**LMA FUNDED PARTICIPATION (PAR/DISTRESSED)**

|  |  |
| --- | --- |
| **GRANTOR: [IXIS Corporate and Investment Bank]** | Date: \_\_\_ February 2013 |
| **PARTICIPANT: [●]** |  |

This Funded Participation is entered into pursuant to the agreed terms (the **Agreed Terms**) evidenced by the Confirmation with a trade date of \_\_\_ February 2013 between the Grantor and the Participant.

On and from the Participation Effective Date the Grantor grants to the Participant a participation in all, or as the case may be, part of the Loans subject to:

* + 1. the Agreed Terms and the terms and conditions incorporated in the Agreed Terms;
    2. the terms and conditions to this Funded Participation; and
    3. the schedule to this Funded Participation;

all of which are incorporated in this Funded Participation.

|  |  |
| --- | --- |
| **The Grantor** | **The Participant** |
| **IXIS Corporate and Investment Bank, London Branch** | **[●]** |
| By: | By: |
| Name: | Name: |
| Title: | Title: |
| Date: | Date: |

**The Schedule**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Credit Agreement Details:** |  | | | | | |
| ISIN (if any): | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | | | | |
| Borrower(s): | London & Regional Portfolio Finance Ltd | | | | | |
| Credit Agreement Dated: | 28 July 2006 | | | | | |
| Guarantor(s): | Any Original Propco as defined in the Credit Agreement | | | | | |
| Agent Bank: | IXIS Corporate & Investment Bank | | | | | |
| Security: | Yes (specify): Deed of Charge dated 28 July 2006; Mortgage of Shares dated 28 July 2006, Mortgage of Shares dated 28 November 2008 | | | | | |
| Total Facility Amount: | £128,080,000 | | | | | |
| Governing Law: | English | | | | | |
| Additional Information: | None | | | | | |
| **Participation Details:** |  | | |  |  | |
| Participated Tranches/Facilities: | B Loan Agreement | | B Loan Agreement | | | B Loan Agreement |
| Facility ISIN (if any): | \_\_\_\_\_\_\_\_ | | \_\_\_\_\_\_\_\_ | | | \_\_\_\_\_\_\_\_ |
| Name of Tranche/Facility: | Junior A1 | | Junior A2 | | | Junior B |
| Nature (Revolving or Term): | Term | | Term | | | Term |
| Final Maturity: | 15 October [2013] | | 15 October [2013] | | | 15 October [2013] |
| Grantor's Commitment: |  | |  | | |  |
| Drawn Amount: | £32,680,000 | | £33,280,000 | | | £33,280,000 |
| Undrawn Amount: | £0 | | £0 | | | £0 |
| Participation Commitment: | £32,680,000 | | £33,280,000 | | | £33,280,000 |
| Participant's Proportion: | 100% | | 100% | | | 100% |
| Participation Effective Date: | The Trade Date | | | | | |
| **Details of outstanding Loans** |  | |  | | |  |
| Specify in respect of each Loan: |  | |  | | |  |
| Drawn Amount: | £32,680,000 | | £33,280,000 | | | £33,280,000 |
| Tranche/Facility: | Junior A1 Facility | | Junior A2 Facility | | | Junior B1 Facility |
| Nature: | Term | | Term | | | Term |
| Interest Period: | 15 January to 15 April 2013 | | | | | |
| 🞎 Details of other Loans are set out on the attached sheet | | | | | | |
| **Details of certain terms of transaction:** | |  | |  |  | |
| Voting Rights: | | Yes | | | | |
| Collateral for undrawn commitment: | | No | | | | |
| Information Rights: | | Yes | | | | |
| Type of transaction (*as specified in Agreed Terms*): | | Distressed trade transaction | | | | |
| **Administration Details:** | |  | | | | |
| Grantor's Receiving Account: | | [●] | | | | |
| Participant's Receiving Account: | | [●] | | | | |
| **Addresses:** | |  | | | | |
| **Grantor** | | **Participant** | | | | |
| [IXIS Corporate & Investment Bank] | | [●] | | | | |
| MEI or other ID no (if any): | | MEI or other ID no (if any): | | | | |
| Address: [●] | | Address: [●] | | | | |
|  | |  | | | | |
| Telephone: [●] | | Telephone: [●] | | | | |
| Facsimile: [●] | | Facsimile: [●] | | | | |
| E-Mail: [●] | | E-Mail: [●] | | | | |
| Attn/Ref: [●] | | Attn/Ref: [●] | | | | |

**TERMS AND CONDITIONS**

These are the Terms and Conditions applicable to the funded participation including the Schedule to the funded participation (the ***Funded Participation***) to which they are annexed.

1. Interpretation
   1. Definitions

In these Terms and Conditions words and expressions shall (unless otherwise expressly defined in these Terms and Conditions) have the meaning given to them in the Funded Participation or in the Agreed Terms (as if any references in such words and expressions to Seller were to Grantor and as if any references in such words and expressions to Buyer were to Participant) and:

1. ***Agents*** means any facility, security or other agent, trustee, representative or co-ordinator under the Credit Documentation and Agent shall be construed accordingly.
2. ***Binding Amendment and Debt Restructuring*** means:
   1. any amendment or waiver of any term of the Credit Documentation or any refinancing of the indebtedness of any Borrower under the Credit Documentation in each case made in accordance with the terms of the Credit Documentation; or
   2. any rescheduling, restructuring or re-organisation of, or the entry into any standstill agreement or similar arrangement for the postponement of rights in respect of the indebtedness (or of any class of indebtedness) of any Obligor.
3. ***Commitment*** means, in relation to any Participated Tranche, the aggregate of the Grantor's drawn (which shall include PIK Interest that has been capitalised from time to time) and undrawn commitment from time to time under that Participated Tranche which, as at the Participation Effective Date, is as specified in the Schedule as Grantor's Commitment.
4. ***Confidentiality* *Agreement*** means any confidentiality agreement entered into by the Grantor and the Participant relating to the transaction or the Credit Agreement.

***Elevation*** shall bear the meaning given to it in Clause 0 (*Elevation*).

1. ***ERISA Representation*** means (in respect of an assignee or a Transferee) a representation and agreement to the Grantor in the form set out in Clause 15.1 (*Participant representation*) but substituting: (a) such assignee or such Transferee in place of the Participant; and (b) the rights being assigned or transferred to such assignee or the rights being acquired by and the obligations being assumed by, such Transferee, in place of the Funded Participation.
2. ***Guarantor*** means any person who has given a guarantee, indemnity, security interest or other assurance against loss to the Grantor (or any person acting on the Grantor's behalf) in respect of any obligations of any Borrower to the Grantor in relation to any Participated Tranche or Loan.
3. ***Interest*** means, unless the context otherwise requires, all interest received by or accruing to the Grantor in respect of any Loan.
4. ***Lender*** means each person originally named as a lender in the Credit Agreement and its successors and assignees from time to time.
5. ***Loan*** means the principal amount of any borrowing made or to be made by any Borrower from the Grantor under a Participated Tranche (which shall include PIK Interest that has been capitalised from time to time) or the principal amount outstanding of that borrowing.
6. ***Non Cash Distribution*** means (i) any note, debenture or other financial instrument, non-cash asset or right, whether debt, equity or otherwise, issued or transferred to the Grantor, or appropriated or otherwise acquired by the Grantor, and (ii) legal title to, or any legal or contractual right to acquire or appropriate, all or part of the Collateral (and any related contractual rights) or any other type of asset transferred to the Grantor by any person, or appropriated or otherwise acquired by the Grantor, in each case, in satisfaction or purported satisfaction of any obligation of an Obligor to make any payment with respect to any Participated Tranche or Loan, or any part of any Participated Tranche or Loan, or any Interest, commission or fees payable in respect of any Participated Tranche or Loan or any part of any Participated Tranche or Loan or any related guarantee or security interest under the Credit Documentation.
7. ***Obligor*** means any Borrower or Guarantor.
8. ***Participant's* *Global Proportion*** means the proportion (expressed as a percentage) borne by the aggregate of the Participation Commitments in respect of all Participated Tranches to the aggregate of all the Grantor's drawn and undrawn commitment under the Credit Agreement.
9. ***Participant's* *Proportion*** means, in relation to any Participated Tranche, the proportion (expressed as a percentage) borne by the relevant Participation Commitment to the relevant Commitment.
10. ***Participated* *Tranche*** means any Tranche in respect of which the Participant is granted a participation under the Funded Participation, as set out in the Schedule.
11. ***Participation*** means the participation in the Loans accepted by the Participant under the Funded Participation.
12. ***Participation Commitment*** means, in relation to any Participated Tranche, the amount specified as such in the Schedule (which shall include PIK Interest that has been capitalised from time to time) less an amount equal to the Participant's Proportion of any amount of the Commitment under that Participated Tranche cancelled or permanently reduced from time to time pursuant to the Credit Agreement.
13. ***Participation Effective* *Date*** means the date specified as such in the Schedule.
14. ***Party*** means a party to the Funded Participation.
15. ***Prohibited Transaction Class Exemptions*** means prohibited transaction class exemptions (***PTE***) issued by the United States Department of Labor, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds), and PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers).
16. ***Receiving Account*** means the account of a Party designated as its Receiving Account as specified in the Schedule.
17. ***Relevant* *Costs* an*d* *Expenses*** means reasonable costs or expenses which the Grantor reasonably incurs after the Participation Effective Date as a result of or in connection with (a) the Credit Documentation or (b) any action or inaction pursuant to Clause 6.2 (*Credit Documentation and voting rights*).
18. ***Tranche*** means any tranche or facility granted to the Obligors under the Credit Agreement.
19. ***Transfer*** shall bear the meaning given to it in Clause 13 (*Assignment and Transfer*).
20. ***Transferee*** shall bear the meaning given to it in Clause 13 (*Assignment and Transfer*).
21. ***Transfer* *Certificate*** means a transfer certificate in the form set out in Annex 1 (*Form of Transfer Certificate*).
22. ***Transfer Date*** means, in relation to a transfer pursuant to Clause 13.2(a) (*Procedure for transfer by Participant*), the later of:
    1. the date on which the Grantor signs the Transfer Certificate; and
    2. the date specified as the Transfer Date in the Transfer Certificate.
    3. Construction
       1. In the Funded Participation and these Terms and Conditions unless the contrary intention appears, a reference to:
       2. a Clause is a reference to a clause of these Terms and Conditions;
       3. the Schedule is a reference to the schedule to the Funded Participation; and
       4. a ***Party*** or any other person includes its successors in title, permitted assigns and permitted transferees.
       5. Headings are for ease of reference only.
       6. If there is any inconsistency between these Terms and Conditions and the Agreed Terms, these Terms and Conditions shall prevail.
       7. References to any document shall be references to the same as amended, varied, supplemented, replaced and restated in any manner from time to time.
       8. A provision of law is a reference to that provision as amended or re-enacted.
    4. Third Party Rights

A person who is not a Party has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of the Funded Participation.

1. Participant's Obligations
   1. Settlement Amount

The Participant shall pay to the Grantor the Settlement Amount on the Settlement Date.

* 1. Sums due under Credit Documentation

If at any time on or after the Participation Effective Date a sum falls due from the Grantor under the Credit Documentation and the sum is attributable in whole or in part to any Loan or Participated Tranche, then the Grantor shall notify the Participant accordingly either no later than two Business Days prior to the time at which the Grantor is required to make the payment under the Credit Documentation or, if the Grantor has received less than two Business Days' notice of the requirement to make that payment under the Credit Documentation, upon its receipt of that notice under the Credit Documentation. Subject to the giving of such notice and to Clause 2.3 (*Retained Obligations*), the Participant shall pay to the account of the Grantor an amount equal to the relevant Participant's Proportion of such sum in the currency and funds and in the place and time at which the Grantor is required to make the payment under the Credit Documentation.

* 1. Retained Obligations

The Participant shall not be obliged to make any payment under Clause 2.2 (*Sums due under Credit Documentation*) if and to the extent that the sum falling due from the Grantor relates to a Retained Obligation.

1. Payments
   1. Receipts

The Grantor shall be entitled to receive, recover and retain all principal, Interest and other money payable:

* + 1. under the Credit Documentation; or
    2. in respect of the Ancillary Rights and Claims,

in relation to each Participated Tranche.

* 1. Payments

Subject to compliance by the Participant with its obligations under the Funded Participation, with effect from the Participation Effective Date the Grantor shall, upon applying any amount actually received by it on or following the Participation Effective Date in respect of:

* + 1. any Loan or Commitment; or
    2. the Ancillary Rights and Claims,

(whether by way of actual receipt, the exercise of any right of set-off or otherwise), pay to the Participant within two Business Days of such application:

* + 1. if that amount is applied in respect of the principal of a Loan, an amount equal to the relevant Participant's Proportion of the amount so applied by the Grantor;
    2. if that amount is applied in satisfaction of Interest accruing on a Loan (or default interest accruing on a Loan, on any Interest or on any other amount in respect of which the Participant has made a payment under Clause 2 (*Participant's Obligations*)), an amount equal to the relevant Participant's Proportion of the amount so applied by the Grantor to the extent that the Participant is entitled to that application pursuant to Condition 14 (*Interest payments and fees*) of the terms and conditions incorporated in the Agreed Terms; and
    3. if that amount is applied in respect of any commission, fees or any other amount relating to:
       1. any Loan or any Commitment; or
       2. any Ancillary Right and Claim

an amount equal to the relevant Participant's Proportion of the amount so applied by the Grantor to the extent that, in the case of any commission or fees relating to any Loan or any Commitment only, the Participant is entitled to that application pursuant to Condition 14 (*Interest payments and fees*) of the terms and conditions incorporated in the Agreed Terms.

* 1. Non‑Cash Distributions

Subject to compliance by the Participant with its obligations under the Funded Participation, on and after the Participation Effective Date, the Grantor shall, upon receipt of any Non-Cash Distribution, hold the Participant's Proportion of that Non-Cash Distribution as agent for the Participant and shall, to the extent reasonably practicable, keep such Non-Cash Distribution separate from its other assets, and, as soon as practicable at the Participant's expense and to the extent permitted by the terms and conditions applicable to such Non-Cash Distribution, have the Participant's Proportion of the Non-Cash Distribution registered in the name of or transferred to the Participant (or such other person as the Participant may reasonably direct). Until such registration or transfer, the Participant's Proportion of such Non-Cash Distribution shall form part of the Funded Participation and the Grantor shall (a) account to the Participant for the full economic benefit thereof and (b) to the extent it is able to do so without breaching any law or the terms and conditions applicable to such Non-Cash Distribution exercise any voting rights or discretions in accordance with the directions of the Participant subject always to the proviso in paragraph (b) of Clause 6.2 (*Credit Documentation and voting rights*) which shall apply *mutatis mutandis*, to such Non-Cash Distribution.

* 1. Non‑attributable sums

If any sum which is received or recovered under the Credit Documentation is not attributable to any particular amount due under the Credit Documentation, that sum will be applied (after payment of any expenses incurred in its collection) by the Grantor towards the obligations of the relevant Obligor as may be required by the Credit Documentation or, if there is no such requirement in the Credit Documentation, on a *pro rata* basis across such obligations.

* 1. No reinvestment

Subject to compliance by the Participant with its obligations under the Funded Participation, on and after the Participation Effective Date the Grantor is not entitled to reinvest any amount received by it in respect of any Loan or Commitment or the Ancillary Rights and Claims, except for investments in cash or cash equivalents (where interest earned on such investments is passed to the Participant) during the short settlement period, if any, from the collection date of such amounts to the date of required remittance to the Participant.

1. Payments Administration
   1. Place

All payments or deposits by either Party to, or with, the other under the Funded Participation shall be made to the Receiving Account of that other Party. Each Party may designate a different account as its Receiving Account for payment by giving the other not less than five Business Days' notice before the due date for payment.

* 1. Funds and currency
     1. Subject to paragraph (b) below, payments under the Funded Participation shall be made in the currency in which the amount is denominated for value on the due date at such times and in such funds as are customary at the time for settlement of transactions in that currency.
     2. Where the Grantor's obligation to make a payment under the Funded Participation arises from receipt or recovery of an amount pursuant to the Credit Documentation or the Ancillary Rights and Claims, the Grantor shall make the payment in the currency and funds in which those monies were received or recovered and, if that currency is not the currency of the country where the designated Receiving Account of the Participant is located, it shall be made to the account of the Participant in the principal financial centre of the country of that currency specified by the Participant.
  2. Grantor withholding
     1. All payments by the Grantor under the Funded Participation shall be made net of any deduction or withholding required to be made from such payments by any law, regulation or practice. If any such deduction or withholding is required to be made, the Grantor shall pay the full amount required to be deducted or withheld to the relevant taxation or other authority within the time allowed for such payment under applicable law and then deliver to the Participant within thirty days after it has made such payment to the applicable authority, an original receipt (or certified copy thereof) issued by such authority evidencing the payment to such authority of all amounts required to be deducted or withheld in respect of such payment. The Participant shall bear the risk of such deduction or withholding and the obligation of the Grantor to pay an amount net of such deduction or withholding and to account to the relevant taxation or other authority for the amount of such deduction or withholding shall satisfy the Grantor's obligation to make the original payment to the Participant (and, for the avoidance of doubt, the requirement in Condition 28.2 (*Free and clear payments*) of the terms and conditions incorporated into the Agreed Terms to make increased payments in respect of deductions or withholdings shall not apply to payments made by the Grantor under the Funded Participation).
     2. The Grantor shall use its reasonable endeavours to avoid any obligation to make such deduction or withholding as is referred to in paragraph (a) above.
  3. Failure to remit
     1. The Grantor shall not be:
        1. responsible for any loss or liability arising out of its failure, or the failure of its relevant branch, owing to causes outside its control (such as, but not limited to, the imposition of foreign exchange restrictions) to remit to the Participant any amount due to it under the Funded Participation; or
        2. except as otherwise provided in Clause 4.5 (*Default Interest*), liable to remit to the Participant any amount greater than the relevant Participant's Proportion of any amount it receives in respect of any Participated Tranche or Loan or the Ancillary Rights and Claims.
  4. Default Interest

If either Party (the ***payer***) fails to pay in full any sum due from it under the Funded Participation to the other Party (the ***payee***) on the due date for payment of the sum, then interest shall accrue (as well after as before judgment) on the unpaid balance of the sum from day to day at a rate which is 2% per annum over the rate (as determined by the payee) which is being offered by leading banks in the relevant interbank market for overnight deposits in the currency of and for an amount equal to the unpaid balance. Interest shall be payable by the payer at the end of each day and, for the purposes of this Clause 4.5, shall constitute part of the unpaid balance to the extent it is not so paid.

* 1. Participant Commitment

Subject to compliance by the Participant with its obligations under the Funded Participation, on and after the Participation Effective Date the Grantor shall not:

* + 1. (other than pursuant to Clause 16 (*Elevation)*)sell, transfer or otherwise dispose of; or
    2. create any mortgage, charge, pledge, lien or other security interest in respect of, the relevant Participation Commitment other than in favour of the Participant.

1. Information
   * 1. Other than as provided in paragraphs (b) to (e) below, the Grantor shall have no responsibility either initially or on a continuing basis to provide the Participant with any credit or other information relating to any Obligor or any other person and the Participant acknowledges that it has made and will continue to make such independent appraisal and examination of the same as it thinks necessary or advisable without reliance upon the Grantor.
     2. The Grantor shall, to the extent that it is lawfully able to do so without breaching any duty of confidentiality or other obligation owed to any person as at the Participation Effective Date (and which has been notified in writing to the Participant prior to the Participation Effective Date, and the Grantor having used commercially reasonable endeavours to remove such impediment) promptly provide the Participant with:
        1. copies of all communications and documents it receives under the Credit Documentation in its capacity as a Lender;
        2. information it receives or possesses in relation to any enforcement proceedings in respect of any Credit Documentation;
        3. information it receives or possesses in relation to any judicial proceedings initiated in respect of the Credit Documentation;
        4. information it receives or possesses in its capacity as a Lender in relation to any negotiations with any third party in relation to the Credit Documentation (including the relevant security); and
        5. information it receives under the Credit Documentation in its capacity as a Lender in connection with any legal proceedings, including Insolvency Proceedings, which have been commenced against any Obligor,

including (in each case and without limitation): details of deadlines for the submission of claims; the status of any notifications to any Insolvency Officer; and the status of any filings of any proof of debt or other claim against any Obligor relating to the Credit Documentation.

* + 1. The Grantor shall be required to attend meetings and conference calls requested by the Participant to discuss any matters in relation to this Agreement, the Credit Documentation and any Obligor, provided it gives no less than one Business Day prior notice to the Grantor, and the Grantor shall, on the request of the Participant (and subject to any prohibitions in the Credit Agreement), take all reasonable steps requested by the Participant to procure that the Participant can also attend any such meetings or calls (including, where requested by the Participant, as an advisor to the Grantor) in the event that the Participant is unable to attend a meeting or conference call, provide the Participant with a summary thereof promtly thereafter. [[1]](#footnote-1)
    2. Paragraphs (b) and (c) of this Clause 5 shall not apply if the Participant gives notice to the Grantor that it does not wish to receive copies of the communications and, documents and information detailed in such paragraphs.
    3. Any notice given by the Participant under paragraph (d) above may be revoked by the Participant at any time. If such notice is revoked, the provisions of paragraphs (b) and (c) above will apply from the date on which the Grantor receives notice of the revocation.

1. Status of Participation
   1. Status of Participation
      1. Other than as provided in Clause 3.3 (*Non-Cash Distributions*):
         1. the Grantor does not transfer or assign any rights or obligations under the Credit Documentation and the Participant will have no proprietary interest in the benefit of the Credit Documentation or in any monies received by the Grantor under or in relation to the Credit Documentation; and
         2. the Grantor does not transfer or assign any rights or obligations in respect of the Ancillary Rights and Claims and the Participant will have no proprietary interest in the benefit of the Ancillary Rights and Claims or in any Non‑Cash Distributions received by the Grantor under or in relation to the Ancillary Rights and Claims.
      2. The relationship between the Grantor and the Participant is that of debtor and creditor with the right of the Participant to receive monies and Non-Cash Distributions from the Grantor restricted to the extent of an amount equal to the relevant portion of any monies and Non-Cash Distributions received by the Grantor in respect of any Loan, Commitment or the Ancillary Rights and Claims.
      3. The Participant shall not be subrogated to or substituted in respect of the Grantor's claims by virtue of any payment under the Funded Participation and the Participant shall have no direct contractual relationship with or rights against any Obligor or other party to the Credit Documentation (except the Grantor) by reason of the Funded Participation.
      4. Other than as provided in Clause 3.3 (*Non-Cash Distributions*), nothing in the Funded Participation constitutes the Grantor as agent, fiduciary or trustee for the Participant.
      5. Nothing in the Funded Participation shall place the Grantor under an obligation to enquire as to the occurrence or otherwise of an event of default under the Credit Documentation.
      6. Nothing in the Funded Participation shall place the Grantor under an obligation to exercise any rights of set-off it may have against any Obligor.
      7. The Grantor's obligations under the Funded Participation shall be subject to its obligations under the Credit Documentation.
   2. Credit Documentation and voting rights
      1. As from the Participation Effective Date the Grantor shall not, without the prior written consent of the Participant:
         1. exercise or refrain from exercising any or all of its rights (including, without limitation, any voting rights in respect of the Credit Documentation, which the Grantor agrees it shall exercise in accordance with the Participant’s instructions), powers and discretions arising under or in connection with the Credit Documentation, including without limitation, in relation to the enforcement of any other security granted in favour of or for the benefit of the Grantor in respect of the Credit Documentation;
         2. in connection with any judicial proceedings relating, in whole or in part, to the Credit Documentation and/or any insolvency proceeding relating to any Obligor, take or refrain from taking any action that could have an effect, whether direct or indirect, adverse or otherwise, on the Credit Documentation, the Purchased Assets or any portion thereof and/or any guarantees or Collateral;
         3. agree to any variation or waiver of the terms of the Credit Documentation;
         4. perform any other acts under the Credit Documentation, including without limitation releasing any security, guarantee or collateral relating to the Participated Tranches or exercising any right of set-off or netting; or
         5. agree or enter into to any Binding Amendment and Debt Restructuring in relation to the Credit Agreement,

and the Grantor agrees that it shall promptly execute each of the above actions if (and as) instructed in writing by the Participant.

* + 1. Should the Grantor be required by the Participant (or otherwise) to grant any power of attorney (or similar written authority) to any legal adviser, court representative or other third party to act on behalf of the Grantor in connection with the Credit Documentation and/or any insolvency proceedings relating to any Obligor, the Grantor shall grant such powers of attorney as requested by the Grantor provided such power of attorney is in a form consistent with the internal policy and procedural requirements of the Grantor (based on legal advice).
    2. In connection with the actions (or otherwise) described in Clause 6.2(a)(ii) above, (i) the Participant shall provide the Grantor, sufficiently in advance of any filing (or other) deadlines relating to such action, with copies of all material documents received by it or proposed to be delivered or submitted by it or its counsel with respect to the relevant action, to allow the Grantor to review and comment thereon prior to such deadline and, (ii) prior to actual delivery or submission of the documents relating to the action, the Participant shall use reasonable efforts to consult with the Grantor in good faith as to the conduct of such action and shall give due regard to any comments or suggestions made by the Grantor.
  1. Grantor's duty of care

The Grantor shall comply in a timely manner with its obligations under the Credit Documentation and exercise the same degree of care with regard to the Participation Commitment as it would if it had not entered into the Funded Participation.

1. Confirmation of Receipts
   * 1. Where the obligation of the Grantor to make a payment to the Participant under the Funded Participation arises as a result of its having received an amount from another person, the Grantor is not obliged to make that payment until the Grantor has established that it has actually received that amount.
     2. The Grantor may assume that the sum has been paid to it in accordance with the Credit Documentation, and, in reliance on that assumption, make available to the Participant a corresponding amount or the relevant portion of that sum. If the sum has not been made available but the Grantor has paid a corresponding amount or the relevant portion of that sum to the Participant, the Participant shall forthwith on demand by the Grantor refund the corresponding amount or the relevant portion thereof together with interest on that amount from the date of payment to the date of refund, calculated at a rate reasonably determined by the Grantor to reflect its costs of funds.
2. Refunds
   * 1. If the Grantor applies any amount in or towards satisfaction of an Obligor's obligations under the Credit Documentation and the Grantor is, as a result of the application or any payment to the Grantor giving rise to the application, obliged by any law, rule or regulation to make any payment to any person, then the Participant shall, upon demand by the Grantor, repay to the Grantor a corresponding portion of any amount paid to the Participant as a result of the application.
     2. If under any pro rata sharing, loss-sharing or similar clause in the Credit Documentation, the Grantor is obliged:
        1. to pay a sum to other Lenders or the Agent under the Credit Documentation;
        2. to acquire an interest in any sum owing to any other Lender under the Credit Documentation; or
        3. otherwise to share any receipts or recoveries by the Grantor under the Credit Documentation,

then the Grantor shall not be deemed for the purposes of the Funded Participation to have received any sum from an Obligor to the extent of that payment, interest acquired or sharing. Any interest acquired shall be deemed to be part of the relevant Loan, if applicable.

1. Collateral For Undrawn Commitment

If the Funded Participation specifies collateral for undrawn commitment, the Participant shall provide such collateral to the Grantor as is set out in, and upon the terms set out in, Annex 2 (*Details and Terms of Collateral for Undrawn Commitment*).

1. Binding Amendments and Debt Restructuring
   1. Risk

The Participant will bear the risk of any Binding Amendment and Debt Restructuring in relation to the Participation.

* 1. Blocked payments

The Grantor shall not be obliged to make any payment to the Participant under the Funded Participation in respect of:

* + 1. any sum which is paid into a blocked account or is paid in non-transferable or non-convertible currency until that impediment is removed; or
    2. any sum which is required to be used for a specific purpose pursuant to a Binding Amendment and Debt Restructuring.
  1. Other instruments

The Grantor may, in connection with any Binding Amendment and Debt Restructuring, apply for or accept or appropriate any Non-Cash Distributions issued or transferred or proposed to be issued or transferred by an Obligor or any other person.

* 1. Agreements
     1. Subject as provided in this Funded Participation, the Grantor may participate in any agreement in connection with a Binding Amendment and Debt Restructuring and which relates to any principal of, Interest on or fees in respect of, any Participated Tranche or Loan.
     2. The Grantor shall give to the Participant the benefit of each agreement referred to above on the same terms (with any necessary amendments to reflect the nature of that agreement) as the Funded Participation to the extent that payments received and applied by the Grantor under that agreement are in the Grantor's reasonable opinion attributable to the Participant's Proportion in relation to any Participated Tranche or Loan.
  2. New money
     1. If, in connection with any Binding Amendment and Debt Restructuring, the Grantor agrees to increase its exposure (whether by way of additional advances or otherwise), the Grantor shall not be obliged to account to the Participant under the Funded Participation until that increased exposure has been paid and satisfied unless:
        1. the Participant participates in the increased exposure on the terms of the Funded Participation (with any necessary amendments to reflect the nature of that agreement);
        2. the terms on which the Grantor so agrees to increase its exposure provide otherwise; or
        3. any sums received by the Grantor following the increased exposure are, in the Grantor's reasonable opinion, attributable to any Loan or Participated Tranche.
     2. Notwithstanding any other provision of these Terms and Conditions the Participant shall have no obligation to participate in any increased exposure whether in connection with any Binding Amendment and Debt Restructuring or otherwise.

1. Set-Off and Counterclaim
   1. No set-off and counterclaim

Subject to Clause 11.2 (*Permitted set-off*), all payments by a Party under the Funded Participation shall be made without set-off or counterclaim.

* 1. Permitted set-off

Either Party may (but is not obliged to) set off any amount due and payable by the other Party under the Funded Participation against any such amounts due and payable by it to the other Party under the Funded Participation. The Party exercising its rights under this Clause 11.2 may effect such currency exchanges as it considers necessary to implement the set off.

# Participant's Acknowledgments

The Grantor notifies the Participant and the Participant acknowledges that:

* + 1. the Participant shall have no recourse to the Grantor if any Obligor fails to comply with its obligations under the Credit Documentation;
    2. the Grantor is under no obligation to support, and shall not be liable to reimburse or otherwise be responsible for, any losses directly or indirectly sustained or incurred by the Participant in connection with the Funded Participation for any reason whatsoever; and
    3. paragraphs (a)and (b) above are without prejudice to the Participant's rights under Clause 12.4(a) (*Indemnity*) or Condition 22.1 (*Seller's Indemnity*) of the terms and conditions incorporated into the Agreed Terms.

1. Expenses and Indemnity
   1. Relevant Costs and Expenses

Subject to Clause 12.2 (***Retained Obligations***) and Clause 12.3 (***Subsequent recoveries***), the Participant shall forthwith within five Business Days following demandpay to the Grantor an amount equal to the Participant's Global Proportion of all Relevant Costs and Expenses.

* 1. Retained Obligations

The Participant shall not be required to pay to the Grantor any amount equal to any Relevant Costs and Expenses which constitute a Retained Obligation.

* 1. Subsequent recoveries

The Grantor shall pay to the Participant the Participant's Global Proportion of any amounts subsequently recovered by the Grantor in respect of any Relevant Costs and Expenses.

* 1. Information
     1. Subject to paragraph (b) below, the Grantor shall:
        1. notify the Participant (giving at least five Business Days’ notice or such lesser time agreed by the Participant) of any anticipated Relevant Costs and Expenses exceeding £2,500 that it expects to incur; and
        2. not incur such Relevant Costs and Expenses without the prior consent of the Participant (where such consent shall be deemed to have been given by the Participant if it has not responded within five Business Days of receipt of the notice under (i) above).
     2. The Grantor and the Participant acknowledge that there may be circumstances where the Grantor incurs or is required to incur Relevant Costs and Expenses under the terms of the Credit Documentation in circumstances where the Grantor did not have the opportunity to proactively consent to or approve such incurrence but nevertheless is required to incur such Relevant Costs and Expenses in accordance with the terms of the Credit Documentation. The Participant and the Grantor agree that the requirements of paragraph (a) above shall not apply to such circumstance provided that, upon the Grantor becoming aware of the incurrence of such Relevant Costs and Expenses (or the need to incur such Relevant Costs and Expenses), the Grantor promptly notifies the Participant of such Relevant Costs and Expenses.
     3. At the request of the Participant, the Grantor shall provide to the Participant as soon as practicable reasonably detailed information regarding any Relevant Costs and Expenses incurred by the Grantor.
     4. [The Grantor shall not be required to take any action directed by the Participant under Clause 6.2(a)(*Credit Documentation and voting rights*) where the Grantor is entitled to be paid material Relevant Costs and Expenses pursuant to Clause 12.1 (*Relevant Costs and Expenses*) above in respect of such action until the Grantor has been paid such Relevant Costs and Expenses.][[2]](#footnote-2)
  2. Indemnity

Each Party (the ***Indemnifying Party***) shall, forthwith on demand, indemnify the other Party (the ***Indemnified Party***) against any loss or liability (other than any loss or liability resulting from the gross negligence or wilful misconduct of the Indemnified Party) which the Indemnified Party incurs as a consequence of any breach by the Indemnifying Party of its obligations or representations under the Funded Participation.

1. Assignment And Transfer
   1. Assignment and Transfer

Subject to this Clause 13:

* + 1. each Party may assign its rights; and
    2. each Party may transfer by novation its rights and obligations,

under this Funded Participation to a third party.

* 1. Conditions Of Prior Assignment Or Transfer
     1. The consent of the other Party is required for an assignment or transfer, save that the consent of the Grantor to a proposed assignment or transfer by the Participant of all or any part of its rights and or obligations (as applicable) under this Funded Participation to any person Controlled directly or indirectly by the Participant, Controlling directly or indirectly the Participant or directly or indirectly under the same Control as the Participant, will not be required and is permitted **provided** that, prior to such assignment or transfer, the Participant has notified the Grantor of such transfer and provided such documentation and other evidence as is reasonably requested by the Grantor in order for the Grantor to comply with necessary "know your customer" or similar identification procedures (in circumstances where the necessary information is not already available to the Grantor in relation to the proposed transferee or assignee) under applicable laws and regulations in relation to the proposed transferee or assignee.

To these effects, "**Control**" shall mean, with respect to a person, (a) direct or indirect ownership of more than 50% of the voting securities of such person, (b) the right to appoint, or cause the appointment of, more than 50% of the members of the board of directors (or similar governing body) of such person or (c) the right to manage, or direct the management of, on a discretionary basis the assets of such Person, and, for avoidance of doubt, a general partner is deemed to Control a limited partnership and a fund advised or managed directly or indirectly by a person shall also be deemed to be Controlled by such person (and the terms "Controlling" and "Controlled" shall have meanings correlative to the foregoing).

All costs and expenses in respect of any transfer or assignment by the Participant carried out in accordance with this paragraph (a) (including where the consent of the Grantor is required) shall be payable by party requesting the transfer or assignment.

* + 1. The consent of the Grantor to a proposed assignment or transfer by the Participant, if required under paragraph (a) above, must not be unreasonably withheld or delayed. The Participant acknowledges that, in determining whether to grant or refuse consent to a proposed transfer of rights and obligations, a relevant factor may be the creditworthiness of the proposed Transferee.
    2. It shall be reasonable for the Grantor to withhold consent, in the case of a proposed assignment or transfer by the Participant if: (i) the proposed Transferee or assignee would be unable to make an ERISA Representation on the effective date of such assignment or transfer; or (ii) the Grantor has not received sufficient information from the Participant pursuant to paragraph (a) above in order to be able to satisfy all necessary "know your customer" or other similar checks under applicable laws and regulations.
    3. An assignment or transfer by the Participant will only be effective on the assignee or Transferee making an ERISA Representation to the Grantor.
  1. Procedure for transfer by Participant
     1. Atransfer by the Participant of its rights and obligations under the Funded Participation to a third party (a ***Transferee***) is effected in accordance with paragraph (c) below when the Grantor signs an otherwise duly completed Transfer Certificate delivered to it by the Participant and the Transferee.
     2. Subject to Clause 14.2 (*Conditions of prior assignment or transfer*), the Grantor shall, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate, sign that Transfer Certificate.
     3. With effect from the Transfer Date:
        1. the Grantor and the Participant shall be released from further obligations towards one another under the Funded Participation and their respective rights against one another shall be cancelled (being *the* ***Discharged Rights and Obligations***);
        2. the Grantor and the Transferee shall assume obligations towards one another and acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as the Grantor and the Transferee have assumed and/or acquired the same in place of the Grantor and the Participant;
        3. the Transferee shall be deemed to make an ERISA Representation to the Grantor; and
        4. the Transferee shall become a party to the Funded Participation as the ***Participant***.
  2. Limitation of Responsibility of Participant

Nothing in any Transaction Document obliges the Participant to:

* + 1. accept a re-transfer from the Transferee of any of the rights and obligations assigned or transferred under this Clause 13 (*Assignment and Transfer*); or
    2. support any losses directly or indirectly incurred by the Transferee by reason of the non-performance by any Obligor of its obligations under the Credit Documentation or otherwise.

1. Notices
   1. Communications in writing

Any communications to be made under or in connection with the Funded Participation shall be made in writing and, unless otherwise stated, may be made by fax or letter.

* 1. Addresses

The address and fax number (and the department or officer, if any for whose attention the communication is to be made) of the Grantor and the Participant for any communication or document to be made under or in connection with the Funded Participation is that identified with its name in the Schedule or any substitute address, fax number or department or office as the Grantor or the Participant may notify to the other.

* 1. Delivery
     1. Any communication or document made or delivered by one person to another under or in connection with the Funded Participation will only be effective:
        1. if by way of fax, when received in legible form; or
        2. 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 14.2 (*Addresses*), if addressed to that department or officer.

* + 1. Any communication or document which becomes effective, in accordance with paragraph (a) above, after 5.00pm in the place of receipt shall be deemed only to become effective on the following day.
  1. Electronic Communication
     1. Any communication to be made between the Grantor and the Participant under or in connection with the Funded Participation may be made by electronic mail or other electronic means, if the Grantor and the Participant:
        1. agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
        2. notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
        3. notify each other of any change to their address or any other such information supplied by them.
     2. Any electronic communication made between the Grantor and the Participant will be effective only when actually received in readable form.
  2. English Language

Any notice given under or in connection with the Funded Participation must be in English.

* 1. Confidentiality
     1. The Participant undertakes to keep confidential all information it receives from the Grantor under the Funded Participation to the extent required by the Confidentiality Agreement.
     2. The Grantor undertakes to keep confidential the existence and contents of this Agreement and any non-public, confidential or proprietary information that it receives from the Participant (including information given orally or in writing and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information) relating to this agreement, but which excludes information that:
        1. is or becomes public knowledge other than as a direct or indirect result of any breach of this agreement; or
        2. is known by the Grantor before the date the information is disclosed to the Grantor by the Participant or is lawfully obtained by the Grantor after that date (other than from a source which is connected with the Participant or an affiliate of the Participant) and which, in either case, as far as the Grantor is aware, has not been obtained in violation of, and is not otherwise subject to, any obligation of confidentiality,

("**Confidential Information**").

* + 1. The Grantor may disclose Confidential Information only:
       1. with the written consent of the Participant;
       2. where requested or required by any court of competent jurisdiction or any competent judicial, governmental, supervisory or regulatory body, or where required by the laws or regulations of any country with jurisdiction over the Grantor’s affairs;
       3. subject to establishment and compliance with appropriate "information barriers" set up in accordance with the Grantor’s regulatory compliance procedures or customary practice, to the Grantor’s affiliates and its and their officers, directors, employees and professional advisers to the extent required and to any auditor of the Grantor in each case which are informed in writing of the confidential nature of such Confidential 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 Confidential Information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information); or
       4. to the extent such Confidential Information relates to the existence of a sub-participation in respect of the Participation and the identity of the Participant only, to the Grantor in its capacity as Agent.
    2. The Grantor agrees (to the extent permitted by law and regulation and except where disclosure is to be made to any competent supervisory or regulatory body during the ordinary course of its supervisory or regulatory function over the Grantor) to promptly inform the Participant of the full circumstances of:
       1. any proposed disclosure by the Grantor under paragraph (c) above; and
       2. any disclosure of Confidential Information in breach of this agreement, upon becoming aware of such disclosure.

1. Erisa Representations
   1. Participant representation

The Participant represents and warrants to and agrees with the Grantor that either (a) no interest in the Funded Participation is being acquired by or on behalf of a person who is, or at any time while the Funded Participation is held thereby will be, one or more "benefit plan investors", within the meaning of Section 3(42) of ERISA the U. S. Employee Retirement Income Security Act of 1974, as amended ("**ERISA**") or (b) (i) the transaction exemption set forth in one or more Prohibited Transaction Class Exemptions is applicable with respect to the purchase and holding of the Funded Participation and the exercise of the Participant's rights thereunder or (ii) less than 25%, in the aggregate, of the Funded Participation (including any interest in the Funded Participation acquired by any parties to whom the Participant sub-participates, sells, assigns or transfers the Funded Participation or any part thereof) is being acquired by, and shall at all times until the termination of the Funded Participation or Elevation be held by ”benefit plan investors”, within the meaning of Section 3(42) of ERISA, excluding from consideration such interests (held by other than "benefit plan investors") as are disregarded under the second sentence of Section 3(42) of ERISA or under applicable related regulations.

* 1. Grantor representation

The Grantor represents and warrants to and agrees with the Participant that either (a) no interest in the Funded Participation is being sold by or on behalf of a person who is one or more "benefit plan investors" within the meaning of Section 3(42) of ERISA or (b) the transaction exemption set forth in one or more Prohibited Transaction Class Exemptions is applicable with respect to the sale of the Funded Participation.

1. Elevation
   1. Elevation – on request

Subject to the terms and provisions of the Credit Documentation and applicable law and regulation, upon the request of:

* + 1. the Participant; and
    2. following an Event of Default which is continuing (under and as defined in the Credit Agreement), the Grantor,

each Party shall use its commercially reasonable efforts to, as soon as reasonably practicable, execute any documents and/or instruments as the other Party may reasonably request in order to cause the Participant (or such other person as may be directed by the Participant) to become a Lender under the Credit Documentation with respect to any Participated Tranche, or part thereof, as the case may be (an ***Elevation***).

* 1. Request Of Grantor

If the Elevation is at the request of the Grantor pursuant to Clause 16.1 (*Elevation – on request*), it must provide notice of such request to the Participant. If the Participant (or a person or entity nominated by the Participant) cannot become a Lender under the terms of the Credit Documentation, or if Elevation to the Participant (or a person or entity nominated by the Participant) would be contrary to applicable law or regulation, the Participant must within 25 Business Days of receipt of such notice, notify the Grantor of a third party of the Participant’s choice to become a Lender under the Credit Documentation and shall use its commercially reasonable efforts to, as soon as reasonably practicable, execute any documents and/or instruments as the Grantor may reasonably request in order to effect such a transfer such third part on substantially the same terms as the Funded Participation or on such other terms as the Participant shall agree. If no third party is notified by the Participant to the Grantor within such time, then the Elevation shall be consummated with such third party as the Grantor may reasonably direct provided that such third party shall agree to enter into a funded participation with the Participant on substantially the same terms as the Funded Participation or on such other terms as the Participant shall agree.

* 1. Third party

In the event that either Party (the ***Directing Party***) directs a third party to become a Lender in accordance with this Clause 16, the Parties shall, and the Directing Party shall use reasonable endeavours to ensure that the third party shall, execute a multilateral termination and transfer agreement substantially in the recommended form of the LMA or such other form as otherwise agreed between the Grantor and the Participant.

* 1. Termination of Funded Participation

Upon the effective date of the Elevation, save for as otherwise agreed between the Grantor and the Participant, including but not limited to, pursuant to Clause 16.3 (*Third Party*) above, the Funded Participation shall be terminated to the extent it relates to the Participated Tranches which are the subject of the Elevation (provided however, that rights and liabilities of the Grantor and the Participant with respect to any facts, events and circumstances which have arisen or accrued, or are otherwise attributable to the period prior to the effective date of Elevation, shall not be terminated and shall remain in full force and effect and, to the extent that any transfer or elevation pursuant to such Elevation is determined to be invalid (or at the Participant’s election on written notice to the Grantor, is alleged by any Obligor to be invalid), the entire Funded Participation shall be deemed not to have terminated and shall remain in full force and effect).

* 1. Transfer Fees

Any transfer fees payable in connection with an Elevation shall be payable by the requesting Party in the case of an Elevation directed under Clause 16.1 (*Elevation – on request*).

1. Governing Law and Jurisdiction

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

1. Jurisdiction

The courts of England have non-exclusive jurisdiction to settle any dispute arising out of or in connection with the Funded Participation (including a dispute relating to any non-contractual obligation arising out of or in connection with the Funded Participation).

1. Service of Process

Each Party irrevocably appoints the person described as process agent (if any) specified in the Agreed Terms to receive on its behalf service of any action, suit or proceedings in connection with the Funded Participation. If any person appointed as process agent ceases to act for any reason the appointing Party shall notify the other Party and shall promptly appoint another person incorporated within England and Wales to act as its process agent.

1. FORM OF TRANSFER CERTIFICATE

To: [●] (the ***Grantor***)

From: [IXIS Corporate Investment Bank] (the ***Participant***) and [●] (the ***Transferee***)

Dated: [●] 2013

**Funded Participation Agreement**

**dated [●] (the Funded Participation)**

* + 1. We refer to the Funded Participation. This is a Transfer Certificate. Terms defined in the Funded Participation have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
    2. We refer to Clause 13.2(a) (*Procedure for transfer by Participant*):
       - 1. The Participant and the Transferee agree to the Participant transferring to the Transferee by novation all of the Participant's rights and obligations under the Funded Participation in accordance with Clause 13.2(a) (*Procedure for transfer by Participant*).
         2. The proposed Transfer Date is [●].
    3. The Transferee expressly acknowledges the limitations on the Participant's obligations set out in Clause 13.4 (*Limitation of responsibility of Participant*).
    4. This Transfer Certificate 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 Transfer Certificate.
    5. This Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by English law.

**THE SCHEDULE**

**Rights and obligations to be transferred**

*[insert relevant details]*

*[Address, fax number, e-mail address if applicable and attention details for notices and receiving account details for payments,]*

|  |  |
| --- | --- |
| [Participant] | [Transferee] |
| By: | By: |

This Transfer Certificate is accepted by the Grantor and the Transfer Date is confirmed as [●] 2013.

[Grantor]

By:

1. DETAILS AND TERMS OF COLLATERAL FOR UNDRAWN COMMITMENT

N/A

1. TBD how coordinating disussions between Blackstone, Natixus, Borrower and Finance Parties prior to completion should be dealt with [↑](#footnote-ref-1)
2. BX to consider offering this up to mitigate request for 5BD to make payments, or deleting in first draft [↑](#footnote-ref-2)