 (Jurisdiction of English courts) or Schedule 13 (Right of First Refusal);
 - (g) (other than as expressly permitted by the provisions of any Finance Document) the nature or scope of:
 - (i) the Charged Property; or
 - (ii) the manner in which the proceeds of enforcement of the Transaction Security are distributed,

(except in the case of paragraphs (i) and (ii) above, insofar as it relates to a sale or disposal of an asset which is the subject of the Transaction Security, where such sale or disposal is expressly permitted under this Agreement or any other Finance Document);
 - (h) the release of any Transaction Security unless permitted under this Agreement or any other Finance Document or relating to a sale or disposal of an asset which is the subject of the Transaction Security, where such sale or disposal is expressly permitted under this Agreement or any other Finance Document; or
 - (i) any amendment to the order of priority or subordination under the Intercreditor Agreement,
- shall not be made, or given, without the prior consent of all the Lenders.

37.4 Other exceptions

- (a) An amendment or waiver which relates to the rights or obligations of the Agent, the Account Bank, the Security Agent, or a Base Reference Bank (each in their capacity as such) may not be effected without the consent of the Agent, the Account Bank, the Security Agent, or that Base Reference Bank, as the case may be.
- (b) Any Permitted Extraordinary Amendment may be made after the occurrence of a Permitted Extraordinary Amendment Event by the Super Majority Lenders.
- (c) No amendment may be made that has the effect of changing any of the representations set out in Clauses 20.20 (Anti-corruption law) and 20.21 (Sanctions) and the covenants set out in Clauses 23.5 (Anti-corruption law) and 23.6 (Sanctions) in a manner that would put a Restricted Lender in breach of a Relevant Provision without the consent of that Restricted Lender.

37.5 Excluded Commitments

If:

- (a) any Defaulting Lender fails to respond to a request for a consent, waiver, amendment of or in relation to any term of any Finance Document or any other vote of Lenders under the terms of this Agreement within 20 Business Days of that request being made; or
- (b) any Lender which is not a Defaulting Lender fails to respond to such a request (other than an amendment, waiver or consent referred to in paragraphs (b), (c) and (d) of Clause 37.3 (All Lender matters)) or such a vote within 20 Business Days of that request being made,

(unless, in either case, the Borrower and the Agent agree to a longer time period in relation to any request):

- (i) its Commitment(s) shall not be included for the purpose of calculating the Total Commitments under the relevant Facility/ies when ascertaining whether any relevant percentage (including, for the avoidance of doubt, unanimity) of Total Commitments has been obtained to approve that request; and
- (ii) its status as a Lender shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve that request.

37.6 Replacement of Lender

(a) If:

- (i) any Lender becomes a Non-Consenting Lender (as defined in paragraph (d) below); or
- (ii) the Borrower becomes obliged to repay any amount in accordance with Clause 8.1 (Illegality) or to pay additional amounts pursuant to Clause 16.1 (Increased costs), Clause 15.2 (Tax gross-up) or Clause 15.3 (Tax indemnity) to any Lender,

then the Borrower may, on ten Business Days' prior written notice to the Agent and such Lender, require such Lender (the **Offering Lender**) to offer to transfer all (and not part only) of its rights and obligations under this Agreement to the other Lenders (which, in the case of a replacement of a Non-Consenting Lender, must be Consenting Lenders (as defined in paragraph (d) below)) pursuant to the terms of Schedule 13 (Right of First Refusal) and Clause 25 (Changes to the Lenders). If there is one or more Responding Party Offer, such Offering Lender shall (to the extent permitted by law) transfer

its rights and obligations in accordance with the terms of Schedule 13 (Right of First Refusal). If there are no Responding Party Offers, such Offering Lender shall (to the extent permitted by law) transfer pursuant to Clause 25 (Changes to the Lenders) all (and not part only) of its rights and obligations under this Agreement to a bank, financial institution, trust, fund or other entity (a **Replacement Lender**) selected by the Borrower which confirms its willingness to assume, and does assume, all the obligations of the transferring Lender in accordance with Clause 25 (Changes to the Lenders) for a purchase price in cash payable at the time of transfer in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Loan and all accrued interest (to the extent that the Agent has not given a notification under Clause 25.16 (Pro rata interest settlement)), Break Costs and other amounts payable in relation thereto under the Finance Documents.

- (b) The replacement of a Lender pursuant to this Clause 37.6 shall be subject to the following conditions:
- (i) the Borrower shall have no right to replace the Agent or Security Agent;
 - (ii) neither the Agent nor the Lenders shall have any obligation to the Borrower to find a Replacement Lender;
 - (iii) in the event of a replacement of a Non-Consenting Lender, such replacement must take place no later than ten Business Days after the date on which that Lender is deemed a Non-Consenting Lender;
 - (iv) in no event shall the Offering Lender replaced under this Clause 37.6 be required to pay or surrender to such Replacement Lender any of the fees received by such Offering Lender pursuant to the Finance Documents; and
 - (v) the Offering Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (a) 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.
- (c) An Offering Lender shall perform the checks described in paragraph (b)(v) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a) above and shall notify the Agent and the Borrower when it is satisfied that it has complied with those checks.
- (d) In the event that:
- (i) the Borrower or the Agent (at the request of the Borrower) has requested the Lenders to give a consent in relation to, or to agree to a waiver or amendment of, any provisions of the Finance Documents;
 - (ii) the consent, waiver or amendment in question requires the approval of all the Lenders; and
 - (iii) Lenders whose Commitments aggregate in the case of a consent, waiver or amendment requiring the approval of all the Lenders, more than 90% of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 90% of the Total Commitments prior to that reduction) have consented or agreed to such waiver or amendment (the **Consenting Lenders**),

then any Lender who does not and continues not to consent or agree to such waiver or amendment shall be deemed a **Non-Consenting Lender**.

37.7 Replacement of a Defaulting Lender

- (a) The Borrower may, at any time a Lender has become and continues to be a Defaulting Lender, by giving ten Business Days' prior written notice to the Agent and such Lender, replace such Lender by requiring such Lender to (and, to the extent permitted by law, such Lender shall) offer to transfer all (and not part only) of its rights and obligations under this Agreement to the other Lenders pursuant to the terms of Schedule 13 (Right of First Refusal) and Clause 25 (Changes to the Lenders). If there is one or more Responding Party Offers, such Defaulting Lender shall (to the extent permitted by law) transfer its rights and obligations in accordance with the terms of Schedule 13 (Right of First Refusal). If there are no Responding Party Offers, such Defaulting Lender shall (to the extent permitted by law) transfer pursuant to Clause 25 (Changes to the Lenders) all (and not part only) of its rights and obligations under this Agreement to a bank, financial institution, trust, fund or other entity (a **Replacement Lender**) selected by the Borrower which confirms its willingness to assume, and does assume, all the obligations, or all the relevant obligations, of the transferring Lender in accordance with Clause 25 (Changes to the Lenders) for a purchase price in cash payable at the time of transfer which is either:
- (i) in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Loan and all accrued interest (to the extent that the Agent has not given a notification under Clause 25.16 (Pro rata interest settlement), Break Costs and other amounts payable in relation thereto under the Finance Documents; or
 - (ii) in an amount agreed between that Defaulting Lender, the Replacement Lender and the Borrower and which does not exceed the amount described in paragraph (a) above but is not less than the Specified Price set out in the Transfer Notice as offered to the Lenders.
- (b) Any transfer of rights and obligations of a Defaulting Lender pursuant to this Clause 37.7 shall be subject to the following conditions:
- (i) the Borrower shall have no right to replace the Agent or Security Agent;
 - (ii) neither the Agent nor the Defaulting Lender shall have any obligation to the Borrower to find a Replacement Lender;
 - (iii) the transfer must take place no later than ten Business Days after the notice referred to in paragraph (a) above;
 - (iv) in no event shall the Defaulting Lender be required to pay or surrender to the Replacement Lender any of the fees received by the Defaulting Lender pursuant to the Finance Documents; and
 - (v) the Defaulting Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (a) 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 to the Replacement Lender.
- (c) The Defaulting Lender shall perform the checks described in paragraph (b)(v) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a) above and shall notify the Agent and the Borrower when it is satisfied that it has complied with those checks.

38. CONFIDENTIAL INFORMATION

38.1 Confidentiality

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 38.2 (Disclosure of Confidential Information) and Clause 38.3 (Disclosure to numbering service providers), 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.

38.2 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, 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 (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:
 - (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 or which succeeds (or which may potentially succeed) it as Agent or Security Agent and, in each case, to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
 - (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 the Borrower 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 28.14 (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, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;

- (vi) 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;
- (vii) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 25.15 (Security over Lenders' rights);
- (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, (I) 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 and (II) if that person is a Strategic Competitor, the consent of the Borrower has been given under paragraphs (c) or (d) of Clause 25.8 (Conditions of assignment or transfer);
- (B) in relation to paragraph (b)(iv) above, (I) 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 that they receive, and is informed that some or all of such Confidential Information may be price-sensitive information and (II) if that person is a Strategic Competitor, the consent of the Borrower has been given under paragraphs (c) or (d) of Clause 25.8 (Conditions of assignment or transfer);
- (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; and
- (d) 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.

38.3 Disclosure to numbering service providers

- (a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facility and/or the Borrower the following information:
- (i) names of the Borrower;
 - (ii) country of domicile of the Borrower;
 - (iii) place of incorporation of the Borrower;
 - (iv) date of this Agreement;
 - (v) Clause 42 (Governing law);
 - (vi) the names of the Agent;
 - (vii) date of each amendment and restatement of this Agreement;
 - (viii) amounts of, and names of, the Facility (and any tranches);
 - (ix) amount of Total Commitments;
 - (x) currencies of the Facility;
 - (xi) type of Facility;
 - (xii) ranking of Facility;
 - (xiii) Termination Date for Facility;
 - (xiv) changes to any of the information previously supplied pursuant to paragraphs (i) to (xiii) above; and
 - (xv) such other information agreed between such Finance Party and the Borrower,
- to enable such numbering service provider to provide its usual syndicated loan numbering identification services.
- (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facility and/or the Borrower by a numbering service provider, and the information associated with each such number, may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.
- (c) The Borrower represents that none of the information set out in paragraphs (i) to (xv) of paragraph (a) above is, nor will at any time be, unpublished price-sensitive information.
- (d) The Agent shall notify the Borrower and the other Finance Parties of:
- (i) the name of any numbering service provider appointed by the Agent in respect of this Agreement, the Facility and/or the Borrower; and
 - (ii) the number or, as the case may be, numbers assigned to this Agreement, the Facility and/or the Borrower by such numbering service provider.

38.4 Entire agreement

This Clause 38 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.

38.5 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.

38.6 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 38.2 (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 38.

38.7 Continuing obligations

The obligations in this Clause 38 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of 12 months from the earlier of:

- (a) the date on which all amounts payable by the Borrower under or in connection with the Finance Documents 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.

39. DISCLOSURE OF FUNDING RATES

39.1 Confidentiality and disclosure

- (a) The Agent and the Borrower 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 Borrower pursuant to Clause 11.4 (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 the Borrower 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 Borrower, 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 Borrower, 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.

39.2 Related obligations

- (a) The Agent and the Borrower 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 the Borrower undertake not to use any Funding Rate for any unlawful purpose.
- (b) The Agent and the Borrower 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 39.1 (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 39.

39.3 No Event of Default

No Event of Default will occur under Clause 24.3 (Other obligations) by reason only of the Borrower's failure to comply with this Clause 39.

40. DISCLOSURE OF LENDER DETAILS BY AGENT

40.1 Supply of Lender details to the Borrower and Bond Agent

- (a) The Agent shall provide to:
 - (i) the Borrower, within three Business Days of a request by the Borrower (but no more frequently than once per calendar month); or
 - (ii) the Bond Agent, within three Business Days of a request by the Bond Agent,

a list (which may be in electronic form) setting out the names of the Lenders as at the date of that request, 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.
- (b) The Bond Agent shall provide to the Borrower, within three Business Days of a request by the Borrower (but no more frequently than once per calendar month), a copy of the PIK Bond Register.

40.2 Supply of Lender details at Borrower's direction

- (a) The Agent and the Bond Agent shall, at the request of the Borrower, disclose the PIK Bond Register, the identity of the Lenders and the details of the Lenders' Commitments to any:
 - (i) other Party or any other person if that disclosure is made to facilitate, in each case, a refinancing of the Financial Indebtedness arising under the Finance Documents or a material waiver or amendment of any term of any Finance Document; and
 - (ii) member of the Group.
- (b) Subject to paragraph (c) below, the Borrower shall procure that the recipient of information disclosed pursuant to paragraph (a) above shall keep such information confidential and shall not disclose it to anyone, and shall ensure that all such information is protected with security measures and a degree of care that would apply to the recipient's own confidential information.
- (c) The recipient may disclose such information to any of its officers, directors, employees, professional advisers, auditors and partners as it shall consider appropriate if any such person is informed in writing of its confidential nature, except that there shall be no such requirement to so inform if that person is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by duties of confidentiality in relation to the information.

40.3 Supply of Lender details to other Lenders

- (a) If a Lender (a **Disclosing Lender**) indicates to the Agent that the Agent may do so, the Agent and the Bond Agent shall disclose that Lender's name and Commitment and the PIK Bonds issued to that Lender to any other Lender that is, or becomes, a Disclosing Lender.
- (b) The Agent shall, if so directed by the Requisite Lenders, request each Lender to indicate to it whether it is a Disclosing Lender.

40.4 Lender enquiry

If any Lender believes that any entity is, or may be, a Lender and:

- (a) that entity ceases to have an Investment Grade Rating; or
- (b) an Insolvency Event occurs in relation to that entity,

the Agent shall, at the request of that Lender, indicate to that Lender the extent to which that entity has a Commitment.

40.5 Lender details definitions

In this Clause 40:

Investment Grade Rating means, in relation to an entity, a rating for its long-term unsecured and non credit-enhanced debt obligations of BBB- or higher by Standard & Poor's Rating Services or Fitch Ratings Ltd or Baa3 or higher by Moody's Investors Service Limited or a comparable rating from an internationally recognised credit rating agency.

Requisite Lenders means a Lender or Lenders whose Commitments aggregate 15% (or more) of the Total Commitments (or if the Total Commitments have been reduced to zero, aggregated 15% (or more) of the Total Commitments immediately prior to that reduction).

41. 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.

42. GOVERNING LAW

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

43. ENFORCEMENT

43.1 Jurisdiction of English courts

- (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 any non-contractual obligation arising out of or in connection with this Agreement) (a **Dispute**).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This Clause 43.1 is for the benefit of the Finance Parties and Secured Parties only. As a result, no Finance Party or Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties and Secured Parties may take concurrent proceedings in any number of jurisdictions.

43.2 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law, the TopCo:

- (i) irrevocably appoints the Borrower as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document (and the Borrower, by its execution of this Agreement, accepts that appointment); and
 - (ii) agrees that failure by an agent for service of process to notify the TopCo of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the TopCo must immediately (and in any event within five days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may appoint another agent for this purpose.
- (c) The Borrower and the TopCo expressly agrees and consents to the provisions of this Clause 43 and Clause 42 (Governing law).

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

SCHEDULE 1

THE ORIGINAL PARTIES

PART 1

THE ORIGINAL LENDERS – OTHER THAN UK NON-BANK LENDERS

Name of Original Lender	Commitment	Treaty Passport scheme reference number and jurisdiction of tax residence (if applicable)
Barclays Bank PLC	£20,235,685.92	N/A
Bayerische Landesbank, London branch	£2,940,581.20	N/A
BlackRock Multi-Manager Alternative Strategies Fund, a Series of BlackRock Funds	£45,525.94	13/B/365984/DTTP Jurisdiction: USA
BNP Paribas, acting through its London Branch	£64,858.42	N/A
Burlington Loan Management Limited	£163,961.97	12/B/356998/DTTP Jurisdiction: Ireland
CCP Credit Acquisition Holdings Luxco, S.à r.l.	£12,526.18	48/C/358143/DTTP Jurisdiction: Luxembourg
Citigroup Financial Products Inc.	£2,776,737.35	13/C/305889/DTTP Jurisdiction: USA
Commerzbank AG, London Branch	£14,351,289.60	N/A
Credit Agricole Corporate and Investment Bank S.A., London Branch	£5,147,577.28	N/A
Credit Suisse International	£2,120,940.67	N/A
CRF2 S.A.	£4,929,420.63	48/C/361039/DTTP Jurisdiction: Luxembourg
CSCP II Acquisition Luxco, S.à r.l.	£3,711.04	48/C/359597/DTTP Jurisdiction: Luxembourg
CVI AA Lux Securities S.à r.l.	£482,995.30	
Field Point Acquisitions S.à r.l.	£27,068,174.18	48/F/364041/DTTP Jurisdiction: Luxembourg
J.P. Morgan Securities PLC	£8,708.07	N/A

JPMorgan Chase Bank, N.A., London Branch	£1,918,025.04	N/A
KBC Bank N.V., London Branch	£24,278.55	N/A
Mariner Glen Oaks, LLC	£97,791.01	
MC GCO (Luxembourg) S.à r.l.	£711,884.59	48/M/365457/DTTP Jurisdiction: Luxembourg
Relative Value Long/Short Debt, A Series of Underlying Funds Trust	£379,440.12	13/U/0362433/DTTP Jurisdiction: Luxembourg
Sculptor Investments IV S.à r.l.	£16,237.21	48/S/366134/DTTP Jurisdiction: Luxembourg
Universal Credit SA acting in respect of its Compartment B	£153,289.35	48/U/347266/DTTP Jurisdiction: Luxembourg
Universal Credit SA acting in respect of its Compartment European Loans	£786,546.40	48/U/347266/DTTP Jurisdiction: Luxembourg
Universal Credit SA acting in respect of its Compartment Z	£378,190.84	48/U/347266/DTTP Jurisdiction: Luxembourg

PART 2

THE ORIGINAL LENDERS – UK NON-BANK LENDERS

Name of Original Lender	Commitment
Jefferies International Limited	£164,703.27
Macquarie Bank Limited, London Branch	£16,919.87

SCHEDULE 2

CONDITIONS PRECEDENT

1. Borrower

- (a) A copy of the constitutional documents of the Borrower and TopCo.
- (b) A copy of a resolution of the board of directors of the Borrower and TopCo:
 - (i) approving the terms of, and the transactions contemplated by, the Transaction Documents to which it is a party and resolving that it execute, deliver and perform the Transaction Documents to which it is a party;
 - (ii) authorising a specified person or persons to execute the Transaction 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 to be signed and/or despatched by it under or in connection with the Transaction Documents to which it is a party.
- (c) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above in relation to the Finance Documents and related documents.
- (d) A copy of a resolution signed by all the holders of the issued shares in the Borrower, approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party.
- (e) A copy of a resolution of the board of directors of each corporate shareholder of the Borrower approving the terms of the resolution referred to in paragraph (d) above.
- (f) A certificate of the Borrower (signed by a director) confirming that (i) borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on the Borrower to be exceeded and (ii) no Default is continuing or would result from the deemed utilisation pursuant to Clause 5 (Deemed Utilisation) and (iii) all representations and warranties in Clause 20 (Representations) to be made by it are correct in all material respects.
- (g) A certificate of an authorised signatory of the Borrower and TopCo certifying that each copy document relating to it specified in this Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of this Agreement.

2. Transaction Documents

A copy of each of the Transaction Documents (other than the Finance Documents) executed by the parties to those documents.

3. Finance Documents

- (a) The Intercreditor Agreement executed by the members of the Group party to that Agreement.
- (b) This Agreement executed by the Borrower.
- (c) The Fee Letters executed by the Borrower.

- (d) The Senior Finance Documents executed by the relevant members of the Group party to those documents.
- (e) At least two originals of the Company Share Charge and Loan Assignment executed by the Borrower.
- (f) A copy of all share certificates, transfers and stock transfer forms or equivalent duly executed by the Borrower in blank in relation to the assets subject to, or expressed to be subject to, the Transaction Security and other documents of title to be provided under the Transaction Security Documents, provided that no document shall have to be provided in relation to security that is to be put in place on a later date.

4. Legal opinions

- (a) A legal opinion of Allen & Overy LLP, legal advisers to the Agent and the Lenders as to English law addressed to the Agent, the Security Agent and the Original Lenders.
- (b) A legal opinion of Appleby, legal advisers to the Agent and the Lenders as to the laws of Jersey addressed to the Agent, the Security Agent and the Original Lenders.

5. Other documents and evidence

- (a) The Budget.
- (b) A copy, certified by an authorised signatory of the Borrower to be a true copy, of the Original Financial Statements of CEHL together with confirmation that there has been no material adverse change in the financial condition of the Borrower and CEHL since the date of preparation of such Original Financial Statements.
- (c) A certificate of the Borrower addressed to the Finance Parties confirming which companies within the Group will on the Restructuring Effective Date be Material Companies.
- (d) A certificate signed by an authorised signatory of the Borrower specifying each member of the Group (assuming that the Restructuring Effective Date has occurred) which is a Dormant Subsidiary as at the Restructuring Effective Date together with certified copies (certified by such authorised signatory to be a true copy) of the last audited accounts of each such Dormant Subsidiary.
- (e) A copy of any other Authorisation or other document, opinion or assurance which the Agent notifies the Borrower is necessary 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.
- (f) Completion of the Lenders' "know your customer checks".
- (g) A certified true copy of the Shareholders' Agreement.
- (h) A certified true copy of the Management Incentive Plan.
- (i) A copy of the Preliminary Steps Completion Notice (as defined in the Restructuring Agreement).
- (j) Evidence that all fees (including legal fees) and expenses then due and payable by the Borrower to the professional advisers in connection with the Restructuring have been or will be paid on the Restructuring Effective Date.

- (k) A certified true copy of the key employee retention plan setting out the incentives to be given to certain key employees of the Group.

SCHEDULE 3

FORM OF TRANSFER CERTIFICATE AND LENDER ACCESSION UNDERTAKING

To: [] as Agent and [] as Security Agent

From: [*The Existing Lender*] (the **Existing Lender**) and [*The New Lender*] (the **New Lender**)

Dated:

Denmark Holdco Limited – Junior Facility Agreement dated [●] (the Facility Agreement)

1. We refer to the Facility Agreement and to the Intercreditor Agreement (as defined in the Facility Agreement). This agreement (the **Agreement**) shall take effect as a Transfer Certificate and Lender Accession Undertaking for the purposes of the Facility Agreement and as a Creditor Accession Undertaking for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor 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 25.11 (Procedure for transfer) 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 25.11 (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 the Loan 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 33.2 (Addresses) 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 25.10 (Limitation of responsibility of Existing Lenders).
4. The New Lender confirms, for the benefit of the Agent and without liability to the Borrower, that it is:
 - (a) [a Qualifying Lender (other than a Treaty Lender);]
 - (b) [a Treaty Lender;]
 - (c) [not a Qualifying Lender].¹
- [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;
 - (b) a partnership each member of which is:
 - (i) a company so resident in the United Kingdom; or

¹ Delete as applicable – each New Lender is required to confirm which of these three categories it falls within.

(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.]²

[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 the [TopCo] notify/notifies to the Borrower that it wishes that the scheme to apply to the Facility Agreement].

**

[7/8]. In consideration of the New Lender being accepted as a Junior Lender for the purposes of the Intercreditor Agreement (and as defined therein), the New Lender confirms that, as from the Transfer Date, it intends to be party to the Intercreditor Agreement as a Junior Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a Junior Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.

[8/9]. 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.

[10/11]. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

[11/12]. This Agreement has been entered into on the date stated at the beginning of this Agreement.

Note: The execution of this Transfer Certificate may not transfer a proportionate share of the Existing Lender's interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

² Include if New Lender comes within paragraph (i)(B) of the definition of Qualifying Lender in Clause 15.1 (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 Facility 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]

[Existing Lender]

[New Lender]

By:

By:

This Agreement is accepted as a Transfer Certificate and Lender Accession Undertaking for the purposes of the Facility Agreement by the Agent, and as a Creditor Accession Undertaking for the purposes of the Intercreditor Agreement by the Security Agent, and the Transfer Date is confirmed as [].

[Agent]

By: _____

[Security Agent]

By: _____

SCHEDULE 4

FORM OF ASSIGNMENT AGREEMENT AND LENDER ACCESSION UNDERTAKING

To: [] as Agent and [], [] as Security Agent, Denmark Topco Limited as TopCo, for and on behalf of the Borrower

From: [the *Existing Lender*] (the **Existing Lender**) and [the *New Lender*] (the **New Lender**)

Dated:

Denmark Holdco Limited – Junior Facility Agreement dated [●] (the Facility Agreement)

1. We refer to the Facility Agreement and to the Intercreditor Agreement (as defined in the Facility Agreement). This is an Assignment Agreement and Lender Accession Undertaking. This agreement (the **Agreement**) shall take effect as an Assignment Agreement and Lender Accession Undertaking for the purposes of the Facility Agreement and as a Creditor Accession Undertaking for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor 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 25.12 (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 Facility Agreement, the other Finance Documents and in respect of the Transaction Security which correspond to that portion of the Existing Lender's Commitment(s) and participations in the Loan under the Facility 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 Commitment(s) and participations in the Loan under the Facility 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:
 - (a) Party to the relevant Finance Documents (other than the Intercreditor Agreement) as a Lender; and
 - (b) Party to the Intercreditor Agreement as a Junior Lender (as defined in the Intercreditor Agreement).
5. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 33.2 (Addresses) 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 25.10 (Limitation of responsibility of Existing Lenders).
7. The New Lender confirms, for the benefit of the Agent and without liability to the Borrower, that it is:

- (a) [a Qualifying Lender (other than a Treaty Lender);]
 - (b) [a Treaty Lender;]
 - (c) [not a Qualifying Lender].³
- [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;
 - (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.]⁴
- [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 the [TopCo/ Junior Company] notify/notifies to the Borrower that it wishes that scheme to apply to the Facility Agreement].
- **
- [10/11]. In consideration of the New Lender being accepted as a Junior Lender for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement), the New Lender confirms that, as from the Transfer Date, it intends to be party to the Intercreditor Agreement as a Junior Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a Junior Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.
- [11/12]. This Agreement acts as notice to the Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 25.13 (Copy of Transfer Certificate and Lender Accession Undertaking or Assignment Agreement and Lender Accession Undertaking to the Borrower), to the Borrower (on behalf of the Borrower) of the assignment referred to in this Agreement.
- [12/13]. 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.

³ Delete as applicable – each New Lender is required to confirm which of these three categories it falls within.

⁴ 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 15.1 (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 Facility Agreement.

[13/14].This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

[14/15].This Agreement has been entered into on the date stated at the beginning of this Agreement.

Note: The execution of this Assignment Agreement and Lender Accession Undertaking may not transfer a proportionate share of the Existing Lender's interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

THE SCHEDULE

Commitment/rights and obligations to be transferred by assignment, release and accession

[insert relevant details]

[Facility office address, fax number and attention details for notices and account details for payments]

[Existing Lender]

[New Lender]

By:

By:

This Agreement is accepted as an Assignment Agreement and Lender Accession Undertaking for the purposes of the Facility Agreement by the Agent, and as a Creditor Accession Undertaking for the purposes of the Intercreditor Agreement by the Security 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 in this Agreement, which notice the Agent receives on behalf of each Finance Party.

[Agent]

By: _____

[Security Agent]

By: _____

SCHEDULE 5

FORM OF COMPLIANCE CERTIFICATE

To: [] as Agent

From: Denmark Topco Limited

Dated:

Dear Sirs

Denmark Holdco Limited – Junior Facility Agreement dated [●] (the Facility Agreement)

1. We refer to the Facility Agreement. This is a Compliance Certificate. Terms defined in the Facility Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
2. We confirm that in respect of the Financial Year ending on 31 December 201[●] the aggregate Capital Expenditure was [●].
3. In respect of the Financial Year ending 31 December 201[insert following Financial Year], the Capital Expenditure set out in the Budget for that Financial Year is £[●].
4. [We confirm that no Default is continuing.]*
5. [We confirm that the following companies constitute Material Companies for the purposes of the Facility Agreement: [].]

Signed

Director
of
Borrower

.....

Director
of Borrower

[insert applicable certification language]

for and on behalf of
[name of Borrower's Auditors]

NOTES:

- * If this statement cannot be made, the certificate should identify any Default that is continuing and the steps, if any, being taken to remedy it.

SCHEDULE 6

LMA FORM OF CONFIDENTIALITY UNDERTAKING

To: [insert name of Existing Lender]

Re: Denmark Holdco Limited – Junior Facility Agreement dated [●] (the **Agreement**)

Date: []

Dear Sirs,

We are considering acquiring an interest in the Agreement which, subject to the Agreement, may be by way of novation, assignment, the entering into, whether directly or indirectly, of a sub-participation 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 the Borrower, or by way of investing in or otherwise financing, directly or indirectly, any such novation, assignment, sub-participation or other transaction (the **Acquisition**). In consideration of you agreeing to make available to us certain information, by our signature of this letter we agree as follows (acknowledged and agreed by you by your signature of a copy of this letter):

1. CONFIDENTIALITY UNDERTAKING

We undertake (a) to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by paragraph 2 below, and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to our own confidential information and (b) until the Acquisition is completed to use the Confidential Information only for the Permitted Purpose.

2. PERMITTED DISCLOSURE

You agree that we may disclose:

- (a) to any of our Affiliates and any of our or their officers, directors, employees, professional advisers and auditors such Confidential Information as we 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) subject to the requirements of the Agreement, to any person:
 - (i) to (or through) whom we assign or transfer (or may potentially assign or transfer) all or any of our rights and/or obligations which we may acquire under the Agreement such Confidential Information as we shall consider appropriate, if the person to whom the Confidential Information is to be given pursuant to this paragraph (i) has delivered a letter to us in equivalent form to this letter;
 - (ii) with (or through) whom we enter into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, the Agreement or the Borrower, such Confidential Information as we shall consider appropriate, if the person to whom the

Confidential Information is to be given pursuant to this paragraph (ii) has delivered a letter to us in equivalent form to this letter;

- (iii) to whom information is required or requested to be disclosed by 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, such Confidential Information as we shall consider appropriate; and
- (c) notwithstanding paragraphs (a) and (b) above, Confidential Information to such persons to whom, and on the same terms as, a Finance Party is permitted to disclose Confidential Information under the Agreement, as if such permissions were set out in full in this letter and as if references in those permissions to Finance Party were references to us.

3. NOTIFICATION OF DISCLOSURE

We agree (to the extent permitted by law and regulation) to inform you:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to subparagraph (iii) of paragraph 2(b) above, 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 letter.

4. RETURN OF COPIES

If we do not enter into the Acquisition and you so request in writing, we shall return or destroy all Confidential Information supplied by you to us and destroy or permanently erase (to the extent technically practicable) all copies of Confidential Information made by us, and use our reasonable endeavours to ensure that anyone to whom we have supplied any Confidential Information destroys or permanently erases (to the extent technically practicable) such Confidential Information and any copies made by them, in each case save to the extent that we or the recipients are required to retain any such Confidential Information by any applicable law, rule or regulation or by any competent judicial, governmental, supervisory or regulatory body or in accordance with internal policy, or where the Confidential Information has been disclosed under paragraph (iii) of paragraph 2(b) above.

5. CONTINUING OBLIGATIONS

The obligations in this letter are continuing and, in particular, shall survive and remain binding on us until (a) if we become a party to the Agreement as a lender of record, the date on which we become such a party to the Agreement; (b) if we enter into the Acquisition but it does not result in us becoming a party to the Agreement as a lender of record, the date falling 12 months after the date on which all of our rights and obligations contained in the documentation entered into to implement the Acquisition have terminated; or (c) in any other case, the date falling 12 months after the date of our final receipt (in whatever manner) of any Confidential Information.

6. NO REPRESENTATION; CONSEQUENCES OF BREACH, ETC

We acknowledge and agree that:

- (a) neither you, nor any member of the Group nor any of your or their respective officers, employees or advisers (each a **Relevant Person**) (i) make any representation or warranty, express or implied, as to, or assume any responsibility for, the accuracy, reliability or

completeness of any of the Confidential Information or any other information supplied by you or the assumptions on which it is based; nor (ii) shall be under any obligation to update or correct any inaccuracy in the Confidential Information or any other information supplied by you, or be otherwise liable to us or any other person in respect of the Confidential Information or any such information; and

- (b) you or members of the Group may be irreparably harmed by the breach of the terms of this letter and damages may not be an adequate remedy; each Relevant Person may be granted an injunction or specific performance for any threatened or actual breach of the provisions of this letter by us.

7. ENTIRE AGREEMENT: NO WAIVER; AMENDMENTS, ETC

- (a) This letter constitutes the entire agreement between us in relation to our obligations regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.
- (b) No failure to exercise, nor any delay in exercising, any right or remedy under this letter will operate as a waiver of any such right or remedy or constitute an election to affirm this letter. No election to affirm this letter will be effective unless it is in writing. No single or partial exercise of any right or remedy will prevent any further or other exercise or the exercise of any other right or remedy under this letter.
- (c) The terms of this letter and our obligations under this letter may only be amended or modified by written agreement between us.

8. INSIDE INFORMATION

We acknowledge 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 we undertake not to use any Confidential Information for any unlawful purpose.

9. NATURE OF UNDERTAKINGS

The undertakings given by us under this letter are given to you and are also given for the benefit of the Borrower and each other member of the Group.

10. THIRD PARTY RIGHTS

- (a) Subject to this paragraph 10 and to paragraphs 6 and 9 above, a person who is not a party to this letter 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 letter.
- (b) The Relevant Persons may enjoy the benefit of the terms of paragraphs 6 and 9 above subject to, and in accordance with, this paragraph 10 and the provisions of the Third Parties Act.
- (c) Notwithstanding any provisions of this letter, the parties to this letter do not require the consent of any Relevant Person to rescind or vary this letter at any time.

11. GOVERNING LAW AND JURISDICTION

- (a) This letter (including the agreement constituted by your acknowledgement of its terms) (the **Letter**) and any non-contractual obligations arising out of or in connection with it (including any non-contractual obligations arising out of the negotiation of the transaction contemplated by this Letter) are governed by English law.
- (b) The courts of England have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Letter (including a dispute relating to any non-contractual obligation arising out of or in connection with either this Letter or the negotiation of the transaction contemplated by this Letter).

12. DEFINITIONS

In this Letter (including the acknowledgement set out below) terms defined in the Agreement shall, unless the context otherwise requires, have the same meaning and:

Confidential Information means all information relating to the TopCo, the Borrower, the Group, the Finance Documents, the Facility and/or the Acquisition which is provided to us in relation to the Finance Documents or the Facility by you or any of your affiliates or 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:

- (a) is or becomes public information other than as a direct or indirect result of any breach by us of this letter; or
- (b) is identified in writing at the time of delivery as non-confidential by you or your advisers; or
- (c) is known by us before the date on which the information is disclosed to us by you or any of your affiliates or advisers, or is lawfully obtained by us after that date from a source which is, as far as we are aware, unconnected with the Group and which, in either case, as far as we are aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

Group means Denmark Holdco Limited, CEHL and each of their respective Subsidiaries for the time being (other than Cory Riverside (Holdings) Limited and its Subsidiaries).

Permitted Purpose means considering and evaluating whether to enter into the Acquisition.

Please acknowledge your agreement to the above by signing and returning the enclosed copy.

Yours faithfully

For and on behalf of

[*Potential Purchaser*]

To: [*Potential Purchaser*]

We acknowledge and agree to the above:

For and on behalf of

[*Existing Lender*]

SCHEDULE 7

TIMETABLES

LIBOR is fixed

Quotation Day 11.00 a.m.

Base Reference Bank Rate calculated by reference to available quotations in accordance with Clause 13.2 (Calculation of Base Reference Bank Rate)

Noon on the Quotation Day

SCHEDULE 8

INITIAL MATERIAL COMPANIES

1. Cory Environmental Municipal Services Limited
2. Cory Environmental (Gloucestershire) Limited
3. Cory Environmental Energy Limited
4. Cory Environmental Limited
5. Cory Environmental (Central Holdings) Limited
6. Cory Environmental Recycling Services Limited
7. Cory Environmental (Central) Limited
8. Waste Hire Services Limited
9. William Roberts (Haulage) Limited
10. Skips@Home Limited
11. U.K. Nationwide Skip Hire Limited
12. Cory Environmental Holdings Limited
13. Cory Environmental Finance Limited
14. Cory Environmental Acquisitions Limited
15. Cory Environmental Management Limited

SCHEDULE 9

INITIAL MATERIAL CONTRACTS

(A) London waste services:

1. Services Contract between Western Riverside Waste Authority and Cory Environmental Limited to the extent that it relates to the EFW Services (as defined therein)

(B) Waste Collection and Cleansing:

2. Contract for waste and recycling collection, beach and street cleaning and associated services between Cornwall Council, Cory Environmental Municipal Services Limited and Cory Environmental Management Limited dated 29 March 2012
3. Contract for street cleaning, refuse collection and recycling between Rutland County Council and Cory Environmental Municipal Services Limited with an effective date of 1 April 2008
4. Contract for street cleaning and litter collection services and a responsive service that deals with ad hoc works, minor repairs and maintenance between Tunbridge Wells Borough Council and Cory Environmental Municipal Services Limited dated 2 December 2008 (as amended by an amending agreement dated 17 July 2013)
5. Contract for the collection and transport of contract waste between the City of Lincoln Council and Cory Environmental Municipal Services Limited dated 17 July 2008 (as amended by the Variation to the Memorandum of Agreement dated 3 May 2011 and 15 April 2015)

(C) Landfill:

6. Contract for the acceptance, management, transfer, recycling and disposal of waste between Gloucestershire County Council and Cory Environmental (Gloucestershire) Limited dated 3 August 2006 as varied by a variation agreement between the same parties dated 27 February 2012

(D) Landfill gas:

7. Agreement relating to the Landfill Gas Generation Project at the Hempstead Landfill Site dated 1 May 2006 between Cory Environmental (Gloucestershire) Limited, Cory Environmental Energy Limited and Summerleaze Re-Generation Limited (now known as Infinis)

SCHEDULE 10

INFORMATION PACKS

1. MONTHLY SUMMARISED MANAGEMENT ACCOUNTS

Borrower consolidated (not consolidating EFW ProjectCo and the Riverside Group)

- Executive summary
- Financial Statements with commentary on key variances
- Profit and Loss account (to EBIT) (for month & YTD) (v budget)
- Cashflow (for month & YTD) (v budget)
- Balance sheet (as at month end) (v budget)

Riverside Group

- Executive summary
- Financial Statements with commentary on key variances
- Profit and Loss account (to EBIT) (for month & YTD) (v budget)
- Cashflow (for month & YTD) (v budget)
- Balance sheet (as at month end) (v budget)

2. ANNUAL BUDGET PACK

Current year full-year forecast (v budget)

- Borrower consolidated P&L (v budget)
- Divisional Adjusted EBITDAP analysis
- Analysis of exceptional costs
- Borrower consolidated Cashflow
- Forecast financial covenants
- Forecast Net Debt
- Distributable amount

Budget analysis (analysis annually and quarterly)

- Borrower consolidated P&L (to EBIT)
- Divisional Adjusted EBITDAP analysis

- Analysis of exceptional costs
- Borrower consolidated Cashflow
- Forecast financial covenants

12 months to June and December

- Forecast Net Debt
- Summary of key drivers/assumptions

LF&G – landfill trends (volume/price and reference to market outlook)

LF&G – gas volumes/price

L&B – collections contract renewal/profitability

L&B – MRF

Riverside – volume/price assumptions

Cost base – fixed cost assumptions

Exceptional costs

Capex spend

- Summary of risks and opportunities to budget
- Riverside

Consolidated P&L

Cashflow

Forecast covenants – ADSCR & LLCR

Comparison of budget to Business Plan

SCHEDULE 11

STRATEGIC PLAN

The Borrower and the Company shall, and the Borrower shall ensure that each other member of the Group will take such action as is required to, in accordance with the terms of the Transaction Documents:

- (a) repay (i) the Loan and (ii) all Utilisations under, and as defined in, the Senior Facilities Agreement in full on or prior to the Termination Date by way of Disposals of assets;
- (b) prioritise the Disposal of, or other solution with respect to, the Landfill and Gas Business and the Collections Business in the short term following the date of this Agreement (while ensuring the maximum value reasonably obtainable is derived from any such Disposal); and
- (c) commence a Marketing Process (as defined in Clause 23.39 (Riverside Assets)) for a Permitted Riverside Disposal by no later than 31 December 2018.

SCHEDULE 12

DISTRIBUTABLE AMOUNT CONFIRMATION

To: [] as Agent

From: Denmark Holdco Limited as Borrower

Dated:

Dear Sirs

Denmark Holdco Limited – Junior Facility Agreement dated [●] (the Facility Agreement)

1. We refer to the Facility Agreement. This is a Distributable Amount Confirmation delivered under clause 21.11 (Distributable Amount) of the Facility Agreement. Terms defined in the Facility Agreement have the same meaning when used in this Distributable Amount Confirmation unless given a different meaning in this Distributable Amount Confirmation.
2. We confirm that on *[insert Cash Sweep Date]*, the Distributable Amount is [●].

[insert details of calculation including cash balance as at relevant Interest Payment Date, latest cashflow forecast for next 12 months (highlighting minimum projected cash balance), reconciliation (if necessary) to the then current Business Plan and proposed disposals in the 12-month period and the impact of such disposal on the forecast cashflows]
3. The Distributable Amount set out above that is required to be applied in payment and/or prepayment under the Senior Facilities Agreement is [●].⁵

Signed _____

Director

of Denmark Holdco Limited

⁵ To be included if the Cash Sweep Date is the Senior Discharge Date

SCHEDULE 13

RIGHT OF FIRST REFUSAL

1. DEFINITIONS

1.1 For the purpose of this Schedule 13:

Additional Amounts has the meaning given to it in paragraph 1.2(a);

Connected Transfer has the meaning given to it in paragraph 2.2(c)(ii);

Connected Transfer Interests has the meaning given to it in paragraph 2.2(c)(ii);

Encumbrance means:

- (a) any mortgage, charge (fixed or floating), pledge, lien, assignment by way of security, trust arrangement or other arrangement having the effect of conferring security; or
- (b) any option to acquire any legal or equitable interest or other right,

other than any Security granted by a Lender in accordance with Clause 25.15 (Security over Lenders' rights) or clause 28.8 (Security over Lenders' rights) of the Senior Facilities Agreement;

Fair Price means the price which the Board of the TopCo determines to be the fair value of the Transferring Interests on a sale as between a willing seller and a willing purchaser (taking no account of whether the Shares do or do not carry control of the TopCo or whether the Loan Assets would provide any majority or minority stake) and, if the TopCo and the Borrower are then carrying on business as a going concern, on the assumption that they will continue to do so;

Interest Allocation of a Responding Party is:

- (a) in the case of a Transfer Notice involving Shares, the aggregate of: (i) half of the ratio of the Commitments of that Responding Party and its Related Entities as at the Transfer Deadline divided by the Total Commitments as at the Transfer Deadline and (ii) half of the ratio of the number of Shares held by that Responding Party and its Related Entities divided by the total number of Shares; and
- (b) in the case of a Transfer Notice not involving Shares, the ratio of the Commitments of that Responding Party and its Related Entities as at the Transfer Deadline divided by the Total Commitments as at the Transfer Deadline;

Interest Allocation Percentage of a Responding Party is the ratio (expressed as a percentage) of that Responding Party's Interest Allocation to the Total Interest Allocation;

Loan Assets means, in relation to a Lender:

- (a) the participation in the Loan; and
- (b) the Commitments,

of that Lender and its Related Entities;

Majority Holders means the holders of more than 50% of the Shares in issue;

Pre-Restructuring Transfer means:

- (a) a transfer of Shares and/or Loan Assets by an Existing Lender to a New Lender (or, in the case of the Shares, the New Lender or its Affiliate or Related Fund) with whom the Existing Lender entered into a binding agreement to transfer or assign all or part of its rights and obligations under the Existing Senior Facilities Agreement prior to the Scheme Meeting Date, provided that:
 - (i) the Existing Lender provided evidence of such binding agreement to the Agent under and as defined in the Existing Senior Facilities Agreement (on a confidential basis) prior to the date of the Scheme Meeting Date and the Borrower is satisfied (acting reasonably) that such agreement was entered into prior to the Scheme Meeting Date;
 - (ii) the New Lender is a bank or financial institution or 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; and
 - (iii) if the Shares are not transferred to the New Lender, the purchaser of the relevant Shares is an Affiliate or Related Fund of the New Lender; or
- (b) a Transfer of Shares and/or a Transfer of Loan Assets by an Existing Lender to a New Lender (or, in the case of the Shares, an Affiliate or Related Fund of the New Lender) which is, or in the case of the Transfer of Shares is pursuant to, an elevation under a Qualifying Subparticipation;

Qualifying Sub-participation means a sub-participation agreement or any other agreement or arrangement having an economic effect substantially similar to a sub-participation agreement:

- (a) which has been entered into by an Existing Lender prior to the Scheme Meeting Date;
- (b) in respect of which the Existing Lender provided evidence of such agreement or arrangement to the Agent under and as defined in the Existing Senior Facilities Agreement (on a confidential basis) prior to the Scheme Meeting Date; and
- (c) in respect of which the New Lender has represented to the Borrower that it, or any of its Affiliates or Related Funds, is, and at all times since the Scheme Meeting Date has been, the legal and beneficial owner of all the Existing Lender's rights under such agreement or arrangement, free and clear of any third party interests or rights, and the Borrower is satisfied (acting reasonably), based on the evidence provided to it, that such representation is accurate;

Related Entity means, in relation to a Lender or a Shareholder, each other Lender and Shareholder which is an Affiliate or Related Fund of that Lender or Shareholder (as applicable);

Responding Party has the meaning given to it in paragraph 3.1;

Responding Party Offer has the meaning given to it in paragraph 3.1;

Restricted Transaction means:

- (a) a Transfer of Loan Assets;

- (b) a sale, assignment or transfer of any legal, equitable, economic or other interest in Loan Assets;
- (c) the granting or permitting to subsist of any Encumbrance over Loan Assets;
- (d) any derivative transaction (including an option, sub-participation or equity or total return swap) in relation to Loan Assets; and
- (e) any transaction having an economically similar effect to any of the above in relation to the Loan Assets,

including any of the above which has occurred or subsists by operation of law;

Reversed means in relation to a Restricted Transaction, that:

- (a) any sale, assignment or transfer of any legal or equitable interest is reversed;
- (b) any Encumbrance is released or cancelled;
- (c) any derivative transaction is unwound; or
- (d) any other steps are taken,

in order to leave the parties in the position they would have been in had the Restricted Transaction not occurred, as appropriate;

Scheme Meeting Date means the date on which the meetings convened by the order of the Court for purposes of the Scheme Creditors considering and, if thought fit, approving the Scheme were held (as such capitalised terms are defined in the Restructuring Agreement);

Senior Commitment means a Commitment (as defined in the Senior Facilities Agreement);

Senior Utilisation means a Utilisation (as defined in the Senior Facilities Agreement);

Shareholder means a holder of the Shares;

Shares means the ordinary shares of TopCo;

Specified Connected Transfer Price has the meaning given to it in paragraph 2.2(c)(ii);

Specified Price has the meaning given to it in paragraph 2.2(a)(ii);

Specified Terms has the meaning given to it in paragraph 2.2(a)(ii);

Stapled Shares means, in relation to any Loan Assets, the Shares stapled to those Loan Assets pursuant to paragraph 4.1;

Total Interest Allocation means the aggregate of all Interest Allocations of all Responding Parties;

Transfer means:

- (a) in respect of the Loan Assets, a transfer or assignment made in accordance with Clause 25 (Changes to the Lenders);

- (b) in respect of the Senior Utilisation and the Senior Commitments, a transfer or assignment made in accordance with clause 28 (Changes to the Lenders) of the Senior Facilities Agreement;
- (c) in respect of the Shares, a transfer of legal and beneficial title,

and, where the context requires, **Transferred** or any derivative thereof will be construed accordingly;

Transfer Deadline has the meaning given to it in paragraph 2.2(a)(iii);

Transfer Notice has the meaning given to it in paragraph 2.1;

Transferor has the meaning given to it in paragraph 2.1; and

Transferring Interests has the meaning given to it in paragraph 2.2(a)(i).

1.2 For the purposes of undertaking any comparative calculation required by paragraph 2.2 of this Schedule 13 and Clause 25.14 (Tag Along and Drag Along under the Shareholders' Agreement) and notwithstanding any allocation of the consideration or price between the parties to that Transfer, the consideration or price for any transfer of the Loan Assets and Shares shall be deemed to be allocated, between the Loan Assets and Shares, the object of the relevant Transfer as follows:

- (a) first, towards the outstanding principal amount of all of the relevant Loan Assets and all accrued interest, Break Costs and other amounts payable in relation to the Loan Assets under the Finance Documents up to their par value (all such other amounts being the **Additional Amounts**);
- (b) second, any amounts above the par value of the relevant Loan Assets and Additional Amounts shall be deemed to be the price or consideration paid or to be paid for all of the Shares the subject of the transfer (accordingly, the price per Share in respect of the relevant transfer shall be deemed to be the amount of such surplus divided by the total number of such Shares); and
- (c) to the extent that the consideration or price is less than the par value of the relevant Loan Assets and Additional Amounts, the consideration or price for the Shares shall be deemed to be zero and the consideration for the relevant Loan Assets shall be deemed to be the whole consideration or price paid or to be paid for the relevant transfer.

2. TRANSFER NOTICES

2.1 A Lender who wishes to Transfer some or all of its rights and obligations under this Agreement or a Shareholder who wishes to Transfer some or all of its Shares (each a **Transferor**) to a person (the **Purchaser**), other than a Transfer:

- (a) to any of its Affiliates or Related Funds;
- (b) in accordance with Clause 25.14 (Tag Along and Drag Along under the Shareholders' Agreement) and clauses 9 (Tag Along) or 10 (Drag Along) of the Shareholders' Agreement; or
- (c) which is a Pre-Restructuring Transfer,

shall give written notice of the proposed Transfer substantially in the form set out in Schedule 14 (Form of Transfer Notice) to TopCo, the Borrower and the Agent in accordance with paragraph 2.2 below (a **Transfer Notice**).

2.2 A Transfer Notice shall be delivered by the Transferor on behalf of itself and its Related Entities and shall:

- (a) specify:
 - (i) the Loan Assets and the Shares (if any) the subject of the proposed Transfer by the Transferor and its Related Entities, which must comply with the requirements of paragraph 4 (Stapling) below (the **Transferring Interests**);
 - (ii) the price at (the **Specified Price**), and the terms on, which the Transferring Interests are offered to be Transferred (together, the **Specified Terms**), provided that:
 - (A) in the case of a Transfer pursuant to Clause 37.6 (Replacement of Lender) the Specified Price in respect of the Shares shall be the Fair Price and the Specified Price for the Loan Assets shall be an amount equal to the outstanding principal amount of the Loan Asset and all Additional Amounts; and
 - (B) in the case of a Transfer pursuant to clause 8.3(c) (Transfer to Affiliates and Related Funds), clause 8.5 (Required Transfers) or clause 8.6 (Unwind of Restricted Transaction) of the Shareholders' Agreement, Clause 25.5(b) (Transfers to Affiliates and Related Funds), Clause 25.6 (Required Transfers), or Clause 25.7 (Unwind of Restricted Transactions), the Specified Price shall be the lower of the Fair Price and (if determinable) the consideration for the Restricted Transfer or Restricted Transaction, as the case may be;
 - (iii) the transfer deadline date, which shall be 5pm on the day falling five Business Days after the date of the Transfer Notice (the **Transfer Deadline**);
 - (iv) details of:
 - (A) the total Loan Assets of the Transferor and each of its Related Entities (and the name of such Related Entities); and
 - (B) the total number of Shares held by the Transferor and its Related Entities (and the name of such Related Entities);
- (b) include a representation by the Transferor:
 - (i) if there is a Purchaser, as to whether the Purchaser is or is not an Affiliate or Related Fund of that Transferor; and
 - (ii) that the Specified Price and the Specified Terms are arm's length;
- (c) either:
 - (i) include a representation by the Transferor that the proposed Transfer is not connected to an actual or potential Transfer of any Senior Utilisation or Senior Commitments; or

(ii) state: (A) that the Transfer of the Transferring Interests is connected to an actual or potential Transfer of any Senior Utilisation or Senior Commitments (a **Connected Transfer**); (B) the details of the Senior Utilisations and Senior Commitments subject to that Connected Transfer (the **Connected Transfer Interests**); and (C) the purchase price offered in respect of the Connected Transfer Interests (the **Specified Connected Transfer Price**) and the terms on which the Transferring Interests and Connected Transferring Interests are offered to be Transferred (together, the **Specified Connected Transfer Terms**); and

(d) invite each of the other Lenders to state in writing to TopCo, the Borrower and the Agent whether it is willing to accept the Transfer of the Transferring Interests and, if applicable, the Connected Transfer Interests.

2.3 If a Transfer Notice includes a Connected Transfer, the Agent shall promptly provide a copy of that Transfer Notice to the Senior Agent.

2.4 On receipt of a Transfer Notice, the Agent shall promptly send a copy to every Lender. The offer of the Transferring Interests shall remain open until the Transfer Deadline.

3. RESPONDING PARTY OFFERS

3.1 Following receipt of the Transfer Notice, any of the other Lenders (a **Responding Party**) may give written notice substantially in the form set out in Schedule 15 (Form of Responding Party Offer) prior to the Transfer Deadline to the TopCo, the Borrower and the Agent of:

(a) its willingness to accept the Transfer of all (but not part) of the Transferring Interests (and, if applicable, the Connected Transfer Interests) on, subject to paragraph (b) below, the same terms, *mutatis mutandis*, as set out in the Transfer Notice; and

(b) the purchase price for the Transferring Interests (and, if applicable the Connected Transfer Interests), which shall:

(i) subject to paragraph (ii) below, be 1% higher than the Specified Price, and for the Connected Transfer Interests, 1% higher than the Specified Connected Transfer Price; or

(ii) in the case of the Transfers set out in paragraph 2.2(a)(ii)(A) and (B) above, the Specified Price and the Specified Connected Transfer Price set out in the Transfer Notice;

(iii) if applicable, the name of its Related Entity (which, for the avoidance of doubt, must satisfy the requirements of Clause 25.2 (Assignments and transfers by the Lenders)) that will be the purchaser of the (A) relevant Loan Assets, (B) the relevant Shares (which may be different from the purchaser of the Loan Assets) and (C) in the case of a Connected Transfer, the Connected Transfer Interests,

(a **Responding Party Offer**);

(iv) together with details of:

(A) the total Loan Assets of that Responding Party and each of its Related Entities (and the name of such Related Entities); and

(B) the total number of Shares held by that Responding Party and each of its Related Entities (and the name of such Related Entities).

- 3.2 A Responding Party must ensure that it and its Affiliates and Related Funds only deliver one Responding Party Offer in respect of a Transfer Notice.
- 3.3 The Agent shall promptly notify the Transferor of all Responding Party Offers received prior to the Transfer Deadline.
- 3.4 On expiry of the Transfer Deadline, if only one Responding Party Offer has been submitted to the TopCo, the Borrower and the Agent prior to the Transfer Deadline, the Transferor shall (on behalf of itself and its Related Entities if relevant) accept such Responding Party Offer by countersigning the Responding Party Offer and delivering a copy of such countersigned Responding Party Offer to the Responding Party, the TopCo, the Borrower and the Agent (each of whom shall, to the extent necessary, promptly carry out, and co-operate with, all required KYC checks) on the next Business Day following the Transfer Deadline. On the tenth Business Day after the delivery of the countersigned Responding Party Offer, the Responding Party (and/or, if applicable, Related Entity specified in the Responding Party Offer) shall be bound to pay the purchase price referred to in paragraph 3.1(b) above for, and to accept the transfer of, the Transferring Interests, and any Connected Transfer Interests, and the Transferor shall (and/or, to the extent applicable, ensure that its Related Entities), on payment of the purchase price, transfer such Transferring Interests, and any Connected Transfer Interests, to the Responding Party (and/or, if applicable, its Related Entity specified in the Responding Party Offer) in accordance with (a) in the case of the Loan Assets, Clause 25 (Changes to the Lenders), (b) in the case of the Connected Transfer Interest, clause 28 (Changes to the Lenders) of the Senior Facilities Agreement and (c) in the case of the Shares, in accordance with the Shareholders' Agreement, on the same terms, *mutatis mutandis*, as the Specified Terms or Specified Connected Transfer Terms, as applicable (other than the Specified Price and, if applicable, the Specified Connected Transfer Price).
- 3.5 If more than one Responding Party Offer has been submitted to the TopCo, the Borrower and the Agent prior to the Transfer Deadline:
- (a) the TopCo shall promptly provide the Agent with a copy of its register of members, showing the Shareholders and the number of Shares by each Shareholder as at the Transfer Deadline;
 - (b) the Agent shall promptly provide the TopCo and the Borrower with a list (which may be in electronic form) setting out the names of the Lenders as at the Transfer Deadline, their respective Commitments and their respective participations in the Loan; and
 - (c) the Transferor shall accept all such Responding Party Offers subject to paragraph 3.6 below, in each case by countersigning the relevant Responding Party Offers, noting that such acceptance is subject to paragraph 3.6 below, and delivering a copy of each such countersigned Responding Party Offer to the relevant Responding Parties, the TopCo, the Borrower and the Agent on the Business Day immediately following the Transfer Deadline.
- 3.6 If more than one Responding Party Offer is accepted in accordance with paragraph 3.5 above, the TopCo shall as soon as reasonably practicable thereafter allocate the Transferring Interests (and, if applicable, the Connected Transfer Interests) to each Responding Party pro rata based on their Interest Allocation Percentage.
- 3.7 On the allocation in paragraph 3.6 above being made, the TopCo shall, as soon as reasonably practicable thereafter, give details of the allocation in writing to the Transferor, each Responding Party, the Borrower, the Agent and the Senior Agent (each of whom shall, to the extent necessary, promptly carry out, and co-operate with, all required KYC checks) and, on the twentieth Business

Day after such details are given, each Responding Party (and/or, if applicable, its Related Entity specified in the relevant Responding Party Offer) shall be bound to pay the purchase price referred to in paragraph 3.1(b) above for, and to accept or join in a transfer of, the Transferring Interest and (if applicable) the Connected Transfer Interest allocated to it and the Transferor shall (and, to the extent applicable, shall ensure that its Related Entities), on payment of the purchase price, transfer the Transferring Interests and (if applicable) the Connected Transfer Interest to the respective Responding Party (and/or, if applicable, its Related Entity specified in the relevant Responding Party Offer) in accordance with (a) in the case of the Loan Assets, Clause 25 (Changes to the Lenders), (b) in the case of the Connected Transfer Interests, clause 28 (Changes to the Lenders) of the Senior Facilities Agreement and (c) in the case of any Shares, in accordance with the Shareholders' Agreement, and in each case on the same terms, *mutatis mutandis*, as the Specified Terms or Specified Connected Transfer Terms, as applicable (other than the Specified Price and, if applicable, the Specified Connected Transfer Price).

- 3.8 If no Lender responds to the Transfer Notice by the Transfer Deadline, the Transferor may at any time after the expiry of the Transfer Deadline Transfer the Transferring Interests (and, if applicable, the Connected Transfer Interests) to the Purchaser provided that the Transferring Interests (and, if applicable, the Connected Transfer Interests) are Transferred on the terms set out in the Transfer Notice (including the purchase price) and without any deduction, rebate or allowance, and further provided that the Transferor may not Transfer any Transferring Interests (and, if applicable, the Connected Transfer Interests) to a Strategic Competitor without the prior consent of the Borrower or the Company (as the case may be) in each case acting by their Chief Financial Officer.

4. STAPLING

- 4.1 The Loan Assets of a Lender and any of its Related Entities are stapled to any and all Shares held by that Lender and its Related Entities. Accordingly, it shall be a condition of:

- (a) any Transfer of Loan Assets of a Lender who is, or whose Related Entity is, a Shareholder which is permitted by Clause 25.4 (Permitted Transfers); and
- (b) any Transfer of Shares of a Shareholder who is, or whose Related Entity is, a Lender which is permitted by clause 8.2 (Permitted Transfers) of the Shareholders' Agreement,

to a person who is not a Related Entity of such Lender or Shareholder (as the case may be), that the ratios of:

- (i) (A) the Loan Assets of that Lender or that Shareholder (as the case may be) and its Related Entities to be Transferred to (B) all the Loan Assets held by that Lender or that Shareholder and its Related Entities; and
- (ii) (A) the Shares held by that Lender or that Shareholder (as the case may be) and its Related Entities to be Transferred to (B) all the Shares held by that Lender or that Shareholder and its Related Entities,

are the same.

- 4.2 Promptly upon request by the Agent (on request by and acting on the instructions of any Lender), the Borrower or the TopCo, each Lender that has Transferred, or intends to Transfer, any Shares or Loan Assets shall provide to the Agent, the Borrower and the TopCo such information regarding the terms of such Transfer to enable the Agent to establish whether such Transfer is or has been made in accordance with the provisions of this Agreement. Each Lender shall procure that its Related Entities shall comply with the obligations in this paragraph 4.2 as if they had been named herein in place of the Lender.

5. AGENT

- 5.1 Other than the obligations of the Agent as set out in this Schedule 13, the Agent shall not be required to monitor or check whether any Transfer has been made in accordance with this Schedule 13 or the Shareholders' Agreement.
- 5.2 The Senior Agent shall not be required to monitor or check whether any Transfer has been made in accordance with this Schedule 13 or the Shareholders' Agreement.

6. MANAGEMENT INCENTIVE PLAN

The Parties shall consider in good faith any amendments required to be made to this Schedule 13 and Clause 25 (Changes to the Lenders) to reflect any amendments made to the Shareholders' Agreement pursuant to clause 13 (Management Incentive Plan) of the Shareholders' Agreement.

SCHEDULE 14

FORM OF TRANSFER NOTICE

From: [[*Existing Lender/Existing Shareholder*] (the **Transferor**)]/[Denmark Topco Limited]/[Denmark Holdco Limited]

To: [] as the Agent
[Denmark Topco Limited] and [Denmark Holdco Limited]

Dated:

Dear Sirs,

Denmark Holdco Limited - Junior Facility Agreement dated [●] (the Junior Facility Agreement)

1. We refer to the Junior Facility Agreement. This is a Transfer Notice. Terms defined in the Junior Facility Agreement have the same meaning when used in this Transfer Notice unless otherwise defined herein.
2. [We wish to Transfer [some/all] of our[, and our Related Entities']⁶ Loan Assets [and Shares]⁷ to [●] (the **Purchaser**) on the following terms:]⁸

OR

[We are delivering this Transfer Notice pursuant to [Clause [37.6 (Replacement of Lender)]]/[25.5(b) (Transfers to Affiliates and Related Funds)]]/[25.6 (Required Transfers)]]/[25.7 (Unwind of Restricted Transactions)]]/[clause [8.3(c) (Transfer to Affiliates and Related Funds)]]/[8.5 (Required Transfers)]]/[8.6 (Unwind of Restricted Transactions)] of the Shareholders' Agreement]⁹ in respect of the following Transferring Interests:]¹⁰

- (a) [Transferor: []]¹¹
- (b) Loan Assets: []
- (c) [Shares: []]¹²
- (d) Specified Price (Loan Assets): []¹³
- (e) [Specified Price (Shares): []]¹⁴

⁶ Delete if none of the Transferor's Related Entities hold any Loan Assets and/or Shares.

⁷ Delete if the Transferor and its Related Entities do not own any Shares.

⁸ Delete if Holdco or Topco is the party delivering the Transfer Notice.

⁹ Delete as applicable.

¹⁰ Delete if the Transferor is the party delivering the Transfer Notice.

¹¹ Delete if the Transferor is the party delivering the Transfer Notice.

¹² Delete if the Transferor and its Related Entities do not own any Shares.

¹³ See paragraph 2.2(a)(ii) of Schedule 13 for the calculation of the Specified Price when a Transfer Notice is delivered pursuant to Clause 37.6 (Replacement of Lender), Clause 25.5(b) (Transfers to Affiliates and Related Funds), Clause 25.6 (Required Transfers), Clause 25.7 (Unwind of Restricted Transactions), clause 8.3(c) (Transfer to Affiliates and Related Funds), clause 8.5 (Required Transfers) or clause 8.6 (Unwind of Restricted Transactions) of the Shareholders' Agreement.

¹⁴ Delete if the Transferor and its Related Entities do not own any Shares.

(f) Specified Terms: []

(g) Transfer Deadline: []¹⁵

3. The total Loan Assets and number of Shares currently held by the Transferor are:

(a) Loan Assets: []

(b) Shares: []

4. [The total Loan Assets and number of Shares currently held by the Transferor's Related Entities are:

(a) [*Related Entity*]¹⁶:

(i) Loan Assets: []

(ii) Shares: []¹⁷

5. The Transferor confirms that:

(a) [the Purchaser [is/is not] an Affiliate or Related Fund of the Transferor]¹⁸; and

(b) the Specified Price and the Specified Terms are arm's length.

6. [The Transferor confirms that the proposed Transfer is not connected to an actual or potential Transfer of any Senior Utilisation or Senior Commitments.]

OR

[The Transferor confirms that the Transfer is a Connected Transfer on the following terms:

(a) Connected Transfer Interests: []

(b) Specified Connected Transfer Price: []

(c) Specified Connected Transfer Terms: []

7. Please confirm in writing to TopCo, the Borrower and the Agent whether you are willing to accept the Transfer of the Transferring Interests [and the Connected Transfer Interests] by no later than the Transfer Deadline.

Yours faithfully,

For and on behalf of [*Insert name of Transferor*]

¹⁵ This must be 5pm on the date falling five Business Days after the date of the Transfer Notice.

¹⁶ Duplicate for each Related Entity that holds Loan Assets and/or Shares.

¹⁷ Delete if none of the Transferor's Related Entities hold any Loan Assets and/or Shares.

¹⁸ Include if there is a Purchaser.

SCHEDULE 15

FORM OF RESPONDING PARTY OFFER

From: [insert name of Lender] (the **Responding Party**)

To: [] as the Agent

[Denmark Topco Limited] and [Denmark Holdco Limited]

Dated:

Dear Sirs,

Denmark Holdco Limited - Junior Facility Agreement dated [●] (the Junior Facility Agreement)

1. We refer to the Junior Facility Agreement. This is a Responding Party Offer in respect of the Transfer Notice dated [●] and delivered by [●] (the **Transfer Notice**). Terms defined in the Junior Facility Agreement and the Transfer Notice have the same meaning when used in this Responding Party Offer unless otherwise defined herein.
2. [We wish to accept the Transfer of all of the Transferring Interests [and the Connected Transfer Interests] on the same terms, *mutatis mutandis*, as set out in the Transfer Notice]¹⁹.

OR

[We wish to accept the Transfer of all of the Transferring Interests [and the Connected Transfer Interests] on, subject to paragraph 3 below, the same terms, *mutatis mutandis*, as set out in the Transfer Notice.]

- [3]. [The purchase price we wish to pay for:

- (a) the Loan Assets is [●];
- (b) the Shares is [●]; and
- (c) [the Connected Transfer Interests] is [●].²⁰²¹

- [3/4]. [The [Loan Assets/Shares/Connected Transfer Interests] will be purchased by [Insert name of the Related Entity/ies]]²².

- [4/5]. We confirm that the Related Entit[y/ies] in paragraph [3/4] above, satisfy the requirements of clause 25.2 (Assignments and transfers by the Lenders) of the Junior Facility Agreement.]²³

- [5/6]. The total Loan Assets and number of Shares held by us are:

- (a) Loan Assets: []

¹⁹ Include in the case of Transfers set out in paragraph 2.2(a)(ii)(A) and (B) of Schedule 13 (Right of First Refusal).

²⁰ For Transfers other than under paragraph 2.2(a)(ii)(A) and (B) of Schedule 13 (Right of First Refusal), the purchase price must be at least 1% higher than the Specified Price, and for any Connected Transfer Interests, 1% higher than the Specified Connected Transfer Price.

²¹ Include this version of paragraph 2 and paragraph 3 for all other Transfers.

²² Include if the entity purchasing the Shares and/or Loan Assets is a Related Entity of the Responding Party.

²³ Include if the purchaser of the Loan Assets is a Related Entity of the Responding Party.

(b) Shares: []

[6/7]. [The total Loan Assets and number of Shares held by our Related Entities are:

[Related Entity]²⁴:

(a) Loan Assets: []

(b) Shares: []²⁵

Yours faithfully

For and on behalf of [*Insert name of Responding Party*]

.....

Countersigned by the Transferor

We accept the Responding Party Offer [subject to paragraph 3.6 of Schedule 13 (Right of First Refusal) and the allocation of the Transferring Interest [and Connected Transfer Interests] between the Responding Parties will be notified separately pursuant to Schedule 13 (Right of First Refusal)]²⁶.

By: _____

Date: _____

²⁴ Duplicate for each Related Entity that holds Loan Assets and/or Shares.

²⁵ Delete if none of the Responding Party's Related Entities hold any Loan Assets and/or Shares.

²⁶ Include if more than one Responding Party Offer is accepted.

SCHEDULE 16

PIK BOND SELECTION NOTICE

From: Denmark Holdco Limited

To: [●] as Bond Agent and [●] as Agent

Dated:

Dear Sirs,

Denmark Holdco Limited – Junior Facility Agreement dated [●] (the Facility Agreement)

1. Pursuant to Clause 11.5 (PIK Bonds) of the Facility Agreement we request that the Bond Agent issue PIK Bonds in the name of Denmark Holdco Limited in respect of all interest accrued in respect of the Facility during the Interest Period ending on [●]. All such PIK Bonds are to be issued on the last day of the relevant Interest Period.
2. This PIK Bond Selection Notice is irrevocable.
3. Terms used in this PIK Bond Selection Notice which are not defined in this PIK Bond Selection Notice but are defined in the Facility Agreement shall have the meaning given to those terms in the Facility Agreement.

Yours faithfully

For and on behalf of

Denmark Holdco Limited

SCHEDULE 17

FORM OF PIK BONDS

THIS PIK BOND HAS NOT BEEN AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED ("THE SECURITIES ACT") AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND OTHERWISE IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS.

Dated:

PIK Bond: [Serial Number]

DENMARK HOLDCO LIMITED

(the **Borrower**)

£[Amount]

PIK Bond

Repayment Due 31 December 2019

Issued subject to the terms and conditions below

This PIK Bond is a PIK Bond for the purposes of (and issued pursuant to clause 11.5 (PIK Bonds) of the junior facility agreement dated [●] (as amended, restated, supplemented or novated from time to time) and made between, amongst others, the Borrower and Wilmington Trust (London) Limited as agent (the **Agent**) and Barclays Bank PLC as security agent (the **Junior Facility Agreement**). Words and expressions defined in the Junior Facility Agreement shall have the same meanings when used in this PIK Bond.

Unless this PIK Bond is held by the Borrower or a tax authority:

- (a) the holder of this PIK Bond shall be a Lender and this PIK Bond shall be a Finance Document, in each case for the purposes of the Junior Facility Agreement and the Intercreditor Agreement; and
- (b) the rights of the holder of this PIK Bond are in all respects subject to the terms of the Intercreditor Agreement.

This is to certify that

[Name of registered holder]

is the registered holder of this PIK Bond and is accordingly entitled to receive such amounts as are expressed to be payable in respect of this PIK Bond from time to time under the Finance Documents.

This PIK Bond is issued with the benefit of and subject to the terms and conditions of the Junior Facility Agreement as if such terms and conditions were expressly set out herein mutatis mutandis.

Upon any payment of principal in respect of this PIK Bond the amount so paid shall be endorsed by or on behalf of the Agent (acting for this purpose as the Borrower's agent) on the schedule to this PIK Bond and the principal amount of this PIK Bond shall be reduced for all purposes by the amount so paid and the remaining principal amount of this PIK Bond shall be endorsed by or on behalf of the Agent on the schedule to this PIK Bond.

This PIK Bond is issued in registered form and is transferable only in accordance with the terms and conditions of the Junior Facility Agreement.

No rights are conferred on any person under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this PIK Bond, but this does not affect any right or remedy of any person which exists or is available apart from that Act.

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

IN WITNESS whereof this PIK Bond has been duly executed and delivered as a deed by the Borrower on the date first above written

[EXECUTED AND DELIVERED AS A DEED)

by **DENMARK HOLDCO LIMITED)**

Director

Director/Secretary]

OR

[EXECUTED AND DELIVERED AS A DEED)

by **DENMARK HOLDCO LIMITED)**

acting by its duly authorised attorney pursuant to)

clause 11.5 (PIK Bonds) of the Junior Facility Agreement)

For and on behalf of [Bond Agent]

In the presence of:

Signature of Witness:

Name:

Address:]

SCHEDULE 18

FORM OF BOND AGENT ACCESSION DEED

To: [●] as Agent.

To: [●] as Borrower.

From: [●] as Bond Agent.

THIS UNDERTAKING is made on [date] by [*insert full name of Bond Agent*] (the **Bond Agent**) in relation to the junior facility agreement (the **Facility Agreement**) dated [●] between, among others, Denmark Holdco Limited as borrower, Barclays Bank PLC as security trustee, Wilmington Trust (London) Limited as agent and the other Finance Parties (as defined in the Facility Agreement). Terms defined in the Facility Agreement shall, unless otherwise defined in this Undertaking, bear the same meanings when used in this Undertaking.

In consideration of the Bond Agent being accepted as a Bond Agent for the purposes of the Facility Agreement, the Bond Agent confirms that, as from [date], it intends to be party to the Facility Agreement as a Bond Agent and undertakes to perform all the obligations expressed in the Facility Agreement to be assumed by a Bond Agent and agrees that it shall be bound by all the provisions of the Facility Agreement, as if it had been an original party to the Facility Agreement.

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

THIS UNDERTAKING has been entered into on the date stated above and is executed as a deed by the Bond Agent and is delivered on the date stated above.

Bond Agent

[EXECUTED as a DEED]

[*insert full name of Bond Agent*]

By: _____

Address:

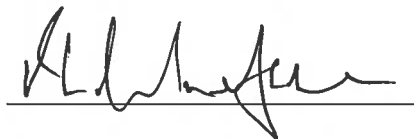
Fax:

SIGNATORIES

THE BORROWER

DENMARK HOLDCO LIMITED

Director:



R.L. MILNES-JAMES

NOTICES:

ADDRESS: 2 CORNBATH SQUARE
LONDON
EC1R 5HL

FAX NUMBER: 020 74175222

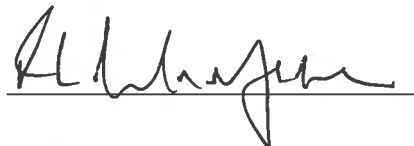
EMAIL: r.milnes+james@cornenvironmental.co.uk

ATTENTION: R.L. MILNES-JAMES.

TOPCO

DENMARK TOPCO LIMITED

Director:



)
)
)

R.L. MILNES-JAMES

NOTICES:

ADDRESS:

13/14 ESPLANADE
ST HEUER
JERSEY, JE1 1BJ.

FAX NUMBER:

020 7417 5222

EMAIL:

rmilnes-james@comenvironmental.co.uk.

ATTENTION:

R.L. MILNES-JAMES

THE AGENT

WILMINGTON TRUST (LONDON) LIMITED

)
)
)

**Elaine Lockhart
Director**

By:



NOTICES:

ADDRESS:

Wilmington Trust (London) Limited
Third Floor
1 King's Arms Yard
London
EC2R 7AF

FAX NUMBER:

+44 (0)20 7397 3601

EMAIL:

kreader@wilmingtontrust.com

ATTENTION:

Keith Reader

THE SECURITY AGENT

BARCLAYS BANK PLC

By:

)
)
)
A. JAY

NOTICES:

ADDRESS:

Barclays Bank PLC
10 South Colonnade
Canary Wharf
London
E14 4PU

FAX NUMBER:

+44 (0)20 7773 4893

EMAIL:

ashley.jay@barclays.com

ATTENTION:

Ashley Jay

THE ACCOUNT BANK

BARCLAYS BANK PLC

)
)
)

By:

A handwritten signature in black ink, appearing to be 'J. [unclear]', written over a horizontal line.

THE ORIGINAL LENDERS

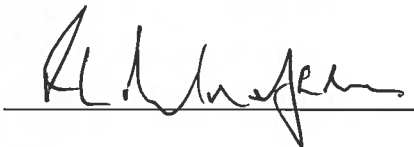
VIKING CONSORTIUM ACQUISITION LIMITED)
for and on behalf of)
BARCLAYS BANK PLC)
pursuant to the authority granted to
VIKING CONSORTIUM ACQUISITION LIMITED
under the Scheme

By:

 R. L. MILNES-JAMES

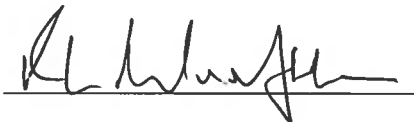
VIKING CONSORTIUM ACQUISITION LIMITED)
for and on behalf of)
BAYERISCHE LANDESBANK, LONDON)
BRANCH
pursuant to the authority granted to
VIKING CONSORTIUM ACQUISITION LIMITED
under the Scheme

By:

 R. L. MILNES-JAMES

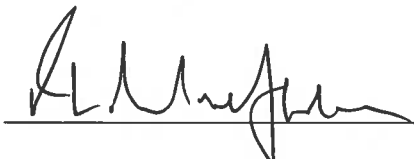
VIKING CONSORTIUM ACQUISITION LIMITED)
for and on behalf of)
BLACKROCK MULTI-MANAGER)
ALTERNATIVE STRATEGIES FUND, A SERIES
OF BLACKROCK FUNDS
pursuant to the authority granted to
VIKING CONSORTIUM ACQUISITION LIMITED
under the Scheme

By:

 R. L. MILNES-JAMES

VIKING CONSORTIUM ACQUISITION LIMITED)
for and on behalf of)
BNP PARIBAS, ACTING THROUGH ITS)
LONDON BRANCH
pursuant to the authority granted to
VIKING CONSORTIUM ACQUISITION LIMITED
under the Scheme

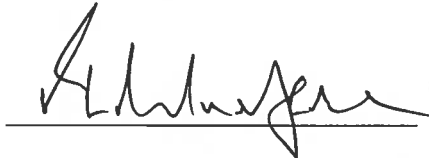
By:

 R. L. MILNES-JAMES

VIKING CONSORTIUM ACQUISITION LIMITED)
for and on behalf of)
BURLINGTON LOAN MANAGEMENT)
LIMITED

pursuant to the authority granted to
VIKING CONSORTIUM ACQUISITION LIMITED
under the Scheme

By:

 R.L. MILNES-JAMES

VIKING CONSORTIUM ACQUISITION LIMITED)
for and on behalf of)
CCP CREDIT ACQUISITION HOLDINGS)
LUXCO, S.À R.L.

pursuant to the authority granted to
VIKING CONSORTIUM ACQUISITION LIMITED
under the Scheme

By:

 R.L. MILNES-JAMES

VIKING CONSORTIUM ACQUISITION LIMITED)
for and on behalf of)
CITIGROUP FINANCIAL PRODUCTS INC.)

pursuant to the authority granted to
VIKING CONSORTIUM ACQUISITION LIMITED
under the Scheme

By:

 R.L. MILNES-JAMES

VIKING CONSORTIUM ACQUISITION LIMITED)
for and on behalf of)
COMMERZBANK AG, LONDON BRANCH)

pursuant to the authority granted to
VIKING CONSORTIUM ACQUISITION LIMITED
under the Scheme

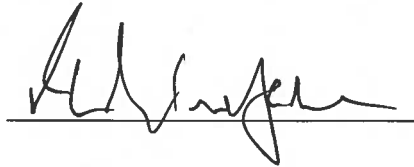
By:

 R.L. MILNES-JAMES

VIKING CONSORTIUM ACQUISITION LIMITED)
for and on behalf of)

**CREDIT AGRICOLE CORPORATE AND
INVESTMENT BANK S.A., LONDON BRANCH**
pursuant to the authority granted to
VIKING CONSORTIUM ACQUISITION LIMITED
under the Scheme

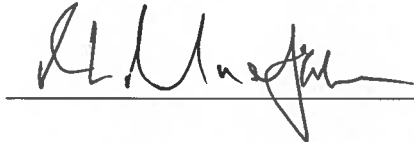
By:



R.L. MILNES-JAMES

VIKING CONSORTIUM ACQUISITION LIMITED
for and on behalf of
CREDIT SUISSE INTERNATIONAL
pursuant to the authority granted to
VIKING CONSORTIUM ACQUISITION LIMITED
under the Scheme

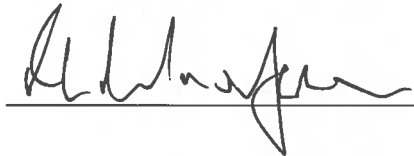
By:



R.L. MILNES-JAMES

VIKING CONSORTIUM ACQUISITION LIMITED
for and on behalf of
CRF2 S.A.
pursuant to the authority granted to
VIKING CONSORTIUM ACQUISITION LIMITED
under the Scheme

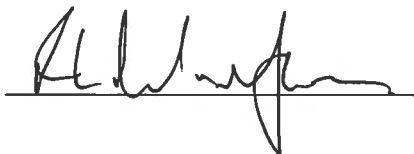
By:



R.L. MILNES-JAMES

VIKING CONSORTIUM ACQUISITION LIMITED
for and on behalf of
CSCP II ACQUISITION LUXCO, S.À R.L.
pursuant to the authority granted to
VIKING CONSORTIUM ACQUISITION LIMITED
under the Scheme

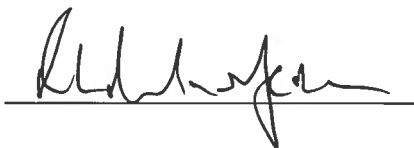
By:



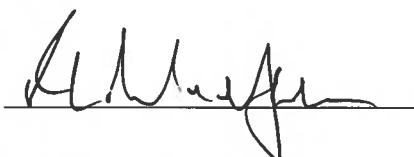
R.L. MILNES-JAMES

VIKING CONSORTIUM ACQUISITION LIMITED)

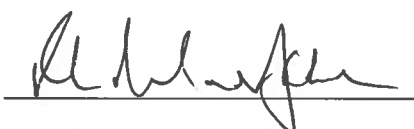
for and on behalf of)
CVI AA LUX SECURITIES S.À R.L.)
pursuant to the authority granted to
VIKING CONSORTIUM ACQUISITION LIMITED
under the Scheme

By:  R.L. MILNES - JAMES

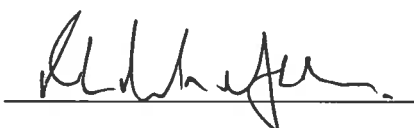
VIKING CONSORTIUM ACQUISITION LIMITED)
for and on behalf of)
FIELD POINT ACQUISITIONS S.À R.L.)
pursuant to the authority granted to
VIKING CONSORTIUM ACQUISITION LIMITED
under the Scheme

By:  R.L. MILNES - JAMES

VIKING CONSORTIUM ACQUISITION LIMITED)
for and on behalf of)
JEFFERIES INTERNATIONAL LIMITED)
pursuant to the authority granted to
VIKING CONSORTIUM ACQUISITION LIMITED
under the Scheme

By:  R.L. MILNES - JAMES

VIKING CONSORTIUM ACQUISITION LIMITED)
for and on behalf of)
J.P. MORGAN SECURITIES PLC)
pursuant to the authority granted to
VIKING CONSORTIUM ACQUISITION LIMITED
under the Scheme

By:  R.L. MILNES - JAMES

VIKING CONSORTIUM ACQUISITION LIMITED)

for and on behalf of)
JPMORGAN CHASE BANK, N.A., LONDON)
BRANCH
pursuant to the authority granted to
VIKING CONSORTIUM ACQUISITION LIMITED
under the Scheme

By:

 R.L. MILNES - JAMES

VIKING CONSORTIUM ACQUISITION LIMITED)
for and on behalf of)
KBC BANK N.V., LONDON BRANCH)
pursuant to the authority granted to
VIKING CONSORTIUM ACQUISITION LIMITED
under the Scheme

By:

 R.L. MILNES - JAMES

VIKING CONSORTIUM ACQUISITION LIMITED)
for and on behalf of)
MACQUARIE BANK LIMITED, LONDON)
BRANCH
pursuant to the authority granted to
VIKING CONSORTIUM ACQUISITION LIMITED
under the Scheme

By:

 R.L. MILNES - JAMES

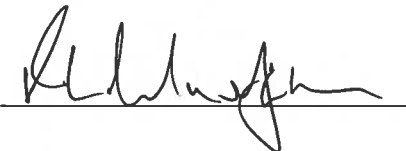
VIKING CONSORTIUM ACQUISITION LIMITED)
for and on behalf of)
MARINER GLEN OAKS, LLC)
pursuant to the authority granted to
VIKING CONSORTIUM ACQUISITION LIMITED
under the Scheme

By:

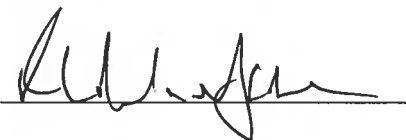
 R.L. MILNES - JAMES

VIKING CONSORTIUM ACQUISITION LIMITED)

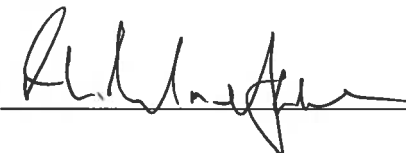
for and on behalf of)
MC GCO (LUXEMBOURG) S.À R.L.)
pursuant to the authority granted to
VIKING CONSORTIUM ACQUISITION LIMITED
under the Scheme

By:  **R.L. MILNES-JAMES**

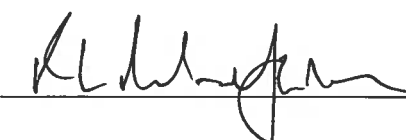
VIKING CONSORTIUM ACQUISITION LIMITED)
for and on behalf of)
RELATIVE VALUE LONG/SHORT DEBT, A)
SERIES OF UNDERLYING FUNDS TRUST
pursuant to the authority granted to
VIKING CONSORTIUM ACQUISITION LIMITED
under the Scheme

By:  **R.L. MILNES-JAMES**

VIKING CONSORTIUM ACQUISITION LIMITED)
for and on behalf of)
SCULPTOR INVESTMENTS IV S.À R.L.)
pursuant to the authority granted to
VIKING CONSORTIUM ACQUISITION LIMITED
under the Scheme

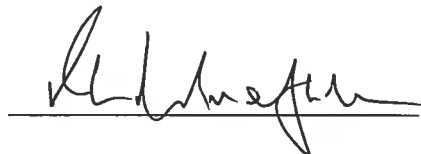
By:  **R.L. MILNES-JAMES**

VIKING CONSORTIUM ACQUISITION LIMITED)
for and on behalf of)
UNIVERSAL CREDIT SA ACTING IN RESPECT)
OF ITS COMPARTMENT B
pursuant to the authority granted to
VIKING CONSORTIUM ACQUISITION LIMITED
under the Scheme

By:  **R.L. MILNES-JAMES**

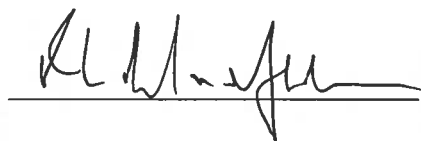
VIKING CONSORTIUM ACQUISITION LIMITED)
for and on behalf of)
UNIVERSAL CREDIT SA ACTING IN RESPECT)
OF ITS COMPARTMENT EUROPEAN LOANS
pursuant to the authority granted to
VIKING CONSORTIUM ACQUISITION LIMITED
under the Scheme

By:

 R.L. MILNES - JAMES

VIKING CONSORTIUM ACQUISITION LIMITED)
for and on behalf of)
UNIVERSAL CREDIT SA ACTING IN RESPECT)
OF ITS COMPARTMENT Z
pursuant to the authority granted to
VIKING CONSORTIUM ACQUISITION LIMITED
under the Scheme

By:

 R.L. MILNES - JAMES