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**THIS AGREEMENT** is dated [                              ] and made between:

1. [                       ] (the "**Parent**");
2. **THE SUBSIDIARIES** of the Parent listed in Part I of Schedule 1 (*The Original Parties*) as original borrowers (the "**Original Borrowers**");
3. **THE SUBSIDIARIES** of the Parent listed in Part I of Schedule 1 (*The Original Parties*) as original guarantors (together with the Parent, the "**Original Guarantors**");
4. [                       ] [and [                       ]] as mandated lead arranger[s] ([whether acting individually or together] the "**Arranger**");
5. **THE FINANCIAL INSTITUTIONS** listed in Part II and Part III of Schedule 1 (*The Original Parties*) as lenders (the "**Original Lenders**");

[(6) [**THE PERSONS** listed in Part IV of Schedule 1 (*The Original Parties*) as hedge counterparties (the "**Original Hedge Counterparties**");][[1]](#footnote-1)

[(6)]/[(7)] **[                       ]** as agent of the [other Finance Parties] (the "**Agent**")[[2]](#footnote-2)\*;

[(7)]/[(8)] **[                       ]** as security trustee for the Secured Parties (the "**Security Agent**")[[3]](#footnote-3)\*\*; and

[(8)]/[(9)] [**[                       ]** [and **[                       ]**] as Issuing Banks[s].]

**IT IS AGREED** as follows:

**SECTION 1**

**INTERPRETATION**

# Definitions And Interpretation

## Definitions

In this Agreement:

"**Acceptable Bank**" means:

* 1. a bank or financial institution which has a rating for its long-term unsecured and non credit-enhanced debt obligations of [   ] or higher by Standard & Poor's Rating Services or Fitch Ratings Ltd or [   ] or higher by Moody's Investor Services Limited or a comparable rating from an internationally recognised credit rating agency; or
  2. any other bank or financial institution approved by the Agent.

"**Accession Deed**" means a document substantially in the form set out in Schedule 7 (*Form of Accession Deed*).

"**Accountants' Report**" means the report by [          ] dated [             ] relating to [the Target and its Subsidiaries and the Target Assets] and addressed to, and/or capable of being relied upon, by the Reliance Parties.

"**Accounting Principles**" means [generally accepted accounting principles in [      ][, including IFRS]]/ [IFRS].

"**Accounting Reference Date**" means [          ].

"**Acquisition**" means the acquisition by the Company of the [Target Shares] [[and] the Target Assets] on the terms of the Acquisition Documents.

"**Acquisition Agreement**" means the [            ] agreement dated [            ] relating to the sale and purchase of [the Target Shares] [[and] the Target Assets] and made between [the Company and the Vendor].

"**Acquisition Costs**" means all fees, costs and expenses, stamp, registration and other Taxes incurred by the Company or any other member of the Group in connection with the Acquisition or the Transaction Documents.

"**Acquisition Documents**" means the Acquisition Agreement [, the Disclosure Letter], [          ], [          ] and any other document designated as an "**Acquisition Document**" by the Agent and the Parent.

"**Acquisition Purpose**" means [any of] the purpose[s] set out in paragraph[s] ‎(a)‎(i) [and [   ]] of Clause ‎3.1 (*Purpose*).

"**Additional Borrower**" means a company which becomes an Additional Borrower in accordance with Clause ‎31 (*Changes to the Obligors*).

"**Additional Cost Rate**" has the meaning given to it in Schedule 4 (*Mandatory Cost Formula*).

"**Additional Guarantor**" means a company which becomes an Additional Guarantor in accordance with Clause ‎31 (*Changes to the Obligors*).

"**Additional Obligor**" means an Additional Borrower or an Additional Guarantor.

"**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.

"**Agent's Spot Rate of Exchange**" means the Agent's spot rate of exchange for the purchase of the relevant currency with the Base Currency in the [London] foreign exchange market at or about 11:00 a.m. on a particular day.

["**Agreed Security Principles**" means the principles set out in Schedule 14 (*Agreed Security Principles*).]

["**Alternative Market Disruption Event**" has the meaning given to that term in Clause 16.2 (*Market disruption*).]

["**Alternative Reference Bank Rate**" has the meaning given to that term in Clause 16.3 (*Alternative Reference Bank Rate*).]

["**Alternative Reference Banks**" means, in relation to a Loan in a currency other than euro, the principal London offices of the banks listed in [Part I of] Schedule 15 (*Alternative Reference Banks*) [and, in relation to a Loan in euro, the principal office in [ ] of the banks listed in Part II of Schedule 15 (*Alternative Reference Banks*)] or such other banks as may be appointed by the Agent in consultation with the Parent.][[4]](#footnote-4)

"**Ancillary Commencement Date**" means, in relation to an Ancillary Facility, the date on which that Ancillary Facility is first made available, which date shall be a Business Day within the Availability Period for the Revolving Facility.

"**Ancillary Commitment**" means, in relation to an Ancillary Lender and an Ancillary Facility, the maximum Base Currency Amount which that Ancillary Lender has agreed (whether or not subject to satisfaction of conditions precedent) to make available from time to time under an Ancillary Facility and which has been authorised as such under Clause ‎9 (*Ancillary Facilities*), to the extent that amount is not cancelled or reduced under this Agreement or the Ancillary Documents relating to that Ancillary Facility.

"**Ancillary Document**" means each document relating to or evidencing the terms of an Ancillary Facility.

"**Ancillary Facility**" means any ancillary facility made available by an Ancillary Lender in accordance with Clause ‎9 (*Ancillary Facilities*).

"**Ancillary Lender**" means each Lender [(or Affiliate of a Lender)] which makes available an Ancillary Facility in accordance with Clause ‎9 (*Ancillary Facilities*).

"**Ancillary Outstandings**" means, at any time, in relation to an Ancillary Lender and an Ancillary Facility then in force the aggregate of the equivalents (as calculated by that Ancillary Lender) in the Base Currency of the following amounts outstanding under that Ancillary Facility:

* 1. the principal amount under each overdraft facility and on-demand short term loan facility (net of any credit balances on any account of any Borrower of an Ancillary Facility with the Ancillary Lender making available that Ancillary Facility to the extent that the credit balances are freely available to be set off by that Ancillary Lender against liabilities owed to it by that Borrower under that Ancillary Facility);
  2. the face amount of each guarantee, bond and letter of credit under that Ancillary Facility; and
  3. the amount fairly representing the aggregate exposure (excluding interest and similar charges) of that Ancillary Lender under each other type of accommodation provided under that Ancillary Facility,

in each case as determined by such Ancillary Lender, acting reasonably in accordance with its normal banking practice and in accordance with the relevant Ancillary Document.

"**Assignment Agreement**" means an agreement substantially in the form set out in Schedule 6 (*Form of Assignment Agreement*) 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 6 (*Form of Assignment Agreement*) it shall not be a Creditor/Agent Accession Undertaking as defined in, and for the purposes of, the Intercreditor Agreement.

"**Auditors**" means [one of PricewaterhouseCoopers, Ernst & Young, KPMG or Deloitte & Touche] or any other firm approved in advance by the Majority Lenders (such approval not to be unreasonably withheld or delayed).

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

"**Availability Period**" means:

* 1. in relation to each Term Facility, the period from and including the date of this Agreement to and including [ ]; and
  2. in relation to the Revolving Facility, the period from and including the date of this Agreement to and including [           ].

"**Available Ancillary Commitment**" means in relation to an Ancillary Facility, an Ancillary Lender's Ancillary Commitment less the Ancillary Outstandings in relation to that Ancillary Facility.

"**Available Commitment**" means, in relation to a Facility, a Lender's Commitment under that Facility minus (subject [to Clause ‎9.8 (*Affiliates of Lenders as Ancillary Lenders)* and] as set out below):

* 1. the Base Currency Amount of its participation in any outstanding Utilisations under that Facility and, in the case of the Revolving Facility only, the Base Currency Amount of the aggregate of its Ancillary Commitments; and
  2. in relation to any proposed Utilisation, the Base Currency Amount of its participation in any other Utilisations that are due to be made under that Facility on or before the proposed Utilisation Date and, in the case of the Revolving Facility only, the Base Currency Amount of its Ancillary Commitment in relation to any new Ancillary Facility that is due to be made available on or before the proposed Utilisation Date.

For the purposes of calculating a Lender's Available Commitment in relation to any proposed Utilisation under the Revolving Facility only, the following amounts shall not be deducted from a Lender's Commitment under that Facility:

* + 1. that Lender's participation in any Revolving Facility Utilisations that are due to be repaid or prepaid on or before the proposed Utilisation Date; and
    2. that Lender's [(or its Affiliate's)] Ancillary Commitments to the extent that they are due to be reduced or cancelled on or before the proposed Utilisation Date.

"**Available Facility**" means, in relation to a Facility, the aggregate for the time being of each Lender's Available Commitment in respect of that Facility.

"**Base Case Model**" means [the financial model including profit and loss, balance sheet and cashflow projections in agreed form relating to the Group (for these purposes assuming completion of the Acquisition) together with the written business plan in agreed form, each prepared by [          ]].

"**Base Currency**" means [                   ].

"**Base Currency Amount**" means:

* 1. in relation to a Utilisation, the amount specified in the Utilisation Request delivered by a Borrower for that Utilisation (or, if the amount requested is not denominated in the Base Currency, that amount converted into the Base Currency at the Agent's Spot Rate of Exchange on the date which is three Business Days before the Utilisation Date or, if later, on the date the Agent receives the Utilisation Request in accordance with the terms of this Agreement) and, in the case of a Letter of Credit, as adjusted under Clause ‎6.8 (*Revaluation of Letters of Credit*) at six-monthly intervals; and
  2. in relation to an Ancillary Commitment, the amount specified as such in the notice delivered to the Agent by the Parent pursuant to Clause ‎9.2 (*Availability*) (or, if the amount specified is not denominated in the Base Currency, that amount converted into the Base Currency at the Agent's Spot Rate of Exchange on the date which is three Business Days before the Ancillary Commencement Date for that Ancillary Facility or, if later, the date the Agent receives the notice of the Ancillary Commitment in accordance with the terms of this Agreement),

as adjusted to reflect any repayment, prepayment, consolidation or division of a Utilisation, or (as the case may be) cancellation or reduction of an Ancillary Facility.

"**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:

* 1. in relation to LIBOR, as the rate at which the relevant Base Reference Bank could borrow funds in the London interbank market; or
  2. in relation to EURIBOR, as the rate at which the relevant Base Reference Bank could borrow funds in the European interbank 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.

"**Base Reference Banks**" means, in relation to LIBOR, the principal London offices of [    ], [    ] and [    ] [and, in relation to EURIBOR, the principal office in [    ] of [    ], [    ] and [    ]] or such other banks as may be appointed by the Agent in consultation with the Parent.

"**Borrower**" means an Original Borrower or an Additional Borrower unless it has ceased to be a Borrower in accordance with Clause ‎31 (*Changes to the Obligors*) [and, in respect of an Ancillary Facility only, any Affiliate of a Borrower that becomes a borrower of that Ancillary Facility with the approval of the relevant Lender pursuant to the provisions of Clause ‎9.9 (*Affiliates of Borrowers*)].

"**Borrowings**" has the meaning given to that term in Clause ‎26.1 (*Financial definitions*).

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

* 1. the interest [excluding the Margin] which a Lender should have received for the period from the date of receipt of all or any part of its participation in a 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:

* 1. 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 in the Relevant Interbank Market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.

["**Budget**" means:

* 1. in relation to the period beginning on [          ] and ending on [           ], the [Base Case Model in agreed form] to be delivered by the Parent to the Agent pursuant to Clause ‎4.1 (*Initial conditions precedent*); and
  2. in relation to any other period, any budget delivered by the Parent to the Agent in respect of that period pursuant to Clause ‎25.4 (*Budget*).]

"**Business Day**" means a day (other than a Saturday or Sunday) on which banks are open for general business in London, [            ] and:

* 1. (in relation to any date for payment or purchase of a currency other than euro) the principal financial centre of the country of that currency; or
  2. (in relation to any date for payment or purchase of euro) any TARGET Day.

"**Capital Expenditure**" has the meaning given to that term in Clause ‎26.1 (*Financial definitions*).

"**Cash**" means, at any time, cash [denominated in [*specify acceptable currencies*]] in hand or at bank and (in the latter case) credited to an account in the name of [an Obligor]/[a member of the Group] with an Acceptable Bank and to which [an Obligor]/[a member of the Group] is alone (or together with other [Obligors]/[members of the Group]) beneficially entitled and for so long as:

* 1. that cash is repayable [on demand]/[within [ ] days after the relevant date of calculation];
  2. 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;
  3. there is no Security over that cash except for Transaction Security or 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
  4. the cash is freely and [(except as mentioned in paragraph (a) above)] immediately available to be applied in repayment or prepayment of the Facilities.

"**Cash Equivalent Investments**" means at any time:

* 1. certificates of deposit maturing within [one year] after the relevant date of calculation and issued by an Acceptable Bank;
  2. any investment in marketable debt obligations issued or guaranteed by the government of [the United States of America, the United Kingdom, [any member state of the European Economic Area or any Participating Member State]] or by an instrumentality or agency of any of them having an equivalent credit rating, maturing within [one year] after the relevant date of calculation and not convertible or exchangeable to any other security;
  3. commercial paper not convertible or exchangeable to any other security:
     1. for which a recognised trading market exists;
     2. issued by an issuer incorporated in [the United States of America, the United Kingdom, [any member state of the European Economic Area or any Participating Member State]];
     3. which matures within [one year] after the relevant date of calculation; and
     4. 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 Investor Services 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;
  4. [sterling bills of exchange eligible for rediscount at the Bank of England and accepted by an Acceptable Bank (or their dematerialised equivalent);]
  5. 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 Investor Services Limited, (ii) which 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
  6. any other debt security approved by the Majority Lenders,

in each case, [denominated in [*specify acceptable currencies*] and] to which any [Obligor]/[member of the Group] is alone (or together with other [Obligors]/[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 arising under the Transaction Security Documents).

"**Cashflow**" has the meaning given to that term in Clause ‎26.1 (*Financial definitions*).

["**Certain Funds Period**" means the period commencing on [the date of this Agreement] and ending on [   ].]

["**Certain Funds Utilisation**" means a [Loan]/[Utilisation] made or to be made under a [Term] Facility during the Certain Funds Period where such [Loan]/ [Utilisation] is to be made solely for an Acquisition Purpose.]

["**Certificate of Title**" means a certificate of title, prepared by English legal counsel for the [Company] relating to the Property/ies and addressed to, and/or capable of being relied upon by, the Reliance Parties.]

"**Change of Control**" means [[initial investors] or any funds controlled by [initial investors] cease to control directly or indirectly the Parent]/[any person or group of persons acting in concert gains direct or indirect control of the Parent]. [For the purposes of this definition:

* 1. "**control**" of the Parent means:
     1. the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:

(A) cast, or control the casting of, more than [ ]% of the maximum number of votes that might be cast at a general meeting of the Parent; or

(B) appoint or remove all, or the majority, of the directors or other equivalent officers of the Parent; or

(C) give directions with respect to the operating and financial policies of the Parent with which the directors or other equivalent officers of the Parent are obliged to comply; [and/or]

* + 1. the holding beneficially of more than [ ]% of the issued share capital of the Parent (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); [and/or]
    2. the holding beneficially of more than [ ]% of the aggregate principal amount of the Loan Notes;]
  1. "**acting in concert**" means, a group of persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate, through the acquisition [directly or indirectly] of shares in the Parent [or the Loan Notes] by any of them, either directly or indirectly, to obtain or consolidate control of the Parent].

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

["**Clean-Up Date**" means the date falling [ ] days after the Closing Date.]

["**Clean-Up Default**" means an Event of Default referred to in Clauses [ ].]

["**Clean-Up Representation**" means any of the representations and warranties under Clauses [ ].]

["**Clean-Up Undertaking**" means any of the undertakings specified in Clauses [ ].]

"**Closing Date**" means the date on which Completion occurs.

"**Commitment**" means a Facility A Commitment, Facility B Commitment, Facility C Commitment or Revolving Facility Commitment.

"**Company**" means [Newco].

"**Completion**" means the completion of the Acquisition in accordance with clause [    ] of the Acquisition Agreement [and [steps [ ] to [  ] of the Structure Memorandum]].

"**Compliance Certificate**" means a certificate [substantially in the form set out in Schedule 9 (*Form of Compliance Certificate*)]/[in form and substance satisfactory to the Agent].

"**Confidential Information**" means all information relating to the Parent, any Obligor, the Group, the Target Group, the Finance Documents or a 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 a Facility from either:

* 1. any member of the Group, the Target Group or any of its advisers; or
  2. another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group or the Target 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:

* 1. is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause ‎42 (*Confidentiality*); or
  2. is identified in writing at the time of delivery as non-confidential by any member of the Group or the Target Group or any of its advisers; or
  3. 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 or the Target Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

"**Confidentiality Undertaking**" means a confidentiality undertaking substantially in a recommended form of the LMA as set out in Schedule 10 (*LMA Form of Confidentiality Undertaking*) or in any other form agreed between the Parent and the Agent.

"**Constitutional Documents**" means [*describe constitutional documents of the Parent*].

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

"**CTA**" means the Corporation Tax Act 2009.

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

* 1. purchases by way of assignment or transfer;
  2. enters into any sub-participation in respect of; or
  3. 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 [or any commitment or amount outstanding under the Mezzanine Facility Agreement].

"**Default**" means an Event of Default or any event or circumstance specified in Clause ‎28 (*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 (other than a Lender which is a Sponsor Affiliate):

* 1. which has failed to make its participation in a Loan available or has notified the Agent that it will not make its participation in a Loan available by the Utilisation Date of that Loan in accordance with Clause ‎5.4 (*Lenders' participation*) or has failed to provide cash collateral (or has notified the Issuing Bank that it will not provide cash collateral) in accordance with Clause ‎7.4 (*Cash collateral by Non-Acceptable L/C Lender*);
  2. which has otherwise rescinded or repudiated a Finance Document; or
  3. [with respect to which an Insolvency Event has occurred and is continuing,]

unless, in the case of paragraph (a) above:

* 1. its failure to pay is caused by:
     1. administrative or technical error; or
     2. a Disruption Event; and

payment is made within [    ] Business Days of its due date; or

* 1. the Lender is disputing in good faith whether it is contractually obliged to make the payment in question.

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

"**Designated Gross Amount**" has the meaning given to that term in Clause ‎9.2 (*Availability*).

"**Designated Net Amount**" has the meaning given to that term in Clause ‎9.2 (*Availability*).

["**Disclosure Letter**" has the meaning given to that term in the Acquisition Agreement.]

"**Disruption Event**" means either or both of:

* 1. 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 Facilities (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
  2. the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:
     1. from performing its payment obligations under the Finance Documents; or
     2. 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.

"**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 [         ] or more or its equivalent in other currencies.

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

* 1. air (including, without limitation, air within natural or man-made structures, whether above or below ground);
  2. water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and
  3. 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.

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

* 1. the pollution or protection of the Environment;
  2. the conditions of the workplace; or
  3. 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 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 Report**" means an environmental report prepared by [         ] and dated [           ] relating to the Acquisition and addressed to, and/or capable of being relied upon by, the Reliance Parties.

["**EURIBOR**" means, in relation to any Loan in euro:

* 1. [the applicable Screen Rate]/[the Base Reference Bank Rate][; or][[5]](#footnote-5)
  2. [(if no Screen Rate is available for the Interest Period of that Loan) the Base Reference Bank Rate],

as of the Specified Time on the Quotation Day for euro and for a period comparable to the Interest Period of that Loan.]

"**Event of Default**" means any event or circumstance specified as such in Clause ‎28 (*Events of Default*).

"**Excess Cashflow**" has the meaning given to that term in Clause ‎26.1 (*Financial definitions*).

"**Expiry Date**" means, for a Letter of Credit, the last day of its Term.

"**Facility**" means a Term Facility or the Revolving Facility.

"**Facility A**" means the term loan facility made available under this Agreement as described in paragraph (a)(i) of Clause ‎2.1 (*The Facilities*).

"**Facility A Commitment**" means:

* 1. in relation to an Original Lender, the amount in the Base Currency set opposite its name under the heading "Facility A Commitment" in Part II or Part III of Schedule 1 (*The Original Parties*) and the amount of any other Facility A Commitment transferred to it under this Agreement or assumed by it in accordance with Clause ‎2.2 (*Increase*); and
  2. in relation to any other Lender, the amount in the Base Currency of any Facility A Commitment transferred to it under this Agreement or assumed by it in accordance with Clause ‎2.2 (*Increase*),

to the extent:

* 1. not cancelled, reduced or transferred by it under this Agreement; and
  2. not deemed to be zero pursuant to Clause ‎30.2 (*Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates*).

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

"**Facility A Repayment Date**" means [*insert dates*]/[each date set out in paragraph (a) of Clause ‎10.1 (*Repayment of Term Loans*)].

"**Facility B**" means the term loan facility made available under this Agreement as described in paragraph (a)(ii) of Clause ‎2.1 (*The Facilities*).

"**Facility B Commitment**" means:

* 1. in relation to an Original Lender, the amount in the Base Currency set opposite its name under the heading "Facility B Commitment" in Part II or Part III of Schedule 1 (*The Original Parties*) and the amount of any other Facility B Commitment transferred to it under this Agreement or assumed by it in accordance with Clause ‎2.2 (*Increase*); and
  2. in relation to any other Lender, the amount in the Base Currency of any Facility B Commitment transferred to it under this Agreement or assumed by it in accordance with Clause ‎2.2 (*Increase*),

to the extent:

* 1. not cancelled, reduced or transferred by it under this Agreement; and
  2. not deemed to be zero pursuant to Clause ‎30.2 (*Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates*).

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

"**Facility B Repayment Date**" means [*insert dates*]/[each date set out in paragraph (c) of Clause ‎10.1 (*Repayment of Term Loans*)].

"**Facility C**" means the term loan facility made available under this Agreement as described in paragraph (a)(iii) of Clause ‎2.1 (*The Facilities*).

"**Facility C Commitment**" means:

* 1. in relation to an Original Lender, the amount in the Base Currency set opposite its name under the heading "Facility C Commitment" in Part II or Part III of Schedule 1 (*The Original Parties*) and the amount of any other Facility C Commitment transferred to it under this Agreement or assumed by it in accordance with Clause ‎2.2 (*Increase*); and
  2. in relation to any other Lender, the amount in the Base Currency of any Facility C Commitment transferred to it under this Agreement or assumed by it in accordance with Clause ‎2.2 (*Increase*),

to the extent:

* 1. not cancelled, reduced or transferred by it under this Agreement; and
  2. not deemed to be zero pursuant to Clause ‎30.2 (*Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates*).

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

"**Facility C Repayment Date**" means [*insert dates*]/[each date set out in paragraph (e) of Clause ‎10.1 (*Repayment of Term Loans*)].

"**Facility Office**" means:

* 1. in respect of a Lender or the Issuing Bank, the office or offices notified by that Lender or the Issuing Bank to the Agent in writing on or before the date it becomes a Lender or the Issuing Bank (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
  2. in respect of any other Finance Party, the office in the jurisdiction in which it is resident for tax purposes.

"**Fee Letter**" means:

* 1. any letter or letters dated on or about the date of this Agreement between the Arranger and the Parent (or the Agent and the Parent or the Security Agent and the Parent) setting out any of the fees referred to in Clause ‎17 (*Fees*); and
  2. any agreement setting out fees payable to a Finance Party referred to in [paragraph (e) of Clause ‎2.2 (*Increase*),] Clause ‎17.5 (*Fees payable in respect of Letters of Credit*) or Clause ‎17.6 (*Interest, commission and fees on Ancillary Facilities*) of this Agreement or under any other Finance Document.

"**Finance Document**" means this Agreement, [the Mandate Letter,] any Accession Deed, any Ancillary Document, any Compliance Certificate, any Fee Letter, any Hedging Agreement, the Intercreditor Agreement, any Resignation Letter, any Selection Notice, any Transaction Security Document, any Utilisation Request and any other document designated as a "Finance Document" by the Agent and the Parent **provided that** where the term "Finance Document" is used in, and construed for the purposes of, this Agreement or the Intercreditor Agreement, a Hedging Agreement shall be a Finance Document only for the purposes of:

* 1. the definition of "Material Adverse Effect";
  2. paragraph (a) of the definition of "Permitted Transaction";
  3. the definition of "Transaction Document";
  4. the definition of "Transaction Security Document";
  5. paragraph (a)(iv) of Clause ‎1.2 (*Construction*);
  6. Clause 23 (*Guarantee and Indemnity*); and
  7. Clause 28 (*Events of Default*) (other than paragraph (b) of Clause 28.16 (*Repudiation and rescission of agreements*) and Clause 28.20 (*Acceleration*)).

"**Finance Party**" means the Agent, the Arranger, the Security Agent, a Lender, the Issuing Bank, a Hedge Counterparty or any Ancillary Lender **provided that** where the term "Finance Party" is used in, and construed for the purposes of, this Agreement or the Intercreditor Agreement, a Hedge Counterparty shall be a Finance Party only for the purposes of:

* 1. the definition of "Secured Parties";
  2. paragraph (a)(i) of Clause ‎1.2 (*Construction*);
  3. paragraph (c) of the definition of Material Adverse Effect;
  4. Clause 23 (*Guarantee and Indemnity*); and
  5. Clause ‎33 (*Conduct of business by the Finance Parties*).

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

* 1. moneys borrowed and debit balances at banks or other financial institutions;
  2. any acceptance under any acceptance credit or bill discounting facility (or dematerialised equivalent);
  3. any note purchase facility or the issue of bonds [(but not Trade Instruments)], notes, debentures, loan stock or any similar instrument;
  4. the amount of any liability in respect of Finance Leases;
  5. receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis [and meet any requirement for de-recognition under the Accounting Principles]);
  6. 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);
  7. 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 [(but not, in any case, Trade Instruments)] 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];
  8. any amount raised by the issue of redeemable shares which are redeemable (other than at the option of the issuer) before the [*insert final repayment date of Facilities*] or are otherwise classified as borrowings under the Accounting Principles);
  9. 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 [ ] days after the date of supply;
  10. [ ];
  11. 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 classified as borrowings under the Accounting Principles]; and
  12. the amount of any liability in respect of any guarantee for any of the items referred to in paragraphs (a) to [(k)] above.

"**Financial Quarter**" has the meaning given to that term in Clause ‎26.1 (*Financial definitions*).

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

"**Financial Year**" has the meaning given to that term in Clause ‎26.1 (*Financial definitions*).

"**Funds Flow Statement**" means a funds flow statement in agreed form.

"**Group**" means the Parent[, the Target] and each of [its]/[their respective] Subsidiaries for the time being.

"**Group Structure Chart**" means the group structure chart in the agreed form.

"**Guarantor**" means an Original Guarantor or an Additional Guarantor, unless it has ceased to be a Guarantor in accordance with Clause ‎31 (*Changes to the Obligors*).

"**Hedge Counterparty**" means:

* 1. [any Original Hedge Counterparty[[6]](#footnote-6); and]
  2. any person which has become a Party as a Hedge Counterparty in accordance with Clause ‎29.8 (*Accession of Hedge Counterparties*)

which, in each case, is or has become, a party to the Intercreditor Agreement as a Hedge Counterparty in accordance with the provisions of the Intercreditor Agreement.

"**Hedging Agreement**" means any master agreement, confirmation, schedule or other agreement [in agreed form] entered into or to be entered into by [*insert name of Borrower of Term Facilities*] and a Hedge Counterparty for the purpose of hedging the types of liabilities and/or risks in relation to the Term Facilities [and the Mezzanine Facility] which, at the time that that master agreement, confirmation, schedule or other agreement (as the case may be) is entered into, the Hedging Letter requires to be hedged.

"**Hedging Letter**" means the letter dated on or before the date of this Agreement and made between the Agent and the Parent describing the hedging arrangements to be entered into in respect of the interest rate liabilities and/or the exchange rate risks of the Borrowers of, and in relation to, the Term Facilities [and the Mezzanine Facility].

"**Holding Account**" means an account:

* 1. held in [          ] by a member of the Group with the Agent or Security Agent;
  2. identified in a letter between the Parent and the Agent as a Holding Account; and
  3. 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 company or corporation, any other company or corporation 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:

* 1. 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;
  2. the Agent otherwise rescinds or repudiates a Finance Document;
  3. (if the Agent is also a Lender) it is a Defaulting Lender under paragraph (a) or (b) of the definition of "Defaulting Lender"; or
  4. an Insolvency Event has occurred and is continuing with respect to the Agent;

unless, in the case of paragraph (a) above:

* 1. its failure to pay is caused by:
     1. administrative or technical error; or
     2. a Disruption Event; and

payment is made within [ ] Business Days of its due date; or

* 1. the Agent is disputing in good faith whether it is contractually obliged to make the payment in question.

"**Increase Confirmation**" means a confirmation substantially in the form set out in Schedule 16 (*Form of Increase Confirmation*).

"**Increase Lender**" has the meaning given to that term in Clause ‎2.2 (*Increase*).

"**Information Memorandum**" means the document in the form approved by the Parent concerning the [Original Obligors] [and the Target Group] which, at the request of [the Original Obligors]/[Company] and on [their]/[its] behalf [was prepared in relation to this transaction and distributed by the Arranger [during [ ]]/[before the date of this Agreement]]/[is to be prepared in relation to this transaction, approved by the Parent and distributed by the Arranger prior to the Syndication Date in connection with the syndication of the Facilities].

"**Information Package**" means the Reports, the Base Case Model [and [ ]].

"**Insolvency Event**" in relation to a Finance Party means that the Finance Party:

### is dissolved (other than pursuant to a consolidation, amalgamation or merger);

### 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;

### makes a general assignment, arrangement or composition with or for the benefit of its creditors;

### 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;

### 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:

* + 1. 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
    2. is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof;

### [has exercised in respect of it one or more of the stabilisation powers pursuant to Part 1 of the Banking Act 2009 and/or has instituted against it a bank insolvency proceeding pursuant to Part 2 of the Banking Act 2009 or a bank administration proceeding pursuant to Part 3 of the Banking Act 2009;][[7]](#footnote-7)

### has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);

### 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;

### 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;

### 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 (i) above; or

### takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts[[8]](#footnote-8).

"**Insurance Report**" means an insurance report prepared by [        ] and dated [        ] and addressed to, and/or capable of being relied upon by, the Reliance Parties.

"**Intellectual Property**" means:

* 1. 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
  2. the benefit of all applications and rights to use such assets of each [member of the Group] [Obligor] (which may now or in the future subsist).

"**Intercreditor Agreement**" means the intercreditor agreement dated [the same date as this Agreement] and made between, among others, the Parent, the Company, the Debtors (as defined in the Intercreditor Agreement), [        ] as Security Agent, [       ] as senior agent, [         ] as mezzanine agent, the Lenders (as Senior Lenders), the Arranger (as Senior Arranger[s]), the Ancillary Lenders (as Senior Lenders), [the Hedge Counterparties][[9]](#footnote-9), the Mezzanine Lenders, the Mezzanine Arranger[s] (each as defined in the Intercreditor Agreement), [the Investors], [the Vendor] and the Intra-Group Lenders (as defined in the Intercreditor Agreement).[[10]](#footnote-10)

"**Interest Period**" means, in relation to a Loan, each period determined in accordance with Clause ‎15 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause ‎14.3 (*Default interest*).

"**Investors**" mean [*initial investors*] and their or any subsequent successors or assigns or transferees.

["**Issuing Bank**" means each Lender identified above as [an] issuing bank[s] and any other Lender which has notified the Agent that it has agreed to the Parent's request to be an Issuing Bank pursuant to the terms of this Agreement [(and if more than one Lender has so agreed, such Lenders shall be referred to, whether acting individually or together, as the "**Issuing Bank**")] **provided that**, in respect of a Letter of Credit issued or to be issued pursuant to the terms of this Agreement, the "**Issuing Bank**" shall be the Issuing Bank which has issued or agreed to issue that Letter of Credit.]

**"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.

["**Key-man Policy**" means a key-man life assurance policy (in form and substance reasonably satisfactory to the Agent and with such insurer as the Agent may [reasonably] approve) taken out and maintained by [the Parent]/[the Company] in respect of the death or disability [or critical illness] of the following individuals and in not less than the following respective amounts:

|  |  |  |
| --- | --- | --- |
| Name of Individual | Amount (£) |  |
|  |  | ] |

"**L/C Proportion**" means in relation to a Lender in respect of any Letter of Credit, the proportion (expressed as a percentage) borne by that Lender's Available Commitment to the relevant Available Facility immediately prior to the issue of that Letter of Credit, adjusted to reflect any assignment or transfer under this Agreement to or by that Lender.

"**Legal Due Diligence Report**" means the legal due diligence report dated [        ] prepared by [               ] relating to the Acquisition and addressed to, and/or capable of being relied upon by, the Reliance Parties.

"**Legal Opinion**" means any legal opinion delivered to the Agent under Clause ‎4.1 (*Initial conditions precedent*) or Clause ‎31 (*Changes to the Obligors*).

"**Legal Reservations**" means:

* 1. 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;
  2. 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; [and]
  3. similar principles, rights and defences under the laws of any Relevant Jurisdiction; [and
  4. 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:

* 1. any Original Lender; and
  2. any bank, financial institution, trust, fund or other entity which has become a Party as a Lender in accordance with Clause ‎2.2 (*Increase*) or Clause ‎29 (*Changes to the Lenders*),

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

"**Letter of Credit**" means:

* 1. a letter of credit, substantially in the form set out in Schedule 12 (*Form of Letter of Credit*) or in any other form requested by the Parent and agreed by the Agent with the prior consent of the Majority Lenders and the Issuing Bank; or
  2. any guarantee, indemnity or other instrument in a form requested by a Borrower (or the Parent on its behalf) and agreed by the Agent with the prior consent of the Majority Lenders and the Issuing Bank.

"**LIBOR**" means, in relation to any Loan:

* 1. [the applicable Screen Rate]/[the Base Reference Bank Rate][; or][[11]](#footnote-11)
  2. [(if no Screen Rate is available for the currency or Interest Period of that Loan) the Base Reference Bank Rate],

as of the Specified Time on the Quotation Day for the currency of that Loan and a period comparable to the Interest Period of that Loan.

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

"**LMA**" means the Loan Market Association.

"**Loan**" means a Term Loan or a Revolving Facility Loan.

["**Loan Note Documents**" means the Loan Notes and Loan Note Instrument in agreed form and any other documents entered into pursuant to any of them.]

["**Loan Note Instrument**" means the instrument pursuant to which the Loan Notes are, or are to be, constituted.]

["**Loan Notes**" means the £[        ] unsecured subordinated loan notes due [ ] of [the Parent].]

["**Major Default**" means:

* 1. with respect to the Parent or the Company only, any circumstances constituting a Default under any of [Clause ‎28.1 (*Non-Payment*), Clause ‎28.3 (*Other obligations*) insofar as it relates to a breach of Clauses [   ], Clause ‎28.4 (*Misrepresentation*) insofar as it relates to a breach of any Major Representation, Clause ‎28.6 (*Insolvency*), Clause ‎28.7 (*Insolvency proceedings*), Clause ‎28.8 (*Creditors' process*), Clause ‎28.9 (*Unlawfulness and invalidity*), Clause ‎28.15 (*Expropriation*) or Clause ‎28.16 (*Repudiation and rescission of agreements*)]; or
  2. the occurrence of [*refer to any relevant termination event under the Acquisition Agreement*][[12]](#footnote-12).]

["**Major Representation**" means a representation or warranty with respect to the Parent or the Company only under any of Clause ‎24.2 (*Status*) to Clause ‎24.6 (*Validity and admissibility in evidence*) inclusive [and [ ]].]

"**Majority Lenders**" means:

* 1. [(for the purposes of paragraph (a) of Clause ‎41.2 (*Required consents*) in the context of a waiver in relation to a proposed Utilisation of the Revolving Facility (other than a Utilisation on the Closing Date) of the condition in Clause ‎4.2 (*Further conditions precedent*)), a Lender or Lenders whose Revolving Facility Commitments aggregate more than 662/3 per cent. of the Total Revolving Facility Commitments; and
  2. (in any other case), a Lender or Lenders whose Commitments aggregate more than 662/3 per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 662/3 per cent. of the Total Commitments immediately prior to that reduction).]

["**Mandate Letter**" means the letter dated [          ] between the Arranger and [          ].]

"**Mandatory Cost**" means the percentage rate per annum calculated by the Agent in accordance with Schedule 4 (*Mandatory Cost formula*).

"**Mandatory Prepayment Account**" means an interest-bearing account:

* 1. held in [          ] by a Borrower with the Agent or Security Agent;
  2. identified in a letter between the Parent and the Agent as a Mandatory Prepayment Account;
  3. subject to Security in favour of the Security Agent which Security is in form and substance satisfactory to the Agent and Security Agent; and
  4. 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:

* 1. in relation to any Facility A Loan [  ] per cent. per annum;
  2. in relation to any Facility B Loan [  ] per cent. per annum;
  3. in relation to any Facility C Loan [ ] per cent. per annum;
  4. in relation to any Revolving Facility Loan [  ] per cent. per annum;
  5. in relation to any Unpaid Sum relating or referable to a Facility, the rate per annum specified above for that Facility; and
  6. in relation to any other Unpaid Sum, the highest rate specified above.

[but if:

* 1. no [Default/Event of Default] has occurred and is continuing;
  2. a period of at least [12 Months] has expired since the Closing Date; and
  3. [Interest Cover]/[Senior [Adjusted] Leverage]/[[Adjusted] Leverage] in respect of the most recently completed Relevant Period is within a range set out below,

then the Margin for each Loan under Facility A and the Revolving Facility will be the percentage per annum set out below in the column for that Facility opposite that range:

| [Interest Cover]/Senior [Adjusted] Leverage]/ [[Adjusted] Leverage] | Facility A Margin  % p.a. | Revolving Facility Margin  % p.a. |
| --- | --- | --- |
| [Greater than or equal to [  ]/[Less than or equal to [     ]] |  |  |
| [Less than [  ] but greater than or equal to [  ]]/Greater than [    ] but less than or equal to [    ]] |  |  |
| [Less than [  ]]/[Greater than [    ]] |  |  |

However:

* + 1. any increase or decrease in the Margin for a Loan shall take effect on the date (the "**reset date**") which is [[ ] Business Days after]/[the first day of the next Interest Period for that Loan following] receipt by the Agent of the Compliance Certificate for that Relevant Period pursuant to Clause ‎25.2 (*Provision and contents of Compliance Certificate*);
    2. [if the effect of the above would be to cause the Margin to reduce by more than one level on any reset date then the Margin will decrease by one level only on that reset date;]
    3. if, following receipt by the Agent of the annual audited financial statements of the Group and related Compliance Certificate, those statements and Compliance Certificate do not confirm the basis for a reduced Margin, then the provisions of Clause ‎14.2 (*Payment of interest*) shall apply and the Margin for that Loan shall be the percentage per annum determined using the table above and the revised ratio of [Interest Cover]/[Senior [Adjusted] Leverage]/[[Adjusted]Leverage] calculated using the figures in the Compliance Certificate;
    4. while [a/an] [Default/Event of Default] is continuing, the Margin for each Loan under Facility A and the Revolving Facility shall be the highest percentage per annum set out above for a Loan under that Facility; and
    5. for the purpose of determining the Margin, [Interest Cover]/[Senior [Adjusted] Leverage]/[[Adjusted]Leverage] and Relevant Period shall be determined in accordance with Clause ‎26.1 (*Financial definitions*).]

"**Market Report**" means a market report prepared by [         ] and dated [      ] and addressed to, and/or capable of being relied upon by, the Reliance Parties.

"**Material Adverse Effect**" means [in the reasonable opinion of the Majority Lenders] a material adverse effect on:

* 1. [the business, operations, property, condition (financial or otherwise) or prospects of the Group taken as a whole; or
  2. [the ability of an Obligor to perform [its obligations under the Finance Documents]/[its payment obligations under the Finance Documents and/or its obligations under Clause ‎26.2 (*Financial condition*) of this Agreement]]/[the ability of the Obligors (taken as a whole) to perform [their obligations under the Finance Documents]/[their payment obligations under the Finance Documents and/or their obligations under Clause ‎26.2 (*Financial condition*) of this Agreement]]; or
  3. 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, at any time:

* 1. an Obligor; or
  2. a wholly-owned member of the Group that holds shares in an Obligor; or
  3. a Subsidiary of the Parent which:
     1. is listed in Schedule 13 (*Material Companies*); or
     2. has [earnings before interest, tax, depreciation and amortisation calculated on the same basis as EBITDA (as defined in Clause ‎26.1 (*Financial definitions*)] representing [   ] per cent. or more of] [EBITDA, as defined in Clause ‎26.1 (*Financial definitions*)] or has gross assets, net assets or turnover (excluding intra-group items) representing [   ] per cent., or more of the gross assets, net assets or turnover of the Group, calculated on a consolidated basis.

Compliance with the conditions set out in paragraph (c)(ii) shall be determined by reference to the most recent Compliance Certificate supplied by the Parent 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 [EBITDA (as defined in Clause ‎26.1 (*Financial definitions*)], gross assets, net assets or turnover of the Group)].

[A report by the Auditors of the Parent that a Subsidiary is or is not a Material Company shall, in the absence of manifest error, be conclusive and binding on all Parties.]

"**Mezzanine Facility**" means the mezzanine loan facility made available under the Mezzanine Facility Agreement.

"**Mezzanine Facility Agreement**" means the mezzanine facility agreement dated [the same date as this Agreement] and made between [ ] as company, [ ] as borrower, [ ] as original guarantor, [ ] as the mezzanine agent, [ ] as the mezzanine arranger[s], [ ] as Security Agent and the persons named in that mezzanine facility agreement as [Lenders].

"**Mezzanine Finance Documents**" means [the Mezzanine Facility Agreement, any accession deed under the Mezzanine Facility Agreement, [any Mezzanine Security Document,] the Intercreditor Agreement, the Warrant Documents, any fee letters setting out any of the fees referred to in the Mezzanine Facility Agreement, any utilisation request or request relating to the selection of an interest period for a utilisation under the Mezzanine Facility Agreement and any other document which is designated a "**Mezzanine Finance Document**" or "**Finance Document**" by the Parent, the mezzanine agent under the Mezzanine Facility Agreement and the Agent.

["**Mezzanine Security Documents**" means each of the following documents:

* 1. [                               ]; and
  2. any other document entered into by any [member of the Group]/[Obligor] (as defined in the Mezzanine Facility Agreement) creating or expressed to create Security over all or any part of its assets in respect of the obligations of any of the [Obligors] (as defined in the Mezzanine Facility Agreement) under any of the Mezzanine Finance Documents.]

"**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:

* 1. [(subject to paragraph (c) below)] if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
  2. 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
  3. 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.

"**New Lender**" has the meaning given to that term in Clause ‎29 (*Changes to the Lenders*).

"**Non-Acceptable L/C Lender**" means a Lender under the Revolving Facility which:

* 1. is not an Acceptable Bank within the meaning of paragraph (a) of the definition of "Acceptable Bank" (other than a Lender which each Issuing Bank has agreed is acceptable to it notwithstanding that fact); or
  2. is a Defaulting Lender; or
  3. has failed to make (or has notified the Agent that it will not make) a payment to be made by it under Clause ‎7.3 (*Indemnities*) or Clause ‎32.10 (*Lenders' indemnity to the Agent*) or any other payment to be made by it under the Finance Documents to or for the account of any other Finance Party in its capacity as Lender by the due date for payment [unless the failure to pay falls within the description of any of those items set out at (i)-(ii) of the definition of Defaulting Lender].

"**Non-Consenting Lender**" has the meaning given to that term in Clause ‎41.4 (*Replacement of Lender*).

"**Notifiable Debt Purchase Transaction**" has the meaning given to that term in paragraph (b) of Clause ‎30.2 (*Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates*).

"**Obligor**" means a Borrower or a Guarantor.

"**Obligors' Agent**" means [          ], appointed to act on behalf of each Obligor in relation to the Finance Documents pursuant to Clause ‎2.4 (*Obligors' Agent*).

"**Optional Currency**" means a currency (other than the Base Currency) which complies with the conditions set out in Clause ‎4.3 (*Conditions relating to Optional Currencies*).

"**Original Financial Statements**" means:

* 1. in relation to the Parent, [          ];
  2. in relation to Target, its consolidated audited financial statements for its Financial Year ended [         ];
  3. in relation to each Original Obligor other than the Parent, its audited financial statements for its Financial Year ended [      ];
  4. in relation to any other Obligor, its audited financial statements delivered to the Agent as required by Clause ‎31 (*Changes to the Obligors*); and
  5. [others].

"**Original Obligor**" means an Original Borrower or an Original Guarantor.

"**Parent Document**" means any agreement evidencing the terms of any Structural Intra-Group Loan in respect of which the Parent is the creditor.

"**Participating Member State**" means any member state of the European Communities that adopts or has adopted the euro as its lawful currency in accordance with legislation of the European Community 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.]

"**Pensions Report**" means the pensions report prepared by [     ] and dated [    ] and addressed to, and/or capable of being relied upon by, the Reliance Parties.

["**Permitted Acquisition**" means:

* 1. the Acquisition;
  2. an acquisition by a member of the Group of an asset sold, leased, transferred or otherwise disposed of by another member of the Group in circumstances constituting a Permitted Disposal;
  3. an acquisition of shares or securities pursuant to a Permitted Share Issue;
  4. an acquisition of securities which are Cash Equivalent Investments so long as those Cash Equivalent Investments become subject to the Transaction Security as soon as is reasonably practicable;
  5. [the incorporation of a company which on incorporation becomes a member of the Group, but only if:
     1. that company is incorporated in [         ] with limited liability; and
     2. if the shares in the company are owned by an Obligor, Security over the shares of that company, in form and substance satisfactory to the Agent, is created in favour of the Security Agent within 30 days of the date of its incorporation;]
  6. [an acquisition (not being an acquisition by the Parent or the Company), [for cash consideration,] of (A) [all of] the issued share capital of a limited liability company or (B) (if the acquisition is made by a limited liability company whose sole purpose is to make the acquisition) a business or undertaking carried on as a going concern, but only if:
     1. no Default is continuing on the closing date for the acquisition or would occur as a result of the acquisition;
     2. the acquired company, business or undertaking is [incorporated or established, and carries on its principal business in], [the European Union or the United States of America] [and is engaged in a business substantially the same as that carried on by the Group];
     3. the consideration (including associated costs and expenses) for the acquisition and any Financial Indebtedness or other assumed actual or contingent liability, in each case remaining in the acquired company (or any such business) at the date of acquisition (when aggregated with the consideration (including associated costs and expenses) for any other Permitted Acquisition and any Financial Indebtedness or other assumed actual or contingent liability, in each case remaining in any such acquired companies or businesses at the time of acquisition (the "**Total Purchase Price**") together with the amount of any investment in any Permitted Joint Venture) does not in any Financial Year of the Parent exceed in aggregate [   ] or its equivalent; [and]
     4. [Others - e.g. Positive EBITDA; financial covenant look-forward; cap on individual acquisitions; provision to the Agent of satisfactory tax, accounting, legal, environmental or other due diligence reports etc.,]

and only if such acquisition is not funded by a Revolving Facility Utilisation.]

[Any acquisition will only be permitted under paragraph (f) if the Parent has delivered to the Agent not later than [          ] Business Days before legally committing to make such acquisition a certificate signed by two directors of the Parent to which is attached a copy of the latest audited accounts (or if not available, management accounts) of the target company or business.

Such certificate must give calculations showing in reasonable detail that the Parent would have remained in compliance with its obligations under Clause ‎26 (*Financial Covenants*) if the covenant tests were recalculated for the Relevant Period ending on the most recent Quarter Date consolidating the financial statements of the target company (consolidated if it has Subsidiaries) or business with the financial statements of the Group for such period on a pro forma basis and as if the consideration for the proposed acquisition had been paid at the start of that Relevant Period.]]

["**Permitted Disposal**" means any sale, lease, licence, transfer or other disposal [which, except in the case of paragraph [(b)], is on arm's length terms]:

* 1. of trading stock or cash made by any member of the Group in the ordinary course of trading of the disposing entity;
  2. of any asset by a member of the Group (the "**Disposing Company**") to another member of the Group (the "**Acquiring Company**"), but if:
     1. the Disposing Company is an Obligor, the Acquiring Company must also be an Obligor;
     2. the Disposing Company had given Security over the asset, the Acquiring Company must give equivalent Security over that asset; and
     3. the Disposing Company is a Guarantor, the Acquiring Company must be a Guarantor guaranteeing at all times an amount no less than that guaranteed by the Disposing Company;
  3. of assets [(other than shares, businesses, Real Property/Intellectual Property)] in exchange for other assets comparable or superior as to type, value and quality;
  4. of obsolete or redundant vehicles, plant and equipment for cash;
  5. of Cash Equivalent Investments for cash or in exchange for other Cash Equivalent Investments;
  6. constituted by a licence of intellectual property rights permitted by Clause ‎27.29 (*Intellectual Property*);
  7. to a Joint Venture, to the extent permitted by Clause ‎27.9 (*Joint ventures*);
  8. arising as a result of any Permitted Security;
  9. [             ]; and
  10. of assets [(other than shares)] for cash where the higher of the [market]/[book] value and net consideration receivable (when aggregated with the higher of the [market]/[book] value and net consideration receivable for any other sale, lease, licence, transfer or other disposal not allowed under the preceding paragraphs [or as a Permitted Transaction]) does not exceed [              ] (or its equivalent) in total during the term of this Agreement and does not exceed [          ] (or its equivalent) in any Financial Year of the Parent.][[13]](#footnote-13)

["**Permitted Distribution**" means:

* 1. [the payment of a dividend on the Preference Shares in accordance with the Articles of Association of the Parent **provided that** such payment is not in breach of the Intercreditor Agreement;][[14]](#footnote-14)
  2. the payment of a dividend to the Company or any of its wholly-owned Subsidiaries;
  3. the payment of a dividend by the Company to the Parent to enable the Parent to make payments of [                 ] [**provided that** the payment is:
     1. made when no Default is continuing or would occur immediately after the making of the payment; and
     2. not in breach of the Intercreditor Agreement][[15]](#footnote-15); and
  4. [                    ].]

["**Permitted Financial Indebtedness**" means Financial Indebtedness:

* 1. arising under any of the Mezzanine Finance Documents, [the Shareholders' Agreement,] [the Loan Note Documents,] [the Vendor Note Documents], in each case as in force on the date of this Agreement and subject always to the terms of this Agreement and the Intercreditor Agreement;
  2. to the extent covered by a Letter of Credit or other letter of credit, guarantee or indemnity issued under an Ancillary Facility;
  3. arising under a foreign exchange transaction for spot or forward delivery entered into in connection with protection against fluctuation in currency rates where that foreign exchange exposure arises in the ordinary course of trade or in respect of Utilisations made in Optional Currencies, but not a foreign exchange transaction for investment or speculative purposes;
  4. arising under a Permitted Loan or a Permitted Guarantee or as permitted by Clause ‎27.33 (*Treasury Transactions*);
  5. of any person acquired by a member of the Group after the Closing 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;
  6. 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 [         ] (or its equivalent in other currencies) at any time; and
  7. not permitted by the preceding paragraphs or as a Permitted Transaction and the outstanding [principal] amount of which does not exceed [                     ] (or its equivalent) in aggregate for the Group at any time.]

["**Permitted Guarantee**" means:

* 1. the endorsement of negotiable instruments in the ordinary course of trade;
  2. any performance or similar bond guaranteeing performance by a member of the Group under any contract entered into in the ordinary course of trade;
  3. any guarantee of a Joint Venture to the extent permitted by Clause 27.9 (*Joint ventures*);
  4. any guarantee permitted under Clause ‎27.23 (*Financial Indebtedness*);
  5. any guarantee given in respect of the netting or set-off arrangements permitted pursuant to paragraph (b) of the definition of Permitted Security;
  6. [any indemnity given in the ordinary course of the documentation of an acquisition or disposal transaction which is a Permitted Acquisition or Permitted Disposal which indemnity is in a customary form and subject to customary limitations;] or
  7. [                    ].]

["**Permitted Joint Venture**" means any investment in any Joint Venture where:

* 1. the Joint Venture is incorporated [, or established, and carries on its principal business], in [the European Union or the United States of America];
  2. the Joint Venture is engaged in a business substantially the same as that carried on by the Group; and
  3. in any financial year of the Company, the aggregate (the "**Joint Venture Investment**") of:
     1. all amounts subscribed for shares in, lent to, or invested in all such Joint Ventures by any member of the Group;
     2. the contingent liabilities of any member of the Group under any guarantee given in respect of the liabilities of any such Joint Venture; and
     3. the [book value/market value] of any assets transferred by any member of the Group to any such Joint Venture,

when aggregated with the Total Purchase Price in respect of Permitted Acquisitions in that Financial Year permitted pursuant to paragraph (f) of the definition of Permitted Acquisition does not exceed [         ] (or its equivalent in other currencies); [and]

* 1. [Others - e.g. cap on individual investments.]]

["**Permitted Loan**" means:

* 1. [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;]
  2. [Financial Indebtedness which is referred to in the definition of, or otherwise constitutes, Permitted Financial Indebtedness (except under paragraph (d) of that definition);]
  3. a loan made to a Joint Venture to the extent permitted under Clause ‎27.9 (*Joint ventures*);
  4. a loan made by an Obligor (other than the Parent) to another Obligor (other than the Parent) or made by a member of the Group which is not an Obligor to another member of the Group (other than the Parent);
  5. any loan made by [an Obligor (other than the Parent) to a member of the Group which is not an Obligor] so long as the aggregate amount of the Financial Indebtedness under any such loans does not exceed [                     ] (or its equivalent) at any time;
  6. any Structural Intra-Group Loan made by the Parent to the Company;
  7. 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 [ ] (or its equivalent) at any time; [and
  8. [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 any such loans does not exceed [            ] (or its equivalent) at any time],]

[so long as in the case of paragraphs (d), (e) and (f) above:

* 1. the creditor of such Financial Indebtedness shall (if it is an Obligor) grant security over its rights in respect of such Financial Indebtedness in favour of the Secured Parties on terms acceptable to the Agent (acting on the instructions of the Majority Lenders); and
  2. 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:

* 1. a scheduled interest payment under the Mezzanine Facility Agreement;
  2. a scheduled [interest payment][and/or][principal repayment] under [specify relevant Structural Intra-Group Loans];
  3. [any payment made by a member of the Group (other than the Parent) to enable the Company to make payments of any fees or other charges due under [            ]]; and
  4. a payment by the Company to the Parent under the relevant Structural Intra-Group Loan to enable the Parent to make payments of [      ];
  5. [           ],

**provided that** such payment is made when (i) (except in the case of paragraph (a) above) no Default is continuing or would occur immediately after the making of the payment; [and] (ii) such payment is not in breach of the Intercreditor Agreement [and [              ]].

["**Permitted Security**" means:

* 1. 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;
  2. any netting or set-off arrangement entered into by any member of the Group [with [ ]] in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances of members of the Group (including an Ancillary Facility which is an overdraft comprising more than one account) but only so long as (i) such arrangement does not permit credit balances of Obligors to be netted or set off against debit balances of members of the Group which are not Obligors and (ii) such arrangement does not give rise to other Security over the assets of Obligors in support of liabilities of members of the Group which are not Obligors [except, in the case of (i) and (ii) above, to the extent such netting, set-off or Security relates to, or is granted in support of, a loan permitted pursuant to paragraph (e) of the definition of "Permitted Loan"];
  3. any payment or close out netting or set-off arrangement pursuant to any Treasury Transaction or foreign exchange transaction entered into by a member of the Group which constitutes Permitted Financial Indebtedness, excluding any Security or Quasi-Security under a credit support arrangement;
  4. any Security or Quasi-Security over or affecting any asset acquired by a member of the Group after the Closing Date if:
     1. the Security or Quasi-Security was not created in contemplation of the acquisition of that asset by a member of the Group;
     2. 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
     3. the Security or Quasi-Security is removed or discharged within [      ] months of the date of acquisition of such asset;
  5. any Security or Quasi-Security over or affecting any asset of any company which becomes a member of the Group after the Closing Date, where the Security or Quasi-Security is created prior to the date on which that company becomes a member of the Group if:
     1. the Security or Quasi-Security was not created in contemplation of the acquisition of that company;
     2. the principal amount secured has not increased in contemplation of or since the acquisition of that company; and
     3. the Security or Quasi-Security is removed or discharged within [          ] months of that company becoming a member of the Group;
  6. 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;
  7. any Security or Quasi-Security (existing as at the date of this Agreement) over assets of any member of the Target Group so long as the Security or Quasi-Security is irrevocably removed or discharged by no later than the Closing Date;
  8. any Quasi-Security arising as a result of a disposal which is a Permitted Disposal;
  9. 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";
  10. [          ]; or
  11. 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 [             ] (or its equivalent in other currencies).][[16]](#footnote-16)

["**Permitted Share Issue**" means an issue of:

* 1. ordinary shares by the Parent to the Investors, 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 Parent and (ii) such issue does not lead to a Change of Control of the Parent;
  2. shares by a member of the Group which is a Subsidiary to its immediate Holding Company [for non-cash consideration] where (if the existing shares of the Subsidiary are the subject of the Transaction Security) the newly-issued shares also become subject to the Transaction Security on the same terms;
  3. [share capital by the [Company/Parent] under and in accordance with the Warrant Documents;] or
  4. [                ].]

["**Permitted Transaction**" means:

* 1. any disposal required, Financial Indebtedness incurred, guarantee, indemnity or Security or Quasi-Security given, or other transaction arising, under the Finance Documents;
  2. the solvent liquidation or reorganisation of any member of the Group which is not an Obligor so long as any payments or assets distributed as a result of such liquidation or reorganisation are distributed to other members of the Group;
  3. transactions (other than (i) any sale, lease, license, transfer or other disposal and (ii) the granting or creation of Security or the incurring or permitting to subsist of Financial Indebtedness) conducted in the ordinary course of trading on arm's length terms; or
  4. [any payments or other transactions contemplated by the Structure Memorandum.]]

["**Preference Shares**" means the [       ] shares of £[        ] each of the Parent.]

"**Properties**" means each of the properties listed in [the debenture/relevant document] and any other Real Property acquired by [an Obligor] after the date of this Agreement. A reference to a "Property" is a reference to any of the Properties.

"**Qualifying Lender**" has the meaning given to that term in Clause ‎18 (*Tax gross-up and indemnities*).

"**Quarter Date**" means the last day of a Financial Quarter.

"**Quasi-Security**" has the meaning given to that term in Clause ‎27.15 (*Negative pledge*).

"**Quotation Day**" means, in relation to any period for which an interest rate is to be determined:

* 1. (if the currency is sterling) the first day of that period;
  2. (if the currency is euro) two TARGET Days before the first day of that period; or
  3. (for any other currency) two Business Days before the first day of that period,

unless market practice differs in the Relevant Interbank Market for a currency, in which case the Quotation Day for that currency will be determined by the Agent in accordance with market practice in the Relevant Interbank Market (and if quotations would normally be given by leading banks in the Relevant Interbank Market on more than one day, the Quotation Day will be the last of those days).

["**Real Property**" means:

* 1. any freehold, leasehold or immovable property; and
  2. any buildings, fixtures, fittings, fixed plant or machinery from time to time situated on or forming part of that freehold, leasehold or immovable property.]

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

["**Reduction Date**" means [             ].]

["**Reduction Instalment**" means [             ].]

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

"**Relevant Interbank Market**" means [in relation to euro, the European interbank market and, in relation to any other currency,] the London interbank market.

"**Relevant Jurisdiction**" means, in relation to an Obligor:

* 1. its jurisdiction of incorporation;
  2. any jurisdiction where any asset subject to or intended to be subject to the Transaction Security to be created by it is situated;
  3. any jurisdiction where it conducts its business; and
  4. [the jurisdiction whose laws govern the perfection of any of the Transaction Security Documents entered into by it].

"**Relevant Period**" has the meaning given to that term in Clause ‎26.1 (*Financial definitions*).

"**Reliance Parties**" means the Agent, the Arranger, the Security Agent, the Issuing Bank, each Hedge Counterparty, each Ancillary Lender, each Original Lender and each person which becomes a Lender as part of the primary syndication of the Facilities.

["**Renewal Request**" means a written notice delivered to the Agent in accordance with Clause ‎6.6 (*Renewal of a Letter of Credit*).]

["**Repayment Date**" means a Facility A Repayment Date, a Facility B Repayment Date or a Facility C Repayment Date or the last day of an Interest Period for a Revolving Facility Loan.]

["**Repayment Instalment**" means [             ].]

"**Repeating Representations**" means [each of the representations set out in Clause ‎24.2 (*Status*) to Clause ‎24.7 (*Governing law and enforcement*), Clause ‎24.11 (*No default*), paragraph (g) of Clause ‎24.12 (*No misleading information*), Clause ‎24.13 (*Original Financial Statements*), Clause ‎24.19 (*Ranking*) to Clause ‎24.21 (*Legal and beneficial ownership*) and Clause ‎24.28 (*Centre of main interests and establishments*)].

["**Report on Title**" means a report on title prepared by English legal counsel for the [Company] relating to the Property/ties and addressed to, and/or capable of being relied upon by, the Reliance Parties.]

"**Reports**" means the [Accountants' Report, the Legal Due Diligence Report, the Environmental Report, the Insurance Report, the Market Report, the Pensions Report, the [Certificates of Title]/[Reports on Title], and the Structure Memorandum].

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

"**Resignation Letter**" means a letter substantially in the form set out in Schedule 8 (*Form of Resignation Letter*).

"**Revolving Facility**" means the revolving credit facility made available under this Agreement as described in paragraph (a)(iv) of Clause ‎2.1 (*The Facilities*).

"**Revolving Facility Commitment**" means:

* 1. in relation to an Original Lender, the amount in the Base Currency set opposite its name under the heading "Revolving Facility Commitment" in Part II or Part III of Schedule 1 (*The Original Parties*) and the amount of any other Revolving Facility Commitment transferred to it under this Agreement or assumed by it in accordance with Clause ‎2.2 (*Increase*); and
  2. in relation to any other Lender, the amount in the Base Currency of any Revolving Facility Commitment transferred to it under this Agreement or assumed by it in accordance with Clause ‎2.2 (*Increase*),

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

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

"**Revolving Facility Utilisation**" means a Revolving Facility Loan or a Letter of Credit.

"**Rollover Loan**" means one or more Revolving Facility Loans:

* 1. made or to be made on the same day that:
     1. a maturing Revolving Facility Loan is due to be repaid; or
     2. a demand by the Agent pursuant to a drawing in respect of a Letter of Credit is due to be met;
  2. the aggregate amount of which is equal to or less than the amount of the maturing Revolving Facility Loan or the relevant claim in respect of that Letter of Credit;
  3. in the same currency as the maturing Revolving Facility Loan (unless it arose as a result of the operation of Clause ‎8.2 (*Unavailability of a currency*)) or the relevant claim in respect of that Letter of Credit; and
  4. made or to be made to the same Borrower for the purpose of:
     1. refinancing that maturing Revolving Facility Loan; or
     2. satisfying the relevant claim in respect of that Letter of Credit.

"**Screen Rate**" means:

* 1. in relation to LIBOR, the British Bankers' Association Interest Settlement Rate for the relevant currency and period[; and
  2. in relation to EURIBOR, the percentage rate per annum determined by the Banking Federation of the European Union for the relevant period,]

displayed on the appropriate page of the Reuters screen. If the agreed page is replaced or service ceases to be available, the Agent may specify another page or service displaying the appropriate rate after consultation with the Parent and the Lenders.

"**Secured Parties**" means each Finance Party from time to time party to this Agreement, any Receiver or Delegate, and each agent, arranger and lender from time to time party to the Mezzanine Facility Agreement.

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

"**Selection Notice**" means a notice substantially in the form set out in Part II of Schedule 3 (*Requests and Notices*) given in accordance with Clause ‎15 (*Interest Periods*) in relation to a Term Facility.

["**Senior Management**" means each and all of [        ].]

["**Separate Loan**" has the meaning given to that term in Clause ‎10.2 (*Repayment of Revolving Facility Loans*).]

["**Service Contract**" means a service contract of each member of Senior Management in agreed form.]

"**Shareholders' Agreement**" means the [subscription and shareholders agreement] dated [the same date as this Agreement] and made between [        ].

"**Specified Time**" means a time determined in accordance with Schedule 11 (*Timetables*).

"**Sponsor Affiliate**" means [**SPONSOR MANAGEMENT COMPANY**] ("[**XCo**]"), each of its Affiliates, any trust of which [XCo] or any of its Affiliates is a trustee, any partnership of which [XCo] or any of its Affiliates is a partner and any trust, fund or other entity which is managed by, or is under the control of, [XCo] or any of its Affiliates **provided that** any such trust, fund or other entity which has been established for at least [6] months solely for the purpose of making, purchasing or investing in loans or debt securities and which is managed or controlled independently from all other trusts, funds or other entities managed or controlled by [XCo] or any of its Affiliates which have been established for the primary or main purpose of investing in the share capital of companies shall not constitute a Sponsor Affiliate[[17]](#footnote-17).

"**Structural Intra-Group Loans**" means a loan by the Parent to the Company, [           ] [and loans made by one member of the Group to another member of the Group specified in the Structure Memorandum.]

["**Structure Memorandum**" means the structure paper entitled "[      ]" and dated [      ] describing the Group and the Acquisition and prepared by [   ] in the agreed form and addressed to, and/or capable of being relied upon by, the Reliance Parties.]

"**Subsidiary**" means [a subsidiary within the meaning of section 1159 of the Companies Act 2006]/[a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006]/[               ].

"**Syndication Date**" means [the day which is [  ] Months after the date of this Agreement or such earlier date specified by the relevant Arranger]/[the day on which the relevant Arranger confirms that the primary syndication of the Facilities has been completed].

"**Target**" means [            ], a company incorporated under the laws of [England and Wales] with registered number [           ].

["**Target Assets**" means [        ] [as defined in the Acquisition Agreement].]

["**Target Group**" means the Target and its Subsidiaries.]

["**Target Shares**" means all of the shares in Target [and all warrants [and options] in respect of the share capital of Target].]

"**TARGET2**" means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilises a single shared platform and which was launched on 19 November 2007.

"**TARGET Day**" means any day on which TARGET2 is open for the settlement of payments in euro.

"**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).

"**Term**" means each period determined under this Agreement for which the Issuing Bank is under a liability under a Letter of Credit.

"**Term Facility**" means Facility A, Facility B or Facility C.

"**Term Loan**" means a Facility A Loan, a Facility B Loan or a Facility C Loan.

"**Termination Date**" means:

* 1. in relation to Facility A [            ];
  2. in relation to Facility B [            ];
  3. in relation to Facility C [ ]; and
  4. in relation to the Revolving Facility [          ].

"**Total Commitments**" means the aggregate of the Total Facility A Commitments, the Total Facility B Commitments, the Total Facility C Commitments and the Total Revolving Facility Commitments, being [             ] at the date of this Agreement.

"**Total Facility A Commitments**" means the aggregate of the Facility A Commitments, being [             ] at the date of this Agreement.

"**Total Facility B Commitments**" means the aggregate of the Facility B Commitments, being [          ] at the date of this Agreement.

"**Total Facility C Commitments**" means the aggregate of the Facility C Commitments, being [    ] at the date of this Agreement.

"**Total Revolving Facility Commitments**" means the aggregate of the Revolving Facility Commitments, being [           ] at the date of this Agreement.

["**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 Mezzanine Finance Documents, the Acquisition Documents, the Shareholders' Agreement[, the Loan Note Documents, the Vendor Note Documents and the Constitutional Documents].

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

"**Transaction Security Documents**" means each of the documents listed as being a Transaction Security Document in paragraph 3(h) of Part IA of Schedule 2 (*Conditions Precedent*), each of the documents listed as being a Transaction Security Document in paragraph 2(c) of Part IB of Schedule 2 (*Conditions Precedent*) and any document required to be delivered to the Agent under paragraph 13 of Part II of Schedule 2 (*Conditions Precedent*) together with any other document entered into by any Obligor creating or expressed to create any Security over all or any part of its assets in respect of the obligations of any of the Obligors under any of the Finance Documents or the Mezzanine Finance Documents.

"**Transfer Certificate**" means a certificate substantially in the form set out in Schedule 5 (*Form of Transfer Certificate*) or any other form agreed between the Agent and the Parent.

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

* 1. the proposed Transfer Date specified in the relevant Assignment Agreement or Transfer Certificate; and
  2. the date on which the Agent executes the relevant Assignment Agreement or Transfer Certificate.

"**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 an Obligor under the Finance Documents.

"**Utilisation**" means a Loan or a Letter of Credit.

"**Utilisation Date**" means the date of a Utilisation, being the date on which the relevant Loan is to be made or the relevant Letter of Credit is to be issued.

"**Utilisation Request**" means a notice substantially in the relevant form set out in Part I of Schedule 3 (*Requests and Notices*).

"**VAT**" means value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature.

"**Vendor**" means [            ].

["**Vendor Note Documents**" means the Vendor Notes and the Vendor Note Instrument in agreed form and any documents entered into pursuant to any of them.]

["**Vendor Note Instrument**" means the instrument pursuant to which the Vendor Notes are, or are to be, constituted.]

["**Vendor Notes**" means the £[          ] [unsecured subordinated] loan notes due [      ] of the Parent.]

["**Warrant Documents**" means the [warrant instrument dated [the same date as this Agreement] between the Parent and [              ] (as [original Mezzanine Lender]) in agreed form and any other document or agreement entered into or executed in connection with that instrument or the rights set out in that instrument.]

## Construction[[18]](#footnote-18)

### Unless a contrary indication appears, a reference in this Agreement to:

#### the "**Agent**", the "**Arranger**", any "**Finance Party**", any "**Hedge Counterparty**", any "**Issuing Bank**", any "**Lender**", any "**Obligor**", 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 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;

#### a document in "**agreed form**" is a document which is previously agreed in writing by or on behalf of the Parent and the Agent or, if not so agreed, is in the form specified by the Agent;

#### "**assets**" includes present and future properties, revenues and rights of every description;

#### 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;

#### "**guarantee**" means (other than in Clause ‎23 (*Guarantee and Indemnity*)) 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;

#### "**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;

#### a Lender's "**participation**" in relation to a Letter of Credit, shall be construed as a reference to the relevant amount that is or may be payable by a Lender in relation to that Letter of Credit;

#### a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);

#### 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;

#### a provision of law is a reference to that provision as amended or re-enacted; and

#### a time of day is a reference to London time.

### Section, Clause and Schedule headings are for ease of reference only.

### 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.

### A Borrower providing "**cash cover**" for a Letter of Credit or an Ancillary Facility means a Borrower paying an amount in the currency of the Letter of Credit (or, as the case may be, Ancillary Facility) to an interest-bearing account in the name of the Borrower and the following conditions being met:

#### the account is with the Security Agent or with the Issuing Bank or Ancillary Lender for which that cash cover is to be provided;

#### subject to paragraph (b) of Clause ‎7.5 (*Cash Cover by Borrower*), until no amount is or may be outstanding under that Letter of Credit or Ancillary Facility, withdrawals from the account may only be made to pay a Finance Party amounts due and payable to it under this Agreement in respect of that Letter of Credit or Ancillary Facility; and

#### the Borrower has executed a security document over that account, in form and substance satisfactory to the Security Agent or the Issuing Bank or Ancillary Lender with which that account is held, creating a first ranking security interest over that account.

### 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 [remedied or waived]/[waived].[[19]](#footnote-19)

### A Borrower "**repaying**" or "**prepaying**" a Letter of Credit or Ancillary Outstandings means:

#### that Borrower providing cash cover for that Letter of Credit or in respect of the Ancillary Outstandings;

#### the maximum amount payable under the Letter of Credit or Ancillary Facility being reduced or cancelled in accordance with its terms; or

#### the Issuing Bank or Ancillary Lender being satisfied that it has no further liability under that Letter of Credit or Ancillary Facility,

and the amount by which a Letter of Credit is, or Ancillary Outstandings are, repaid or prepaid under paragraphs (f)(i) and (f)(ii) above is the amount of the relevant cash cover or reduction.

### An amount borrowed includes any amount utilised by way of Letter of Credit or under an Ancillary Facility.

### A Lender funding its participation in a Utilisation includes a Lender participating in a Letter of Credit.

### An outstanding amount of a Letter of Credit at any time is the maximum amount that is or may be payable by the relevant Borrower in respect of that Letter of Credit at that time.

## Third party rights

[A person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Agreement.]/

### [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.

### Notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.]

**SECTION 2**

**THE FACILITIES**

# The Facilities

## The Facilities

### Subject to the terms of this Agreement, the Lenders make available:

#### a Base Currency term loan facility in an aggregate amount equal to the Total Facility A Commitments;

#### a Base Currency term loan facility in an aggregate amount equal to the Total Facility B Commitments;

#### a Base Currency term loan facility in an aggregate amount equal to the Total Facility C Commitments; and

#### a multicurrency revolving credit facility in an aggregate amount the Base Currency Amount of which is equal to the Total Revolving Facility Commitments.

### Each Term Facility will be available to the relevant Borrowers as specified in the [Funds Flow Statement]/[Structure Memorandum] and the Revolving Facility will be available to [all the Borrowers].

### Subject to the terms of this Agreement and the Ancillary Documents, an Ancillary Lender may make available an Ancillary Facility to any of the Borrowers in place of all or part of its Commitment under the Revolving Facility.

## Increase

### The Parent may by giving prior notice to the Agent [by no later than the date falling [     ] Business Days] after the effective date of a cancellation of:

#### the Available Commitments of a Defaulting Lender in accordance with Clause ‎11.7 (*Right of cancellation in relation to a Defaulting Lender*); or

#### the Commitments of a Lender in accordance with Clause ‎11.1 (*Illegality*),

request that the Total Commitments be increased (and the Total Commitments under that Facility shall be so increased) in an aggregate amount in the Base Currency of up to the amount of the Available Commitments or Commitments so cancelled as follows:

#### the increased Commitments will be assumed by one or more Lenders or other banks, financial institutions, trusts, funds or other entities (each an "**Increase Lender**") selected by the Parent (each of which shall not be a Sponsor Affiliate or a member of the Group and which is further acceptable to the Agent (acting reasonably)) and each of which confirms its willingness to assume and does assume all the obligations of a Lender corresponding to that part of the increased Commitments which it is to assume, as if it had been an Original Lender;

#### each of the Obligors and any Increase Lender shall assume obligations towards one another and/or acquire rights against one another as the Obligors and the Increase Lender would have assumed and/or acquired had the Increase Lender been an Original Lender;[[20]](#footnote-20)

#### each Increase Lender shall become a Party as a "Lender" and any Increase Lender and each of the other Finance Parties shall assume obligations towards one another and acquire rights against one another as that Increase Lender and those Finance Parties would have assumed and/or acquired had the Increase Lender been an Original Lender;

#### the Commitments of the other Lenders shall continue in full force and effect; and

#### any increase in the Total Commitments shall take effect on the date specified by the Parent in the notice referred to above or any later date on which the conditions set out in paragraph (b) below are satisfied.

### An increase in the Total Commitments will only be effective on:

#### the execution by the Agent of an Increase Confirmation from the relevant Increase Lender;

#### in relation to an Increase Lender which is not a Lender immediately prior to the relevant increase:

##### the Increase Lender entering into the documentation required for it to accede as a party to the Intercreditor Agreement; and

##### the performance by the Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assumption of the increased Commitments by that Increase Lender, the completion of which the Agent shall promptly notify to the Parent, the Increase Lender and the Issuing Bank; and

#### in the case of an increase in the Total Revolving Facility Commitments, the Issuing Bank consenting to that increase.

### Each Increase Lender, by executing the Increase Confirmation, 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 increase becomes effective.

### [[Unless the Agent otherwise agrees or the increased Commitment is assumed by an existing Lender,] the Parent shall, on the date upon which the increase takes effect, [pay to the Agent (for its own account) a fee of [        ] and the Parent shall] promptly on demand pay the Agent and the Security Agent the amount of all costs and expenses (including legal fees) reasonably incurred by either of them and, in the case of the Security Agent, by any Receiver or Delegate in connection with any increase in Commitments under this Clause ‎2.2.]

### [The Parent may pay to the Increase Lender a fee in the amount and at the times agreed between the Parent and the Increase Lender in a Fee Letter.]

### Clause ‎29.4 (*Limitation of responsibility of Existing Lenders*) shall apply *mutatis mutandis* in this Clause ‎2.2 in relation to an Increase Lender as if references in that Clause to:

#### an "**Existing Lender**" were references to all the Lenders immediately prior to the relevant increase;

#### the "**New Lender**" were references to that "**Increase Lender**"; and

#### a "**re-transfer**" and "**re-assignment**" were references to respectively a "**transfer**" and "**assignment**".

## Finance Parties' rights and obligations

### 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.

### The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor shall be a separate and independent debt.

### A Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.

## Obligors' Agent

### Each Obligor (other than the Parent) by its execution of this Agreement or an Accession Deed irrevocably appoints the Parent to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:

#### the Parent on its behalf to supply all information concerning itself contemplated by this Agreement to the Finance Parties and to give all notices and instructions (including, in the case of a Borrower, Utilisation Requests), to execute on its behalf any Accession Deed, to make such agreements and to effect the relevant amendments, supplements and variations capable of being given, made or effected by any Obligor notwithstanding that they may affect the Obligor, without further reference to or the consent of that Obligor; and

#### each Finance Party to give any notice, demand or other communication to that Obligor pursuant to the Finance Documents to the Parent,

and in each case the Obligor shall be bound as though the Obligor itself had given the notices and instructions (including, without limitation, any Utilisation Requests) or executed or made the agreements or effected the amendments, supplements or variations, or received the relevant notice, demand or other communication.

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

# Purpose

## Purpose

### Each Borrower shall apply all amounts borrowed by it under a Term Facility towards:

#### payment to the Vendor of the purchase price for the [Target Shares] [and] [Target Assets] under the Acquisition Agreement; and

#### payment of the Acquisition Costs (other than periodic fees)[; and

#### refinancing certain Financial Indebtedness of the Target and its Subsidiaries to third parties],

as described in the Funds Flow Statement.

### [Each Borrower shall apply all amounts borrowed by it under the Revolving Facility, any Letter of Credit and any utilisation of any Ancillary Facility towards the general corporate[[21]](#footnote-21) and working capital purposes of the Group (but not towards [acquisitions of companies, businesses or undertakings or] prepayment of any Term Loan or, in the case of any utilisation of any Ancillary Facility, towards prepayment of any Revolving Facility Utilisation).]

## Monitoring

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

# Conditions Of Utilisation

## Initial conditions precedent

The Lenders will only be obliged to comply with Clause ‎5.4 (*Lenders' participation*) in relation to any Utilisation if on or before the Utilisation Date for that Utilisation, the Agent has received all of the documents and other evidence listed in Part IA and Part IB of Schedule 2 (*Conditions precedent*) in form and substance satisfactory to the Agent. The Agent shall notify the Parent and the Lenders promptly upon being so satisfied.

## Further conditions precedent

Subject to Clause 4.1 *(Initial Conditions Precedent),* the Lenders will only be obliged to comply with Clause ‎5.4 (*Lenders' participation*) [in relation to a Utilisation other than one to which Clause 4.5 (*Utilisations during the Certain Funds Period*) applies], if on the date of the Utilisation Request and on the proposed Utilisation Date:

### [other than in the case of a Rollover Loan]/[in the case of a Rollover Loan, no Event of Default is continuing or would result from the proposed Loan, and in the case of any other Utilisation,] no Default is continuing or would result from the proposed Utilisation; and

### in relation to any Utilisation on the Closing Date, all the representations and warranties in Clause ‎24 (*Representations*) or, in relation to any other Utilisation, the Repeating Representations to be made by each Obligor are true [in all material respects].

## Conditions relating to Optional Currencies

### A currency will constitute an Optional Currency in relation to a Revolving Facility Utilisation if:

#### it is readily available in the amount required and freely convertible into the Base Currency in the Relevant Interbank Market on the Quotation Day and the Utilisation Date for that Utilisation; and

#### it [is[ ] or] has been approved by the Agent (acting on the instructions of all the Lenders) on or prior to receipt by the Agent of the relevant Utilisation Request for that Utilisation.

### If the Agent has received a written request from the Parent for a currency to be approved under paragraph (a)(ii) above, the Agent will confirm to the Parent by the Specified Time:

#### whether or not the Lenders have granted their approval; and

#### if approval has been granted, the minimum amount for any subsequent Utilisation in that currency.

## Maximum number of Utilisations

### A Borrower (or the Parent) may not deliver a Utilisation Request if as a result of the proposed Utilisation:

#### [       ] or more Term Loans would be outstanding; or

#### [       ] or more Revolving Facility Utilisations would be outstanding.

### A Borrower (or the Parent) may not request that a Facility A Loan be divided if, as a result of the proposed division, [        ] or more Facility A Loans would be outstanding.

### [A Borrower (or the Parent) may not request that a Facility B Loan or a Facility C Loan be divided.]

### Any Loan made by a single Lender under Clause ‎8.2 (*Unavailability of a currency*) shall not be taken into account in this Clause ‎4.4.

### [Any Separate Loan shall not be taken into account in this Clause ‎4.4.]

### A Borrower (or the Parent) may not request that a Letter of Credit be issued under the Revolving Facility if, as a result of the proposed Utilisation, [         ] or more Letters of Credit would be outstanding.

## [Utilisations during the Certain Funds Period

### Subject to Clause ‎4.1 (*Initial conditions precedent*), during the Certain Funds Period, the Lenders will only be obliged to comply with Clause ‎5.4 (*Lenders' participation*) in relation to a Certain Funds Utilisation if, on the date of the Utilisation Request and on the proposed Utilisation Date:

#### no Major Default is continuing or would result from the proposed Utilisation; and

#### all the Major Representations are true [in all material respects].

### During the Certain Funds Period (save in circumstances where, pursuant to paragraph (a) above, a Lender is not obliged to comply with Clause ‎5.4 (*Lenders' participation*) and subject as provided in Clause ‎11.1 (*Illegality*) and Clause 12.1 (*Exit*)), none of the Finance Parties shall be entitled to:

#### cancel any of its Commitments to the extent to do so would prevent or limit the making of a Certain Funds Utilisation;

#### rescind, terminate or cancel this Agreement or any of the [Term Facilities] or exercise any similar right or remedy or make or enforce any claim under the Finance Documents it may have to the extent to do so would prevent or limit the making of a Certain Funds Utilisation;

#### refuse to participate in the making of a Certain Funds Utilisation;

#### exercise any right of set-off or counterclaim in respect of a Utilisation to the extent to do so would prevent or limit the making of a Certain Funds Utilisation; or

#### cancel, accelerate or cause repayment or prepayment of any amounts owing under this Agreement or under any other Finance Document to the extent to do so would prevent or limit the making of a Certain Funds Utilisation,

**provided that** immediately upon the expiry of the Certain Funds Period all such rights, remedies and entitlements shall be available to the Finance Parties notwithstanding that they may not have been used or been available for use during the Certain Funds Period.]

**SECTION 3**

**UTILISATION**

# Utilisation - Loans

## Delivery of a Utilisation Request

A Borrower (or the Parent on its behalf) may utilise a Facility by delivery to the Agent of a duly completed Utilisation Request not later than the Specified Time.

## Completion of a Utilisation Request for Loans

### Each Utilisation Request for a Loan is irrevocable and will not be regarded as having been duly completed unless:

#### it identifies the Facility to be utilised;

#### the proposed Utilisation Date is a Business Day within the Availability Period applicable to that Facility;

#### the currency and amount of the Utilisation comply with Clause ‎5.3 (*Currency and amount*); and

#### the proposed Interest Period complies with Clause ‎15 (*Interest Periods*).

### Multiple Utilisations may be requested in a Utilisation Request where the proposed Utilisation Date is the Closing Date. Only one Utilisation may be requested in each subsequent Utilisation Request.

## Currency and amount

### The currency specified in a Utilisation Request must be:

#### in relation to a Term Facility, the Base Currency; and

#### in relation to the Revolving Facility, the Base Currency or an Optional Currency.

### The amount of the proposed Utilisation must be:

#### an amount equal to [   ] for Facility A or, if less, the Available Facility; or

#### an amount equal to [   ] for Facility B or, if less, the Available Facility; or

#### an amount equal to [   ] for Facility C or, if less, the Available Facility; or

#### for the Revolving Facility:

##### if the currency selected is the Base Currency, a minimum of [    ] or, if less, the Available Facility; or

##### [if the currency selected is [           ], a minimum of [    ] or, if less, the Available Facility; or]

##### if the currency selected is an Optional Currency [other than [    ]],the minimum amount specified by the Agent pursuant to paragraph (b)(ii) of Clause ‎4.3 (*Conditions relating to Optional Currencies*) or, if less, the Available Facility.

## Lenders' participation

### If the conditions set out in this Agreement have been met, and subject to Clause ‎10.2 (*Repayment of Revolving Facility Loans*), each Lender shall make its participation in each Loan available by the Utilisation Date through its Facility Office.

### The amount of each Lender's participation in each Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to making the Loan.

### The Agent shall determine the Base Currency Amount of each Revolving Facility Loan which is to be made in an Optional Currency and notify each Lender of the amount, currency and the Base Currency Amount of each Loan, the amount of its participation in that Loan and, if different, the amount of that participation to be made available in cash by the Specified Time.

## Limitations on Utilisations

### The Revolving Facility shall not be utilised unless each Term Facility has been utilised.

### A Term Facility may only be utilised on the Closing Date and only if all of the Term Facilities are utilised *pro rata* on that date.

### The maximum aggregate Base Currency Amount of all Letters of Credit shall not exceed [          ].

### The maximum aggregate amount of the Ancillary Commitments of all the Lenders shall not at any time exceed [         ].

## Cancellation of Commitment

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

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

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

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

## [Clean down

The Parent shall ensure that the aggregate of the Base Currency Amounts of:

### all Revolving Facility Loans;

### [any cash loan element of the Ancillary Outstandings under all the Ancillary Facilities]; and

### (to the extent not included within paragraph[s] (a) [and (b)] above), any cash loans covered by a Letter of Credit or a letter of credit or guarantee issued under an Ancillary Facility as contemplated by the definition of Permitted Financial Indebtedness; **LESS**

### any amount of cash (other than cash held in a Holding Account or Mandatory Prepayment Account) or Cash Equivalent Investments held by wholly-owned members of the Group,

(as confirmed in a certificate signed by [two authorised signatories]/[a director] of the Parent provided to the Agent within [   ] Business Days after the end of each [Financial Year]/[six-month period]) shall not exceed [   ] for a period of not less than [   ] successive days in [each of its Financial Years]/[any six-month period]. Not less than [ ] month[s] shall elapse between two such periods.]

# Utilisation - Letters Of Credit

## The Revolving Facility

### The Revolving Facility may be utilised by way of Letters of Credit.

### Other than Clause ‎5.5 (*Limitations on Utilisations*) and Clause ‎5.7 (*Clean down*), Clause ‎5 (*Utilisation - Loans*) does not apply to utilisations by way of Letters of Credit.

## Delivery of a Utilisation Request for Letters of Credit

A Borrower (or the Parent on its behalf) may request a Letter of Credit to be issued by delivery to the Agent of a duly completed Utilisation Request not later than the Specified Time.

## Completion of a Utilisation Request for Letters of Credit

Each Utilisation Request for a Letter of Credit is irrevocable and will not be regarded as having been duly completed unless:

### it specifies that it is for a Letter of Credit;

### it identifies the Borrower of the Letter of Credit;

### it identifies the Issuing Bank which has agreed to issue the Letter of Credit;

### the proposed Utilisation Date is a Business Day within the Availability Period applicable to the Revolving Facility;

### the currency and amount of the Letter of Credit comply with Clause ‎6.4 (*Currency and amount*);

### the form of Letter of Credit is attached;

### [the Expiry Date of the Letter of Credit falls on or before the Termination Date in relation to the Revolving Facility;]

### [the Term of the Letter of Credit is [   ] Months or less;]

### the delivery instructions for the Letter of Credit are specified; and

### [the identity of the beneficiary of the Letter of Credit is [   ] or any other beneficiary approved by [all the Lenders/the Majority Lenders].]

## Currency and amount

### The currency specified in a Utilisation Request must be [ ]/[the Base Currency or an Optional Currency].

### Subject to paragraph (c) of Clause ‎5.5 (*Limitations on Utilisations*), the amount of the proposed Letter of Credit must be an amount whose Base Currency Amount is not more than the Available Facility and which is:

#### [if the currency selected is the Base Currency, a minimum of [      ] or, if less, the Available Facility; or]

#### [if the currency selected is [         ], a minimum of [        ] or, if less, the Available Facility; or]

#### if the currency selected is an Optional Currency [other than [       ]], the minimum amount specified by the Agent pursuant to paragraph (b)(ii) of Clause ‎4.3 (*Conditions relating to Optional Currencies*) or, if less, the Available Facility.

## Issue of Letters of Credit

### If the conditions set out in this Agreement have been met, the Issuing Bank shall issue the Letter of Credit on the Utilisation Date.

### Subject to Clause ‎4.1(*Initial Conditions Precedent*),the Issuing Bank will only be obliged to comply with paragraph (a) above [in relation to a Letter of Credit other than one to which paragraph (c) below applies], if on the date of the Utilisation Request [or Renewal Request] and on the proposed Utilisation Date:

#### [other than in the case of a Letter of Credit to be renewed in accordance with Clause ‎6.6 (*Renewal of a Letter of Credit*),] [in the case of a Letter of Credit to be renewed in accordance with Clause ‎6.6 (*Renewal of a Letter of Credit*) no Event of Default is continuing or would result from the proposed Utilisation and, in the case of any other Utilisation,] no Default is continuing or would result from the proposed Utilisation; and

#### in relation to any Utilisation on the Closing Date, all the representations and warranties in Clause ‎24 (*Representations*) or, in relation to any other Utilisation, the Repeating Representations to be made by each Obligor are true [in all material respects].

### [Subject to Clause ‎4.1 (*Initial conditions precedent*), during the Certain Funds Period, the Issuing Bank will only be obliged to comply with paragraph (a) above in relation to a Letter of Credit which is a Certain Funds Utilisation, if on the date of the Utilisation Request and on the proposed Utilisation Date:

#### no Major Default is continuing or would result from the issue of the proposed Letter of Credit; and

#### all the Major Representations are true [in all material respects].

### During the Certain Funds Period (save in circumstances where, pursuant to paragraph (c) above, the Issuing Bank is not obliged to comply with paragraph (a) above and subject as provided in Clause 11.2 (*Illegality in relation to Issuing Bank*) and Clause 12.1 (*Exit*)), the Issuing Bank shall not be entitled to:

#### rescind, terminate or cancel this Agreement or the Revolving Facility or exercise any similar right or remedy or make or enforce any claim under the Finance Documents it may have to the extent to do so would prevent or limit the issuing of a Letter of Credit which is a Certain Funds Utilisation;

#### refuse to issue a Letter of Credit which is a Certain Funds Utilisation;

#### exercise any right of set-off or counterclaim in respect of a Letter of Credit to the extent to do so would prevent or limit the making of a Letter of Credit which is a Certain Funds Utilisation; or

#### cause repayment or prepayment of any amounts owing under this Agreement or under any other Finance Document to the extent to do so would prevent or limit the making of a Letter of Credit which is a Certain Funds Utilisation,

### **provided that** immediately upon the expiry of the Certain Funds Period all such rights, remedies and entitlements shall be available to the Issuing Bank notwithstanding that they may not have been used or been available for use during the Certain Funds Period.]

### The amount of each Lender's participation in each Letter of Credit will be equal to the proportion borne by its Available Commitment to the Available Facility (in each case in relation to the Revolving Facility) immediately prior to the issue of the Letter of Credit.

### The Agent shall determine the Base Currency Amount of each Letter of Credit which is to be issued in an Optional Currency and shall notify the Issuing Bank and each Lender of the details of the requested Letter of Credit and its participation in that Letter of Credit by the Specified Time.

## [Renewal of a Letter of Credit

### A Borrower (or the Parent on its behalf) may request that any Letter of Credit issued on behalf of that Borrower be renewed by delivery to the Agent of a Renewal Request in substantially similar form to a Utilisation Request for a Letter of Credit by the Specified Time.

### The Finance Parties shall treat any Renewal Request in the same way as a Utilisation Request for a Letter of Credit except that the conditions set out in paragraph (f) of Clause ‎6.3 (*Completion of a Utilisation Request for Letters of Credit*) shall not apply.

### The terms of each renewed Letter of Credit shall be the same as those of the relevant Letter of Credit immediately prior to its renewal, except that:

#### its amount may be less than the amount of the Letter of Credit immediately prior to its renewal; and

#### its Term shall start on the date which was the Expiry Date of the Letter of Credit immediately prior to its renewal, and shall end on the proposed Expiry Date specified in the Renewal Request.

### If the conditions set out in this Agreement have been met, the Issuing Bank shall amend and re-issue any Letter of Credit pursuant to a Renewal Request.]

## Reduction of a Letter of Credit

### If, on the proposed Utilisation Date of a Letter of Credit, any of the Lenders under the Revolving Facility is a Non-Acceptable L/C Lender and:

#### that Lender has failed to provide cash collateral to the Issuing Bank in accordance with Clause ‎7.4 (*Cash collateral by Non-Acceptable L/C Lender*); and

#### either:

##### the Issuing Bank has not required the relevant Borrower to provide cash cover pursuant to Clause ‎7.5 (*Cash cover by Borrower*); or

##### the relevant Borrower has failed to provide cash cover to the Issuing Bank in accordance with Clause ‎7.5 (*Cash cover by Borrower*),

the Issuing Bank may reduce the amount of that Letter of Credit by an amount equal to the amount of the participation of that Non-Acceptable L/C Lender in respect of that Letter of Credit and that Non-Acceptable L/C Lender shall be deemed not to have any participation (or obligation to indemnify the Issuing Bank) in respect of that Letter of Credit for the purposes of the Finance Documents.

### The Issuing Bank shall notify the Agent of each reduction made pursuant to this Clause ‎6.7.

### This Clause 6.7 shall not affect the participation of each other Lender in that Letter of Credit.

## Revaluation of Letters of Credit

### If any Letters of Credit are denominated in an Optional Currency, the Agent shall [at six monthly intervals after the date of this Agreement,]/[at six monthly intervals after the date of the Letter of Credit],/[[ ] days after the end of [each of its Financial Years]/[each half of each of its Financial Years]] recalculate the Base Currency Amount of each Letter of Credit by notionally converting into the Base Currency the outstanding amount of that Letter of Credit on the basis of the Agent's Spot Rate of Exchange on the date of calculation.

### The Parent shall, if requested by the Agent within [     ] days of any calculation under paragraph (a) above, ensure that within three Business Days sufficient Revolving Facility Utilisations are prepaid to prevent the Base Currency Amount of the Revolving Facility Utilisations exceeding the Total Revolving Facility Commitments (after deducting the total Ancillary Commitments) following any adjustment to a Base Currency Amount under paragraph (a) of this Clause ‎6.8.

# Letters Of Credit

## Immediately payable

If a Letter of Credit or any amount outstanding under a Letter of Credit is expressed to be immediately payable, the Borrower that requested (or on behalf of which the Parent requested) the issue of that Letter of Credit shall repay or prepay that amount immediately.

## Claims under a Letter of Credit

### Each Borrower irrevocably and unconditionally authorises the Issuing Bank to pay any claim made or purported to be made under a Letter of Credit requested by it (or requested by the Parent on its behalf) and which appears on its face to be in order (in this Clause ‎7, a "**claim**").

### Each Borrower shall immediately on demand pay to the Agent for the Issuing Bank an amount equal to the amount of any claim.

### Each Borrower acknowledges that the Issuing Bank:

#### is not obliged to carry out any investigation or seek any confirmation from any other person before paying a claim; and

#### deals in documents only and will not be concerned with the legality of a claim or any underlying transaction or any available set-off, counterclaim or other defence of any person.

### The obligations of a Borrower under this Clause ‎7 will not be affected by:

#### the sufficiency, accuracy or genuineness of any claim or any other document; or

#### any incapacity of, or limitation on the powers of, any person signing a claim or other document.

## Indemnities

### Each Borrower shall immediately on demand indemnify the Issuing Bank against any cost, loss or liability incurred by the Issuing Bank (otherwise than by reason of the Issuing Bank's gross negligence or wilful misconduct) in acting as the Issuing Bank under any Letter of Credit requested by (or on behalf of) that Borrower.

### Each Lender shall (according to its L/C Proportion) immediately on demand indemnify the Issuing Bank against any cost, loss or liability incurred by the Issuing Bank (otherwise than by reason of the Issuing Bank's gross negligence or wilful misconduct) in acting as the Issuing Bank under any Letter of Credit (unless the Issuing Bank has been reimbursed by an Obligor pursuant to a Finance Document).

### [If any Lender is not permitted (by its constitutional documents or any applicable law) to comply with paragraph (b) above, then that Lender will not be obliged to comply with paragraph (b) and shall instead be deemed to have taken, on the date the Letter of Credit is issued (or if later, on the date the Lender's participation in the Letter of Credit is transferred or assigned to the Lender in accordance with the terms of this Agreement), an undivided interest and participation in the Letter of Credit in an amount equal to its L/C Proportion of that Letter of Credit. On receipt of demand from the Agent, that Lender shall pay to the Agent (for the account of the Issuing Bank) an amount equal to its L/C Proportion of the amount demanded.]

### The Borrower which requested (or on behalf of which the Parent requested) a Letter of Credit shall immediately on demand reimburse any Lender for any payment it makes to the Issuing Bank under this Clause ‎7.3 in respect of that Letter of Credit.

### The obligations of each Lender or Borrower under this Clause are continuing obligations and will extend to the ultimate balance of sums payable by that Lender or Borrower in respect of any Letter of Credit, regardless of any intermediate payment or discharge in whole or in part.

### The obligations of any Lender or Borrower under this Clause will not be affected by any act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under this Clause (without limitation and whether or not known to it or any other person) including:

#### any time, waiver or consent granted to, or composition with, any Obligor, any beneficiary under a Letter of Credit or any other person;

#### the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor or any member of the Group;

#### the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor, any beneficiary under a Letter of Credit or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;

#### any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor, any beneficiary under a Letter of Credit or any other person;

#### any amendment (however fundamental) or replacement of a Finance Document, any Letter of Credit or any other document or security[[22]](#footnote-22);

#### any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document, any Letter of Credit or any other document or security; or

#### any insolvency or similar proceedings.

## Cash collateral by Non-Acceptable L/C Lender[[23]](#footnote-23)

### If, at any time, a Lender under the Revolving Facility is a Non-Acceptable L/C Lender, the Issuing Bank may, by notice to that Lender, request that Lender to pay and that Lender shall pay, on or prior to the date falling [       ] Business Days after the request by the Issuing Bank, an amount equal to that Lender's L/C Proportion of the outstanding amount of a Letter of Credit and in the currency of that Letter of Credit to an interest-bearing account held in the name of that Lender with the Issuing Bank.

### The Non-Acceptable L/C Lender to whom a request has been made in accordance with paragraph (a) above shall enter into a security document or other form of collateral arrangement over the account, in form and substance satisfactory to the Issuing Bank, as collateral for any amounts due and payable under the Finance Documents by that Lender to the Issuing Bank in respect of that Letter of Credit.

### Until no amount is or may be outstanding under that Letter of Credit, withdrawals from the account may only be made to pay to the Issuing Bank amounts due and payable to the Issuing Bank by the Non-Acceptable L/C Lender under the Finance Documents in respect of that Letter of Credit.

### Each Lender under the Revolving Facility shall notify the Agent and the Parent:

#### on the date of this Agreement or on any later date on which it becomes such a Lender in accordance with Clause ‎2.2 (*Increas*e) or Clause ‎29 (*Changes to the Lenders*) whether it is a Non-Acceptable L/C Lender; and

#### as soon as practicable upon becoming aware of the same, that it has become a Non-Acceptable L/C Lender,

and an indication in Schedule 1 (*The Original Parties*), in a Transfer Certificate, in an Assignment Agreement or in an Increase Confirmation to that effect will constitute a notice under paragraph (d)(i) to the Agent and, upon delivery in accordance with Clause ‎29.7 (*Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Parent)*, to the Parent.

### Any notice received by the Agent pursuant to paragraph (d) above shall constitute notice to the Issuing Bank of that Lender's status and the Agent shall, upon receiving each such notice, promptly notify the Issuing Bank of that Lender's status as specified in that notice.

### If a Lender who has provided cash collateral in accordance with this Clause ‎7.4:

#### ceases to be a Non-Acceptable L/C Lender; and

#### no amount is due and payable by that Lender in respect of a Letter of Credit,

that Lender may, at any time it is not a Non-Acceptable L/C Lender, by notice to the Issuing Bank request that an amount equal to the amount of the cash provided by it as collateral in respect of that Letter of Credit (together with any accrued interest) standing to the credit of the relevant account held with the Issuing Bank be returned to it and the Issuing Bank shall pay that amount to the Lender within [        ] Business Days after the request from the Lender (and shall cooperate with the Lender in order to procure that the relevant security or collateral arrangement is released and discharged).

## Cash cover by Borrower

### If a Lender which is a Non-Acceptable L/C Lender fails to provide cash collateral (or notifies the Issuing Bank that it will not provide cash collateral) in accordance with Clause ‎7.4 (*Cash collateral by Non-Acceptable L/C Lender*) and the Issuing Bank notifies the Obligors' Agent (with a copy to the Agent) that it requires the Borrower of the relevant Letter of Credit or proposed Letter of Credit to provide cash cover to an account with the Issuing Bank in an amount equal to that Lender's L/C Proportion of the outstanding amount of that Letter of Credit and in the currency of that Letter of Credit then that Borrower shall do so within [ ] Business Days after the notice is given.

### Notwithstanding paragraph (d) of Clause ‎1.2 (*Construction*), the Issuing Bank may agree to the withdrawal of amounts up to the level of that cash cover from the account if:

#### it is satisfied that the relevant Lender is no longer a Non-Acceptable L/C Lender; or

#### the relevant Lender's obligations in respect of the relevant Letter of Credit are transferred to a New Lender in accordance with the terms of this Agreement; or

#### an Increase Lender has agreed to undertake the obligations in respect of the relevant Lender's L/C Proportion of the Letter of Credit.

### To the extent that a Borrower has complied with its obligations to provide cash cover in accordance with this Clause ‎7.5, the relevant Lender's L/C Proportion in respect of that Letter of Credit will remain (but that Lender's obligations in relation to that Letter of Credit may be satisfied in accordance with paragraph (d)(ii) of Clause ‎1.2 (*Construction*)). However, the relevant Borrower's obligation to pay any Letter of Credit fee in relation to the relevant Letter of Credit to the Agent (for the account of that Lender) in accordance with paragraph (b) of Clause ‎17.5 (*Fees payable in respect of Letters of Credit*) will be reduced proportionately as from the date on which it complies with that obligation to provide cash cover (and for so long as the relevant amount of cash cover continues to stand as collateral).

### The relevant Issuing Bank shall promptly notify the Agent of the extent to which a Borrower provides cash cover pursuant to this Clause ‎7.5 and of any change in the amount of cash cover so provided.

## Rights of contribution

No Obligor will be entitled to any right of contribution or indemnity from any Finance Party in respect of any payment it may make under this Clause ‎7.

# Optional Currencies

## Selection of currency

A Borrower (or the Parent on its behalf) shall select the currency of a Revolving Facility Utilisation in a Utilisation Request.

## Unavailability of a currency

If before the Specified Time on any Quotation Day:

### a Lender notifies the Agent that the Optional Currency requested is not readily available to it in the amount required; or

### a Lender notifies the Agent that compliance with its obligation to participate in a Loan in the proposed Optional Currency would contravene a law or regulation applicable to it,

the Agent will give notice to the relevant Borrower [or Parent] to that effect by the Specified Time on that day. In this event, any Lender that gives notice pursuant to this Clause ‎8.2 will be required to participate in the Loan in the Base Currency (in an amount equal to that Lender's proportion of the Base Currency Amount, or in respect of a Rollover Loan, an amount equal to that Lender's proportion of the Base Currency Amount of the Rollover Loan that is due to be made) and its participation will be treated as a separate Loan denominated in the Base Currency during that Interest Period.

## Agent's calculations

Each Lender's participation in a Loan will be determined in accordance with paragraph (b) of Clause ‎5.4 (*Lenders' participation*).

# Ancillary Facilities

## Type of Facility

An Ancillary Facility may be by way of:

### an overdraft facility;

### a guarantee, bonding, documentary or stand-by letter of credit facility;

### a short term loan facility;

### a derivatives facility;

### a foreign exchange facility; or

### any other facility or accommodation required in connection with the business of the Group and which is agreed by the Parent with an Ancillary Lender.

## Availability

### If the Parent and a Lender agree and except as otherwise provided in this Agreement, the Lender may provide an Ancillary Facility on a bilateral basis in place of [all or part of] that Lender's unutilised Revolving Facility Commitment (which shall (except for the purposes of determining the Majority Lenders and of Clause ‎41.4 (*Replacement of Lender*)) be reduced by the amount of the Ancillary Commitment under that Ancillary Facility).

### An Ancillary Facility shall not be made available unless, not later than [   ] Business Days prior to the Ancillary Commencement Date for an Ancillary Facility, the Agent has received from the Parent:

#### a notice in writing of the establishment of an Ancillary Facility and specifying:

##### the proposed Borrower(s) [(or Affiliate[s] of a Borrower)] which may use the Ancillary Facility;

##### the proposed Ancillary Commencement Date and expiry date of the Ancillary Facility;

##### the proposed type of Ancillary Facility to be provided;

##### the proposed Ancillary Lender;

##### the proposed Ancillary Commitment, the maximum amount of the Ancillary Facility and, if the Ancillary Facility is an overdraft facility comprising more than one account its maximum gross amount (that amount being the "**Designated Gross Amount**") and its maximum net amount (that amount being the "**Designated Net Amount**"); and

##### the proposed currency of the Ancillary Facility (if not denominated in the Base Currency); and

#### any other information which the Agent may reasonably request in connection with the Ancillary Facility.

The Agent shall promptly notify the Ancillary Lender and the other Lenders of the establishment of an Ancillary Facility.

No amendment or waiver of a term of any Ancillary Facility shall require the consent of any Finance Party other than the relevant Ancillary Lender unless such amendment or waiver itself relates to or gives rise to a matter which would require an amendment of or under this Agreement (including, for the avoidance of doubt, under this Clause). In such a case, the provisions of this Agreement with regard to amendments and waivers will apply.

### Subject to compliance with paragraph (b) above:

#### the Lender concerned will become an Ancillary Lender; and

#### the Ancillary Facility will be available,

with effect from the date agreed by the Parent and the Ancillary Lender.

## Terms of Ancillary Facilities

### Except as provided below, the terms of any Ancillary Facility will be those agreed by the Ancillary Lender and the Parent.

### However, those terms:

#### must be based upon normal commercial terms at that time (except as varied by this Agreement);

#### may allow only Borrowers [(or Affiliates of Borrowers nominated pursuant to Clause ‎9.9 (*Affiliates of Borrowers*))] to use the Ancillary Facility;

#### may not allow the Ancillary Outstandings to exceed the Ancillary Commitment;

#### may not allow the Ancillary Commitment of a Lender to exceed the Available Commitment with respect to the Revolving Facility of that Lender; and

#### must require that the Ancillary Commitment is reduced to nil, and that all Ancillary Outstandings are repaid (or cash cover provided in respect of all the Ancillary Outstandings) not later than the Termination Date for the Revolving Facility (or such earlier date as the Revolving Facility Commitment of the relevant Ancillary Lender (or its Affiliate) is reduced to zero).

### If there is any inconsistency between any term of an Ancillary Facility and any term of this Agreement, this Agreement shall prevail except for (i) Clause ‎38.3 (*Day count convention*) which shall not prevail for the purposes of calculating fees, interest or commission relating to an Ancillary Facility; (ii) an Ancillary Facility comprising more than one account where the terms of the Ancillary Documents shall prevail [to the extent required to permit the netting of balances on those accounts]; and (iii) where the relevant term of this Agreement would be contrary to, or inconsistent with, the law governing the relevant Ancillary Document, in which case that term of this Agreement shall not prevail.

### Interest, commission and fees on Ancillary Facilities are dealt with in Clause ‎17.6 (*Interest, commission and fees on Ancillary Facilities*).

## Repayment of Ancillary Facility

### An Ancillary Facility shall cease to be available on the Termination Date in relation to the Revolving Facility or such earlier date on which its expiry date occurs or on which it is cancelled in accordance with the terms of this Agreement.

### If an Ancillary Facility expires in accordance with its terms the Ancillary Commitment of the Ancillary Lender shall be reduced to zero (and its Revolving Facility Commitment shall be increased accordingly).

### No Ancillary Lender may demand repayment or prepayment of any amounts or demand cash cover for any liabilities made available or incurred by it under its Ancillary Facility (except where the Ancillary Facility is provided on a net limit basis to the extent required to bring any gross outstandings down to the net limit) unless:

#### the Total Revolving Facility Commitments have been cancelled in full, or all outstanding Utilisations under the Revolving Facility have become due and payable in accordance with the terms of this Agreement, or the Agent has declared all outstanding Utilisations under the Revolving Facility immediately due and payable, or the expiry date of the Ancillary Facility occurs; or

#### it becomes unlawful in any applicable jurisdiction for the Ancillary Lender to perform any of its obligations as contemplated by this Agreement or to fund, issue or maintain its participation in its Ancillary Facility; or

#### the Ancillary Outstandings (if any) under that Ancillary Facility can be refinanced by a Revolving Facility Utilisation and the Ancillary Lender gives sufficient notice to enable a Revolving Facility Utilisation to be made to refinance those Ancillary Outstandings.

### For the purposes of determining whether or not the Ancillary Outstandings under an Ancillary Facility mentioned in paragraph (c)(iii) above can be refinanced by a Utilisation of the Revolving Facility:

#### the Revolving Facility Commitment of the Ancillary Lender will be increased by the amount of its Ancillary Commitment; and

#### the Utilisation may (so long as paragraph (c)(i) above does not apply) be made irrespective of whether a Default is outstanding or any other applicable condition precedent is not satisfied (but only to the extent that the proceeds are applied in refinancing those Ancillary Outstandings) and irrespective of whether Clause ‎4.4 (*Maximum number of Utilisations*) or paragraph (a)(iii) of Clause ‎5.2 (*Completion of a Utilisation Request for Loans*) applies.

### On the making of a Utilisation of the Revolving Facility to refinance Ancillary Outstandings:

#### each Lender will participate in that Utilisation in an amount (as determined by the Agent) which will result as nearly as possible in the aggregate amount of its participation in the Revolving Facility Utilisations then outstanding bearing the same proportion to the aggregate amount of the Revolving Facility Utilisations then outstanding as its Revolving Facility Commitment bears to the Total Revolving Facility Commitments; and

#### the relevant Ancillary Facility shall be cancelled.

### In relation to an Ancillary Facility which comprises an overdraft facility where a Designated Net Amount has been established, the Ancillary Lender providing that Ancillary Facility shall only be obliged to take into account for the purposes of calculating compliance with the Designated Net Amount those credit balances which it is permitted to take into account by the then current law and regulations in relation to its reporting of exposures to [the Financial Services Authority][[24]](#footnote-24) as netted for capital adequacy purposes.

## Ancillary Outstandings

Each Borrower and each Ancillary Lender agrees with and for the benefit of each Lender that:

### the Ancillary Outstandings under any Ancillary Facility provided by that Ancillary Lender shall not exceed the Ancillary Commitment applicable to that Ancillary Facility and where the Ancillary Facility is an overdraft facility comprising more than one account, Ancillary Outstandings under that Ancillary Facility shall not exceed the Designated Net Amount in respect of that Ancillary Facility; and

### where all or part of the Ancillary Facility is an overdraft facility comprising more than one account, the Ancillary Outstandings (calculated on the basis that the words in brackets in paragraph (a) of the definition of that term were deleted) shall not exceed the Designated Gross Amount applicable to that Ancillary Facility.

## [Adjustment for Ancillary Facilities upon acceleration

In this Clause ‎9.6:

"**Revolving Outstandings**" means, in relation to a Lender, the aggregate of the equivalent in the Base Currency of (i) its participation in each Revolving Facility Utilisation then outstanding (together with the aggregate amount of all accrued interest, fees and commission owed to it as a Lender under the Revolving Facility), and (ii) if the Lender is also an Ancillary Lender, the Ancillary Outstandings in respect of Ancillary Facilities provided by that Ancillary Lender (together with the aggregate amount of all accrued interest, fees and commission owed to it as an Ancillary Lender in respect of the Ancillary Facility).

"**Total Revolving Outstandings**" means the aggregate of all Revolving Outstandings.

### If a notice is served under Clause ‎28.20 (*Acceleration*) (other than a notice declaring Utilisations to be due on demand), each Lender and each Ancillary Lender shall promptly adjust by corresponding transfers (to the extent necessary) their claims in respect of amounts outstanding to them under the Revolving Facility and each Ancillary Facility to ensure that after such transfers the Revolving Outstandings of each Lender bear the same proportion to the Total Revolving Outstandings as such Lender's Revolving Facility Commitment bears to the Total Revolving Facility Commitments, each as at the date the notice is served under Clause ‎28.20 (*Acceleration*).

### If an amount outstanding under an Ancillary Facility is a contingent liability and that contingent liability becomes an actual liability or is reduced to zero after the original adjustment is made under paragraph (a) above, then each Lender and Ancillary Lender will make a further adjustment by corresponding transfers (to the extent necessary) to put themselves in the position they would have been in had the original adjustment been determined by reference to the actual liability or, as the case may be, zero liability and not the contingent liability.

### [Prior to the application of the provisions of paragraph (a) of this Clause ‎9.6, an Ancillary Lender that has provided an overdraft comprising more than one account under an Ancillary Facility shall set-off any liabilities owing to it under such overdraft facility against credit balances on any account comprised in such overdraft facility.]

### All calculations to be made pursuant to this Clause ‎9.6 shall be made by the Agent based upon information provided to it by the Lenders and Ancillary Lenders.][[25]](#footnote-25)

## Information

Each Borrower and each Ancillary Lender shall, promptly upon request by the Agent, supply the Agent with any information relating to the operation of an Ancillary Facility (including the Ancillary Outstandings) as the Agent may reasonably request from time to time. Each Borrower consents to all such information being released to the Agent and the other Finance Parties.

## [Affiliates of Lenders as Ancillary Lenders

### Subject to the terms of this Agreement, an Affiliate of a Lender may become an Ancillary Lender. In such case, the Lender and its Affiliate shall be treated as a single Lender whose Revolving Facility Commitment is the amount set out opposite the relevant Lender's name in Part II or Part III of Schedule 1 (*The Original Parties*) and/or the amount of any Revolving Facility Commitment transferred to or assumed by that Lender under this Agreement, to the extent (in each case) not cancelled, reduced or transferred by it under this Agreement. For the purposes of calculating the Lender's Available Commitment with respect to the Revolving Facility, the Lender's Commitment shall be reduced to the extent of the aggregate of the Ancillary Commitments of its Affiliates.

### The Parent shall specify any relevant Affiliate of a Lender in any notice delivered by the Parent to the Agent pursuant to paragraph (b)(i) of Clause ‎9.2 (*Availability*).

### An Affiliate of a Lender which becomes an Ancillary Lender shall accede to the Intercreditor Agreement as an Ancillary Lender and any person which so accedes to the Intercreditor Agreement shall, at the same time, become a party to this Agreement as an Ancillary Lender in accordance with clause [18.11] (*Creditor/Agent Accession Undertaking*) of the Intercreditor Agreement.

### [If a Lender assigns all of its rights and benefits or transfers all of its rights and obligations to a New Lender (as defined in Clause ‎29 (*Changes to the Lenders*), its Affiliate shall cease to have any obligations under this Agreement or any Ancillary Document.]

### Where this Agreement or any other Finance Document imposes an obligation on an Ancillary Lender and the relevant Ancillary Lender is an Affiliate of a Lender which is not a party to that document, the relevant Lender shall ensure that the obligation is performed by its Affiliate.]

## [Affiliates of Borrowers

### Subject to the terms of this Agreement, an Affiliate [incorporated in [         ]] of a Borrower may with the approval of the relevant Lender become a borrower with respect to an Ancillary Facility.

### The Parent shall specify any relevant Affiliate of a Borrower in any notice delivered by the Parent to the Agent pursuant to paragraph (b)(i) of Clause ‎9.2 (*Availability*).

### If a Borrower ceases to be a Borrower under this Agreement in accordance with Clause ‎31.3 (*Resignation of a Borrower*), its Affiliate shall cease to have any rights under this Agreement or any Ancillary Document.

### Where this Agreement or any other Finance Document imposes an obligation on a Borrower under an Ancillary Facility and the relevant Borrower is an Affiliate of a Borrower which is not a party to that document, the relevant Borrower shall ensure that the obligation is performed by its Affiliate.

### Any reference in this Agreement or any other Finance Document to a Borrower being under no obligations (whether actual or contingent) as a Borrower under such Finance Document shall be construed to include a reference to any Affiliate of a Borrower being under no obligations under any Finance Document or Ancillary Document.]

## Revolving Facility Commitment amounts

Notwithstanding any other term of this Agreement, each Lender shall ensure that at all times its Revolving Facility Commitment is not less than[:

### ]its Ancillary Commitment[; or

### the Ancillary Commitment of its Affiliate].

**SECTION 4**

**REPAYMENT, PREPAYMENT AND CANCELLATION**

# Repayment

## Repayment of Term Loans

(a) The Borrowers under Facility A shall repay the aggregate Facility A Loans

[in full on the Termination Date.]/

[in instalments by repaying on each Facility A Repayment Date an amount which reduces the Base Currency Amount of the outstanding aggregate Facility A Loans by an amount equal to [ ] per cent of all the Facility A Loans borrowed by the Borrowers as at close of business in [London] on the last day of the Availability Period in relation to Facility A.]/

[in instalments by repaying on each Facility A Repayment Date an amount which reduces the Base Currency Amount of the outstanding aggregate Facility A Loans by the amount set out opposite that Facility A Repayment Date below:

|  |  |
| --- | --- |
| **Facility A Repayment Date** | **Repayment Instalment** |
| [          ] | [          ]] |

[in instalments by repaying on each Facility A Repayment Date an amount which reduces the Base Currency Amount of the outstanding aggregate Facility A Loans by an amount equal to the relevant percentage of all the Facility A Loans borrowed by the Borrowers as at the close of business in [London] on the last day of the Availability Period in relation to Facility A as set out in the table below:

|  |  |
| --- | --- |
| **Facility A Repayment Date** | **Repayment Instalment** |
| [          ] | [insert percentage]] |

[(b)] [If, in relation to a Facility A Repayment Date, the aggregate amount of the Facility A Loans made to the Borrowers exceeds the Repayment Instalment to be repaid by the Borrowers, the Parent may, if it gives the Agent not less than five Business Days' prior notice, select which of those Facility A Loans will be wholly or partially repaid so that the Facility A Repayment Instalment is repaid on the relevant Repayment Date in full. The Parent may not make a selection if as a result more than one Facility A Loan will be partially repaid.]

[(b)]/[(c)] The Borrowers under Facility B shall repay the aggregate Facility B Loans

[in full on the Termination Date.]/

[in instalments by repaying on each Facility B Repayment Date an amount which reduces the Base Currency Amount of the outstanding aggregate Facility B Loans by an amount equal to [ ] per cent of all the Facility B Loans borrowed by the Borrowers as at close of business in [London] on the last day of the Availability Period in relation to Facility B.]/

[in instalments by repaying on each Facility B Repayment Date an amount which reduces the Base Currency Amount of the outstanding aggregate Facility B Loans by the amount set out opposite that Facility B Repayment Date below:

|  |  |
| --- | --- |
| **Facility B Repayment Date** | **Repayment Instalment** |
| [          ] | [          ]]/ |

[in instalments by repaying on each Facility B Repayment Date an amount which reduces the Base Currency Amount of the outstanding aggregate Facility B Loans by an amount equal to the relevant percentage of all the Facility B Loans borrowed by the Borrowers as at the close of business in [London] on the last day of the Availability Period in relation to Facility B as set out in the table below:

|  |  |
| --- | --- |
| **Facility B Repayment Date** | **Repayment Instalment** |
| [          ] | [insert percentage]] |

[(c)]/[(d)] [If, in relation to a Facility B Repayment Date, the aggregate amount of the Facility B Loans made to the Borrowers exceeds the Repayment Instalment to be repaid by the Borrowers, the Parent may, if it gives the Agent not less than five Business Days' prior notice, select which of those Facility B Loans will be wholly or partially repaid so that the Facility B Repayment Instalment is repaid on the relevant Repayment Date in full. The Parent may not make a selection if as a result more than one Facility B Loan will be partially repaid.]

[(d)]/[(e)] The Borrowers under Facility C shall repay the aggregate Facility C Loans

[in full on the Termination Date.]/

[in instalments by repaying on each Facility C Repayment Date an amount which reduces the Base Currency Amount of the outstanding aggregate Facility C Loans by an amount equal to [ ] per cent of all the Facility C Loans borrowed by the Borrowers as at close of business in [London] on the last day of the Availability Period in relation to Facility C.]/

[in instalments by repaying on each Facility C Repayment Date an amount which reduces the Base Currency Amount of the outstanding aggregate Facility C Loans by the amount set out opposite that Facility C Repayment Date below:

|  |  |
| --- | --- |
| **Facility C Repayment Date** | **Repayment Instalment** |
| [          ] | [          ]] |

[in instalments by repaying on each Facility C Repayment Date an amount which reduces the Base Currency Amount of the outstanding aggregate Facility C Loans by an amount equal to the relevant percentage of all the Facility C Loans borrowed by the Borrowers as at the close of business in [London] on the last day of the Availability Period in relation to Facility C as set out in the table below:

|  |  |
| --- | --- |
| **Facility C Repayment Date** | **Repayment Instalment** |
| [          ] | [insert percentage]] |

[(e)]/[(f)] [If, in relation to a Facility C Repayment Date, the aggregate amount of the Facility C Loans made to the Borrowers exceeds the Repayment Instalment to be repaid by the Borrowers, the Parent may, if it gives the Agent not less than five Business Days' prior notice, select which of those Facility C Loans will be wholly or partially repaid so that the Facility C Repayment Instalment is repaid on the relevant Repayment Date in full. The Parent may not make a selection if as a result more than one Facility C Loan will be partially repaid.]

[(f)]/[(g)] [If the Parent fails to deliver a notice to the Agent in accordance with paragraphs (b), (d) or (f) above, the Agent shall select the Facility A Loans, Facility B Loans or, as the case may be, Facility C Loans, to be wholly or partially repaid.]

[(g)]/[(h)] The Borrowers may not reborrow any part of a Term Facility which is repaid.

## Repayment of Revolving Facility Loans

### [Subject to paragraph (c) below,] [Each]/[each] Borrower which has drawn a Revolving Facility Loan shall repay that Loan on the last day of its Interest Period.

### Without prejudice to each Borrower's obligation under paragraph (a) above, if one or more Revolving Facility Loans are to be made available to a Borrower:

#### on the same day that a maturing Revolving Facility Loan is due to be repaid by that Borrower;

#### in the same currency as the maturing Revolving Facility Loan (unless it arose as a result of the operation of Clause ‎8.2 (*Unavailability of a currency*)); and

#### in whole or in part for the purpose of refinancing the maturing Revolving Facility Loan;

the aggregate amount of the new Revolving Facility Loans shall be treated as if applied in or towards repayment of the maturing Revolving Facility Loan so that:

##### if the amount of the maturing Revolving Facility Loan exceeds the aggregate amount of the new Revolving Facility Loans:

###### the relevant Borrower will only be required to pay an amount in cash in the relevant currency equal to that excess; and

###### each Lender's participation (if any) in the new Revolving Facility Loans shall be treated as having been made available and applied by the Borrower in or towards repayment of that Lender's participation (if any) in the maturing Revolving Facility Loan and that Lender will not be required to make its participation in the new Revolving Facility Loans available in cash; and

##### if the amount of the maturing Revolving Facility Loan is equal to or less than the aggregate amount of the new Revolving Facility Loans:

###### the relevant Borrower will not be required to make any payment in cash; and

###### each Lender will be required to make its participation in the new Revolving Facility Loans available in cash only to the extent that its participation (if any) in the new Revolving Facility Loans exceeds that Lender's participation (if any) in the maturing Revolving Facility Loan and the remainder of that Lender's participation in the new Revolving Facility Loans shall be treated as having been made available and applied by the Borrower in or towards repayment of that Lender's participation in the maturing Revolving Facility Loan.

### [At any time when a Lender becomes a Defaulting Lender, the maturity date of each of the participations of that Lender in the Revolving Facility Loans then outstanding will be automatically extended to [the last day of the Availability Period in relation to the Revolving Facility]/ [the Termination Date in relation to the Revolving Facility] and will be treated as separate Revolving Facility Loans (the "**Separate Loans**") denominated in the currency in which the relevant participations are outstanding.

### A Borrower to whom a Separate Loan is outstanding may prepay that Loan by giving [ ] Business Days' prior notice to the Agent. The Agent will forward a copy of a prepayment notice received in accordance with this paragraph (d) to the Defaulting Lender concerned as soon as practicable on receipt.

### Interest in respect of a Separate Loan will accrue for successive Interest Periods selected by the Borrower by the time and date specified by the Agent (acting reasonably) and will be payable by that Borrower to the Defaulting Lender on the last day of each Interest Period of that Loan.

### The terms of this Agreement relating to Revolving Facility Loans generally shall continue to apply to Separate Loans other than to the extent inconsistent with paragraphs (c) to (e) above, in which case those paragraphs shall prevail in respect of any Separate Loan.][[26]](#footnote-26)

## [Reduction of Revolving Facility]

### [                           ]

## [Effect of cancellation and prepayment on scheduled repayments and reductions

### If the Parent cancels the whole or any part of the Facility A Commitments, the Facility B Commitments, the Facility C Commitments or the Revolving Facility Commitments in accordance with Clause ‎11.6 (*Right of cancellation and repayment in relation to a single Lender or Issuing Bank*) or Clause ‎11.7 (*Right of cancellation in relation to a Defaulting Lender*) or if the Facility A Commitment, Facility B Commitment, Facility C Commitment or Revolving Facility Commitment of any Lender is reduced under Clause ‎11.1 (*Illegality*) then (other than, in any relevant case, to the extent that any part of the relevant Commitment(s) is subsequently increased pursuant to Clause ‎2.2 (*Increase*)):

#### [in the case of the Facility A Commitments, the amount of the Repayment Instalment for each Repayment Date falling after that cancellation will reduce *pro rata* by the amount cancelled;]

#### [in the case of the Facility B Commitments, the amount of the Repayment Instalment for each Repayment Date falling after that cancellation will reduce *pro rata* by the amount cancelled;]

#### [in the case of the Facility C Commitments, the amount of the Repayment Instalment for each Repayment Date falling after that cancellation will reduce *pro rata* by the amount cancelled;] and

#### [in the case of the Revolving Facility Commitments, the amount of the Reduction Instalment for each Reduction Date falling after that cancellation will reduce *pro rata* by the amount cancelled.]

### [If the Parent cancels the whole or any part of the Facility A Commitments, the Facility B Commitments, the Facility C Commitments or the Revolving Facility Commitments in accordance with Clause ‎11.3 (*Voluntary cancellation*) then:

#### [in the case of Facility A Commitments, the amount of the Repayment Instalment for each Repayment Date falling after that cancellation will reduce [*pro rata*] / [in chronological order] / [in inverse chronological order] by the amount cancelled;]

#### [in the case of Facility B Commitments, the amount of the Repayment Instalment for each Repayment Date falling after that cancellation will reduce [*pro rata*] / [in chronological order] / [in inverse chronological order] by the amount cancelled];

#### [in the case of Facility C Commitments, the amount of the Repayment Instalment for each Repayment Date falling after that cancellation will reduce [*pro rata*] / [in chronological order] / [in inverse chronological order] by the amount cancelled;] and

#### [in the case of Revolving Facility Commitments, the amount of the Reduction Instalment for each Reduction Date falling after that cancellation will reduce [*pro rata*] / [in chronological order] / [in inverse chronological order] by the amount cancelled.]]

### If any of the Facility A Loans, Facility B Loans or Facility C Loans are prepaid in accordance with Clause ‎11.6 (*Right of cancellation and repayment in relation to a single Lender or Issuing Bank*) or Clause ‎11.1 (*Illegality*) then the amount of the Repayment Instalment for the relevant Facility for each Repayment Date falling after that prepayment will reduce *pro rata* by the amount of the Facility A Loan, Facility B Loan or, as the case may be, Facility C Loan prepaid.

### [If any of the Facility A Loans, Facility B Loans or Facility C Loans or Revolving Facility Utilisations are prepaid in accordance with Clause ‎11.4 (*Voluntary prepayment of Term Loans*), Clause ‎11.5 (*Voluntary prepayment of Revolving Facility Utilisations*), or Clause ‎12.2 (*Disposal, Insurance and Acquisition Proceeds and Excess Cashflow*) then:

#### [in the case of Facility A, the amount of the Repayment Instalment for each Repayment Date falling after that prepayment will reduce [*pro rata*] [in chronological order] [in inverse chronological order] by the amount of the Facility A Loan prepaid;]

#### [in the case of Facility B, the amount of the Repayment Instalment for each Repayment Date falling after that prepayment will reduce [*pro rata*] [in chronological order] [in inverse chronological order] by the amount of the Facility B Loan prepaid];

#### [in the case of Facility C, the amount of the Repayment Instalment for each Repayment Date falling after that prepayment will reduce [*pro rata*] [in chronological order] [in inverse chronological order] by the amount of the Facility C Loan prepaid;] and

#### [in the case of a prepayment of the Revolving Facility under Clause ‎12.2 (*Disposal, Insurance and Acquisition Proceeds and Excess Cashflow*) only, the amount of the Reduction Instalment for each Reduction Date falling after that prepayment will reduce [*pro rata*] [in chronological order] [in inverse chronological order] by the amount of the Revolving Facility Loan prepaid].][[27]](#footnote-27)

# Illegality, Voluntary Prepayment And Cancellation

## 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 any Utilisation:

### that Lender, shall promptly notify the Agent upon becoming aware of that event;

### upon the Agent notifying the Parent, the Commitment of that Lender will be immediately cancelled; and

### each Borrower shall repay that Lender's participation in the Utilisations made to that Borrower on the last day of the Interest Period for each Utilisation occurring after the Agent has notified the Parent 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).

## Illegality in relation to Issuing Bank

If it becomes unlawful for an Issuing Bank to issue or leave outstanding any Letter of Credit, then:

### that Issuing Bank shall promptly notify the Agent upon becoming aware of that event;

### upon the Agent notifying the Parent, the Issuing Bank shall not be obliged to issue any Letter of Credit;

### the Parent shall procure that [each Obligor/the relevant Borrower] shall use its best endeavours to procure the release of each Letter of Credit issued by that Issuing Bank and outstanding at such time; and

### unless any other Lender has agreed to be an Issuing Bank pursuant to the terms of this Agreement, the Revolving Facility shall cease to be available for the issue of Letters of Credit.

## Voluntary cancellation

### [Subject to paragraph (b) below] The Parent may, if it gives the Agent not less than [ ] Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, cancel the whole or any part (being a minimum amount of [         ]) of an Available Facility. Any cancellation under this Clause 11.3 shall reduce the Commitments of the Lenders rateably under that Facility.

### [The Parent shall not cancel any part of the Available Commitment with respect to Facility B or Facility C unless there is no Available Commitment with respect to Facility A]/[The Parent shall not cancel any part of the Available Commitment with respect to a Term Facility unless at the same time it cancels a *pro rata* amount of the Available Commitments for each other Term Facility].

### Any notice of cancellation of the Available Commitments with respect to the Revolving Facility delivered at any time while Loans under any other Facility remain outstanding and/or other Commitments remain uncancelled must be accompanied by evidence, in form and substance satisfactory to the Majority Lenders, that the Group will have sufficient working capital facilities available to it following such cancellation.

## Voluntary prepayment of Term Loans

### [Subject to paragraph (c) below] a Borrower to which a Term Loan has been made may, if it or the Parent gives the Agent not less than [     ] Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of that Term Loan (but, if in part, being an amount that reduces the Base Currency Amount of that Term Loan by a minimum amount of [         ]).

### A Term Loan may only be prepaid after the last day of the Availability Period (or, if earlier, the day on which the applicable Available Facility is zero).

### [A Term Loan shall only be prepaid if all the Term Loans are:

#### prepaid at the same time; and

#### prepaid in amounts which reduce the Facility B Loan, the Facility C Loan and the aggregate amount of the Facility A Loans by the same proportion,

[unless a Facility B Lender or a Facility C Lender elects to waive its share of the prepayment under Clause 13.8 (*Prepayment elections*) in which case the [Facility A Loans] shall in addition be reduced by an amount equal to that waived prepayment]]/

[The Facility B Loan and the Facility C Loan shall only be prepaid if the whole of the Facility A Loans have been prepaid or will be prepaid at the same time. A prepayment of the Facility A Loans shall be applied to reduce *pro rata* the Facility A Loans.]

## Voluntary prepayment of Revolving Facility Utilisations

A Borrower to which a Revolving Facility Utilisation has been made may, if it or the Parent gives the Agent not less than [       ] Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of a Revolving Facility Utilisation (but if in part, being an amount that reduces the Base Currency Amount of the Revolving Facility Utilisation by a minimum amount of [     ]).

## Right of cancellation and repayment in relation to a single Lender or Issuing Bank

### If:

#### any sum payable to any Lender by an Obligor is required to be increased under paragraph (c) of Clause ‎18.2 (*Tax gross-up*); or

#### any Lender or Issuing Bank claims indemnification from the Parent or an Obligor under Clause ‎18.3 (*Tax indemnity*) or Clause ‎19.1 (*Increased costs*),

the Parent may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Agent notice:

#### (if such circumstances relate to a Lender) of cancellation of the Commitment of that Lender and its intention to procure the repayment of that Lender's participation in the Utilisations; or

#### (if such circumstances relate to the Issuing Bank) of repayment of any outstanding Letter of Credit issued by it and cancellation of its appointment as an Issuing Bank under this Agreement in relation to any Letters of Credit to be issued in the future.

### 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.

### On the last day of each Interest Period which ends after the Parent has given notice under paragraph (a) above in relation to a Lender (or, if earlier, the date specified by the Parent in that notice), each Borrower to which a Utilisation is outstanding shall repay that Lender's participation in that Utilisation together with all interest and other amounts accrued under the Finance Documents.

## Right of cancellation in relation to a Defaulting Lender

### If any Lender becomes a Defaulting Lender, the Parent may, at any time whilst the Lender continues to be a Defaulting Lender, give the Agent [ ] Business Days' notice of cancellation of each Available Commitment of that Lender.

### On the notice referred to in paragraph (a) above becoming effective, each Available Commitment of the Defaulting Lender shall immediately be reduced to zero.

### The Agent shall as soon as practicable after receipt of a notice referred to in paragraph (a) above, notify all the Lenders.

# Mandatory Prepayment

## Exit

### For the purpose of this Clause ‎12.1:

"**Flotation**" means:

#### a successful application being made for the admission of any part of the share capital of any member of the Group [(or Holding Company of any member of the Group)] to the Official List maintained by the FSA [or [          ]] and the admission of any part of the share capital of any member of the Group [(or Holding Company of any member of the Group)] to trading on the London Stock Exchange plc [or [          ]]; or

#### the grant of permission to deal in any part of the issued share capital of any member of the Group [(or Holding Company of any member of the Group)] on the Alternative Investment Market or the PLUS market (formerly Ofex) 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.

"**FSA**" means the Financial Services Authority acting in its capacity as the competent authority for the purposes of Part VI of the Financial Services and Markets Act 2000.

### Upon the occurrence of:

#### any Flotation; or

#### a Change of Control; or

#### 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 Facilities will be cancelled and all outstanding Utilisations and Ancillary Outstandings, together with accrued interest, and all other amounts accrued under the Finance Documents, shall become immediately due and payable.

## Disposal, Insurance and Acquisition Proceeds and Excess Cashflow

### For the purposes of this Clause ‎12.2, Clause ‎12.3 (*Application of mandatory prepayments*) and Clause ‎12.4 (*Mandatory Prepayment Accounts and Holding Accounts*):

"**Acquisition Proceeds**" means the proceeds of a claim (a "**Recovery Claim**") against the Vendor or any of its Affiliates (or any employee, officer or adviser) in relation to the Acquisition Documents or against the provider of any Report (in its capacity as a provider of that Report) except for Excluded Acquisition Proceeds, and after deducting:

#### any reasonable expenses which are incurred by any member of the Group to persons who are not members of the Group; and

#### any Tax incurred and required to be paid by a member of the Group (as reasonably determined by the relevant member of the Group on the basis of existing rates and taking into account any available credit, deduction or allowance),

in each case in relation to that Recovery Claim.

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

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

#### any reasonable expenses which are incurred by any member of the Group with respect to that Disposal to persons who are not members of the Group; and

#### any Tax incurred and required to be paid by the seller in connection with that Disposal (as reasonably determined by the seller, on the basis of existing rates and taking account of any available credit, deduction or allowance).

"**Excluded Acquisition Proceeds**" means any proceeds of a Recovery Claim which the Parent notifies the Agent are, or are to be, applied:

#### in payment of amounts payable to the Vendor pursuant to the Acquisition Agreement by way of adjustment to the purchase price in respect of the Acquisition (except to the extent relating to a working capital adjustment);

#### to satisfy (or reimburse a member of the Group which has discharged) any liability, charge or claim upon a member of the Group by a person which is not a member of the Group; or

#### in the replacement, reinstatement and/or repair of assets of members of the Group which have been lost, destroyed or damaged,

in each case as a result of the events or circumstances giving rise to that Recovery Claim, if those proceeds are so applied as soon as possible (but in any event within [ ] days, or such longer period as the Majority Lenders may agree) after receipt.

"**Excluded Disposal Proceeds**" means [          ].

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

#### to meet a third party claim;

#### to cover [operating losses in respect of which the relevant insurance claim was made]; or

#### 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 [ ] days, or such longer period as the Majority Lenders may agree) after receipt.

"**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.

### Subject to clause [13.5] (*Adjustment of Mandatory Prepayments*) of the Intercreditor Agreement, the Parent shall ensure that the Borrowers prepay Utilisations in the following amounts at the times and in the order of application contemplated by Clause ‎12.3 (*Application of mandatory prepayments*):

#### the amount of Acquisition Proceeds;

#### the amount of Disposal Proceeds;

#### the amount of Insurance Proceeds; and

#### the amount equal to [  ]% of Excess Cashflow for any Financial Year of the Parent.

## Application of mandatory prepayments

### A prepayment made under Clause ‎12.2 (*Disposal, Insurance and Acquisition Proceeds and Excess Cashflow*) shall be applied in the following order:

#### first, in prepayment of Term Loans as contemplated in paragraphs (b) to (e) inclusive below;

#### secondly, in cancellation of Available Commitments under the Revolving Facility (and the Available Commitment of the Lenders under the Revolving Facility will be cancelled rateably);

#### thirdly, in prepayment of Revolving Facility Utilisations (such that outstanding Revolving Facility Loans shall be prepaid before outstanding Letters of Credit) and cancellation of Revolving Facility Commitments; and

#### then, in repayment and cancellation of the Ancillary Outstandings and Ancillary Commitments.

### Unless the Parent makes an election under paragraph (d) below, the Borrowers shall prepay Loans at the following times:

#### in the case of any prepayment relating to the amounts of Acquisition Proceeds, Disposal Proceeds or Insurance Proceeds, promptly upon receipt of those proceeds; and

#### in the case of any prepayment relating to an amount of Excess Cashflow, [within [  ] days of delivery pursuant to Clause ‎25.1 (*Financial Statements*) of the annual consolidated accounts of the Parent for the relevant Financial Year].

### A prepayment under Clause ‎12.2 (*Disposal, Insurance and Acquisition Proceeds and Excess Cashflow*) shall prepay the Term Loans as follows:

[(i) in amounts which reduce the Facility A Loans, the Facility B Loan and the Facility C Loan by the same proportion] [unless a Facility B Lender or a Facility C Lender elects to waive all or part of its share of the prepayment under Clause ‎13.8 (*Prepayment elections*) in which case the Facility A Loans will in addition be reduced by an amount equal to the waived prepayment]/;

[(i) in prepayment of the Facility A Loans and, when all the Facility A Loans have been prepaid in full, prepayment of the Facility B Loan and the Facility C Loan pro rata]; and

(ii) in reducing the relevant Repayment Instalment for each Repayment Date falling after the date of prepayment in the manner contemplated by paragraph ‎(d) of Clause ‎10.4 (*Effect of cancellation and prepayment on scheduled repayments and reductions*).

### Subject to paragraph (e) below, the Parent may elect that any prepayment under Clause ‎12.2 (*Disposal, Insurance and Acquisition Proceeds and Excess Cashflow*) be applied in prepayment of a Loan on the last day of the Interest Period relating to that Loan. If the Parent makes that election then a proportion of the Loan equal to the amount of the relevant prepayment will be due and payable on the last day of its Interest Period.

### If the Parent has made an election under paragraph (d) 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).

## Mandatory Prepayment Accounts and Holding Accounts

### The Parent shall ensure that:

#### Disposal Proceeds, Insurance Proceeds and Acquisition Proceeds in respect of which the Parent has made an election under paragraph (d) of Clause ‎12.3 (*Application of mandatory prepayments*) are paid into a Mandatory Prepayment Account as soon as reasonably practicable after receipt by a member of the Group;

#### [*Insert details of any amounts of Excluded Disposal Proceeds, Excluded Insurance Proceeds and/or Excluded Acquisition Proceeds to be applied in 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; and

#### an amount equal to any Excess Cashflow in respect of which the Parent has made an election under paragraph (d) of Clause ‎12.3 (*Application of mandatory prepayments*) is paid into a Mandatory Prepayment Account promptly after such election.

### The Parent and each Borrower irrevocably authorise the Agent to apply:

#### amounts credited to the Mandatory Prepayment Account; and

#### amounts credited to the Holding Account [which have not been applied in [            ] within [    ] months of receipt of the relevant proceeds (or such longer time period as the [Agent]/[Majority Lenders] may agree)],

to pay amounts due and payable under Clause ‎12.3 (*Application of mandatory prepayments*) and otherwise under the Finance Documents. The Parent and each Borrower further irrevocably authorise the Agent to so apply amounts credited to the Holding Account whether or not [        ] months have elapsed since receipt of those proceeds if a Default has occurred and is continuing. [The Parent and each Borrower also irrevocably authorise the Agent to 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).]

### A Lender, Security Agent or Agent 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) each such account is subject to the Transaction Security.

## Excluded proceeds

[Where Excluded Acquisition Proceeds, 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 Acquisition Proceeds, Excluded Disposal Proceeds or Excluded Insurance Proceeds), the Parent 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].

# Restrictions

## Notices of Cancellation or Prepayment

Any notice of cancellation, prepayment, authorisation or other election given by any Party under Clause ‎11 (*Illegality, voluntary prepayment and cancellation*), paragraph (d) of Clause ‎12.3 (*Application of Mandatory Prepayments*) or Clause ‎12.4 (*Mandatory Prepayment Accounts and Holding Accounts*) 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.

## Interest and other amounts

Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.

## No reborrowing of Term Facilities

No Borrower may reborrow any part of a Term Facility which is prepaid.

## Reborrowing of Revolving Facility

Unless a contrary indication appears in this Agreement, any part of the Revolving Facility which is prepaid or repaid may be reborrowed in accordance with the terms of this Agreement.

## Prepayment in accordance with Agreement

No Borrower shall repay or prepay all or any part of the Utilisations or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.

## No reinstatement of Commitments

Subject to Clause ‎2.2 (*Increase*), no amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.

## Agent's receipt of Notices

If the Agent receives a notice under Clause ‎11 (*Illegality, voluntary prepayment and cancellation*) or an election under paragraph (d) of Clause ‎12.3 (*Application of Mandatory Prepayments*), it shall promptly forward a copy of that notice or election to either the Parent or the affected Lender, as appropriate.

## Prepayment elections

The Agent shall notify the Lenders as soon as possible of any proposed prepayment of any Facility B Loan or any Facility C Loan under Clause ‎11.4 (*Voluntary prepayment of Term Loans*) or Clause ‎12.2 (*Disposal, Insurance and Acquisition Proceeds and Excess Cashflow*). [A Lender may, if it gives the Agent not less than [ ][[28]](#footnote-28) Business Days' prior notice, elect to waive all or a specified part of its share of that prepayment of Facility B or Facility C if the amount waived can be applied to reduce [Facility A Loans]].

## Effect of Repayment and Prepayment on Commitments

If all or part of a Utilisation under a Facility is repaid or prepaid and is not available for redrawing (other than by operation of Clause ‎4.2 (*Further conditions precedent*)), an amount of the Commitments (equal to the Base Currency Amount of the amount of the Utilisation which is repaid or prepaid) in respect of that Facility will be deemed to be cancelled on the date of repayment or prepayment. Any cancellation under this Clause 13.9 shall reduce the Commitments of the Lenders rateably under that Facility.

**SECTION 5**

**COSTS OF UTILISATION**

# Interest

## Calculation of interest

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

### Margin;

### LIBOR [or, in relation to any Loan in euro, EURIBOR]; and

### Mandatory Cost, if any.

## Payment of interest

### The Borrower to which a Loan has been made shall pay accrued interest on that Loan on the last day of each Interest Period (and, if the Interest Period is longer than six Months, on the dates falling at six Monthly intervals after the first day of the Interest Period).

### [If the annual audited financial statements of the Group and related Compliance Certificate received by the Agent show that a higher Margin should have applied during a certain period, then the Parent shall (or shall ensure the relevant Borrower shall) promptly pay to the Agent any amounts necessary to put the Agent and the Lenders in the position they would have been in had the appropriate rate of the Margin applied during such period.]

## Default interest

### If an Obligor 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 [   ] per cent. higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Agent (acting reasonably). Any interest accruing under this Clause ‎14.3 shall be immediately payable by the Obligor on demand by the Agent.

### If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:

#### the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and

#### the rate of interest applying to the overdue amount during that first Interest Period shall be [   ] per cent. higher than the rate which would have applied if the overdue amount had not become due.

### 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.

## Notification of rates of interest

The Agent shall promptly notify the Lenders and the relevant Borrower (or the Parent) of the determination of a rate of interest under this Agreement.

# Interest Periods

## Selection of Interest Periods and Terms

### A Borrower (or the Parent on behalf of a Borrower) may select an Interest Period for a Loan in the Utilisation Request for that Loan or (if the Loan is a Term Loan and has already been borrowed) in a Selection Notice.

### Each Selection Notice for a Term Loan is irrevocable and must be delivered to the Agent by the Borrower (or the Parent on behalf of the Borrower) to which that Term Loan was made not later than the Specified Time.

### If a Borrower (or the Parent) fails to deliver a Selection Notice to the Agent in accordance with paragraph (b) above, the relevant Interest Period will, subject to Clause ‎15.2 (*Changes to Interest Periods*), be [one] Month.

### Subject to this Clause ‎15, a Borrower (or the Parent) may select an Interest Period of [[   ] or [    ]] Months or any other period agreed between the Parent and the Agent (acting on the instructions of all the Lenders in relation to the relevant Loan). [In addition a Borrower (or the Parent on its behalf) may select an Interest Period of:

#### (in relation to Facility [A] [B] [C]) a period of less than [one] Month, if necessary to ensure that there are [Facility A Loans] [Facility B Loans] [Facility C Loans] (with an aggregate Base Currency Amount equal to or greater than the Repayment Instalment) which have an Interest Period ending on a Repayment Date relating to the relevant Facility for the Borrowers to make the Repayment Instalment due on that date; or

#### (in relation to the Revolving Facility) a period of less than [one] Month, if necessary to ensure that (when aggregated with the Available Facility for the Revolving Facility) there are Revolving Facility Loans (with an aggregate Base Currency Amount equal to or greater than the Reduction Instalment) which have an Interest Period ending on a Reduction Date for the scheduled reduction to occur].

### An Interest Period for a Loan shall not extend beyond the Termination Date applicable to its Facility.

### Each Interest Period for a Term Loan shall start on the Utilisation Date or (if already made) on the last day of its preceding Interest Period.

### A Revolving Facility Loan has one Interest Period only.

### Prior to the Syndication Date, Interest Periods shall be one Month or such other period as the Agent and the Parent may agree and any Interest Period which would otherwise end during the Month preceding or extend beyond the Syndication Date shall end on the Syndication Date.

## Changes to Interest Periods

### [Prior to determining the interest rate for a [Facility A Loan] [Facility B Loan] [Facility C Loan], the Agent may shorten an Interest Period for any [Facility A Loan] [Facility B Loan] [Facility C Loan] to ensure there are sufficient [Facility A Loans] [Facility B Loans] [Facility C Loans] (with an aggregate Base Currency Amount equal to or greater than the relevant Repayment Instalment) which have an Interest Period ending on a [Facility A] [Facility B] [Facility C] Repayment Date for the Borrowers to make the relevant Repayment Instalment due on that date.]

### [Prior to determining the interest rate for a Revolving Facility Loan, the Agent may shorten the Interest Period for any Revolving Facility Loan to ensure that, when aggregated with the Available Facility for the Revolving Facility, there are sufficient Revolving Facility Loans (with an aggregate Base Currency Amount equal to or greater than the Reduction Instalment) which have an Interest Period ending on a Reduction Date for the scheduled reduction to occur.]

### If the Agent makes any of the changes to an Interest Period referred to in this Clause ‎15.2, it shall promptly notify the Parent and the Lenders.

## 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).

## Consolidation and division of Facility A Loans

### Subject to paragraph (b) below, if two or more Interest Periods:

#### relate to Facility A Loans made to the same Borrower; and

#### end on the same date,

those Facility A Loans will, unless that Borrower (or the Parent on its behalf) specifies to the contrary in the Selection Notice for the next Interest Period, be consolidated into, and treated as, a single Facility A Loan on the last day of the Interest Period.

### Subject to Clause ‎4.4 (*Maximum number of Utilisations*), and Clause ‎5.3 (*Currency and amount*) if a Borrower (or the Parent on its behalf) requests in a Selection Notice that a Facility A Loan be divided into two or more Facility A Loans, that Facility A Loan will, on the last day of its Interest Period, be so divided with Base Currency Amounts specified in that Selection Notice, having an aggregate Base Currency Amount equal to the Base Currency Amount of the Facility A Loan immediately before its division.

# Changes To The Calculation Of Interest

## Absence of quotations

Subject to Clause ‎16.2 (*Market disruption*):

### if LIBOR [or, if applicable, EURIBOR] is to be determined by reference to the Base Reference Banks but a Base Reference Bank does not supply a quotation by the Specified Time on the Quotation Day, the applicable LIBOR [or EURIBOR] shall be determined on the basis of the quotations of the remaining Base Reference Banks[; or

### if Clause ‎16.3 (*Alternative Reference Bank Rate*) applies but an Alternative Reference Bank does not supply a quotation before [close of business in London on the date falling one Business Day after the Quotation Day for that Loan]/[ ], the applicable Alternative Reference Bank Rate shall be determined on the basis of the quotations of the remaining Alternative Reference Banks].

## Market disruption

### If a Market Disruption Event occurs in relation to a Loan for any Interest Period, then the rate of interest on each Lender's share of that Loan for the Interest Period shall be the percentage rate per annum which is the sum of:

#### the Margin;

#### [the Alternative Reference Bank Rate or (if an Alternative Market Disruption Event has occurred with respect to that Loan for the relevant Interest Period of that Loan)] the rate notified to the Agent by that Lender as soon as practicable and in any event by close of business on the date falling [   ] Business Days after the Quotation Day (or, if earlier, on the date falling [   ] 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 that Lender of funding its participation in that Loan from whatever source it may reasonably select; and

#### the Mandatory Cost, if any, applicable to that Lender's participation in the Loan.

### If:

#### the percentage rate per annum notified by a Lender pursuant to paragraph (a)(ii) above is less than [LIBOR [or, in relation to any Loan in euro, EURIBOR]]/[the Alternative Reference Bank Rate]; or

#### a Lender has not notified the Agent of a percentage rate per annum pursuant to paragraph (a)(ii) above,

the cost to that Lender of funding its participation in that Loan for that Interest Period shall be deemed, for the purposes of paragraph (a) above, to be [LIBOR [or in relation to a loan in euro, EURIBOR]]/[the Alternative Reference Bank Rate].

### In this Agreement:

["**Alternative Market Disruption Event**" means:

* + 1. before close of business in London on the date falling one Business Day after the Quotation Day for the relevant Interest Period of the Loan, none or only [one]/[ ][[29]](#footnote-29) of the Alternative Reference Banks [supplies]/[supply] a rate to the Agent to determine the Alternative Reference Bank Rate for the relevant Interest Period of the Loan; or
    2. before close of business in London [on the date falling [ ] Business Days after the Quotation Day for the relevant Interest Period of the Loan], the Agent receives notifications from a Lender or Lenders (whose participations in that Loan exceed [ ][[30]](#footnote-30) per cent. of that Loan) that the cost to it of funding its participation in that Loan from whatever source it may reasonably select would be in excess of the Alternative Reference Bank Rate; and]

"**Market Disruption Event**" means:

* + 1. at or about noon on the Quotation Day for the relevant Interest Period [the Screen Rate is not available and] none or only one of the Base Reference Banks supplies a rate to the Agent to determine LIBOR [or, if applicable, EURIBOR] for the relevant currency and Interest Period; or
    2. 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 a Loan exceed [   ] per cent. of that Loan) that the cost to it of funding its participation in that Loan from whatever source it may reasonably select would be in excess of LIBOR [or, if applicable, EURIBOR].

## [Alternative Reference Bank Rate

### If a Market Disruption Event occurs, the Agent shall as soon as is practicable request each of the Alternative Reference Banks to supply to it the rate at which that Alternative Reference Bank could have borrowed funds in the relevant currency and for the relevant period in the London interbank market [or, in relation to a Loan in euro, the European interbank market] at or about 11:00 a.m. [or, in relation to a Loan in euro, at or about 11:00 a.m. (Brussels time)] on the Quotation Day for the Interest Period of that Loan], were it to have done so by asking for and then accepting interbank offers for deposits in reasonable market size in the currency of that Loan and for a period comparable to the Interest Period of that Loan.

### As soon as is practicable after receipt of the rates supplied by the Alternative Reference Banks, the Agent will notify the Parent and the Lenders of the arithmetic mean of the rates supplied to it in accordance with paragraph (a) above (rounded upwards to four decimal places) (the "**Alternative Reference Bank Rate**").]

## Alternative basis of interest or funding

### If [a Market Disruption Event]/[an Alternative Market Disruption Event] occurs and the Agent or the Parent so requires, the Agent and the Parent shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.

### Any alternative basis agreed pursuant to paragraph (a) above shall, with the prior consent of all the Lenders and the Parent, be binding on all Parties.

## Break Costs

### Each 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 a Loan or Unpaid Sum being paid by that Borrower on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.

### 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.

# Fees

## Commitment fee

### The Parent shall pay to the Agent (for the account of each Lender) a fee [in the Base Currency] computed at the rate of:

#### [ ] per cent. per annum on that Lender's Available Commitment under Facility A for the Availability Period applicable to Facility A;

#### [ ] per cent. per annum on that Lender's Available Commitment under Facility B for the Availability Period applicable to Facility B;

#### [ ] per cent. per annum on that Lender's Available Commitment under Facility C for the Availability Period applicable to Facility C; and

#### [[ ] per cent. per annum on that Lender's Available Commitment under the Revolving Facility for the Availability Period applicable to the Revolving Facility.][[31]](#footnote-31)

### The accrued commitment fee is payable on the last day of each successive period of three Months which ends during the relevant Availability Period, on the last day of the relevant Availability Period and on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.

### [No commitment fee is payable to the Agent (for the account of a Lender) on any Available Commitment of that Lender for any day on which that Lender is a Defaulting Lender.]

## Arrangement fee

The Parent shall pay to the Arranger an arrangement fee in the amount and at the times agreed in a Fee Letter.

## Agency fee

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

## Security Agent fee

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

## Fees payable in respect of Letters of Credit

### [The Parent or] each Borrower shall pay to the Issuing Bank a fronting fee at the rate of [ ] per cent. per annum on the outstanding amount which is counter-indemnified by the other Lenders of each Letter of Credit requested by it for the period from the issue of that Letter of Credit until its Expiry Date.

### [The Parent or] each Borrower shall pay to the Agent (for the account of each Lender) a Letter of Credit fee in [the Base Currency] (computed at the rate equal to the Margin applicable to a Revolving Facility Loan) on the outstanding amount of each Letter of Credit requested by it for the period from the issue of that Letter of Credit until its Expiry Date. This fee shall be distributed according to each Lender's L/C Proportion of that Letter of Credit.

### The accrued fronting fee and Letter of Credit fee on a Letter of Credit shall be payable on the [first/last] day of each successive period of three Months (or such shorter period as shall end on the Expiry Date for that Letter of Credit) starting on [the date of issue of that Letter of Credit]. The accrued fronting fee and Letter of Credit fee is also payable to the Agent on the cancelled amount of any Lender's Revolving Facility Commitment at the time the cancellation is effective if that Commitment is cancelled in full and the Letter of Credit is prepaid or repaid in full.

### [[The Parent or] each Borrower shall pay to the Issuing Bank (for its own account) an issuance/administration fee in the amount and at the times specified in a Fee Letter.]

## Interest, commission and fees on Ancillary Facilities

The rate and time of payment of interest, commission, fees and any other remuneration in respect of each Ancillary Facility shall be determined by agreement between the relevant Ancillary Lender and the Borrower of that Ancillary Facility based upon normal market rates and terms.

**SECTION 6**

**ADDITIONAL PAYMENT OBLIGATIONS**

# Tax Gross Up And Indemnities[[32]](#footnote-32)

## Definitions

In this Agreement:

"**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:

* 1. a Lender (other than a Lender within paragraph (ii) below) which is beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document and is:
     1. 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; 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 which is within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance;

* + 1. [a Lender which is:
       1. a company resident in the United Kingdom for United Kingdom tax purposes;
       2. a partnership each member of which is:

(a) a company so resident in the United Kingdom; or

(b) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA;

* + - 1. 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]
    1. a Treaty Lender; or
  1. [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:

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

"**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.

"**Tax Payment**" means either the increase in a payment made by an Obligor to a Finance Party under Clause ‎18.2 (*Tax gross-up*) or a payment under Clause ‎18.3 (*Tax indemnity*).

"**Treaty Lender**" means a Lender which:

#### is treated as a resident of a Treaty State for the purposes of the Treaty;

#### 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

#### ][[33]](#footnote-33)

"**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:

#### where a Lender becomes a Party on the day on which this Agreement is entered into, a Lender listed in Part III of Schedule 1 (*The Original Parties*); and[[34]](#footnote-34)

#### where a Lender becomes a Party after the day on which this Agreement is entered into, a Lender which gives a Tax Confirmation in the Assignment Agreement or Transfer Certificate which it executes on becoming a Party.]

Unless a contrary indication appears, in this Clause ‎18 a reference to "**determines**" or "**determined**" means a determination made in the absolute discretion of the person making the determination.

## Tax gross-up

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

### The Parent shall promptly upon becoming aware that an Obligor 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 or Issuing Bank shall notify the Agent on becoming so aware in respect of a payment payable to that Lender or Issuing Bank. If the Agent receives such notification from a Lender or Issuing Bank it shall notify the Parent and that Obligor.

### If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

### 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:

#### 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

#### the relevant Lender is a Qualifying Lender solely by virtue of paragraph (i)(B) of the definition of Qualifying Lender and:

##### an officer of H.M. Revenue & Customs has given (and not revoked) a direction (a "**Direction**") under section 931 of the ITA which relates to the payment and that Lender has received from the Obligor making the payment or from the Company a certified copy of that Direction; and

##### the payment could have been made to the Lender without any Tax Deduction if that Direction had not been made; or

#### the relevant Lender is a Qualifying Lender solely by virtue of paragraph (i)(B) of the definition of Qualifying Lender and:

##### the relevant Lender has not given a Tax Confirmation to the Company; and

##### the payment could have been made to the Lender without any Tax Deduction if the Lender had given a Tax Confirmation to the Company, on the basis that the Tax Confirmation would have enabled the Company to have formed a reasonable belief that the payment was an "excepted payment" for the purpose of section 930 of the ITA]; or

#### the relevant Lender is a Treaty Lender and the Obligor making the payment is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had that Lender complied with its obligations under paragraph (g) below.

### If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

### Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction 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.

### 

#### Subject to paragraph (ii) below, a Treaty Lender and each Obligor which makes a payment to which that Treaty Lender is entitled shall co-operate in completing any procedural formalities necessary for that Obligor to obtain authorisation to make that payment without a Tax Deduction.

#### Nothing in paragraph (i) above shall require a Treaty Lender to:

##### register under the HMRC DT Treaty Passport scheme;

##### apply the HMRC DT Treaty Passport scheme to any Utilisation if it has so registered; or

##### file Treaty forms if it has included an indication to the effect that it wishes the HMRC DT Treaty Passport scheme to apply to this Agreement in accordance with paragraph ‎(j) below or paragraph ‎(a) of Clause ‎18.6 (*HMRC DT Treaty Passport scheme confirmation*) and the Obligor making that payment has not complied with its obligations under paragraph (k) below or paragraph ‎(b) of Clause ‎18.6 (*HMRC DT Treaty Passport scheme confirmation*).

### [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 Parent by entering into this Agreement.

### A UK Non-Bank Lender shall promptly notify the Parent and the Agent if there is any change in the position from that set out in the Tax Confirmation.]

### 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 include an indication to that effect (for the benefit of the Agent and without liability to any Obligor) by including its scheme reference number and its jurisdiction of tax residence opposite its name in Part II of ‎Schedule 1 (*The Original Parties*).

### Where a Lender includes the indication described in paragraph (j) above in Part II of ‎Schedule 1 (*The Original Parties*):

#### each Original Borrower shall, to the extent that that Lender is a Lender under a Facility made available to that Original Borrower pursuant to Clause ‎2.1 (*The Facilities*), file a duly completed form DTTP2 in respect of such Lender with HM Revenue & Customs within 30 days of the date of this Agreement and shall promptly provide the Lender with a copy of that filing; and

#### each Additional Borrower shall, to the extent that that Lender is a Lender under a Facility made available to that Additional Borrower pursuant to Clause ‎2.1 (*The Facilities*), file a duly completed form DTTP2 in respect of such Lender with HM Revenue & Customs within 30 days of becoming an Additional Borrower and shall promptly provide the Lender with a copy of that filing.

### If a Lender has not included an indication to the effect that it wishes the HMRC DT Treaty Passport scheme to apply to this Agreement in accordance with paragraph ‎(j) above or paragraph ‎(a) of Clause ‎18.6 (*HMRC DT Treaty Passport scheme confirmation*), no Obligor shall file any form relating to the HMRC DT Treaty Passport scheme in respect of that Lender's Commitment(s) or its participation in any Utilisation.

## Tax indemnity

### The Parent 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.

### Paragraph (a) above shall not apply:

#### with respect to any Tax assessed on a Finance Party:

##### 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

##### 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

#### to the extent a loss, liability or cost:

##### is compensated for by an increased payment under Clause ‎18.2 (*Tax gross-up*); or

##### would have been compensated for by an increased payment under Clause ‎18.2 (*Tax gross-up*) but was not so compensated solely because one of the exclusions in paragraph (d) of Clause ‎18.2 (*Tax gross-up*) applied.

### 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 Parent.

### A Protected Party shall, on receiving a payment from an Obligor under this Clause ‎18.3, notify the Agent.

## Tax Credit

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

### a Tax Credit is attributable either to an increased payment of which that Tax Payment forms part or to that Tax Payment; and

### that Finance Party has obtained, utilised and retained that Tax Credit,

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

## Lender Status Confirmation

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

### not a Qualifying Lender;

### a Qualifying Lender (other than a Treaty Lender); or

### a Treaty Lender.

If a New Lender fails to indicate its status in accordance with this Clause 18.5 then such New Lender shall be treated for the purposes of this Agreement (including by each Obligor) as if it is not a Qualifying Lender until such time as it notifies the Agent which category applies (and the Agent, upon receipt of such notification, shall inform the Company). For the avoidance of doubt, a Transfer Certificate, Assignment Agreement or Increase Confirmation shall not be invalidated by any failure of a Lender to comply with this Clause ‎18.5.

## HMRC DT Treaty Passport scheme confirmation

### A New Lender or an Increase 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 include an indication to that effect (for the benefit of the Agent and without liability to any Obligor) in the Transfer Certificate, Assignment Agreement or Increase Confirmation which it executes by including its scheme reference number and its jurisdiction of tax residence in that Transfer Certificate, Assignment Agreement or Increase Confirmation.

### Where a New Lender or an Increase Lender includes the indication described in paragraph ‎(a) above in the relevant Transfer Certificate, Assignment Agreement or Increase Confirmation:

#### each Borrower which is a Party as a Borrower as at the relevant Transfer Date or the date on which the increase in Total Commitments described in the relevant Increase Confirmation takes effect shall, to the extent that that New Lender or Increase Lender becomes a Lender under a Facility which is made available to that Borrower pursuant to Clause ‎2.1 (*The Facilities*), file a duly completed form DTTP2 in respect of such Lender with HM Revenue & Customs within 30 days of that Transfer Date or that date on which the increase in Total Commitments takes effect and shall promptly provide the Lender with a copy of that filing; and

#### each Additional Borrower which becomes an Additional Borrower after the relevant Transfer Date or the date on which the increase in Total Commitments described in the relevant Increase Confirmation takes effect shall, to the extent that that New Lender or Increase Lender is a Lender under a Facility which is made available to that Additional Borrower pursuant to Clause ‎2.1 (*The Facilities*), file a duly completed form DTTP2 in respect of such Lender with HM Revenue & Customs within 30 days of becoming an Additional Borrower and shall promptly provide the Lender with a copy of that filing.

## Stamp taxes

The Parent shall pay and, within three Business Days of demand, indemnify each Secured Party and Arranger against any cost, loss or liability that Secured Party or Arranger incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

## VAT

### All amounts set out or expressed in a Finance Document to be payable by any Party to a Finance Party which (in whole or in part) constitute the consideration for a supply or supplies for VAT purposes shall be deemed to be exclusive of any VAT which is chargeable on such supply or supplies, 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, that Party shall pay to the 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 such VAT (and such Finance Party shall promptly provide an appropriate VAT invoice to such Party).

### 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 "**Subject Party**") is required by the terms of any Finance Document to pay an amount equal to the consideration for such supply to the Supplier (rather than being required to reimburse the Recipient in respect of that consideration), such Party shall also pay to the Supplier (in addition to and at the same time as paying such amount) an amount equal to the amount of such VAT. The Recipient will promptly pay to the Subject Party an amount equal to any credit or repayment obtained by the Recipient from the relevant tax authority which the Recipient reasonably determines is in respect of such VAT.

### 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.

### Any reference in this Clause ‎18.8 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).

# Increased Costs

## Increased costs[[35]](#footnote-35)

### Subject to Clause ‎19.3 (*Exceptions*) the Parent 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 or (ii) compliance with any law or regulation made after the date of this Agreement.

### In this Agreement "**Increased Costs**" means:

#### a reduction in the rate of return from a Facility or on a Finance Party's (or its Affiliate's) overall capital;

#### an additional or increased cost; or

#### 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 an Ancillary Commitment or funding or performing its obligations under any Finance Document or Letter of Credit.

## Increased cost claims

### A Finance Party intending to make a claim pursuant to Clause ‎19.1 (*Increased Costs*) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Parent.

### Each Finance Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount of its Increased Costs.

## Exceptions[[36]](#footnote-36)

### Clause ‎19.1 (*Increased Costs*) does not apply to the extent any Increased Cost is:

#### attributable to a Tax Deduction required by law to be made by an Obligor;

#### compensated for by Clause ‎18.3 (*Tax indemnity*) (or would have been compensated for under Clause ‎18.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause ‎18.3 (*Tax indemnity*) applied);

#### compensated for by the payment of the Mandatory Cost; or

#### attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.

### In this Clause ‎19.3 reference to a "**Tax Deduction**" has the same meaning given to the term in Clause ‎18.1 (*Definitions*).

# Other Indemnities

## Currency indemnity

### If any sum due from an Obligor under the Finance Documents (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:

#### making or filing a claim or proof against that Obligor; or

#### obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

that Obligor shall as an independent obligation, within three Business Days of demand, indemnify the Arranger and each other 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.

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

## Other indemnities

### The Parent shall (or shall procure that an Obligor will), within three Business Days of demand, indemnify the Arranger and each other Secured Party against any cost, loss or liability incurred by it as a result of:

#### the occurrence of any Event of Default;

#### a failure by an Obligor to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause ‎34 (*Sharing among the Finance Parties*);

#### funding, or making arrangements to fund, its participation in a Utilisation requested by a Borrower in a Utilisation Request 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);

#### issuing or making arrangements to issue a Letter of Credit requested by the Parent or a Borrower in a Utilisation Request but not issued by reason of the operation of any one or more of the provisions of this Agreement; or

#### a Utilisation (or part of a Utilisation) not being prepaid in accordance with a notice of prepayment given by a Borrower or the Parent.

### The Parent shall promptly indemnify each Finance Party, each Affiliate of a Finance Party and each officer or employee of a Finance Party or its Affiliate, against any cost, loss or liability incurred by that Finance Party or its Affiliate (or officer or employee of that Finance Party or Affiliate) in connection with or arising out of the Acquisition or the funding of the Acquisition (including but not limited to those incurred in connection with any litigation, arbitration or administrative proceedings or regulatory enquiry concerning the Acquisition), unless such loss or liability is caused by the gross negligence or wilful misconduct of that Finance Party or its Affiliate (or employee or officer of that Finance Party or Affiliate). Any Affiliate or any officer or employee of a Finance Party or its Affiliate may rely on this Clause ‎20.2 [subject to Clause ‎1.3 (*Third party rights*) and the provisions of the Third Parties Act].

## Indemnity to the Agent

The Parent shall promptly indemnify the Agent against any cost, loss or liability incurred by the Agent (acting reasonably) as a result of:

### investigating any event which it reasonably believes is a Default; or

### acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised.

## Indemnity to the Security Agent[[37]](#footnote-37)

### Each Obligor 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:

#### the taking, holding, protection or enforcement of the Transaction Security,

#### the exercise of any of the rights, powers, discretions and remedies vested in the Security Agent and each Receiver and Delegate by the Finance Documents or by law; or

#### any default by any Obligor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents.

### The Security Agent 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 ‎20.4 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.

# Mitigation By The Lenders

## Mitigation

### Each Finance Party shall, in consultation with the Parent, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause ‎11.1 (*Illegality*) (or, in respect of the Issuing Bank, Clause ‎11.2 (*Illegality in relation to Issuing Bank*)), Clause ‎18 (*Tax gross-up and indemnities*) or Clause ‎19 (*Increased Costs*) or paragraph [   ] of Schedule 4 (*Mandatory Cost formula*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.

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

## Limitation of liability

### The Parent 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 ‎21.1 (*Mitigation*).

### A Finance Party is not obliged to take any steps under Clause ‎21.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

# Costs And Expenses

## Transaction expenses

The Parent shall promptly on demand pay the Agent, the Arranger, the Issuing Bank and the Security Agent[[38]](#footnote-38) 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:

### this Agreement and any other documents referred to in this Agreement and the Transaction Security; and

### any other Finance Documents executed after the date of this Agreement.

## Amendment costs

If (a) an Obligor requests an amendment, waiver or consent or (b) an amendment is required pursuant to Clause ‎35.10 (*Change of currency*), the Parent 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.

## [Security Agent's ongoing costs

### In the event of (i) a Default or (ii) the Security Agent considering it necessary or expedient or (iii) the Security Agent being requested by an Obligor or the Majority Lenders to undertake duties which the Security Agent and the Parent agree to be of an exceptional nature and/or outside the scope of the normal duties of the Security Agent under the Finance Documents, the Parent shall pay to the Security Agent any additional remuneration that may be agreed between them.

### If the Security Agent and the Parent fail to agree upon the nature of the duties or upon any additional remuneration, that 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 Parent 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 Parent) and the determination of any investment bank shall be final and binding upon the parties to this Agreement.][[39]](#footnote-39)

## Enforcement and preservation costs

The Parent shall, within three Business Days of demand, pay to the Arranger and each other Secured Party[[40]](#footnote-40) 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.

**SECTION 7**

**GUARANTEE**

# Guarantee And Indemnity

## Guarantee and indemnity

Each Guarantor irrevocably and unconditionally jointly and severally:

### guarantees to each Finance Party punctual performance by each other Obligor of all that Obligor's obligations under the Finance Documents;

### undertakes with each Finance Party that whenever another Obligor does not pay any amount when due under or in connection with any Finance Document, that Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and

### agrees with each Finance Party that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Finance Party immediately on demand against any cost, loss or liability it incurs as a result of an Obligor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by a Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 23 if the amount claimed had been recoverable on the basis of a guarantee.

## Continuing Guarantee

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

## Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is made by a Finance Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Guarantor under this Clause 23 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

## Waiver of defences

The obligations of each Guarantor under this Clause ‎23 will not be affected by an act, omission, matter or thing which, but for this Clause ‎23, would reduce, release or prejudice any of its obligations under this Clause ‎23 (without limitation and whether or not known to it or any Finance Party) including:

### any time, waiver or consent granted to, or composition with, any Obligor or other person;

### the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;

### the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;

### any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;

### any amendment, novation, supplement, extension restatement (however fundamental and whether or not more onerous) or replacement of a Finance Document or any other document or security including, without limitation, any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any Finance Document or other document or security;

### any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or

### any insolvency or similar proceedings.

## Guarantor Intent

Without prejudice to the generality of Clause ‎23.4 (*Waiver of Defences*), each Guarantor expressly confirms that it intends that this guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

## Immediate recourse

Each Guarantor waives any right it may have of first requiring any Finance Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under this Clause ‎23. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

## Appropriations

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

### refrain from applying or enforcing any other moneys, security or rights held or received by that Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Guarantor shall be entitled to the benefit of the same; and

### hold in an interest-bearing suspense account any moneys received from any Guarantor or on account of any Guarantor's liability under this Clause ‎23.

## Deferral of Guarantors' rights

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Agent otherwise directs, no Guarantor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 23:

### to be indemnified by an Obligor;

### to claim any contribution from any other guarantor of any Obligor's obligations under the Finance Documents;

### to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Finance Party;

### to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which any Guarantor has given a guarantee, undertaking or indemnity under Clause ‎23.1 (*Guarantee and Indemnity*);

### to exercise any right of set-off against any Obligor; and/or

### to claim or prove as a creditor of any Obligor in competition with any Finance Party.

If a Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Finance Parties by the Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Finance Parties and shall promptly pay or transfer the same to the Agent or as the Agent may direct for application in accordance with Clause ‎35 (*Payment mechanics*).

## Release of Guarantors' right of contribution

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

### that Retiring Guarantor is released by each other Guarantor from any liability (whether past, present or future and whether actual or contingent) to make a contribution to any other Guarantor arising by reason of the performance by any other Guarantor of its obligations under the Finance Documents; and

### each other Guarantor waives any rights it may have by reason of the performance of its obligations under the Finance Documents to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under any Finance Document or of any other security taken pursuant to, or in connection with, any Finance Document where such rights or security are granted by or in relation to the assets of the Retiring Guarantor.

## Additional security

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

## Guarantee Limitations[[41]](#footnote-41)

[This guarantee does not apply to any liability to the extent that it would result in this guarantee constituting unlawful financial assistance within the meaning of sections 678 or 679 of the Companies Act 2006 [or any equivalent and applicable provisions under the laws of the jurisdiction of incorporation of the relevant Guarantor] and, with respect to any Additional Guarantor, is subject to any limitations set out in the Accession Deed applicable to such Additional Guarantor.]

**SECTION 8**

**REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT**

# Representations[[42]](#footnote-42)

## General

### Each Obligor makes the representations and warranties set out in this Clause ‎24 to each Finance Party.

### In relation to the representations and warranties made on the date of this Agreement and any other date on or before the Closing Date, it is assumed that [Completion has occurred and] the Parent has the knowledge [of Senior Management].

## Status

### It and each of its Subsidiaries is a limited liability corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation.

### It and each of its Subsidiaries has the power to own its assets and carry on its business as it is being conducted.

## Binding obligations

Subject to the Legal Reservations:

### 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

### (without limiting the generality of paragraph (a) above), 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.

## 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] [pursuant to the Agreed Security Principles] do not and will not conflict with:

### any law or regulation applicable to it;

### the constitutional documents of any member of the Group; or

### 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.

## 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.

### [No limit on its powers will be exceeded as a result of the borrowing, grant of security or giving of guarantees or indemnities contemplated by the Transaction Documents to which it is a party.]

## Validity and admissibility in evidence

### All Authorisations required or desirable:

#### 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

#### 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 paragraph (b) of Clause ‎24.9 (*No filing or stamp taxes*) [and [          ]], which Authorisation[s] will be promptly obtained or effected after [the date of this Agreement]/[the Closing Date].

### 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].

## Governing law and enforcement

### The choice of governing law of the Finance Documents will be recognised and enforced in its Relevant Jurisdictions.

### 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.

## Insolvency

No:

### corporate action, legal proceeding or other procedure or step described in paragraph (a) of Clause ‎28.7 (*Insolvency proceedings*); or

### creditors' process described in Clause ‎28.8 (*Creditors' process*),

has been taken or, to the knowledge of the Parent, threatened in relation to a member of the Group; and none of the circumstances described in Clause ‎28.6 (*Insolvency*) applies to a member of the Group.

## No filing or stamp taxes

Under the laws of its Relevant Jurisdiction it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents [except:

### registration of particulars of [             ] at the Companies Registration Office in England and Wales under section 860 of the Companies Act 2006 [and Regulation 10 of the Overseas Companies (Execution of Documents and Registration of Charges) Regulations 2009] and payment of associated fees;

### registration of particulars of [             ] at the Trade Marks Registry at the Patent Office in England and Wales and payment of associated fees; and

### registration of [             ] at the Land Registry or Land Charges Registry in England and Wales 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]/

[except any filing, recording or enrolling or any tax or fee payable in relation to [*name of Transaction Security Document*] which is referred to in any Legal Opinion and which will be made or paid promptly after the date of the relevant Finance Document].

## Deduction of Tax[[43]](#footnote-43)

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 Qualifying Lender:

#### falling within paragraph (i)(A) of the definition of Qualifying Lender; [or

#### [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][[44]](#footnote-44); or

#### falling within paragraph (ii) of the definition of Qualifying Lender or;][[45]](#footnote-45)

### 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).

## No default

### No Event of Default and, on the date of this Agreement and the Closing Date, no Default is continuing or is reasonably likely to result from the making of any Utilisation or the entry into, the performance of, or any transaction contemplated by, any Transaction Document.

### 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.

## No misleading information

Save as disclosed in writing to the Agent and the Arranger prior to the date of this Agreement (or, in relation to the Information Memorandum, prior to the date of the Information Memorandum):

### any factual information contained in the Information Memorandum or the Information Package was true and accurate in all material respects as at the date of the relevant report or document containing the information or (as the case may be) as at the date the information is expressed to be given;

### the Base Case Model has been prepared in accordance with the Accounting Principles as applied to the Original Financial Statements, and the financial projections contained in the Base Case Model have been prepared on the basis of recent historical information, are fair and based on reasonable assumptions and have been approved by the board of directors of the Parent;

### any financial projection or forecast contained in the Information Memorandum or the Information Package has been prepared on the basis of recent historical information and on the basis of reasonable assumptions and was fair (as at the date of the relevant report or document containing the projection or forecast) and arrived at after careful consideration;

### the expressions of opinion or intention provided by or on behalf of an Obligor for the purposes of the Information Memorandum or the Information Package 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;

### no event or circumstance has occurred or arisen and no information has been omitted from the Information Memorandum or the Information Package and no information has been given or withheld that results in the information, opinions, intentions, forecasts or projections contained in the Information Memorandum or the Information Package being untrue or misleading in any material respect;

### all material information provided to a Finance Party by or on behalf of the Investors, the Parent or the Company in connection with the Acquisition and/or the Target Group on or before the date of this Agreement and not superseded before that date (whether or not contained in the Information Package) is accurate and not misleading in any material respect and all projections provided to any Finance Party on or before the date of this Agreement have been prepared in good faith on the basis of assumptions which were reasonable at the time at which they were prepared and supplied; and

### all other written information provided by any member of the Group (including its advisers) to a Finance Party [or the provider of any Report] was true, complete and accurate in all material respects as at the date it was provided and is not misleading in any respect.

[The representations and warranties made with respect to the Reports are made by each Obligor in this Clause ‎24.12 only so far as it is aware after making due and careful enquiries.]

## Original Financial Statements

### Its Original Financial Statements were prepared in accordance with the Accounting Principles consistently applied [unless expressly disclosed to the Agent in writing to the contrary] [However in the case of [monthly][and quarterly] statements, normal year end adjustments were not made].

### Its unaudited Original Financial Statements fairly represent its financial condition and results of operations (consolidated in the case of Target) for the relevant [month] [or] [financial quarter][unless expressly disclosed to the Agent in writing to the contrary prior to the date of this Agreement].

### Its audited Original Financial Statements give a true and fair view of its financial condition and results of operations (consolidated in the case of Target) during the relevant financial year [unless expressly disclosed to the Agent in writing to the contrary prior to the date of this Agreement].

### There has been no material adverse change in its assets, business or financial condition (or the assets, business or consolidated financial condition of the Group, in the case of the Parent) since the date of the [Accountant's Report/Original Financial Statements].

### The Original Financial Statements of the Target [and the Parent] do not consolidate the results, assets or liabilities of any person or business which does not form part of the [Target Shares or the Target Assets].

### Its most recent financial statements delivered pursuant to Clause 25.1 (*Financial Statements*):

#### have been prepared in accordance with the Accounting Principles as applied to the Original Financial Statements [and the Base Case Model]; and

#### give a true and fair view of (if audited) or fairly present (if unaudited) its consolidated financial condition as at the end of, and consolidated results of operations for, the period to which they relate.

### The budgets and forecasts supplied under this Agreement were arrived at after careful consideration and have been prepared in good faith on the basis of recent historical information and on the basis of assumptions which were reasonable as at the date they were prepared and supplied.

### Since the date of the most recent financial statements delivered pursuant to Clause 25.1 *(Financial Statements)* there has been no material adverse change in the business, assets or financial condition of the Group.

## 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.

## No breach of laws

### 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.

### 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.

## Environmental laws

### Each member of the Group is in compliance with Clause ‎27.3 (*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 in a manner or to an extent which has or is reasonably likely to have a Material Adverse Effect.

### 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.

### 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 [Base Case Model] and the cost of compliance with the recommendations contained in the Environmental Report is adequately provided for in the [Base Case Model].

## [Taxation

### 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 Tax of [         ] (or its equivalent in any other currency) or more.

### 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 liability of, or claim against, any member of the Group of [           ] (or its equivalent in any other currency) or more is reasonably likely to arise].

### It is resident for Tax purposes only in the jurisdiction of its incorporation.]

## Security and Financial Indebtedness

### 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.

### No member of the Group has any Financial Indebtedness outstanding other than as permitted by this Agreement.

## Ranking

The Transaction Security has or will have [the ranking in priority which it is expressed to have in the Transaction Security Documents]/[first ranking priority] and it is not subject to any prior ranking or *pari passu* ranking Security.

## 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.

## Legal and beneficial ownership

### [Subject to paragraph (c) below,] it and each of its Subsidiaries is the sole legal and beneficial owner of the respective assets over which it purports to grant Security.

### [Subject to paragraph (c) below,] all the [Target Shares] [and] [Target Assets] are or will be on the Closing Date legally and beneficially owned by [the Company/the members of the Group specified in the Structure Memorandum as owner of those shares and assets] free from any claims, third party rights or competing interests other than Permitted Security permitted under Clause ‎27.15 (*Negative Pledge*).

### [The [Target Shares] are beneficially but not legally owned by the purchaser until those shares are registered in the register of shareholders of Target, which registration will be made as soon as possible after the Closing Date].

## 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. Except as provided in the Shareholders Agreement [and the Warrant Documents], 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 or member of the Target Group (including any option or right of pre-emption or conversion).

## Intellectual Property

It [and each of its Subsidiaries]:

### is the sole legal and beneficial owner of or has licensed to it [on normal commercial terms] 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 Base Case Model;

### does not [(nor does any of its Subsidiaries)], 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

### has taken all formal or procedural actions (including payment of fees) required to maintain any material Intellectual Property owned by it.

## Group Structure Chart

### Assuming Completion has occurred [and steps [   ] to [   ] of the Structure Memorandum have been completed,] the Group Structure Chart delivered to the Agent pursuant to Part IA of Schedule 2 (*Conditions Precedent*) is true, complete and accurate in all material respects and shows the following information:

#### each member of the Group, including current name and company registration number, its jurisdiction of incorporation and/or establishment, a list of shareholders and indicating whether a company is a Dormant Subsidiary or is not a company with limited liability; and

#### all minority interests in any member of the Group and any person in which any member of the Group holds shares in its issued share capital or equivalent ownership interest of such person.

### All necessary intra-Group loans, transfers, share exchanges and other steps resulting in the final Group structure are set out in the Group Structure Chart and have been or will be taken in compliance with all relevant laws and regulations and all requirements of relevant regulatory authorities.

## Obligors

### [Each Subsidiary of the Parent incorporated in the United Kingdom [(other than a Dormant Subsidiary)] and each Material Company incorporated in any other jurisdiction is or will be an Obligor on the Closing Date.]/[Each Subsidiary [(other than a Dormant Subsidiary)] is or will be an Obligor on the Closing Date.]

### [The aggregate [of earnings before interest, tax, depreciation and amortisation (calculated on the same basis as EBITDA (as defined in Clause ‎26 (*Financial Covenants*)))]/ [the aggregate gross assets, the aggregate net assets and the aggregate turnover] of the Guarantors on the Closing Date (calculated on an unconsolidated basis and excluding all intra-Group items and investments in Subsidiaries of any member of the Group) exceeds [ ]% of [EBITDA, as defined in Clause ‎26 (*Financial Covenants*)] / [the consolidated gross assets, net assets or turnover of the Group].

## Accounting reference date

The Accounting Reference Date of each member of the Group is [             ].

## Acquisition Documents, disclosures and other Documents

### The Acquisition Documents contain all the terms of the Acquisition.

### There is no disclosure made [in the Disclosure Letter or any other disclosure] to the Acquisition Documents or the Shareholders' Agreement which has or may have a [material] adverse effect on any of the information, opinions, intentions, forecasts and projections contained or referred to in the Information Package.

### To the best of its knowledge no representation or warranty (as qualified by [the Disclosure Letter]) given by any party to the Acquisition Document[s] is untrue or misleading in any material respect.

### The Shareholders' Agreement, the Service Contracts and the constitutional documents of the Parent and the Company (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 Investors and between Senior Management, the Parent and any member of the Group.

## Centre of main interests and establishments

For the purposes of The Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings (the "**Regulation**"), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in [England and Wales]/[its jurisdiction of incorporation] [and it has no "establishment" (as that term is used in Article 2(h) of the Regulations) in any other jurisdiction].

## [Pensions[[46]](#footnote-46)

Except for [*specify any existing defined benefit pension schemes or those of any employer with which any member of the Group has been "connected" or "associated"*]:

### 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 Pensions Schemes Act 1993); and

### 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.]

## No adverse consequences

### It is not necessary under the laws of its Relevant Jurisdictions:

#### in order to enable any Finance Party to enforce its rights under any Finance Document; or

#### 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.

### 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.

## Holding and Dormant Companies

### Except as may arise under the Transaction Documents and for Acquisition Costs, before the Closing Date neither the Parent nor the Company has traded or incurred any liabilities or commitments (actual or contingent, present or future) other than in the case of the Parent acting as a Holding Company of the Company.

### Each of [*insert list of dormant subsidiaries*] is a Dormant Subsidiary.

## Times when representations made

### All the representations and warranties in this Clause ‎24 are made by each Original Obligor on the date of this Agreement [except for the representations and warranties set out in Clause ‎24.12 (*No misleading information*) which are deemed to be made by each Obligor (i) with respect to the Information Memorandum, on the date the Information Memorandum is approved by the Parent, (ii) with respect to the Base Case Model, on the date of this Agreement and on the Closing Date and (iii) with respect to the Information Package (other than the Base Case Model), on the date of this Agreement and on any later date on which the Information Package (or part of it) is released to the Arranger[s] for distribution in connection with syndication].

### All the representations and warranties in this Clause ‎24 are deemed to be made by each Obligor on the Closing Date.

### The representations and warranties in Clause ‎24.12 (*No misleading information*) are deemed to be made by each Obligor on the Syndication Date.

### The Repeating Representations are deemed to be made by each Obligor on the date of each Utilisation Request, on each Utilisation Date and on the first day of each Interest Period (except that those contained in paragraphs (a) - (e) of Clause ‎24.13 (*Original Financial Statements*) will cease to be so made once subsequent financial statements have been delivered under this Agreement).

### All the representations and warranties in this Clause ‎24 except Clause ‎24.12 (*No misleading information*), Clause ‎24.24 (*Group Structure Chart*), Clause ‎24.27 (*Acquisition Documents, Disclosures and Other Documents*) and Clause ‎24.31 (*Holding and Dormant Companies*) are deemed to be made by each Additional Obligor on the day on which it becomes (or it is proposed that it becomes) an Additional Obligor.

### 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.

# Information Undertakings

The undertakings in this Clause ‎25 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 ‎25:

"**Annual Financial Statements**" means the financial statements for a Financial Year delivered pursuant to paragraph (a) of Clause ‎25.1 (*Financial statements*).

"**Monthly Financial Statements**" means the financial statements delivered pursuant to paragraph (c) of Clause ‎25.1 (*Financial statements*).

"**Quarterly Financial Statements**" means the financial statements delivered pursuant to paragraph (b) of Clause ‎25.1 (*Financial statements*).

## Financial statements

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

### as soon as they are available, but in any event within [   ] days after the end of each of its Financial Years:

#### its audited consolidated financial statements for that Financial Year;

#### the audited financial statements (consolidated if appropriate) of each Obligor for that Financial Year; [and

#### the audited financial statements of any other [Material Company]/[Subsidiary] for that Financial Year if requested by the Agent];

### [as soon as they are available, but in any event within [    ] days after the end of each Financial Quarter of each of its Financial Years its consolidated financial statements for that Financial Quarter;] and

### as soon as they are available, but in any event within [    ] days after the end of each month its financial statements on a consolidated basis for that month (to include cumulative management accounts for the Financial Year to date).

## Provision and contents of Compliance Certificate

### The Parent shall supply a Compliance Certificate to the Agent with each set of its audited consolidated Annual Financial Statements and each set of its [consolidated] Quarterly Financial Statements.

### The Compliance Certificate shall, amongst other things, set out (in reasonable detail) computations as to compliance with Clause ‎26 (*Financial Covenants*).

### Each Compliance Certificate shall be signed by two directors of the Parent [and, if required to be delivered with the consolidated Annual Financial Statements of the Parent, shall be reported on by the Parent's Auditors in the form agreed by the Parent and the Majority Lenders].

## Requirements as to financial statements

### The Parent shall procure that each set of Annual Financial Statements, Quarterly Financial Statements and Monthly Financial Statements includes a balance sheet, profit and loss account and cashflow statement. In addition the Parent shall procure that:

#### each set of Annual Financial Statements shall be audited by the Auditors;

#### each set of Quarterly Financial Statements includes a cashflow forecast in respect of the Group relating to the [  ] month period commencing at the end of the relevant Financial Quarter;

#### each set of Monthly Financial Statements is accompanied by a statement by the directors of the Parent commenting on the performance of the Group for the month to which the financial statements relate [and the Financial Year to date] and any material developments or proposals affecting the Group or its business; and

#### [specify other requirements].

### Each set of financial statements delivered pursuant to Clause ‎25.1 (*Financial statements*):

#### 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 as at the date as 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 and accompanying those Annual Financial Statements];

#### in the case of consolidated financial statements of the Group, shall be accompanied by a statement by the directors of the Parent comparing actual performance for the period to which the financial statements relate to:

##### the projected performance for that period set out in the Budget; and

##### the actual performance for the corresponding period in the preceding Financial Year of the Group; and

#### [shall be prepared in accordance with the Accounting Principles.]/ [shall be prepared using the Accounting Principles, accounting practices and financial reference periods consistent with those applied:

##### in the case of the Parent, in the preparation of the Base Case Model; and

##### in the case of any Obligor, in the preparation of the Original Financial Statements for that Obligor,

unless, in relation to any set of financial statements, the Parent notifies the Agent that there has been a change in the Accounting Principles or the accounting practices and its Auditors (or, if appropriate, the Auditors of the Obligor) deliver to the Agent:

##### a description of any change necessary for those financial statements to reflect the Accounting Principles or accounting practices upon which the Base Case Model or, as the case may be, that Obligor's Original Financial Statements were prepared; and

##### sufficient information, in form and substance as may be reasonably required by the Agent, to enable the Lenders to determine whether Clause ‎26 (*Financial covenants*) has been complied with, to determine the Margin as set out in the definition of "Margin", to determine the amount of any prepayments to be made from excess cashflow under Clause ‎12.2 (*Disposal, Insurance and Acquisition Proceeds and Excess Cashflow*) and to make an accurate comparison between the financial position indicated in those financial statements and the Base Case Model (in the case of the Parent) or that Obligor's Original Financial Statements (in the case of an Obligor).

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 Base Case Model or, as the case may be, the Original Financial Statements were prepared.]

### If the Agent wishes to discuss the financial position of any member of the Group with the Auditors, the Agent may notify the Parent, stating the questions or issues which the Agent wishes to discuss with the Auditors. In this event, the Parent must ensure that the Auditors are authorised (at the expense of the Parent):

#### to discuss the financial position of each member of the Group with the Agent on request from the Agent; and

#### to disclose to the Agent for the Finance Parties any information which the Agent may reasonably request.

## Budget

### The Parent shall supply to the Agent in sufficient copies for all the Lenders, as soon as the same become available but in any event within [   ] days before the start of each of its Financial Years, an annual Budget for that financial year.

### The Parent shall ensure that each Budget:

#### is in a form reasonably acceptable to the Agent and includes a projected consolidated profit and loss, balance sheet and cashflow statement for the Group, projected financial covenant calculations and [            ];

#### is prepared in accordance with the Accounting Principles and the accounting practices and financial reference periods applied to financial statements under Clause ‎25.1 (*Financial statements*); and

#### has been approved by the board of directors of the Parent.

### If the Company updates or changes the Budget, it shall [promptly][within not more than [ ] days of the update or change being made] 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.

## Group companies

The Parent shall, at the request of the Agent, supply to the Agent a report issued by its Auditors stating [which of its Subsidiaries are Material Companies] [and confirming that the [aggregate of earnings before interest, tax, depreciation and amortisation (calculated on the same basis as EBITDA, as defined in Clause ‎26 (*Financial Covenants*))/ [aggregate gross assets, aggregate net assets and aggregate turnover] of the Guarantors (calculated on an unconsolidated basis and excluding all intra-Group items and investments in Subsidiaries of any member of the Group) exceeds [ ]% of [EBITDA (as defined in Clause ‎26 (*Financial Covenants*))]/[the consolidated gross assets, net assets and turnover of the Group].

## Presentations

Once in every Financial Year, [or more frequently if requested to do so by the Agent if the Agent reasonably suspects a Default is continuing or may have occurred or may occur], at least two directors of the Parent (one of whom shall be the chief financial officer) must give a presentation to the Finance Parties about the on-going business and financial performance of the Group.

## Year-end

### The Parent shall [not change its Accounting Reference Date]/[procure that each Financial Year-end of each member of the Group falls on [ ]].

### [The Parent shall procure that its first annual accounting period ends within six months of its date of incorporation.]

## Information: miscellaneous

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

### at the same time as they are dispatched, copies of all documents [dispatched by the Parent to its shareholders generally (or any class of them) or] dispatched by the Parent or any Obligors to its creditors generally (or any class of them);

### 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 [or which would involve a liability, or a potential or alleged liability, exceeding £[            ] (or its equivalent in other currencies)];

### promptly upon becoming aware of the relevant claim, the details of any claim which is current, threatened or pending against the Vendor or any other person in respect of the Acquisition Documents and details of any disposal or insurance claim which will require a prepayment under Clause ‎12.2 (*Disposal, Insurance and Acquisition Proceeds and Excess Cashflow*);

### promptly, such information as the Security Agent may reasonably require about the Charged Property and compliance of the Obligors with the terms of any Transaction Security Documents; and

### promptly on request, such further information regarding the financial condition, assets and operations of the Group and/or any member of the Group (including any requested amplification or explanation of any item in the financial statements, budgets or other material provided by any Obligor under this Agreement, any changes to [management of the Group]/[Senior Management] and an up to date copy of its Shareholders' register (or equivalent in its jurisdiction of incorporation)) as any Finance Party through the Agent may reasonably request.

## Notification of default

### Each Obligor shall notify the Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).

### Promptly upon a request by the Agent, the Parent shall supply to the Agent a certificate signed by two of its directors or senior officers on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

## "Know your customer" checks

### If:

#### 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;

#### any change in the status of an Obligor or the composition of the shareholders of an Obligor after the date of this Agreement; or

#### 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, each Obligor shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or, in the case of the event described in paragraph (iii) above, on behalf of any prospective new Lender) in order for the Agent, such Lender or, in the case of the event described in paragraph (iii) above, any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

### 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.

### The Parent shall, by not less than [10] Business Days' prior written notice to the Agent, notify the Agent (which shall promptly notify the Lenders) of its intention to request that one of its Subsidiaries becomes an Additional Obligor pursuant to Clause ‎31 (*Changes to the Obligors*).

### Following the giving of any notice pursuant to paragraph (c) above, if the accession of such Additional Obligor obliges the Agent or any Lender to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Parent shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or on behalf of any prospective new Lender) in order for the Agent or such Lender or any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the accession of such Subsidiary to this Agreement as an Additional Obligor.[[47]](#footnote-47)

# Financial Covenants

## Financial definitions

In this Agreement:

["**Adjusted EBITDA**" means, in relation to a Relevant Period, EBITDA for that Relevant Period adjusted by:

* 1. including the operating profit before interest, tax, depreciation[,]/[and] amortisation [and impairment charges] (calculated on the same basis as EBITDA) of a member of the Group for the Relevant Period (or attributable to a business or assets acquired during the Relevant Period) prior to its becoming a member of the Group or (as the case may be) prior to the acquisition of the business or assets; and
  2. excluding operating profit before interest, tax, depreciation[,]/[and] amortisation [and impairment charges] (calculated on the same basis as EBITDA) attributable to any member of the Group (or to any business or assets) disposed of during the Relevant Period.]

"**Borrowings**" means, at any time, the aggregate outstanding principal, 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:

* 1. moneys borrowed and debit balances at banks or other financial institutions;
  2. any acceptances under any acceptance credit or bill discount facility (or dematerialised equivalent);
  3. any note purchase facility or the issue of bonds [(but not Trade Instruments)], notes, debentures, loan stock or any similar instrument;
  4. any Finance Lease;
  5. 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]);
  6. any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument [(but not, in any case, Trade Instruments)] 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];
  7. [any amount raised by the issue of shares which are redeemable (other than at the option of the issuer) before the [*insert final repayment date of Facilities*] [or are otherwise classified as borrowings under the Accounting Principles]];[[48]](#footnote-48)
  8. 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 [ ] days after the date of supply;
  9. 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]; and
  10. (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 (i) above.

"**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 [(other than expenditure or obligations in respect of Business Acquisitions)] in respect of expenditure which, in accordance with the Accounting Principles, is treated as capital expenditure (and including the capital element of any expenditure or obligation incurred in connection with a Finance Lease).

"**Cashflow**" means, in respect of any Relevant Period, EBITDA for that Relevant Period after:

* 1. adding the amount of any decrease (and deducting the amount of any increase) in Working Capital for that Relevant Period;
  2. adding the amount of any cash receipts (and deducting the amount of any cash payments) during that Relevant Period in respect of any Exceptional Items not already taken account of in calculating EBITDA for any Relevant Period [(other than, in the case of cash receipts, Relevant Proceeds)];
  3. adding the amount of any cash receipts during that Relevant Period in respect of any Tax rebates or credits and deducting the amount actually paid or due and payable in respect of Taxes during that Relevant Period by any member of the Group;
  4. [adding (to the extent not already taken into account in determining EBITDA) the amount of any dividends or other profit distributions received in cash by any member of the Group during that Relevant Period from any entity which is itself not a member of the Group and deducting (to the extent not already deducted in determining EBITDA) the amount of any dividends paid in cash during the Relevant Period to minority shareholders in members of the Group;][[49]](#footnote-49)
  5. [adding the amount of any cash paid to a member of the Group in the Relevant Period that represents repayment of any loan made to a Joint Venture;]
  6. adding the amount of any increase in provisions, other non-cash debits and other non-cash charges (which are not Current Assets or Current Liabilities) and deducting the amount of any non-cash credits (which are not Current Assets or Current Liabilities) in each case to the extent taken into account in establishing EBITDA;
  7. deducting the amount of any Capital Expenditure actually made [(or due to be made] during that Relevant Period by any member of the Group and the aggregate of any cash consideration paid for, or the cash cost of, any Business Acquisitions and the amount of any Joint Venture Investments in cash except (in each case) to the extent funded from:

##### the proceeds of Disposals or insurance claims permitted to be retained for this purpose;

##### [Retained Excess Cashflow;]

##### [any Capex Facility];

##### New Shareholder Injections; or

##### [other];

* 1. [deducting the amount of any cash costs of Pension Items during that Relevant Period to the extent not taken into account in establishing EBITDA;] and
  2. [others],

and so that no amount shall be added (or deducted) more than once [and there shall be excluded the effect of all cash movements associated with the Acquisition and the Acquisition Costs].

"**Cashflow Cover**" means the ratio of Cashflow to Debt Service in respect of any Relevant Period.

"**Current Assets**" means the aggregate (on a consolidated basis) of all inventory, work in progress, trade and other receivables of each member of the Group including prepayments in relation to operating items and sundry debtors (but excluding Cash [and Cash Equivalent Investments]) [maturing]/[expected to be realised] within twelve months from the date of computation but **excluding** amounts in respect of:

* 1. receivables in relation to Tax;
  2. Exceptional Items and other non-operating items;
  3. insurance claims;[and]
  4. any interest owing to any member of the Group[; and
  5. amounts owed by [the Vendor] in connection with the Acquisition].

"**Current Liabilities**" means the aggregate (on a consolidated basis) of all liabilities (including trade creditors, accruals and provisions) of each member of the Group [falling due]/[expected to be settled] within twelve months from the date of computation but **excluding** amounts in respect of:

* 1. liabilities for Borrowings and Finance Charges;
  2. liabilities for Tax;
  3. Exceptional Items and other non-operating items;
  4. insurance claims;[and]
  5. liabilities in relation to dividends declared but not paid by the Parent or by a member of the Group in favour of a person which is not a member of the Group[; and
  6. amounts owed to [the Vendor] in connection with the Acquisition].

"**Debt Service**" means, in respect of any Relevant Period, the aggregate of:

* 1. [Net] Finance Charges for that Relevant Period;
  2. the aggregate of all scheduled [and mandatory] repayments of Borrowings falling due [and any voluntary prepayments made][[50]](#footnote-50) during that Relevant Period but excluding:
     1. any amounts falling due under any overdraft or revolving facility [(including, without limitation, the Revolving Facility and any Ancillary Facility)] and which were available for simultaneous redrawing according to the terms of that facility;
     2. any mandatory prepayment made pursuant to Clause ‎12.2 (*Disposal, Insurance and Acquisition Proceeds and Excess Cashflow*);
     3. any such obligations owed to any member of the Group; and
     4. any prepayment of Borrowings existing on the Closing Date which is required to be repaid under the terms of this Agreement;
  3. [the amount of any cash dividends or distributions paid or made by the Parent in respect of that Relevant Period;][[51]](#footnote-51) and
  4. the amount of the capital element of any payments in respect of that Relevant Period payable under any Finance Lease entered into by any member of the Group,

and so that no amount shall be included more than once.

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

* 1. **[before deducting** any interest, commission, fees, discounts, prepayment fees, premiums or charges and other finance payments whether paid, payable or capitalised by any member of the Group (calculated on a consolidated basis) in respect of that Relevant Period;]
  2. **not including** any accrued interest owing to any member of the Group;
  3. before taking into account any Exceptional Items;
  4. **before deducting** any Acquisition Costs;
  5. [**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;][[52]](#footnote-52)
  6. [plus or minus the Group's share of the profits or losses (after finance costs and tax) of Non-Group Entities]/[(**after deducting** the amount of any profit of any Non-Group Entity to the extent that the amount of the profit included in the financial statements of the Group exceeds the amount actually received in cash by members of the Group through distributions by the Non-Group Entity];[[53]](#footnote-53)
  7. [**before taking into account** any unrealised gains or losses on any [derivative instrument]/[financial instrument] (other than any derivative instrument which is accounted for on a hedge accounting basis)];
  8. [**before taking into account** any gain [or loss] arising from an upward [or downward] revaluation of any other asset [at any time after [*insert date of latest financials*]];
  9. [before taking into account any Pension Items;]
  10. [**excluding** the charge to profit represented by the expensing of stock options;] and
  11. [others],

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.

"**EBITDA**" means, in respect of any Relevant Period, EBIT for that Relevant Period **after adding back** any amount attributable to the amortisation[,]/[or] depreciation [or impairment] of assets of members of the Group [(and taking no account of the reversal of any previous impairment charge made in that Relevant Period)].

"**Exceptional Items**" means [any exceptional, one off, non-recurring or extraordinary items]/[any material items of an unusual or non-recurring nature which represent gains or losses including those arising on:

* 1. the restructuring of the activities of an entity and reversals of any provisions for the cost of restructuring;
  2. disposals, revaluations or impairment of non-current assets;
  3. disposals of assets associated with discontinued operations; [and
  4. *any other examples of "exceptional items"*].

"**Excess Cashflow**" means, for any period for which it is being calculated, Cashflow for that period less (except to the extent already deducted in calculating Cashflow):

* 1. Debt Service for that period;[and]
  2. [the amount of any voluntary prepayments made under the Finance Documents during that period; and][[54]](#footnote-54)
  3. any [Unused Amount]/[Permitted Carry Forward Amount].

"**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 paid, payable [or capitalised] by any member of the Group (calculated on a consolidated basis) in respect of that Relevant Period:

* 1. [**including**]/[**excluding**] any upfront fees or costs [which are included as part of the effective interest rate adjustments];
  2. **including** the interest (but not the capital) element of payments in respect of Finance Leases;
  3. **including** any commission, fees, discounts and other finance payments payable by (and deducting any such amounts payable to) any member of the Group under any interest rate hedging arrangement;[and]
  4. **excluding** any Acquisition Costs[;]
  5. [**excluding** any interest cost or expected return on plan assets in relation to any post-employment benefit schemes;]
  6. [if a Joint Venture is accounted for on a proportionate consolidation basis, after **adding** the Group's share of the finance costs or interest receivable of the Joint Venture;]
  7. [taking no account of any unrealised gains or losses on any [derivative instruments]/[financial instruments] other than any derivative instruments which are accounted for on a hedge accounting basis;][and]
  8. [**excluding** (i) any capitalised interest [(other than cash pay interest converted to capitalised interest pursuant to [paragraph (b)(iii)(C) of clause 5.8 (*Amendments and waivers: Mezzanine Lenders*)] of the Intercreditor Agreement)] in respect of the loan made under the Mezzanine Facility Agreement [and (ii) interest (capitalised or otherwise) in respect of the Loan Notes or the Vendor Notes] [*and others*]],

[together with the amount of any cash dividends or distributions paid or made by the Parent in respect of that Relevant Period][[55]](#footnote-55) and so that no amount shall be added (or deducted) more than once.

"**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.

"**Financial Quarter**" means the period commencing on the day after one Quarter Date and ending on the next Quarter Date.

"**Financial Year**" means the annual accounting period of the Group [ending on or about [ ] in each year].

"**Interest Cover**" means the ratio of EBITDA to [Net] Finance Charges in respect of any Relevant Period.

"**[Adjusted] Leverage**" means, in respect of any Relevant Period, the ratio of Total [Net] Debt on the last day of that Relevant Period to [Adjusted] EBITDA in respect of that Relevant Period.

["**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 on any Cash or Cash Equivalent Investment.]

"**New Shareholder Injections**" means the aggregate amount subscribed for by any person (other than a member of the Group) for ordinary shares in the [Parent] or for subordinated loan notes or other subordinated debt instruments in the Parent [on substantially the same terms as the Loan Notes or otherwise] on terms acceptable to the Majority Lenders.

"**Non-Group Entity**" means any investment or entity (which is not itself a member of the Group (including associates and Joint Ventures)) in which any member of the Group has an ownership interest.

["**Pension Items**" means any income or charge attributable to a post-employment benefit scheme other than the current service costs [and any past service costs and curtailments and settlements] attributable to the scheme.]

["**Permitted Carry Forward Amount**" has the meaning given to it in Clause ‎26.2 (*Financial condition*).]

"**Quarter Date**" means each of [31 March, 30 June, 30 September and 31 December].

"**Relevant Period**" means [each period of twelve months[, or such shorter period commencing on the Closing Date,] ending on or about the last day of the Financial Year and each period of twelve months ending on or about the last day of each Financial Quarter.]

["**Relevant Proceeds**" means Acquisition Proceeds, Disposal Proceeds or Insurance Proceeds (each as defined in Clause ‎12.2 (*Disposal, Insurance and Acquisition Proceeds and Excess Cashflow*).]

"**Retained Excess Cashflow**" means Excess Cashflow which is not required to be applied in making any prepayment under the Finance Documents.

"**Senior Interest Cover**" means the ratio of EBITDA to Senior [Net] Finance Charges in respect of any Relevant Period.

"**Senior [Adjusted] Leverage**" means, in respect of any Relevant Period, the ratio of Senior Total [Net] Debt on the last day of that Relevant Period to [Adjusted] EBITDA in respect of that Relevant Period.

[**"Senior [Net] Finance Charges**" means, in respect of any Relevant Period, the [Net] Finance Charges for that Relevant Period *less* that part of the [Net] Finance Charges for that Relevant Period attributable to the Mezzanine Facility [*and* without taking into account any commissions, fees, discounts and other finance payments receivable or payable under any interest rate hedging in respect of the Mezzanine Facility].]

"**Senior Total [Net] Debt**" means, at any time, the Total [Net] Debt *after deducting* that part of Total [Net] Debt attributable to the Mezzanine Facility.

"**Total [Net] Debt**" means, at any time, the aggregate amount of all obligations of members of the Group for or in respect of Borrowings at that time but:

* 1. **excluding** any such obligations to any other member of the Group;
  2. [**excluding** any such obligations in respect of the Loan Notes [and, to the extent they constitute Borrowings, any New Shareholder Injections]] [and the Vendor Notes]];
  3. including, in the case of Finance Leases only, their capitalised value; and
  4. [**deducting** the aggregate amount of Cash and Cash Equivalent Investments held by any [member of the Group]/[Obligors] at that time],

and so that no amount shall be included or excluded more than once.

"**Unused Amount**" has the meaning given to it in Clause ‎26.2 (*Financial condition*).

"**Working Capital**" means, on any date, Current Assets less Current Liabilities.

## Financial condition

The Parent shall ensure that:

### *Cashflow Cover*: Cashflow Cover in respect of any Relevant Period specified in column 1 below shall not be less than the ratio set out in column 2 below opposite that Relevant Period.

|  |  |
| --- | --- |
| **Column 1**  **Relevant Period** | **Column 2**  **Ratio** |
| Relevant Period expiring [ ] | [ ]:1 |

### *Senior Interest Cover*: Senior Interest Cover in respect of any Relevant Period specified in column 1 below shall not be less than the ratio set out in column 2 below opposite that Relevant Period.

|  |  |
| --- | --- |
| **Column 1**  **Relevant Period** | **Column 2**  **Ratio** |
| Relevant Period expiring [ ] | [ ]:1 |

### *Interest Cover*: Interest Cover in respect of any Relevant Period specified in column 1 below shall not be less than the ratio set out in column 2 below opposite that Relevant Period.

|  |  |
| --- | --- |
| **Column 1**  **Relevant Period** | **Column 2**  **Ratio** |
| Relevant Period expiring [ ] | [ ]:1 |

### *Senior [Adjusted] Leverage*: Senior [Adjusted] Leverage in respect of any Relevant Period specified in column 1 below shall not exceed the ratio set out in column 2 below opposite that Relevant Period.

|  |  |
| --- | --- |
| **Column 1**  **Relevant Period** | **Column 2**  **Ratio** |
| Relevant Period expiring [ ] | [ ]:1 |

### *[Adjusted] Leverage*: [Adjusted] Leverage in respect of any Relevant Period specified in column 1 below shall not exceed the ratio set out in column 2 below opposite that Relevant Period.

|  |  |
| --- | --- |
| **Column 1**  **Relevant Period** | **Column 2**  **Ratio** |
| Relevant Period expiring [ ] | [ ]:1 |

### *Capital Expenditure*: The aggregate Capital Expenditure of the Group (other than Capital Expenditure funded by the retention of the proceeds of [Recovery Claims], [Disposals] and insurance claims in accordance with Clause 12.5 (*Excluded Proceeds*) [or from New Shareholder Injections] [in respect of any Financial Year specified in column 1 below shall not exceed the amount set out in column 2 below opposite that Financial Year.]/[in respect of:

#### the period beginning on the Closing Date and ending on the expiry of the first Financial Year specified in column 1 below; and

#### each other Financial Year specified in column 1 below,

shall not exceed the amount set out in column 2 below opposite that Financial Year.]

|  |  |
| --- | --- |
| **Column 1**  **Financial Year Ending** | **Column 2**  **Maximum Expenditure** |
|  |  |

[If in any Financial Year (the "**Original Financial Year**") the amount of the Capital Expenditure is less than the maximum amount permitted for that Original Financial Year (the difference being referred to below as the "**Unused Amount**"), then the maximum expenditure amount set out in column 2 above for the immediately following Financial Year (the "**Carry Forward Year**") shall [for the purpose of that Carry Forward Year only] be increased by an amount (the "**Permitted Carry Forward Amount**") equal to [the Unused Amount]/[the [lower]/[lowest] of (1) the Unused Amount and (2) [ ]% of the maximum amount permitted for the Original Financial Year[, (3) [*insert currency and number*], and (4) the amount which could have been utilised by way of additional Capital Expenditure in the Original Financial Year without causing a breach of the Cash Cover test during that Original Financial Year].

[In any Carry Forward Year, the original amount specified in column 2 above shall be treated as having been incurred prior to any Permitted Carry Forward Amount carried forward into that Carry Forward Year and no amount carried forward into that Carry Forward Year may be carried forward into a subsequent Financial Year.]

## Financial testing

### [Subject to paragraph (b) below,] the financial covenants set out in Clause ‎26.2 (*Financial condition*) shall be calculated in accordance with the Accounting Principles and tested by reference to each of the financial statements delivered pursuant to [paragraphs (a)(i) and (b)] of Clause ‎25.1 (*Financial Statements*) and/or each Compliance Certificate delivered pursuant to Clause ‎25.2 (*Provision and contents of Compliance Certificate*).

### [For the purpose of the financial covenants in paragraph (d) (*Senior [Adjusted] Leverage*) and paragraph (e) ([*Adjusted] Leverage*) of Clause ‎26.2 (*Financial condition*) for each of the Relevant Periods ending on a date which is less than 12 months after the Closing Date, EBITDA shall be calculated by reference to the amount of EBITDA as disclosed in the financial statements and/or Compliance Certificates for the Financial Quarters ending after the Closing Date, annualised [on a straight line basis]/[in accordance with the EBITDA seasonality profile for the business of the Group agreed between the Arranger and the Parent on or prior to the date of this Agreement]. [*specify other method of pro forma-ing EBITDA*]]

# General Undertakings

The undertakings in this Clause ‎27 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***

## Authorisations

Each Obligor shall promptly:

### obtain, comply with and do all that is necessary to maintain in full force and effect; and

### supply certified copies to the Agent of,

any Authorisation required under any law or regulation of a Relevant Jurisdiction to:

#### enable it to perform its obligations under the Finance Documents and the Acquisition Documents;

#### ensure the legality, validity, enforceability or admissibility in evidence of any Finance Document or Acquisition Document; and

#### carry on its business where failure to do so has or is reasonably likely to have a Material Adverse Effect.

## Compliance with laws

Each Obligor shall (and the Parent 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.

## Environmental compliance

### Each Obligor shall (and the Parent shall ensure that each member of the Group will):

#### comply with all Environmental Law;

#### obtain, maintain and ensure compliance with all requisite Environmental Permits;

#### implement procedures to monitor compliance with and to prevent liability under any Environmental Law,

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

### [                   ].

## Environmental claims

Each Obligor shall (through the Parent), promptly upon becoming aware of the same, inform the Agent in writing of:

### any Environmental Claim against any member of the Group which is current, pending or threatened; and

### 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.

## Taxation

### Each Obligor shall (and the Parent 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:

#### such payment is being contested in good faith;

#### 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 ‎25.1 (*Financial statements*); and

#### 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].

### No member of the Group may change its residence for Tax purposes.

***Restrictions on business focus***

## Merger

No Obligor shall (and the Parent 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].

## Change of business

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

## Acquisitions

### Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no other member of the Group will):

#### acquire a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them); or

#### incorporate a company.

### 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:

#### a Permitted Acquisition; or

#### a Permitted Transaction.

## Joint ventures

### Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no member of the Group will):

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

#### 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).

### Paragraph (a) above does not apply to any acquisition of (or agreement to acquire) any interest in a Joint Venture or transfer of assets (or agreement to transfer assets) to a Joint Venture or loan made to or guarantee given in respect of the obligations of a Joint Venture if such transaction is a Permitted Acquisition, a Permitted Disposal, a Permitted Loan or a Permitted Joint Venture.

## Holding Companies

Neither the Parent nor the Company shall trade, carry on any business, own any assets or incur any liabilities except for:

### 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;

### 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 but only if those shares, credit balances, cash and Cash Equivalent Investments are subject to the Transaction Security;

### 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.

## Dormant subsidiaries

[No Obligor shall (and the Parent shall ensure no member of the Group will) cause or permit any member of the Group which is a Dormant Subsidiary to commence trading or cease to satisfy the criteria for a Dormant Subsidiary unless such Dormant Subsidiary becomes an Additional Guarantor in accordance with Clause ‎31.4 (*Additional Guarantors*)].

***Restrictions on dealing with assets and Security***

## Preservation of assets

Each Obligor shall (and the Parent shall ensure that each 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.

## Pari passu ranking

Each Obligor shall ensure that at all times any unsecured and unsubordinated claims of a Finance Party or Hedge Counterparty 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.

## Acquisition Documents

### The Company shall (and the Parent will procure that the Company will) promptly pay all amounts payable to the Vendor under the Acquisition Documents as and when they become due (except to the extent that any such amounts are being contested in good faith by a member of the Group and where adequate reserves are set aside for any such payment).

### The Company shall, (and the Parent will procure that the Company and each relevant member of the Group will), take all reasonable and practical steps to preserve and enforce its rights (or the rights of any other member of the Group) and pursue any claims and remedies arising under any Acquisition Documents.

## Negative pledge

In this Clause ‎27.15, "**Quasi-Security**" means an arrangement or transaction described in paragraph (b) below.

Except as permitted under paragraph (c) below:

### No Obligor shall (and the Parent shall ensure that no other member of the Group will) create or permit to subsist any Security over any of its assets.

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

#### sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by an Obligor [or any other member of the Group];

#### sell, transfer or otherwise dispose of any of its receivables on recourse terms;

#### 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

#### 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.

### Paragraphs (a) and (b) above do not apply to any Security or (as the case may be) Quasi-Security, which is:

#### Permitted Security; or

#### a Permitted Transaction.

## Disposals

### Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no 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.

### Paragraph (a) above does not apply to any sale, lease, transfer or other disposal which is:

#### a Permitted Disposal (other than a disposal, to another member of the Group, of a creditor's rights under a Structural Intra-Group Loan);

#### a Permitted Transaction (other than a disposal, to another member of the Group, of a creditor's rights under a Structural Intra-Group Loan);

#### a disposal giving effect to a Liabilities Acquisition which is permitted by, and as defined in, the Intercreditor Agreement; or

#### a disposal, to another member of the Group, of a creditor's rights under a Structural Intra-Group Loan where that disposal is made to enable the Company to make payments of any fees or other charges due under [           ]] **provided that** [(A)]such disposal is made when no Default is continuing or would occur immediately after the making of the disposal; [and] (B) such disposal is not restricted by the Intercreditor Agreement [and [         ]].

## Arm's length basis

### Except as permitted by paragraph (b) below, no Obligor shall (and the Parent shall ensure no member of the Group will) enter into any transaction with any person except on arm's length terms and for full market value.

### The following transactions shall not be a breach of this Clause ‎27.17:

#### intra-Group loans permitted under Clause ‎27.18 (*Loans or credit*);

#### 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 (*Initial conditions precedent*) or agreed by the Agent;

#### any Permitted Transaction; and

#### any Liabilities Acquisition which is permitted by, and as defined in, the Intercreditor Agreement.

***Restrictions on movement of cash - cash out***

## Loans or credit

### Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no member of the Group will) be a creditor in respect of any Financial Indebtedness.

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

#### a Permitted Loan; or

#### a Permitted Transaction.

## No Guarantees or indemnities

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

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

#### a Permitted Guarantee; or

#### a Permitted Transaction.

## Dividends and share redemption

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

#### 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);

#### repay or distribute any dividend or share premium reserve;

#### pay or allow any member of the Group to pay any management, advisory or other fee to or to the order of any of the shareholders of the Parent; or

#### redeem, repurchase, defease, retire or repay any of its share capital or resolve to do so.

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

#### a Permitted Distribution; or

#### a Permitted Transaction (other than one referred to in paragraph (c) of the definition of that term).

## Loan Notes and Vendor Loan Notes

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

#### repay or prepay any principal amount (or capitalised interest) outstanding under the [Loan Notes]/[Vendor Loan Notes];

#### pay any interest, fee or charge accrued or due under the [Loan Note Instrument]/[Vendor Note Instrument]; or

#### purchase, redeem, defease or discharge any of the loan notes outstanding under the [Loan Note Instrument]/[Vendor Note Instrument].

### Paragraph (a) above does not apply to [                                  ].

## Mezzanine Facility and Structural Intra-Group Loans

### Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no member of the Group will):

#### repay or prepay any principal amount (or capitalised interest) outstanding under the Mezzanine Facility or the Structural Intra-Group Loans;

#### pay any interest or any other amounts payable in connection with the Mezzanine Facility or the Structural Intra-Group Loans; [or

#### purchase, redeem, defease or discharge any amount outstanding with respect to [the Mezzanine Facility[[56]](#footnote-56) or] the Structural Intra-Group Loans.

### Paragraph (a) does not apply to a payment, repayment, prepayment, purchase, redemption, defeasance or discharge which is a Permitted Payment or is otherwise permitted under the Intercreditor Agreement.

***Restrictions on movement of cash - cash in***

## Financial Indebtedness

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

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

#### Permitted Financial Indebtedness; or

#### a Permitted Transaction.

## Share capital

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

### a Permitted Share Issue; or

### a Permitted Transaction.

***Miscellaneous***

## Insurance

### Each Obligor shall (and the Parent shall ensure that each 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.

### All insurances must be with reputable independent insurance companies or underwriters.

### Where insurances and risks have been identified in the Insurance Report, the Parent shall ensure the insurances maintained are at least in respect of the business and assets and against the risks and to the extent recommended in the Insurance Report.

### [Within 30 days of the date of this Agreement, the]/[The] Parent shall [obtain and] maintain [each]/[the] Key-man Policy and procure the renewal or replacement of [each]/[the] Key-man Policy prior to its expiry.]

### [ ].

## Pensions[[57]](#footnote-57)

### [The Parent 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).][[58]](#footnote-58)

### [[Except for [*specify any existing defined benefit pension schemes*] the Parent 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].][[59]](#footnote-59)

### The Parent 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 Parent), actuarial reports in relation to all pension schemes mentioned in (a) above.

### The Parent 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).

### [Each Obligor 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 [it/any member of the Group].][[60]](#footnote-60)

### [Each Obligor shall immediately notify the Agent if it receives a Financial Support Direction or a Contribution Notice from the Pensions Regulator.]

## Access

[If a [Default]/[Event of Default] is continuing or the Agent reasonably suspects a [Default]/[Event of Default] is continuing or may occur, each]/[Each] Obligor shall, and the Parent shall ensure that each [member of the Group]/[Obligor] will, (not more than once in every Financial Year unless the Agent reasonably suspects a [Default]/[Event of Default] is continuing or may occur) permit the Agent and/or the Security Agent and/or accountants or other professional advisers and contractors of the Agent or Security Agent free access at all reasonable times and on reasonable notice at the risk and cost of the Obligor or Company to (a) the premises, assets, books, accounts and records of each [member of the Group]/[Obligor] and (b) meet and discuss matters with Senior Management.

## Service contracts

### [The Parent must ensure that there is in place in respect of each Obligor and each Material Company qualified management with appropriate skills].

### If any of the Senior Management ceases (whether by reason of death, retirement at normal retiring age or through ill health or otherwise) to perform his or her duties (as required under the Service Contracts), the Parent must as soon as reasonably practicable thereafter:

#### notify the Agent; and

#### [after consultation with the Agent as to the identity of such replacement person, find and appoint an adequately qualified replacement for him or her as promptly as practicable].

### [The Parent shall ensure that no member of the Group amends, varies, waives, novates, supplements or replaces any term of a Service Contract in a way which is or is reasonably likely to be materially prejudicial to the interests of the Finance Parties].

## Intellectual Property

### Each Obligor shall (and the Parent shall procure that each Group member will):

#### preserve and maintain the subsistence and validity of the Intellectual Property necessary for the business of the relevant Group member;

#### use reasonable endeavours to prevent any infringement in any material respect of the Intellectual Property;

#### 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;

#### 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

#### 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.][[61]](#footnote-61)

### [Failure to comply with any part of paragraph (a) above shall not be a breach of this Clause ‎27.29 to the extent that any dealing with Intellectual Property which would otherwise be a breach of paragraph (a) is contemplated by the definition of Permitted Transaction.]

## Amendments

### No Obligor shall (and the Parent shall ensure that no 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 (*Initial conditions precedent*) or Clause ‎31 (*Changes to the Obligors*) or enter into any agreement with any shareholders of the Parent (other than as set out in the Shareholders' Agreement or the Loan Note Documents) or any of their Affiliates which is not a member of the Group except in writing:

#### in accordance with the provisions of Clause ‎41 (*Amendments and Waivers*);

#### to the extent that that amendment, variation, novation, supplement, superseding, waiver or termination is permitted by the Intercreditor Agreement;

#### prior to or on the Closing Date, with the prior written consent of the Original Lenders; or

#### after the Closing Date, in a way which:

##### could not be reasonably expected materially and adversely to affect the interests of the Lenders; and

##### would not change the date, amount or method of payment of [interest or principal on the [Loan Notes] [or the Vendor Notes]] [or the dividends on the Preference Shares].

### The Parent 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.

## Financial assistance

Each Obligor shall (and the Parent shall procure each member of the Group will) comply in all respects with sections 678 and 679 of the Companies Act 2006 and any equivalent legislation in other jurisdictions including in relation to the execution of the Transaction Security Documents and payment of amounts due under this Agreement.

## Group bank accounts

The Parent shall ensure that [within [ ] days of the Closing Date ]all bank accounts of the Group shall be opened and maintained with a Finance Party or an Affiliate of a Finance Party and are subject to valid Security under the Transaction Security Documents.

## Treasury Transactions

No Obligor shall (and the Parent will procure that no members of the Group will) enter into any Treasury Transaction, other than:

### the hedging transactions documented by the Hedging Agreements;

### spot and forward delivery foreign exchange contracts entered into in the ordinary course of business and not for speculative purposes; and

### any Treasury Transaction entered into for the hedging of actual or projected real exposures arising in the ordinary course of trading activities of a member of the Group for a period of not more than [   ] months and not for speculative purposes.

## Compliance with Hedging Letter

The Parent shall ensure that all exchange rate and interest rate hedging arrangements required by the Hedging Letter are implemented in accordance with the terms of the Hedging Letter and that such arrangements are not terminated, varied or cancelled without the consent of the Agent (acting on the instructions of the Majority Lenders), save as permitted by the Intercreditor Agreement.

## [Cash management

### Subject to paragraph (b) below, no Obligor (other than the Parent) shall, and each Obligor will procure that none of its Subsidiaries will, at any time hold cash or Cash Equivalent Investments greater than required for its projected cashflow requirements for the next [ ] days (the amount of such excess being the "**Cash Balance**") and any such Cash Balance shall be lent by such member of the Group to the Company pursuant to a Structural Intra-Group Loan.

### No Obligor shall be obliged at any time to procure that a Subsidiary lend any Cash Balance under paragraph (a):

#### at a time when to do so would cause the Obligor or the Subsidiary (despite that person using all reasonable efforts to avoid the relevant Tax liability) to incur a materially greater Tax liability in respect of the Cash Balance than it would otherwise incur if the loan were made at a later date;

#### if (despite using all reasonable efforts to avoid the breach or result) to do so would breach any applicable law or result in personal liability for the Obligor or the Subsidiary or any of such person's directors or management; or

#### if it involves an amount which is less than £[ ] (or its equivalent).]

## Guarantors

### The Parent shall ensure that at all times after the Closing Date, [the aggregate of earnings before interest, tax, depreciation and amortisation (calculated on the same basis as EBITDA, as defined in Clause 26 (*Financial Covenants*)) of the Guarantors] / [the aggregate gross assets, the aggregate net assets and aggregate turnover] of the Guarantors (in each case calculated on an unconsolidated basis and excluding all intra-group items and investments in Subsidiaries of any member of the Group) represents not less than [ ] per cent of [EBITDA (as defined in Clause 26 (*Financial Covenants*))] / [consolidated gross assets, consolidated net assets and consolidated turnover] of the Group.

### [The Parent need only perform its obligations under paragraph (a) above if it is not unlawful for the relevant person to become a Guarantor and that person becoming a Guarantor would not result in personal liability for that person's directors or other management. Each Obligor must use, and must procure that the relevant person uses, all reasonable endeavours lawfully available to avoid any such unlawfulness or personal liability. This includes agreeing to a limit on the amount guaranteed. The Agent may (but shall not be obliged to) agree to such a limit if, in its opinion, to do so would avoid the relevant unlawfulness or personal liability.]

## Further assurance

### [Subject to the Agreed Security Principles,] each Obligor shall (and the Parent shall procure that each member of the Group will) 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)):

#### 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 or the Finance Parties provided by or pursuant to the Finance Documents or by law;

#### to confer on the Security Agent or confer on the Finance Parties Security over any property and assets of that Obligor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to the Transaction Security Documents; and/or

#### to facilitate the realisation of the assets which are, or are intended to be, the subject of the Transaction Security.

### Each Obligor shall (and the Parent shall procure that each member of the Group shall) take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Finance Parties by or pursuant to the Finance Documents.

## [Syndication

The Parent shall provide reasonable assistance to the Arranger in the preparation of the Information Memorandum and the primary syndication of the Facilities (including, without limitation, by making Senior Management available for the purpose of making presentations to, or meeting, potential lending institutions) and will comply with all reasonable requests for information from potential syndicate members prior to completion of syndication.][[62]](#footnote-62)

## Conditions subsequent

### [The Parent shall procure that within 30 days of the Closing Date [*insert name of Borrower of the Term Facilities*] enters into the Hedging Agreements.]

### The Parent shall procure that each member of the Group identified in Part III of Schedule 2 (*Conditions Precedent*) accedes as an Additional Obligor and [, subject to the Agreed Security Principles] grants the Transaction Security and carries out any action to protect, perfect or give priority to the Transaction Security by the specified date identified opposite the name of that member of the Group in Part III of Schedule 2 (*Conditions Precedent*).

### Each Obligor must use, and must procure that any other member of the Group that is a potential provider of Transaction Security uses, all reasonable endeavours lawfully available to avoid or mitigate the constraints on the provision of Security provided for in the Agreed Security Principles.

### [                      ].

# Events Of Default

Each of the events or circumstances set out in this Clause ‎28 is an Event of Default (save for Clause ‎28.20 (*Acceleration*) [and Clause ‎28.21 (*Clean-Up Period*)]).

## Non-payment

An Obligor 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:

### its failure to pay is caused by:

#### administrative or technical error; or

#### a Disruption Event; and

[(b) payment is made within:

#### (in the case of (a)(i) above), [         ] Business Days of its due date; or

#### (in the case of (a)(ii) above), [         ] Business Days of its due date]

**OR**

[(b) payment is made within [         ] Business Days of its due date.]

## Financial covenants and other obligations

### Any requirement of Clause ‎26 (*Financial covenants*) is not satisfied [or an Obligor does not comply with the provisions of Clause ‎25 (*Information Undertakings*)] [and/or Clause ‎27 (*General Undertakings*)][[63]](#footnote-63).

### An Obligor does not comply with any provision of any Transaction Security Document.

## Other obligations

### An Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause ‎28.1 (*Non-payment*) and Clause ‎28.2 (*Financial covenants and other obligations*)).

### No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within [  ] Business Days of the earlier of (i) the Agent giving notice to the Parent or relevant Obligor and (ii) the Parent or an Obligor becoming aware of the failure to comply.

## Misrepresentation

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

## Cross default

### Any Financial Indebtedness of any member of the Group is not paid when due nor within any originally applicable grace period.

### 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).

### 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).

### Any creditor of any member of the Group becomes entitled to declare any Financial Indebtedness of any member of the Group due and payable prior to its specified maturity as a result of an event of default (however described).

### No Event of Default will occur under this Clause ‎28.5 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than [        ](or its equivalent in any other currency or currencies).

## Insolvency

### A member of the Group is unable or admits inability to pay its debts as they fall due [or is deemed to or declared to be unable to pay its debts under applicable law], suspends or threatens to suspend making payments on any of its debts or, 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.

### The value of the assets of any member of the Group is less than its liabilities (taking into account contingent and prospective liabilities).

### 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.

## Insolvency proceedings

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

#### 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;

#### a composition, compromise, assignment or arrangement with any creditor of any member of the Group;

#### 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

#### enforcement of any Security over any assets of any member of the Group,

or any analogous procedure or step is taken in any jurisdiction.

### Paragraph (a) shall not apply to:

#### any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within [14] days of commencement; or

#### any step or procedure contemplated by paragraph (b) of the definition of Permitted Transaction.

## Creditors' process

Any expropriation, attachment, sequestration, distress or execution [or any analogous process in any jurisdiction] affects any asset or assets of a [member of the Group]/[Obligor]/[Material Company] [having an aggregate value of [   ]] [and is not discharged within [ ] days].

## Unlawfulness and invalidity

### It is or becomes unlawful for an Obligor [or any other member of the Group that is a party to the Intercreditor Agreement] to perform any of its obligations under the 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.

### Any obligation or obligations of any Obligor under any Finance Documents [or any other member of the Group under the Intercreditor Agreement] 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.

### Any Finance Document 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.

## Intercreditor Agreement

### Any party to the Intercreditor Agreement (other than a Finance Party or an Obligor) fails to comply with the provisions of, or does not perform its obligations under, the Intercreditor Agreement; or

### 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 [ ] days of the earlier of the Agent giving notice to that party or that party becoming aware of the non-compliance or misrepresentation.

## 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].

## Change of ownership

### After the Closing Date, an Obligor (other than the Parent) ceases to be a wholly-owned Subsidiary of the Parent; or

### An Obligor ceases to own at least the same percentage of shares in a Material Company as on the Closing Date,

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

## [Change of management

[             ] or [             ] ceases to be employed by [the Parent]/[the Company] or to devote the time and attention to the business, trade and offices of the Group or perform the functions required under the terms of [his/her] Service Contract and a replacement person approved in writing by the Majority Lenders (such approval not to be unreasonably withheld or delayed) has not given a legally binding acceptance to an offer of employment and resigned from [his/her] existing employment within [ ] days of that cessation. This Event of Default shall also apply to any replacement person as if references in this Clause to [   ] or [   ] were references to that replacement person and references to "Service Contract" were references to the service contract of that person].

## Audit qualification

The Auditors of the Group qualify the audited annual consolidated financial statements of the Parent.

## 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.

## Repudiation and rescission of agreements

### An Obligor (or any other relevant party) rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document or any of the Transaction Security or evidences an intention to rescind or repudiate a Finance Document or any Transaction Security.

### Any party to the Acquisition Documents, the Shareholders' Agreement, the Intercreditor Agreement or the Loan Note Documents 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.

## Litigation

Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes 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 has or is reasonably likely to have a Material Adverse Effect.

## 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 Obligors under all Financial Support Directions and Contributions Notices is less than [ ].[[64]](#footnote-64)

## 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.

## 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 Parent:

### cancel the Total Commitments and/or Ancillary Commitments at which time they shall immediately be cancelled;

### declare that all or part of the Utilisations, 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;

### declare that all or part of the Utilisations be payable on demand, at which time they shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders;

### declare that cash cover in respect of each Letter of Credit is immediately due and payable at which time it shall become immediately due and payable;

### declare that cash cover in respect of each Letter of Credit is payable on demand at which time it shall immediately become due and payable on demand by the Agent on the instructions of the Majority Lenders;

### declare all or any part of the amounts (or cash cover in relation to those amounts) outstanding under the Ancillary Facilities to be immediately due and payable, at which time they shall become immediately due and payable;

### declare that all or any part of the amounts (or cash cover in relation to those amounts) outstanding under the Ancillary Facilities be payable on demand, at which time they shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders; and/or

### exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

## [Clean-Up Period

Notwithstanding any other provision of any Finance Document:

### any breach of a Clean-Up Representation or a Clean-Up Undertaking; or

### any Event of Default constituting a Clean-Up Default,

will be deemed not to be a breach of representation or warranty, a breach of covenant or an Event of Default (as the case may be) if:

#### it would have been (if it were not for this provision) a breach of representation or warranty, a breach of covenant or an Event of Default only by reason of circumstances relating exclusively to any member of the Target Group (or any obligation to procure or ensure in relation to a member of the Target Group);

#### it is capable of remedy and reasonable steps are being taken to remedy it;

#### the circumstances giving rise to it have not been procured by or approved by the Parent[, any Original Obligor] or [ ]; and

#### it is not reasonably likely to have a Material Adverse Effect.

If the relevant circumstances are continuing on or after the Clean-up Date, there shall be a breach of representation or warranty, breach of covenant or Event of Default, as the case may be notwithstanding the above (and without prejudice to the rights and remedies of the Finance Parties).]

**SECTION 9**

**CHANGES TO PARTIES**

# Changes To The Lenders

## Assignments and transfers by the Lenders

Subject to this Clause ‎29 and to [Clause ‎30 (*Restriction on Debt Purchase Transactions*)]/[Clause ‎30 (*Debt Purchase Transactions*)][[65]](#footnote-65), a Lender (the "**Existing Lender**") may:

### assign any of its rights; or

### 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**").

## Conditions of assignment or transfer

### [An Existing Lender must consult with the Parent for no more than [ ] days before it may make an assignment or transfer in accordance with Clause ‎29.1 (*Assignments and transfers by the Lenders*) unless the assignment or transfer is:

#### to another Lender or an Affiliate of a Lender;

#### if the Existing Lender is a fund, to a fund which is a Related Fund of the Existing Lender; or

#### made at a time when an Event of Default is continuing.]

### The consent of the Issuing Bank is required for any assignment or transfer by an Existing Lender of any of its rights and/or obligations under the Revolving Facility.

### [An assignment or transfer of part of a Lender's participation must be in an amount such that the Base Currency Amount of that Lender's remaining participation (when aggregated with its Affiliates' and Related Funds' participation) in respect of Commitments or Utilisations made under Facility [A]/[B]/[C] is in a minimum amount of [ ].]

### [(Other than in the case of an assignment permitted by paragraph (b) of Clause ‎30.1 (*Permitted Debt Purchase Transactions*)) an][[66]](#footnote-66) [An] assignment will only be effective on:

#### receipt by the Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that the New Lender will assume the same obligations to the other Finance Parties and the other Secured Parties as it would have been under if it was an Original Lender;

#### the New Lender entering into the documentation required for it to accede as a party to the Intercreditor Agreement; and

#### 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.

### 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 ‎29.5 (*Procedure for transfer*) is complied with.

### If:

#### a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and

#### as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause ‎19 (*Increased Costs*),

then 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. This paragraph (f) shall not apply in respect of an assignment or transfer made in the ordinary course of the primary syndication of the Facilities.

### Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

## Assignment or transfer fee

Unless the Agent otherwise agrees and excluding an assignment or transfer (i) to an Affiliate of a Lender, (ii) to a Related Fund or (iii) made in connection with primary syndication of the Facilities, 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 [        ].

## Limitation of responsibility of Existing Lenders

### Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:

#### the legality, validity, effectiveness, adequacy or enforceability of the Transaction Documents, the Transaction Security or any other documents;

#### the financial condition of any Obligor;

#### the performance and observance by any Obligor [or any other member of the Group] of its obligations under the Transaction Documents or any other documents; or

#### 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.

### Each New Lender confirms to the Existing Lender, the other Finance Parties and the Secured Parties that it:

#### has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender or any other Finance Party in connection with any Transaction Document or the Transaction Security; and

#### will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.

### Nothing in any Finance Document obliges an Existing Lender to:

#### accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause ‎29; or

#### support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under the Transaction Documents or otherwise.

## Procedure for transfer

### Subject to the conditions set out in Clause ‎29.2 (*Conditions of assignment or transfer*) a transfer is effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate.

### The Agent shall only be obliged to execute a Transfer Certificate 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.

### [Subject to Clause 29.10 (*Pro rata interest settlement*), on]/[On] the Transfer Date:

#### to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents and in respect of the Transaction Security each of the Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and in respect of the Transaction Security and their respective rights against one another under the Finance Documents and in respect of the Transaction Security shall be cancelled (being the "**Discharged Rights and Obligations**");

#### each of the Obligors and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Obligor or other member of the Group and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;

#### the Agent, the Arranger, the Security Agent, the New Lender, the other Lenders, the Issuing Bank and any relevant Ancillary Lender 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 Arranger, the Security Agent, the Issuing Bank and any relevant Ancillary Lender and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and

#### the New Lender shall become a Party as a "Lender".

## Procedure for assignment

### Subject to the conditions set out in Clause ‎29.2 (*Conditions of assignment or transfer*) an assignment may be effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.

### The Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.

### [Subject to Clause 29.10 (*Pro rata interest settlement*), on]/[On] the Transfer Date:

#### 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;

#### 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 any corresponding obligations by which it is bound in respect of the Transaction Security); and

#### the New Lender shall become a Party as a "Lender" and will be bound by obligations equivalent to the Relevant Obligations.[[67]](#footnote-67)

### Lenders may utilise procedures other than those set out in this Clause ‎29.6 to assign their rights under the Finance Documents (but not, without the consent of the relevant Obligor or unless in accordance with Clause 29.5 (*Procedure for transfer*), to obtain a release by that Obligor from the obligations owed to that Obligor by the Lenders nor the assumption of equivalent obligations by a New Lender) **provided that** they comply with the conditions set out in Clause ‎29.2 (*Conditions of assignment or transfer*).

## Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Parent

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

## Accession of Hedge Counterparties

Any person which becomes a party to the Intercreditor Agreement as a Hedge Counterparty shall, at the same time, become a Party to this Agreement as a Hedge Counterparty in accordance with clause [18.11] (*Creditor/Agent Accession Undertaking*) of the Intercreditor Agreement.

## [Security over Lenders' rights

In addition to the other rights provided to Lenders under this Clause ‎29, each Lender may without consulting with or obtaining consent from any Obligor, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

### any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and

### 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:

#### 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

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

## [Pro rata interest settlement

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 ‎29.5 (*Procedure for transfer*) or any assignment pursuant to Clause ‎29.6 (*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):

### 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

### 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:

#### when the Accrued Amounts become payable, those Accrued Amounts will be payable for the account of the Existing Lender; and

#### the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause ‎29.10, have been payable to it on that date, but after deduction of the Accrued Amounts.]

**30. [RESTRICTION ON DEBT PURCHASE TRANSACTIONS****[[68]](#footnote-68)**

30.1 **Prohibition on Debt Purchase Transactions by the Group**

The Parent shall not, and shall procure that each other member of the Group shall not, enter into any Debt Purchase Transaction or [beneficially own all or any part of the share capital of a company that is][be] a Lender or a party to a Debt Purchase Transaction of the type referred to in paragraphs (b) or (c) of the definition of Debt Purchase Transaction.

30.2 **Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates**

* 1. For so long as a Sponsor Affiliate (i) beneficially owns a Commitment or (ii) has entered into a sub-participation agreement relating to a Commitment or other agreement or arrangement having a substantially similar economic effect and such agreement or arrangement has not been terminated:
     1. in ascertaining the Majority Lenders[[69]](#footnote-69) or whether any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments has been obtained to approve any request for a consent, waiver, amendment or other vote under the Finance Documents such Commitment shall be deemed to be zero; and
     2. for the purposes of Clause ‎41.3 (*Exceptions*), such Sponsor Affiliate or the person with whom it has entered into such sub-participation, other agreement or arrangement shall be deemed not to be a Lender (unless in the case of a person not being a Sponsor Affiliate it is a Lender by virtue otherwise than by beneficially owning the relevant Commitment).
  2. Each Lender shall, unless such Debt Purchase Transaction is an assignment or transfer, promptly notify the Agent in writing if it knowingly enters into a Debt Purchase Transaction with a Sponsor Affiliate (a "**Notifiable Debt Purchase Transaction**"), such notification to be substantially in the form set out in Part I of Schedule 17 (*Forms of Notifiable Debt Purchase Transaction Notice*).
  3. A Lender shall promptly notify the Agent if a Notifiable Debt Purchase Transaction to which it is a party:
     1. is terminated; or
     2. ceases to be with a Sponsor Affiliate,

such notification to be substantially in the form set out in Part II of Schedule 17 (*Forms of Notifiable Debt Purchase Transaction Notice*).

* 1. Each Sponsor Affiliate that is a Lender agrees that:
     1. in relation to any meeting or conference call to which all the Lenders are invited to attend or participate, it shall not attend or participate in the same if so requested by the Agent or, unless the Agent otherwise agrees, be entitled to receive the agenda or any minutes of the same; and
     2. in its capacity as Lender, unless the Agent otherwise agrees, it shall not be entitled to receive any report or other document prepared at the behest of, or on the instructions of, the Agent or one or more of the Lenders.] /

**OR**

# [Debt Purchase transactions

## Permitted Debt Purchase Transactions

### The Parent shall not, and shall procure that each other member of the Group shall not (i) enter into any Debt Purchase Transaction other than in accordance with the other provisions of this Clause ‎30 or (ii) [beneficially own all or any part of the share capital of a company that is][be] a Lender or a party to a Debt Purchase Transaction of the type referred to in paragraphs (b) or (c) of the definition of Debt Purchase Transaction.

### A Borrower may purchase by way of assignment, pursuant to Clause ‎29 (*Changes to the Lenders*), a participation in any Term Loan[[70]](#footnote-70) in respect of which it is the borrower and any related Commitment where:

#### such purchase is made for a consideration of less than par;

#### such purchase is made using one of the processes set out at paragraphs (c) and (d) below;

#### such purchase is made at a time when no Default is continuing; and

#### the consideration for such purchase is funded from (1) that part of Excess Cashflow[[71]](#footnote-71) [for the Financial Year of the Parent immediately preceding the Financial Year of the Parent in which such purchase is to be made][[72]](#footnote-72) which is not required to be applied in prepayment of the Facilities pursuant to the other terms of this Agreement or (2) New Shareholder Injections (as defined in Clause ‎26.1 (*Financial definitions*)).

#### A Debt Purchase Transaction referred to in paragraph (b) above may be entered into pursuant to a solicitation process (a "**Solicitation Process**") which is carried out as follows.

#### Prior to 11.00 am on a given Business Day (the "**Solicitation Day**") the Parent or a financial institution acting on its behalf (the "**Purchase Agent**") will approach at the same time each Lender which participates in the relevant Term Facilities to enable them to offer to sell to the relevant Borrower(s) an amount of their participation in one or more Term Facilities. Any Lender wishing to make such an offer shall, by 11.00 am on the second Business Day following such Solicitation Day, communicate to the Purchase Agent details of the amount of its participations, and in which Term Facilities, it is offering to sell and the price at which it is offering to sell such participations. Any such offer shall be irrevocable until 11.00 am on the third Business Day following such Solicitation Day and shall be capable of acceptance by the Parent on behalf of the relevant Borrower(s) on or before such time by communicating its acceptance in writing to the Purchase Agent or, if it is the Purchase Agent, the relevant Lenders. The Purchase Agent (if someone other than the Parent) will communicate to the relevant Lenders which offers have been accepted by 12 noon on the third Business Day following such Solicitation Day. In any event by 11.00 am on the fourth Business Day following such Solicitation Date, the Parent shall notify the Agent of the amounts of the participations purchased through the relevant Solicitation Process, the identity of the Term Facilities to which they relate and the average price paid for the purchase of participations in each relevant Term Facility. The Agent shall disclose such information to any Lender that requests such disclosure.

#### Any purchase of participations in the Term Facilities pursuant to a Solicitation Process shall be completed and settled on or before the fifth Business Day after the relevant Solicitation Day.

#### In accepting any offers made pursuant to a Solicitation Process the Parent shall be free to select which offers and in which amounts it accepts but on the basis that in relation to a participation in a particular Term Facility it accepts offers in inverse order of the price offered (with the offer or offers at the lowest price being accepted first) and that if in respect of participations in a particular Term Facility it receives two or more offers at the same price it shall only accept such offers on a pro rata basis.

#### A Debt Purchase Transaction referred to in paragraph (b) above may also be entered into pursuant to an open order process (an "**Open Order Process**") which is carried out as follows.

#### The Parent (on behalf of the relevant Borrower(s)) may by itself or through another Purchase Agent place an open order (an "**Open Order**") to purchase participations in one or more of the Term Facilities up to a set aggregate amount at a set price by notifying at the same time all the Lenders participating in the relevant Term Facilities of the same. Any Lender wishing to sell pursuant to an Open Order will, by 11.00 am on any Business Day following the date on which the Open Order is placed but no earlier than the first Business Day, and no later than the fifth Business Day, following the date on which the Open Order is placed, communicate to the Purchase Agent details of the amount of its participations, and in which Term Facilities, it is offering to sell. Any such offer to sell shall be irrevocable until 11.00 am on the Business Day following the date of such offer from the Lender and shall be capable of acceptance by the Parent on behalf of the relevant Borrower(s) on or before such time by it communicating such acceptance in writing to the relevant Lender.

#### Any purchase of participations in the Term Facilities pursuant to an Open Order Process shall be completed and settled by the relevant Borrower(s) on or before the fourth Business Day after the date of the relevant offer by a Lender to sell under the relevant Open Order.

#### If in respect of participations in a Term Facility the Purchase Agent receives on the same Business Day two or more offers at the set price such that the maximum amount of such Term Facility to which an Open Order relates would be exceeded, the Parent shall only accept such offers on a pro rata basis.

#### The Parent shall, by 11.00 am on the sixth Business Day following the date on which an Open Order is placed, notify the Agent of the amounts of the participations purchased through such Open Order Process and the identity of the Term Facilities to which they relate. The Agent shall disclose such information to any Lender that requests the same.

### For the avoidance of doubt, there is no limit on the number of occasions a Solicitation Process or an Open Order Process may be implemented.

### In relation to any Debt Purchase Transaction entered into pursuant to this Clause 30.1, notwithstanding any other term of this Agreement or the other Finance Documents:

#### on completion of the relevant assignment pursuant to Clause ‎29 (*Changes to the Lenders*), the portions of the Term Loans to which it relates shall be extinguished [and any related Repayment Instalments will be reduced pro-rata accordingly][[73]](#footnote-73);

#### such Debt Purchase Transaction and the related extinguishment referred to in paragraph (i) above shall not constitute a prepayment of the Facilities;

#### the Borrower which is the assignee shall be deemed to be an entity which fulfils the requirements of Clause ‎29.1 (*Assignments and transfers by the Lenders*) to be a New Lender (as defined in such Clause);

#### no member of the Group shall be deemed to be in breach of any provision [[SPECIFIED CLAUSES] of] Clause ‎27 (*General Undertakings*)[[74]](#footnote-74) solely by reason of such Debt Purchase Transaction;

#### Clause ‎34 (*Sharing among the Finance Parties*) shall not be applicable to the consideration paid under such Debt Purchase Transaction; and

#### for the avoidance of doubt, any extinguishment of any part of the Term Loans shall not affect any amendment or waiver which prior to such extinguishment had been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement.

## Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates

### For so long as a Sponsor Affiliate (i) beneficially owns a Commitment or (ii) has entered into a sub-participation agreement relating to a Commitment or other agreement or arrangement having a substantially similar economic effect and such agreement or arrangement has not been terminated:

#### in ascertaining the Majority Lenders[[75]](#footnote-75) or whether any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments has been obtained to approve any request for a consent, waiver, amendment or other vote under the Finance Documents such Commitment shall be deemed to be zero; and

#### for the purposes of Clause ‎41.3 (*Exceptions*), such Sponsor Affiliate or the person with whom it has entered into such sub-participation, other agreement or arrangement shall be deemed not to be a Lender (unless in the case of a person not being a Sponsor Affiliate it is a Lender by virtue otherwise than by beneficially owning the relevant Commitment).

### Each Lender shall, unless such Debt Purchase Transaction is an assignment or transfer, promptly notify the Agent in writing if it knowingly enters into a Debt Purchase Transaction with a Sponsor Affiliate (a "**Notifiable Debt Purchase Transaction**"), such notification to be substantially in the form set out in Part I of Schedule 17 (*Forms of Notifiable Debt Purchase Transaction Notice*).

### A Lender shall promptly notify the Agent if a Notifiable Debt Purchase Transaction to which it is a party:

* + 1. is terminated; or
    2. ceases to be with a Sponsor Affiliate,

such notification to be substantially in the form set out in Part II of Schedule 17 (*Forms of Notifiable Debt Purchase Transaction Notice*).

### Each Sponsor Affiliate that is a Lender agrees that:

#### in relation to any meeting or conference call to which all the Lenders are invited to attend or participate, it shall not attend or participate in the same if so requested by the Agent or, unless the Agent otherwise agrees, be entitled to receive the agenda or any minutes of the same; and

#### in its capacity as Lender, unless the Agent otherwise agrees, it shall not be entitled to receive any report or other document prepared at the behest of, or on the instructions of, the Agent or one or more of the Lenders.]

# Changes To The Obligors

## Assignment and transfers by Obligors

No Obligor [or any other member of the Group] may assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

## Additional Borrowers

### Subject to compliance with the provisions of paragraphs (c) and (d) of Clause ‎25.10 ("*Know your customer" checks*), the Parent may request that any of its wholly owned Subsidiaries which is not a Dormant Subsidiary becomes a Borrower. That Subsidiary shall become a Borrower if:

#### it is incorporated in the same jurisdiction as an existing Borrower and the Majority Lenders approve the addition of that Subsidiary or otherwise if all the Lenders approve the addition of that Subsidiary;

#### the Parent and that Subsidiary deliver to the Agent a duly completed and executed Accession Deed;

#### the Subsidiary is (or becomes) a Guarantor prior to becoming a Borrower;

#### the Parent confirms that no Default is continuing or would occur as a result of that Subsidiary becoming an Additional Borrower; and

#### the Agent has received all of the documents and other evidence listed in Part II and, if applicable, Part III of Schedule 2 (*Conditions precedent*) in relation to that Additional Borrower, each in form and substance satisfactory to the Agent.

### The Agent shall notify the Parent and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part II and, if applicable, Part III of Schedule 2 (*Conditions precedent*).

### Upon becoming an Additional Borrower that Subsidiary shall make any filings (and provide copies of such filings) as required by paragraph (k) of Clause ‎18.2 (*Tax gross-up*) and paragraph (b) of Clause ‎18.6 (*HMRC DT Treaty Passport scheme confirmation*) in accordance with those paragraphs.

## Resignation of a Borrower

### In this Clause ‎31.3, Clause ‎31.5 (*Resignation of a Guarantor*) and Clause ‎31.7 (*Resignation and release of Security on disposal*), "**Third Party Disposal**" means the disposal of an Obligor to a person which is not a member of the Group where that disposal is permitted under Clause ‎27.16 (*Disposals*) or made with the approval of the Majority Lenders (and the Parent has confirmed this is the case).

### [With the prior consent of all the Lenders, the Parent may request that a Borrower ceases to be a Borrower by delivering to the Agent a Resignation Letter]/[If a Borrower is the subject of a Third Party Disposal, the Parent may request that such Borrower (other than the Parent or the Company) ceases to be a Borrower by delivering to the Agent a Resignation Letter].

### The Agent shall accept a Resignation Letter and notify the Parent and the other Finance Parties of its acceptance if:

#### the Parent has confirmed that no Default is continuing or would result from the acceptance of the Resignation Letter;

#### the Borrower is under no actual or contingent obligations as a Borrower under any Finance Documents;

#### where the Borrower is also a Guarantor (unless its resignation has been accepted in accordance with Clause ‎31.5 (*Resignation of a Guarantor*)), its obligations in its capacity as Guarantor continue to be legal, valid, binding and enforceable and in full force and effect (subject to the Legal Reservations) and the amount guaranteed by it as a Guarantor is not decreased (and the Parent has confirmed this is the case); and

#### the Parent has confirmed that it shall ensure that any relevant Disposal Proceeds will be applied in accordance with Clause ‎12.2 (*Disposal, Insurance and Acquisition Proceeds and Excess Cashflow*).

### Upon notification by the Agent to the Parent of its acceptance of the resignation of a Borrower, that company shall cease to be a Borrower and shall have no further rights or obligations under the Finance Documents as a Borrower [except that the resignation shall not take effect (and the Borrower will continue to have rights and obligations under the Finance Documents) until the date on which the Third Party Disposal takes effect].[[76]](#footnote-76)

### The Agent may, at the cost and expense of the Parent, require a legal opinion from counsel to the Agent confirming the matters set out in paragraph (c)(iii) above and the Agent shall be under no obligation to accept a Resignation Letter until it has obtained such opinion in form and substance satisfactory to it.

## Additional Guarantors

### Subject to compliance with the provisions of paragraphs (c) and (d) of Clause ‎25.10 ("*Know your customer" checks*), the Parent may request that any of its [wholly owned] Subsidiaries become a Guarantor.

### The Parent shall ensure that each member of the Group identified in Part III of Schedule 2 (*Conditions precedent*) as an Additional Obligor shall become an Additional Guarantor and[, subject to the Agreed Security Principles,] shall grant the Transaction Security identified opposite the name of that member of the Group in Part III of Schedule 2 (*Conditions Precedent*) on or prior to the date specified in Part III of that Schedule.

### The Parent shall procure that any other member of the Group which is [a Material Company]/[not a Dormant Subsidiary] shall, as soon as possible after becoming a [Material Company]/[member of the Group (or ceasing to be a Dormant Subsidiary)], become an Additional Guarantor and [, subject to the Agreed Security Principles,] grant Security as the Agent may require [and shall accede to the [Intercreditor Agreement]].

### A member of the Group shall become an Additional Guarantor if:

#### the Parent and the proposed Additional Guarantor deliver to the Agent a duly completed and executed Accession Deed; and

#### the Agent has received all of the documents and other evidence listed in Part II and, if applicable, Part III of Schedule 2 (*Conditions Precedent*) in relation to that Additional Guarantor, each in form and substance satisfactory to the Agent.

### The Agent shall notify the Parent and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part II and, if applicable, Part III of Schedule 2 (*Conditions precedent*).

## Resignation of a Guarantor

### The Parent may request that a Guarantor (other than the Parent or the Company) ceases to be a Guarantor by delivering to the Agent a Resignation Letter if:

#### that Guarantor is being disposed of by way of a Third Party Disposal (as defined in Clause ‎31.3 (*Resignation of a Borrower*)) and the Parent has confirmed this is the case; or

#### subject to paragraph (c)(ii) of clause [3.2] (*Amendments and Waivers: Senior Lenders*) of the Intercreditor Agreement, all the Lenders have consented to the resignation of that Guarantor.

### Subject to paragraph (a) of clause [18.14] (*Resignation of a Debtor*) of the Intercreditor Agreement, the Agent shall accept a Resignation Letter and notify the Parent and the Lenders of its acceptance if:

#### the Parent has confirmed that no Default is continuing or would result from the acceptance of the Resignation Letter;

#### no payment is due from the Guarantor under Clause ‎23.1 (*Guarantee and indemnity*);

#### where the Guarantor is also a Borrower, it is under no actual or contingent obligations as a Borrower and has resigned and ceased to be a Borrower under Clause ‎31.3 (*Resignation of a Borrower*); and

#### the Parent has confirmed that it shall ensure that the Disposal Proceeds will be applied in accordance with Clause ‎12.2 (*Disposal, Insurance and Acquisition Proceeds and Excess Cashflow*).

### The resignation of that Guarantor shall not be effective until the date of the relevant Third Party Disposal at which time that company shall cease to be a Guarantor and shall have no further rights or obligations under the Finance Documents as a Guarantor.

## Repetition of Representations

Delivery of an Accession Deed constitutes confirmation by the relevant Subsidiary that the representations and warranties referred to in paragraph (e) of Clause ‎24.32 (*Times when representations made*) are true and correct in relation to it as at the date of delivery as if made by reference to the facts and circumstances then existing.

## Resignation [and release of security on disposal][[77]](#footnote-77)

If a Borrower or Guarantor is or is proposed to be the subject of a Third Party Disposal then:

### [where that Borrower or Guarantor created Transaction Security over any of its assets or business in favour of the Security Agent, or Transaction Security in favour of the Security Agent was created over the shares (or equivalent) of that Borrower or Guarantor, the Security Agent may, at the cost and request of the Parent, release those assets, business or shares (or equivalent) and issue certificates of non-crystallisation;]

### the resignation of that Borrower or Guarantor [and related release of Transaction Security referred to in paragraph (a) above] shall not become effective until the date of that disposal; and

### if the disposal of that Borrower or Guarantor is not made, the Resignation Letter of that Borrower or Guarantor [and the related release of Transaction Security referred to in paragraph (a) above] shall have no effect and the obligations of the Borrower or Guarantor [and the Transaction Security created or intended to be created by or over that Borrower or Guarantor shall continue in such force and effect as if that release had not been effected.][[78]](#footnote-78)

**SECTION 10**

**THE FINANCE PARTIES**

# Role Of The Agent, The Arranger, The Issuing Bank And Others

## Appointment of the Agent

### Each of the Arranger, the Lenders and the Issuing Bank appoints the Agent to act as its agent under and in connection with the Finance Documents.

### Each of the Arranger, the Lenders and the Issuing Bank authorises the Agent 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.

## Duties of the Agent

### Subject to paragraph (b) 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.

### Without prejudice to Clause ‎29.7 (*Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Parent*) and paragraph (e) of Clause ‎7.4 (*Cash Collateral by Non-Acceptable L/C Lender*), paragraph (a) above shall not apply to any Transfer Certificate, any Assignment Agreement or any Increase Confirmation.

### 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.

### 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.

### 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, the Arranger or the Security Agent) under this Agreement it shall promptly notify the other Finance Parties.

### The Agent shall provide to the Parent[, within [    ] Business Days of the last Business Day of each calendar month]/[within [    ] Business Days of a request by the Parent (but no more frequently than once per calendar month)], a list (which may be in electronic form) setting out the names of the Lenders [as at that Business Day]/[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 sending and receipt 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.

### The Agent's duties under the Finance Documents are solely mechanical and administrative in nature.

## Role of the Arranger

Except as specifically provided in the Finance Documents, the Arranger has no obligations of any kind to any other Party under or in connection with any Finance Document.

## No fiduciary duties

### Nothing in this Agreement constitutes the Agent, the Arranger and/or the Issuing Bank as a trustee or fiduciary of any other person.

### None of the Agent, the Security Agent, the Arranger, the Issuing Bank or any Ancillary Lender 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.

## Business with the Group

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

## Rights and discretions

### The Agent [and the Issuing Bank] may rely on:

#### any representation, notice or document (including, without limitation, any notice given by a Lender pursuant to paragraph (b) or paragraph (c) of Clause ‎30.2 (*Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates*)) believed by it to be genuine, correct and appropriately authorised; and

#### any statement made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify.

### The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:

#### no Default has occurred (unless it has actual knowledge of a Default arising under Clause ‎28.1 (*Non-payment*));

#### any right, power, authority or discretion vested in any Party or the Majority Lenders has not been exercised;

#### any notice or request made by the Parent (other than a Utilisation Request or Selection Notice) is made on behalf of and with the consent and knowledge of all the Obligors; and

#### no Notifiable Debt Purchase Transaction:

##### has been entered into;

##### has been terminated; or

##### has ceased to be with a Sponsor Affiliate.

### The Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts.

### The Agent may act in relation to the Finance Documents through its personnel and agents.

### The Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.

### Without prejudice to the generality of paragraph (e) above, the Agent may disclose the identity of a Defaulting Lender to the other Finance Parties and the Parent and shall disclose the same upon the written request of the Parent or the Majority Lenders.

### Notwithstanding any other provision of any Finance Document to the contrary, none of the Agent, the Arranger or the Issuing Bank 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.

### The Agent [is not obliged to]/[may not][[79]](#footnote-79) disclose to any Finance Party any details of the rate notified to the Agent by any Lender [or Alternative Reference Bank] [or the identity of any such Lender [or Alternative Reference Bank]] for the purpose of paragraph (a)(ii) of Clause ‎16.2 (*Market Disruption*).

## Majority Lenders' instructions

### Unless a contrary indication appears in a Finance Document, the Agent shall (i) exercise any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by the Majority Lenders (or, if so instructed by the Majority Lenders, refrain from exercising any right, power, authority or discretion vested in it as Agent) and (ii) not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with an instruction of the Majority Lenders.

### Unless a contrary indication appears in a Finance Document, any instructions given by the Majority Lenders will be binding on all the Finance Parties other than the Security Agent.

### The Agent may refrain from acting in accordance with the instructions of the Majority Lenders (or, if appropriate, the Lenders) until it has received such security as it may require for any cost, loss or liability (together with any associated VAT) which it may incur in complying with the instructions.

### In the absence of instructions from the Majority Lenders, (or, if appropriate, the Lenders) the Agent may act (or refrain from taking action) as it considers to be in the best interest of the Lenders.

### 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 (e) 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.

## Responsibility for documentation

None of the Agent, the Arranger, the Issuing Bank [or any Ancillary Lender]:

### is responsible for the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Agent, the Arranger, the Issuing Bank, an Ancillary Lender, an Obligor or any other person given in or in connection with any Finance Document or the Information Memorandum or the Reports or the transactions contemplated in the Finance Documents;

### is responsible for the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Finance Document or the Transaction Security; or

### [is responsible for 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.]

## Exclusion of liability

### Without limiting paragraph (b) below [(and without prejudice to the provisions of paragraph (e) of Clause[[80]](#footnote-80) ‎35.11 (*Disruption to Payment Systems etc.)*)], none of the Agent, the Issuing Bank, [or any Ancillary Lender] will be liable [(including, without limitation, for negligence or any other category of liability whatsoever)][[81]](#footnote-81) for any action taken by it under or in connection with any Finance Document or the Transaction Security, unless directly caused by its gross negligence or wilful misconduct.

### No Party (other than the Agent, the Issuing Bank [or an Ancillary Lender] (as applicable)) may take any proceedings against any officer, employee or agent of the Agent, the Issuing Bank [or any Ancillary Lender], in respect of any claim it might have against the Agent, the Issuing Bank [or an Ancillary Lender] 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, the Issuing Bank or any Ancillary Lender may rely on this Clause [subject to Clause ‎1.3 (*Third party rights*) and the provisions of the Third Parties Act].

### 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.

### Nothing in this Agreement shall oblige the Agent or the Arranger to carry out any "know your customer" or other checks in relation to any person on behalf of any Lender and each Lender confirms to the Agent and the Arranger 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 or the Arranger.

## Lenders' indemnity to the Agent

Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, within three Business Days of demand, against any cost, loss or liability [(including, without limitation, for negligence or any other category of liability whatsoever)][[82]](#footnote-82) 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 ‎35.11 (*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][[83]](#footnote-83) in acting as Agent under the Finance Documents (unless the Agent has been reimbursed by an Obligor pursuant to a Finance Document).

## Resignation of the Agent

### 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 Parent.

### Alternatively the Agent may resign by giving 30 days notice to the Lenders and the Parent, in which case the Majority Lenders (after consultation with the Parent) may appoint a successor Agent.

### 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 Parent) may appoint a successor Agent [(acting through an office in the United Kingdom)].

### [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 ‎32 [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.]

### 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 Agent's resignation notice shall only take effect upon the appointment of a successor.

### Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Clause ‎32. 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.

## Replacement of the Agent

### After consultation with the Parent, 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)].

### 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.

### 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 but shall remain entitled to the benefit of this Clause ‎32 (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 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.

## Confidentiality

### In acting as agent for the Finance Parties, 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.

### 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.

### Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent nor the Arranger is obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would or might in its reasonable opinion constitute a breach of any law or a breach of a fiduciary duty.

## Relationship with the Lenders

### [Subject to Clause ‎29.10 (*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:

#### [entitled to or liable for any payment due under any Finance Document on that day; and]

#### 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.

### Each Lender shall supply the Agent with any information required by the Agent in order to calculate the Mandatory Cost in accordance with Schedule 4 (*Mandatory Cost formula*).

### Each Lender shall supply the Agent with any information that the Security Agent may reasonably specify (through the Agent) as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent. Each Lender shall deal with the Security Agent exclusively through the Agent and shall not deal directly with the Security Agent.

### 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 ‎37.6 (*Electronic communication*)) electronic mail address and/or any other information required to enable the sending and receipt of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address, department and officer by that Lender for the purposes of Clause ‎37.2 (*Addresses*) and paragraph (a)(iii) of Clause ‎37.6 (*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.

## Credit appraisal by the Lenders, Issuing Bank and Ancillary Lenders

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Lender, Issuing Bank and Ancillary Lender confirms to the Agent, the Arranger, the Issuing Bank and each Ancillary Lender 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:

### the financial condition, status and nature of each member of the Group;

### the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;

### whether that Secured Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the Transaction Security, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;

### the adequacy, accuracy and/or completeness of the Information Memorandum, the Reports and any other information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and

### 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.

## Base Reference Banks [and Alternative Reference Banks]

If a Base Reference Bank [or Alternative Reference Bank] (or, if a Base Reference Bank [or Alternative Reference Bank] is not a Lender, the Lender of which it is an Affiliate) ceases to be a Lender, the Agent shall (in consultation with the Parent) appoint another Lender or an Affiliate of a Lender to replace that Base Reference Bank [or Alternative Reference Bank].

## [Agent's management time

### Any amount payable to the Agent under Clause ‎20.3 (*Indemnity to the Agent*), Clause ‎22 (*Costs and expenses*) and Clause ‎32.10 (*Lenders' indemnity to the 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 Parent and the Lenders, and is in addition to any fee paid or payable to the Agent under Clause ‎17 (*Fees*).

### [Any cost of utilising the Agent's management time or other resources shall include, without limitation, any such costs in connection with Clause ‎30.2 (*Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates*).]]

## 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.

## Reliance and engagement letters

Each Finance Party and Secured Party confirms that each of the Arranger and 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 Arranger or Agent) the terms of any reliance letter or engagement letters relating to the Reports or 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, 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.

# Conduct Of Business By The Finance Parties

No provision of this Agreement will:

### interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;

### 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

### oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

# Sharing Among The Finance Parties

## Payments to Finance Parties

### Subject to paragraph (b) below, if a Finance Party (a "**Recovering Finance Party**") receives or recovers any amount from an Obligor other than in accordance with Clause ‎35 (*Payment mechanics*) (a "**Recovered Amount**") and applies that amount to a payment due under the Finance Documents then:

#### the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery, to the Agent;

#### the Agent shall determine whether the receipt or recovery is in excess of the amount 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 ‎35 (*Payment mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and

#### 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 ‎35.6 (*Partial payments*).

### Paragraph (a) above shall not apply to any amount received or recovered by an Issuing Bank or an Ancillary Lender in respect of any cash cover provided for the benefit of that Issuing Bank or that Ancillary Lender.

## Redistribution of payments

The Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Finance Parties (other than the Recovering Finance Party) (the "**Sharing Finance Parties**") in accordance with Clause ‎35.6 (*Partial payments*) towards the obligations of that Obligor to the Sharing Finance Parties.

## Recovering Finance Party's rights

On a distribution by the Agent under Clause ‎34.2 (*Redistribution of payments*) of a payment received by a Recovering Finance Party from an Obligor, as between the relevant Obligor 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 that Obligor.

## 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:

### 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 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

### as between the relevant Obligor and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Obligor.

## Exceptions

### This Clause ‎34 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 relevant Obligor.

### 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:

#### it notified the other Finance Party of the legal or arbitration proceedings; and

#### 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.

## Ancillary Lenders

### This Clause ‎34 shall not apply to any receipt or recovery by a Lender in its capacity as an Ancillary Lender at any time prior to service of notice under Clause ‎28.20 (*Acceleration*).

### Following service of notice under Clause ‎28.20 (*Acceleration*), this Clause ‎34 shall apply to all receipts or recoveries by Ancillary Lenders except to the extent that the receipt or recovery represents a reduction from the Designated Gross Amount for an Ancillary Facility to its Designated Net Amount.

**SECTION 11**

**ADMINISTRATION**

# Payment Mechanics

## Payments to the Agent

### On each date on which an Obligor or a Lender is required to make a payment under a Finance Document excluding a payment under the terms of an Ancillary Document, that Obligor 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.

### 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 a Participating Member State or London) with such bank as the Agent specifies.

## Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause ‎35.3 (*Distributions to an Obligor*) and Clause ‎35.4 (*Clawback*) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five Business Days' notice with a bank in the principal financial centre of the country of that currency (or, in relation to euro, in the principal financial centre of a Participating Member State or London).

## Distributions to an Obligor

The Agent may (with the consent of the Obligor or in accordance with Clause ‎36 (*Set-Off*)) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

## Clawback

### 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.

### 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.

## Impaired Agent

### If, at any time, the Agent becomes an Impaired Agent, an Obligor or a Lender which is required to make a payment under the Finance Documents to the Agent in accordance with Clause  ‎35.1 (*Payments to the Agent*) may instead either pay that amount direct to the required recipient or pay 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 Obligor or the Lender making the payment and designated as a trust account for the benefit of the Party or Parties beneficially entitled to that payment under the Finance Documents. In each case such payments must be made on the due date for payment under the Finance Documents.

### All interest accrued on the amount standing to the credit of the trust account shall be for the benefit of the beneficiaries of that trust account *pro rata* to their respective entitlements.

### A Party which has made a payment in accordance with this Clause ‎35.5 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.

### Promptly upon the appointment of a successor Agent in accordance with Clause  ‎32.12 (*Replacement of the Agent*), each Party which has made a payment to a trust account in accordance with this Clause ‎35.5 shall 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 in accordance with Clause  ‎35.2 (*Distributions by the Agent*).

## Partial payments

### 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 an Obligor under those Finance Documents, the Agent shall apply that payment towards the obligations of that Obligor under those Finance Documents in the following order:

#### **first**, in or towards payment *pro rata* of any unpaid fees, costs and expenses of the Agent, the Issuing Bank and the Security Agent under those Finance Documents;

#### **secondly**, in or towards payment *pro rata* of any accrued interest, fee or commission due but unpaid under those Finance Documents;

#### **thirdly**, in or towards payment *pro rata* of any principal due but unpaid under those Finance Documents and any amount due but unpaid under Clause ‎7.2 (*Claims under a Letter of Credit*) and Clause ‎7.3 (*Indemnities*); and

#### **fourthly**, in or towards payment *pro rata* of any other sum due but unpaid under the Finance Documents.

### The Agent shall, if so directed by the Majority Lenders, vary the order set out in paragraphs (a)(ii) to (iv) above.

### Paragraphs (a) and (b) above will override any appropriation made by an Obligor.[[84]](#footnote-84)

## Set-off by Obligors

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

## Business Days

### Any payment 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).

### 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.

## Currency of account

### Subject to paragraphs (b) to (e) below, the Base Currency is the currency of account and payment for any sum due from an Obligor under any Finance Document.

### A repayment of a Utilisation or Unpaid Sum or a part of a Utilisation or Unpaid Sum shall be made in the currency in which that Utilisation or Unpaid Sum is denominated on its due date.

### Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated when that interest accrued.

### Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.

### Any amount expressed to be payable in a currency other than the Base Currency shall be paid in that other currency.

## Change of currency

### 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:

#### 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 Parent); and

#### 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).

### If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Parent) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Interbank Market and otherwise to reflect the change in currency.

## [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 Parent that a Disruption Event has occurred:

### the Agent may, and shall if requested to do so by the Parent, consult with the Parent with a view to agreeing with the Parent such changes to the operation or administration of the Facilities as the Agent may deem necessary in the circumstances;

### the Agent shall not be obliged to consult with the Parent 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;

### 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;

### any such changes agreed upon by the Agent and the Parent 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 ‎41 (*Amendments and Waivers*);

### the Agent shall not be liable for any damages, costs or losses 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 ‎35.11; and

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

# Set-Off

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

### Any credit balances taken into account by an Ancillary Lender when operating a net limit in respect of any overdraft under an Ancillary Facility shall on enforcement of the Finance Documents be applied first in reduction of the overdraft provided under that Ancillary Facility in accordance with its terms.

# Notices

## 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.

## 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:

### in the case of the Parent or the Company, that identified with its name below;

### in the case of each Lender, the Issuing Bank, each Ancillary Lender or any other Obligor, that notified in writing to the Agent on or prior to the date on which it becomes a Party; and

### 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.

## Delivery

### Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:

#### if by way of fax, when received in legible form; or

#### 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 ‎37.2 (*Addresses*), if addressed to that department or officer.

### 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).

### All notices from or to an Obligor shall be sent through the Agent.

### Any communication or document made or delivered to the Parent in accordance with this Clause ‎37.3 will be deemed to have been made or delivered to each of the Obligors.

## Notification of address and fax number

Promptly upon receipt of notification of an address or fax number or change of address or fax number pursuant to Clause ‎37.2 (*Addresses*) or changing its own address or fax number, the Agent shall notify the other Parties.

## 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.

## Electronic communication

### Any communication to be made between the Agent or the Security Agent and a Lender under or in connection with the Finance Documents may be made by electronic mail or other electronic means, if the Agent, the Security Agent and the relevant Lender:

#### agree that, unless and until notified to the contrary, this is to be an accepted form of communication;

#### 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

#### notify each other of any change to their address or any other such information supplied by them.

### Any electronic communication made between the Agent and a Lender or the Security Agent will be effective only when actually received in readable form and in the case of any electronic communication made by a Lender 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.

## Use of websites

### The Parent 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 Parent and the Agent (the "**Designated Website**") if:

#### the Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;

#### both the Parent and the Agent are aware of the address of and any relevant password specifications for the Designated Website; and

#### the information is in a format previously agreed between the Parent 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 Parent accordingly and the Parent 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 Parent 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.

### 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 Parent and the Agent.

### The Parent shall promptly upon becoming aware of its occurrence notify the Agent if:

#### the Designated Website cannot be accessed due to technical failure;

#### the password specifications for the Designated Website change;

#### any new information which is required to be provided under this Agreement is posted onto the Designated Website;

#### any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or

#### the Parent 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 Parent notifies the Agent under paragraph (c)(i) or paragraph (c)(v) above, all information to be provided by the Parent 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].

### 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 Parent shall at its own cost comply with any such request within ten Business Days.

## English language

### Any notice given under or in connection with any Finance Document must be in English.

### All other documents provided under or in connection with any Finance Document must be:

#### in English; or

#### 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.

# Calculations And Certificates

## 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.

## 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.

## Day count convention

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

# Partial Invalidity

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

# 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 the Finance Documents shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

# Amendments And Waivers

## Intercreditor Agreement

This Clause ‎41 is subject to the terms of the Intercreditor Agreement.

## Required consents

### Subject to Clause ‎41.3 (*Exceptions*) any term of the Finance Documents (other than [the Mandate Letter])[[85]](#footnote-85) may be amended or waived only with the consent of the Majority Lenders and the Parent and any such amendment or waiver will be binding on all Parties.

### The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause ‎41.

### Each Obligor agrees to any such amendment or waiver permitted by this Clause ‎41 which is agreed to by the Parent. This includes any amendment or waiver which would, but for this paragraph (c), require the consent of all of the Guarantors.

## Exceptions

### An amendment or waiver that has the effect of changing or which relates to:

#### the definition of "Majority Lenders" in Clause ‎1.1 (*Definitions*);

#### an extension to the date of payment of any amount under the Finance Documents [(other than in relation to Clause 12 (*Mandatory Prepayment*))];[[86]](#footnote-86)

#### a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;

#### [a change in currency of payment of any amount under the Finance Documents;]

#### an increase in or an extension of any Commitment or the Total Commitments;

#### a change to the Borrowers or Guarantors other than in accordance with Clause ‎31 (*Changes to the Obligors*);

#### any provision which expressly requires the consent of all the Lenders;

#### Clause ‎2.3 (*Finance Parties' rights and obligations*), [Clause ‎12 (*Mandatory prepayment*),] Clause ‎29 (*Changes to the Lenders*) or this Clause ‎41;

#### (other than as expressly permitted by the provisions of any Finance Document) the nature or scope of:

##### the guarantee and indemnity granted under Clause ‎23 (*Guarantee and Indemnity*);

##### [the Charged Property; or

##### the manner in which the proceeds of enforcement of the Transaction Security are distributed][[87]](#footnote-87)

(except in the case of paragraph (B) and paragraph (C) 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);

#### the release of any guarantee and indemnity granted under Clause 23 (*Guarantee and Indemnity*) or 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;

#### [any amendment to the order of priority or subordination under the Intercreditor Agreement]; or[[88]](#footnote-88)

#### [                     ],

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

### An amendment or waiver which relates to the rights or obligations of the Agent, the Arranger, the Issuing Bank, the Security Agent, any Ancillary Lender or a Hedge Counterparty (each in their capacity as such) may not be effected without the consent of the Agent, the Arranger, the Issuing Bank, the Security Agent, that Ancillary Lender or, as the case may be, that Hedge Counterparty.

### [Any amendment which relates to the rights of the Lenders to waive prepayment of Facility B or Facility C under Clause ‎13.8 (*Prepayment elections*) shall not be effected without the consent of the Lenders under Facility B or Facility C, as the case may be.]

### [If any Lender fails to respond to a request for a consent, waiver, amendment of or in relation to any of the terms of any Finance Document [(other than an amendment or waiver referred to in paragraphs [(a)(ii), (iii) and (v) above)] or [*other*]] or other vote of Lenders under the terms of this Agreement within [ ] Business Days (unless the Parent and the Agent agree to a longer time period in relation to any request) of that request being made, its Commitment and/or participation shall not be included for the purpose of calculating the Total Commitments or participations under the relevant Facility/ies when ascertaining whether any relevant percentage (including, for the avoidance of doubt, unanimity) of Total Commitments and/or participations has been obtained to approve that request.][[89]](#footnote-89)

## Replacement of Lender

### If at any time:

#### any Lender becomes a Non-Consenting Lender (as defined in paragraph (c) below); or

#### an Obligor becomes obliged to repay any amount in accordance with Clause ‎11.1 (*Illegality*) or to pay additional amounts pursuant to Clause ‎19.1 (*Increased Costs*) or Clause ‎18.2 (*Tax gross-up*) to any Lender in excess of amounts payable to the other Lenders generally,

then the Parent may, on [ ] Business Days' prior written notice to the Agent and such Lender, replace such Lender by requiring such Lender to (and such Lender shall) transfer pursuant to Clause ‎29 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement to a Lender or other bank, financial institution, trust, fund or other entity (a "**Replacement Lender**") selected by the Parent, and which is acceptable to the Agent (acting reasonably) and (in the case of any transfer of a Revolving Facility Commitment), the Issuing Bank, which confirms its willingness to assume and does assume all the obligations of the transferring Lender (including the assumption of the transferring Lender's participations on the same basis as the transferring Lender) for a purchase price in cash payable at the time of transfer equal to the outstanding principal amount of such Lender's participation in the outstanding Utilisations and all accrued interest and/or Letter of Credit fees, Break Costs and other amounts payable in relation thereto under the Finance Documents.

### The replacement of a Lender pursuant to this Clause shall be subject to the following conditions:

#### the Parent shall have no right to replace the Agent or Security Agent;

#### neither the Agent nor the Lender shall have any obligation to the Parent to find a Replacement Lender;

#### in the event of a replacement of a Non-Consenting Lender such replacement must take place no later than [ ] days after the date the Non-Consenting Lender notifies the Parent and the Agent of its failure or refusal to give a consent in relation to, or agree to any waiver or amendment to the Finance Documents requested by the Parent; and

#### in no event shall the Lender replaced under this paragraph (b) be required to pay or surrender to such Replacement Lender any of the fees received by such Lender pursuant to the Finance Documents.

### In the event that:

#### the Parent or the Agent (at the request of the Parent) 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;

#### the consent, waiver or amendment in question requires the approval of all the Lenders; and

#### Lenders whose Commitments aggregate more than [ ] per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than [ ] per cent. of the Total Commitments prior to that reduction) have consented or agreed to such waiver or amendment,

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**".

## Disenfranchisement of Defaulting Lenders

### For so long as a Defaulting Lender has any Available Commitment, in ascertaining the Majority Lenders[[90]](#footnote-90) or whether any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments or Total Revolving Commitments has been obtained to approve any request for a consent, waiver, amendment or other vote under the Finance Documents, that Defaulting Lender's Commitments will be reduced by the amount of its Available Commitments.

### For the purposes of this Clause ‎41.5, the Agent may assume that the following Lenders are Defaulting Lenders:

#### any Lender which has notified the Agent that it has become a Defaulting Lender;

#### any Lender in relation to which it is aware that any of the events or circumstances referred to in paragraphs (a), (b) or (c) of the definition of "**Defaulting Lender**" has occurred,

unless it has received notice to the contrary from the Lender concerned (together with any supporting evidence reasonably requested by the Agent) or the Agent is otherwise aware that the Lender has ceased to be a Defaulting Lender.

## Replacement of a Defaulting Lender

### The Parent may, at any time a Lender has become and continues to be a Defaulting Lender, by giving [   ] Business Days' prior written notice to the Agent and such Lender:

#### replace such Lender by requiring such Lender to (and such Lender shall) transfer pursuant to Clause ‎29 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement;

#### require such Lender to (and such Lender shall) transfer pursuant to Clause ‎29 (*Changes to the Lenders*) all (and not part only) of the undrawn Revolving Commitment of the Lender; or

* + 1. require such Lender to (and such Lender shall) transfer pursuant to Clause ‎29 (*Changes to the Lenders*) all (and not part only) of its rights and obligations in respect of the Revolving Facility,

to a Lender or other bank, financial institution, trust, fund or other entity (a "**Replacement Lender**") selected by the Parent, and which (unless the Agent is an Impaired Agent) is acceptable to the Agent (acting reasonably) and (in the case of any transfer of a Revolving Facility Commitment) to the Issuing Bank, which confirms its willingness to assume and does assume all the obligations or all the relevant obligations of the transferring Lender (including the assumption of the transferring Lender's participations or unfunded participations (as the case may be) on the same basis as the transferring Lender) [for a purchase price in cash payable at the time of transfer equal to the outstanding principal amount of such Lender's participation in the outstanding Utilisations and all accrued interest and/or Letter of Credit fees, Break Costs and other amounts payable in relation thereto under the Finance Documents].

### Any transfer of rights and obligations of a Defaulting Lender pursuant to this Clause shall be subject to the following conditions:

#### the Parent shall have no right to replace the Agent or Security Agent;

#### neither the Agent nor the Defaulting Lender shall have any obligation to the Parent to find a Replacement Lender;

#### the transfer must take place no later than [ ] days after the notice referred to in paragraph (a) above; and

#### 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.

# Confidentiality

## Confidential Information

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause ‎42.2 (*Disclosure of Confidential Information*) and Clause ‎42.3 (*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.

## Disclosure of Confidential Information

Any Finance Party may disclose:

### 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;

### to any person:

#### to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;

#### with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Obligors and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;

#### appointed by any Finance Party or by a person to whom paragraph (b)(i) or (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 (d) of Clause ‎32.14 (*Relationship with the Lenders*));

#### 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;

#### 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;

#### [to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause ‎29.9 (*Security over Lenders' rights*)][[91]](#footnote-91);

#### 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;

#### who is a Party; or

#### with the consent of the Parent;

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

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

##### in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;

##### 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;

### 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 Parent and the relevant Finance Party;

### [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 Obligors [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.]]

## Disclosure to numbering service providers

### 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 Facilities and/or one or more Obligors the following information:

#### names of Obligors;

#### country of domicile of Obligors;

#### place of incorporation of Obligors;

#### date of this Agreement;

#### the names of the Agent and the Arranger;

#### date of each amendment and restatement of this Agreement;

#### amount of Total Commitments;

#### currencies of the Facilities;

#### type of Facilities[[92]](#footnote-92);

#### ranking of Facilities;

#### Termination Date for Facilities;

#### changes to any of the information previously supplied pursuant to paragraphs (i) to (xi) above; and

#### such other information agreed between such Finance Party and the Parent,

to enable such numbering service provider to provide its usual syndicated loan numbering identification services.[[93]](#footnote-93)

### The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facilities and/or one or more Obligors 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.

### [The Parent] / [Each Obligor] represents that none of the information set out in paragraphs (i) to (xiii) of paragraph (a) above is, nor will at any time be, unpublished price-sensitive information.][[94]](#footnote-94)

### [The Agent shall notify the Parent and the other Finance Parties of:

#### the name of any numbering service provider appointed by the Agent in respect of this Agreement, the Facilities and/or one or more Obligors; and

#### the number or, as the case may be, numbers assigned to this Agreement, the Facilities and/or one or more Obligors by such numbering service provider.][[95]](#footnote-95)

## Entire agreement

This Clause ‎42 (*Confidentiality*) 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.

## 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.

## Notification of disclosure

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

### of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause ‎42.2 (*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

### upon becoming aware that Confidential Information has been disclosed in breach of this Clause ‎42 (*Confidentiality*).

## Continuing obligations

The obligations in this Clause ‎42 (*Confidentiality*) are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of [twelve] months from the earlier of:

### the date on which all amounts payable by the Obligors 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

### the date on which such Finance Party otherwise ceases to be a Finance Party.

# Counterparts

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

**SECTION 12**

**GOVERNING LAW AND ENFORCEMENT**

# Governing Law

This Agreement [and any non-contractual obligations arising out of or in connection with it][[96]](#footnote-96) [is/are] governed by English law.

# Enforcement

## Jurisdiction of English courts

### 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][[97]](#footnote-97)) (a "**Dispute**").

### 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.

### This Clause ‎45.1 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.

## Service of process

### Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in England and Wales):

#### irrevocably appoints [the Parent]/[*insert name of other Original Obligor which is appointed as agent*] as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document [(and the [Parent]/[*insert name of other Original Obligor which is appointed as agent*] by its execution of this Agreement, accepts that appointment)]; and

#### agrees that failure by an agent for service of process to notify the relevant Obligor of the process will not invalidate the proceedings concerned.

### 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 Parent (on behalf of all the Obligors) must immediately (and in any event within [   ] 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.

### [*insert name of Obligor*] expressly agrees and consents to the provisions of this Clause ‎45 and Clause ‎44 (*Governing law*).

**This Agreement has been entered into on the date stated at the beginning of this Agreement.**

The Original Parties

1. The Original Obligors

|  |  |
| --- | --- |
| Name of Original Borrower | Registration number (or equivalent, if any) Jurisdiction of Incorporation |
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| --- | --- |
| Name of Original Guarantor | Registration number (or equivalent, if any) Jurisdiction of Incorporation |
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1. The Original Lenders [- other than UK Non-Bank Lenders][[98]](#footnote-98)

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| --- | --- | --- | --- | --- | --- | --- |
| Name of Original Lender | Facility A Commitment | Facility B Commitment | Facility C Commitment | Revolving Facility Commitment | Status (Non-Acceptable L/C Lender: Yes/No) | Treaty Passport scheme reference number and jurisdiction of tax residence (if applicable)[[99]](#footnote-99) |
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1. [The Original Lenders - UK Non-Bank Lenders][[100]](#footnote-100)

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| --- | --- | --- | --- | --- | --- |
| Name of Original Lender | Facility A Commitment | Facility B Commitment | Facility C Commitment | Revolving Facility Commitment | Status (Non-Acceptable L/C Lender: Yes/No) |
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1. [The Original Hedge Counterparties][[101]](#footnote-101)

Conditions Precedent

Part IA  
Conditions precedent to signing of the Agreement

1. **Obligors**
   1. A copy of the Constitutional Documents and of the constitutional documents of each other Original Obligor.
   2. A copy of a resolution of the board [or, if applicable, a committee of the board] of directors of each Original Obligor:
      1. 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;
      2. authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf;
      3. authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request and Selection Notice) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
      4. in the case of an Obligor other than the Parent, authorising the Parent to act as its agent in connection with the Finance Documents.
   3. [If applicable, a copy of a resolution of the board of directors of the relevant company, establishing the committee referred to in paragraph (b) above.]
   4. 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.
   5. [A copy of a resolution signed by all the holders of the issued shares in each Original Guarantor, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Original Guarantor is a party.]
   6. [A copy of a resolution of the board of directors of each corporate shareholder of each Original Guarantor approving the terms of the resolution referred to in paragraph (e) above.]
   7. A certificate of the Parent (signed by a director) confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on any Original Obligor to be exceeded.
   8. A certificate of an authorised signatory of the Parent or other relevant Original Obligor certifying that each copy document relating to it specified in this   
      Part IA of 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.
   9. [Others].[[102]](#footnote-102)
2. **Transaction Documents**
   1. A copy of each of the Acquisition Documents, the Shareholders' Agreement and the other Transaction Documents (other than the Finance Documents) executed by the parties to those documents.
   2. A copy of each of the Service Contracts.
3. **Finance Documents**
   1. The Intercreditor Agreement executed by the members of the Group party to that Agreement [and the holders of the Loan Notes [and Vendor Notes.]]
   2. This Agreement executed by the members of the Group party to this Agreement.
   3. The Fee Letters executed by [the Parent].
   4. The Hedging Letter in agreed form and executed by the Parent.
   5. The Mezzanine Facility Agreement executed by the Company and other members of the Group party to that agreement.
   6. The Warrant Documents executed by [the Parent] and all other Mezzanine Finance Documents.
   7. Each Parent Document executed by the Parent and any other member of the Group party to that agreement.
   8. At least two originals of the following Transaction Security Documents executed by the Original Obligors specified below opposite the relevant Transaction Security Document:

|  |  |
| --- | --- |
| Name of Original Obligor | Transaction Security Document |
|  |  |
|  |  |

* 1. A copy of all notices required to be sent under the Transaction Security Documents executed by [*relevant Obligors*] [duly acknowledged by the addressee].
  2. A copy of all share certificates, transfers and stock transfer forms or equivalent duly executed by the relevant Obligor 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.

1. **[Insurance**

A letter from [ ] insurance broker [dated the date of this Agreement] addressed to the Agent, the Arranger[s], the Security Agent and the Lenders listing the insurance policies of the Group and confirming that they are on risk and that the insurance for the Group at the date of this Agreement is at a level acceptable to the Majority Lenders and covering appropriate risks for the business carried out by the Group.]

1. **Contracts**
   1. Written acknowledgement in the agreed form executed by the Vendor acknowledging the Transaction Security over the Acquisition Agreement.
   2. [Others.]
2. **Legal opinions**

The following legal opinions, each addressed to the Agent, the Security Agent and the Original Lenders and capable of being relied upon by any persons who become Lenders pursuant to the primary syndication of the Facilities.

* 1. A legal opinion of [           ], legal advisers to the Agent and the Arranger as to English law substantially in the form distributed to the Original Lenders prior to signing this Agreement.
  2. A legal opinion of the following legal advisers to the Agent and Arranger:
     1. [insert name of law firm] as to [insert jurisdiction of incorporation] law; and
     2. [         ] as to [          ],

each substantially in the form distributed to the Original Lenders prior to signing this Agreement.

1. **Other documents and evidence**
   1. Evidence that any process agent referred to in Clause ‎45.2 (*Service of process*), if not an Original Obligor, has accepted its appointment.
   2. The Group Structure Chart which shows the Group assuming the Closing Date has occurred [and steps [       ] to [        ] of the Structure Memorandum have completed].
   3. The Budget.
   4. The Reports and a copy of the agreed form report to be delivered by the Auditors pursuant to paragraph (c) of Clause ‎25.2 (*Provision and contents of Compliance Certificate*) together with confirmation from the Auditors that it can be relied upon by the Finance Parties.
   5. A copy, certified by an authorised signatory of the Parent to be a true copy, of the Original Financial Statements of each Obligor.
   6. A certificate signed by an authorised signatory of the Parent specifying each member of the Group (assuming the Closing Date has occurred) which is a Dormant Company as at the Closing 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.
   7. The Structure Memorandum.
   8. A Certificate of [the Parent's Auditors]/[*reporting accountants*] addressed to the Finance Parties confirming [which companies within the Group are Material Companies] [and] [that the [aggregate of earnings before interest, tax, depreciation and amortisation (calculated on the same basis as EBITDA, as defined in Clause ‎26 (*Financial Covenants*))]/ [aggregate gross assets, the aggregate net assets and aggregate turnover] of the Original Guarantors (in each case calculated on an unconsolidated basis and excluding all intra-Group items and investments in Subsidiaries of any member of the Group) exceeds [          ]% of the [EBITDA (as defined in Clause ‎26 (*Financial Covenants*)] / [consolidated gross assets, consolidated net assets and consolidated turnover of the Group].
   9. A letter from the Parent to the Agent specifying the Holding Account and the Mandatory Prepayment Account including details of each account name, account number and the name and address of the bank where each account is held.
   10. A letter of engagement with the Finance Parties and Secured Parties from each of:
       1. the authors of the Accountant's Report; and
       2. the Auditors of the Group which will be providing Compliance Certificates.
   11. A copy of any other Authorisation or other document, opinion or assurance which the Agent considers to be necessary or desirable (if it has notified the Parent accordingly) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.

Part IB  
Conditions precedent to initial Utilisation

1. **Additional Obligors**
   1. Evidence that any members of the Group required to accede as Additional Obligors on or prior to the Closing Date in accordance with Clause ‎27.39 (*Conditions Subsequent*) (referred to in this Part IB as "**relevant Obligors**") have done so or will have done so at Completion including an Accession Deed executed by the relevant Obligor and the Parent.
   2. Documentation equivalent to that referred in paragraphs 2 to 9 inclusive of Part II of Schedule 2 with respect to each relevant Obligor.
   3. In relation to relevant Obligors incorporated in England and Wales, Scotland or Northern Ireland, evidence that members of the Group incorporated in England and Wales, Scotland or Northern Ireland have done all that is necessary (including, without limitation, by re-registering as a private company) to comply with sections 677 to 683 of the Companies Act 2006 in order to enable each relevant Obligor to enter into the Finance Documents and perform its obligations under the Finance Documents.
   4. [If the relevant Obligor is not incorporated in England and Wales, Scotland or Northern Ireland, such documentary evidence as legal counsel to the Agent may require, that such Obligor has complied with any law in its jurisdiction relating to financial assistance or analogous process.]
   5. [Others.]
2. **Finance Documents**
   1. [The following Ancillary Documents: [                    ].]
   2. The following in relation to Transaction Security over Properties in England and Wales granted under the Transaction Security Documents given by [*Insert names of relevant Obligors*]:
      1. Satisfactory priority searches of the Land Registry and Land Charges Searches.
      2. An effective discharge of all Security affecting the Real Property (if any) or an undertaking regarding the release of such Security by the Parent's English legal counsel in form and substance satisfactory to the Agent.
      3. Copies of (A) all notices of charge relating to all of the Real Property signed on behalf of the relevant Obligor, including a request to the recipient of the notice that it be returned to [ ] as solicitors to the Agent, [as to English law,] and if a relevant registration fee is required by the appropriate recipient then a cheque for such amount is to be provided within a reasonable time and (B) all consents to charge, signed by the relevant third party.
      4. All deeds, documents and ancillary papers relating to the Real Property including official copies of Land Registry entries, counterpart leases, licences and any other deeds or documents necessary or desirable to assist the Security Agent to enforce the Transaction Security [in accordance with the schedule of deeds agreed between [*insert name of Parent's English Legal Counsel*] and [            ] as solicitors to the Agent as to English law].
      5. [A letter of undertaking from [ ], [counsel to the Parent], concerning the registration of the charge over Properties and if a relevant registration fee is required, a cheque for such amount.]
      6. [Others]
   3. At least two originals of the following Transaction Security Documents executed by the relevant Obligors specified below opposite the relevant Transaction Security Document:

|  |  |
| --- | --- |
| Name of relevant Obligor | Transaction Security Document |
|  |  |
|  |  |

* 1. A copy of all notices required to be sent under the Transaction Security Documents executed by [*relevant Obligors*] [duly acknowledged by the addressee].
  2. A copy of all share certificates, transfers and stock transfer forms or equivalent duly executed by the relevant Obligor 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.

1. **Insurance**
   1. [All insurance policies subject to or expressed to be subject to the Transaction Security relating to the Charged Property.]
   2. [Written evidence that the insurance policy(ies) relating to the Charged Property contain (in form and substance reasonably satisfactory to the Security Agent) an endorsement naming the Security Agent as sole loss payee in respect of [                          ].]
   3. [An original copy of the Key-man Polic[y]/[ies]].
2. **Legal opinions**

The following legal opinions, each addressed to the Agent, the Security Agent and the Original Lenders and capable of being relied upon by any persons who become Lenders pursuant to the primary syndication of the Facilities.

* 1. A legal opinion of [           ], legal advisers to the Agent and the Arranger as to English law substantially in the form distributed to the Original Lenders prior to signing this Agreement.
  2. A legal opinion of the following legal advisers to the Agent and Arranger:
     1. [insert name of law firm] as to [insert jurisdiction of incorporation] law; and
     2. [         ] as to [          ],

each substantially in the form distributed to the Original Lenders prior to signing this Agreement.

1. **Other documents and evidence**
   1. Evidence that the fees, costs and expenses then due from the Parent pursuant to Clause ‎17 (*Fees*), Clause ‎17.5 (*Fees* *payable in respect of Letters of Credit*), Clause ‎17.6 (*Interest, commission and fees on Ancillary Facilities*), Clause ‎18.7 (*Stamp taxes*) and Clause ‎22 (*Costs and expenses*) have been paid or will be paid by the first Utilisation Date.
   2. The Funds Flow Statement in a form agreed by the Parent and the Agent detailing the proposed movement of funds on or before the Closing Date.
   3. A Certificate of the Parent (signed by a director) detailing the estimated Acquisition Costs.
   4. A Certificate of the Parent (signed by a director) certifying that:
      1. each of the matters specified in clause [         ] of the Acquisition Agreement has been satisfied or, with the consent of the Agent, waived (other than payment of [the purchase price] under clause [   ] of the Acquisition Agreement which will be satisfied immediately following utilisation of the Term Facilities);
      2. no Acquisition Document has been amended, varied, novated, supplemented, superseded, waived or terminated except with the consent of the Agent; and
      3. the Parent is not aware of any breach of any warranty or any claim under the Acquisition Agreement.
   5. A certificate of the Parent (signed by a director) certifying that:
      1. the Shareholders' Agreement and Structural Intra-Group Loans are in full force and effect;
      2. the [Investors] [and Senior Management] have subscribed for [        ] ordinary shares and [        ] [Preference Shares]/[Loan Notes] in the [Parent] as required by the Shareholders' Agreement;
      3. those [        ] ordinary shares and [         ] [Preference Shares]/[Loan Notes] subscribed for have been issued fully paid;
      4. a utilisation request requesting the advance of the full amount of the Mezzanine Facility on or before the Closing Date has been issued by the Company and each of the conditions precedent to such utilisation specified in clause [         ] of the Mezzanine Facility Agreement have been satisfied (other than utilisation of the Facilities);
      5. as a result of the above subscriptions or loans the Company has the sum available to it of [ ] made up of:

|  |  |
| --- | --- |
| Ordinary Shares | [         ] |
| Preference Shares | [         ] |
| Loan Notes | [         ] |
| Mezzanine Facility | [         ] |

or made up of any higher subscription amount in respect of Ordinary Shares to make up for any shortfall in the proceeds of any Loans requested or loans under the Mezzanine Facility requested to be utilised on the Closing Date as a result of the anticipated failure by a Lender or mezzanine lender to fund its participations on the Closing Date.

* + 1. that sum of [                   ] has been applied or will, simultaneously with first utilisation under this Agreement be applied for the same purpose as the proceeds of Facility A; and
    2. [the Vendor has subscribed for the Vendor Note in the Parent and the Vendor Note has been or will, simultaneously with utilisation of Facility A, be issued to the Vendor.]
  1. [Utilisation Requests relating to any Utilisations to be made on the Closing Date.]
  2. The following documents in relation to Financial Indebtedness, Security and Guarantees:

[*describe documentary evidence, if any, of discharge of existing Financial Indebtedness or Security or guarantees which are not permitted by this Agreement,].*

* 1. [others e.g. competition consents/clearances, etc.].

Part II  
Conditions precedent required to be  
delivered by an Additional Obligor

1. An Accession Deed executed by the Additional Obligor and the Parent.
2. A copy of the constitutional documents of the Additional Obligor.
3. A copy of a resolution of the board [or, if applicable, a committee of the board] of directors of the Additional Obligor:
   1. approving the terms of, and the transactions contemplated by, the Accession Deed and the Finance Documents and resolving that it execute, deliver and perform the Accession Deed and any other Finance Document to which it is party;
   2. authorising a specified person or persons to execute the Accession Deed and other Finance Documents on its behalf;
   3. authorising a specified person or persons, on its behalf, to sign and/or despatch all other documents and notices (including, in relation to an Additional Borrower, any Utilisation Request or Selection Notice) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
   4. authorising the Parent to act as its agent in connection with the Finance Documents
4. [If applicable, a copy of a resolution of the board of directors of the Additional Obligor, establishing the committee referred to in paragraph 3 above.]
5. A specimen of the signature of each person authorised by the resolution referred to in paragraph 3 above.
6. [A copy of a resolution signed by all the holders of the issued shares of the Additional Guarantor, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Additional Guarantor is a party.]
7. [A copy of a resolution of the board of directors of each corporate shareholder of each Additional Guarantor approving the terms of the resolution referred to in paragraph 6 above.]
8. A certificate of the Additional Obligor (signed by a director) confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on it to be exceeded.
9. A certificate of an authorised signatory of the Additional Obligor certifying that each copy document listed in this Part II of 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 the Accession Deed.
10. A copy of any other authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration or other document, opinion or assurance which the Agent considers to be necessary or desirable in connection with the entry into and performance of the transactions contemplated by the Accession Letter or for the validity and enforceability of any Finance Document. [[103]](#footnote-103)
11. If available, the latest audited financial statements of the Additional Obligor.
12. The following legal opinions, each addressed to the Agent, the Security Agent and the Lenders:
    1. A legal opinion of the legal advisers to the Agent in England, as to English law in the form distributed to the Lenders prior to signing the Accession Deed.
    2. If the Additional Obligor is incorporated in or has its "centre of main interest" [or "establishment"] (as referred to in Clause ‎24.28 (*Centre of main interests and establishments*)) in a jurisdiction other than England and Wales or is executing a Finance Document which is governed by a law other than English law, a legal opinion of the legal advisers to the Agent in the jurisdiction of its incorporation, "centre of main interest" or "establishment" (as applicable) or, as the case may be, the jurisdiction of the governing law of that Finance Document (the "**Applicable Jurisdiction**") as to the law of the Applicable Jurisdiction and in the form distributed to the Lenders prior to signing the Accession Deed.
13. If the proposed Additional Obligor is incorporated in a jurisdiction other than England and Wales, evidence that the process agent specified in Clause ‎45.2 (*Service of process*), if not an Obligor, has accepted its appointment in relation to the proposed Additional Obligor.
14. [Any security documents] which [, subject to the Agreed Security Principles,] are required by the Agent to be executed by the proposed Additional Obligor.
15. Any notices or documents required to be given or executed under the terms of those security documents.
    1. If the Additional Obligor is incorporated in England and Wales, Scotland or Northern Ireland, evidence that the Additional Obligor has done all that is necessary (including, without limitation, by re-registering as a private company) to comply with sections 677 to 683 of the Companies Act 2006 in order to enable that Additional Obligor to enter into the Finance Documents and perform its obligations under the Finance Documents.
    2. [If the Additional Obligor is not incorporated in England and Wales, Scotland or Northern Ireland, such documentary evidence as legal counsel to the Agent may require, that such Additional Obligor has complied with any law in its jurisdiction relating to financial assistance or analogous process.]

Part III  
Transaction Security Documents and security related documents to be delivered by Additional Obligors

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Name of Additional Obligor | Capacity (Borrower and/or Guarantor) | Date by which must become Additional Obligor | Description of Transaction Security Document and Transaction Security | Date by which Transaction Security Document to be executed and delivered to Agent | Description of Security related documents and other action to be taken by Additional Obligor to protect or perfect or give priority to Transaction Security and date by which action is to be completed. |
| [insert name] | [Borrower] [Guarantor] | Closing Date] | [insert description] | [Closing Date] |  |

Requests and Notices

Part IA  
Utilisation Request  
Loans

From: [*Borrower*] [*Parent*]\*

To: [*Agent*]

Dated:

Dear Sirs

**[Parent] – [             ] Senior Facilities Agreement**

**dated [             ] (the "Facilities Agreement")**

1. We refer to the Facilities Agreement. This is a Utilisation Request. Terms defined in the Facilities Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to borrow a Loan on the following terms:
   1. Borrower: [             ]
   2. Proposed Utilisation Date: [             ] (or, if that is not a Business Day, the next Business Day)
   3. Facility to be utilised: [Facility A]/[Facility B]/[Facility C] [Revolving Facility]\*\*
   4. Currency of Loan: [             ]
   5. Amount: [             ] or, if less, the Available Facility
   6. Interest Period: [             ]
3. We confirm that each condition specified in Clause ‎4.2 (*Further conditions precedent*) [or, to the extent applicable, Clause ‎4.5 (*Utilisations during the Certain Funds Period*)] is satisfied on the date of this Utilisation Request.
4. [The proceeds of this Loan should be credited to [*account*]].
5. This Utilisation Request is irrevocable.

Yours faithfully

…………………………………

authorised signatory for

[the Parent on behalf of [*insert name of relevant Borrower*]]/ [*insert name of Borrower*]\*

NOTES:

\* Amend as appropriate. The Utilisation Request can be given by the Borrower or by the Parent.

\*\* Select the Facility to be utilised and delete references to the other Facilities.

Part IB  
Utilisation Request  
Letters of Credit

From: [*Borrower*] [*Parent*]\*

To: [*Agent*]

Dated:

Dear Sirs

**[Parent] - [           ] Senior Facilities Agreement**

**dated [             ] (the "Facilities Agreement")**

1. We refer to the Facilities Agreement. This is a Utilisation Request. Terms defined in the Facilities Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to arrange for a Letter of Credit to be issued by the Issuing Bank specified below (which has agreed to do so) on the following terms:
   1. Borrower: [             ]
   2. Issuing Bank: [             ]
   3. Proposed Utilisation Date: [             ] (or, if that is not a Business Day, the next Business Day)
   4. Facility to be utilised: Revolving Facility
   5. Currency of Letter of Credit: [             ]
   6. Amount: [             ] or, if less, the Available Facility in relation to the Revolving Facility
   7. Term: [             ]
3. We confirm that each condition specified in paragraph (b) (or, to the extent applicable, paragraph (c)), of Clause ‎6.5 (*Issue of Letters of Credit*) is satisfied on the date of this Utilisation Request.
4. We attach a copy of the proposed Letter of Credit.
5. The purpose of this proposed Letter of Credit is [                   ].
6. This Utilisation Request is irrevocable.

Yours faithfully,

………………………………

authorised signatory for

[the Parent on behalf of] [*insert name of relevant Borrower*]]/[*insert name of Relevant Borrower*]\*

NOTES:

\* Amend as appropriate. The Utilisation Request can be given by the Borrower or by the Parent.

Part II  
Selection Notice

**Applicable to a Term Loan**

From: [*Borrower*] [*Parent*]\*

To: [*Agent*]

Dated:

Dear Sirs

**[Parent] - [ ] Senior Facilities Agreement**

**dated [ ] (the "Facilities Agreement")**

1. We refer to the Facilities Agreement. This is a Selection Notice. Terms defined in the Facilities Agreement have the same meaning in this Selection Notice unless given a different meaning in this Selection Notice.
2. We refer to the following Facility A Loan[s] with an Interest Period ending on [       ]\*\*.
3. [We request that the above Facility A Loan[s] be divided into [ ] Facility A Loans with the following Base Currency Amounts and Interest Periods:]\*\*\*

*or*

[We request that the next Interest Period for the above Facility [A]/[B]/[C] Loan[s] is [      ]].\*\*\*\*

1. This Selection Notice is irrevocable.

Yours faithfully

.....................................

authorised signatory for

[the Parent on behalf of] [*insert name of relevant Borrower*] \*

NOTES:

\* Amend as appropriate. The Selection Notice can be given by the Borrower or the Parent.

\*\* Insert details of all Term Loans for the relevant Facility which have an Interest Period ending on the same date.

\*\*\* Use this option if division of Facility A Loans is requested.

\*\*\*\* Use this option if sub-division is not required [or if Selection Notice relates to Facility B Loans or Facility C Loans].

Mandatory Cost Formula

[*Current LMA Mandatory Cost Schedule to be inserted*]

Form Of Transfer Certificate

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

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

Dated:

**[Parent] – [ ] Senior Facilities Agreement**

**dated [ ] (the "Facilities Agreement")**

1. We refer to the Facilities Agreement and to the Intercreditor Agreement (as defined in the Facilities Agreement). This agreement (the "**Agreement**") shall take effect as a Transfer Certificate for the purpose of the Facilities Agreement and as a Creditor/Agent Accession Undertaking for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to clause ‎29.5 (*Procedure for transfer*) of the Facilities Agreement:
   1. The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation all or part of the Existing Lender's Commitment, rights and obligations referred to in the Schedule in accordance with Clause ‎29.5 (*Procedure for transfer*).
   2. The proposed Transfer Date is [          ].
   3. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause ‎37.2 (*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 ‎29.4 (*Limitation of responsibility of Existing Lenders*).
4. The New Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:
   1. [a Qualifying Lender falling within paragraph (i)(A) [or paragraph (ii)] of the definition of Qualifying Lender);]
   2. [a Treaty Lender;]
   3. [not a Qualifying Lender].[[104]](#footnote-104)
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:
   1. a company resident in the United Kingdom for United Kingdom tax purposes;
   2. a partnership each member of which is:
      1. a company so resident in the United Kingdom; or
      2. a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or
   3. a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.][[105]](#footnote-105)

5. [The New Lender confirms (for the benefit of the Agent and without liability to any Obligor) that it is a Treaty Lender that holds a passport under the HMRC DT Treaty Passport scheme (reference number [ ]) and is tax resident in [ ][[106]](#footnote-106)\*, so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax and notifies the Parent that:

* 1. each Borrower which is a Party as a Borrower as at the Transfer Date must, to the extent that the New Lender becomes a Lender under a Facility which is made available to that Borrower pursuant to clause ‎2.1 (*The Facilities*) of the Facilities Agreement, make an application to HM Revenue & Customs under form DTTP2 within 30 days of the Transfer Date; and
  2. each Additional Borrower which becomes an Additional Borrower after the Transfer Date must, to the extent that the New Lender is a Lender under a Facility which is made available to that Additional Borrower pursuant to clause 2.1 (*The Facilities*) of the Facilities Agreement, make an application to HM Revenue & Customs under form DTTP2 within 30 days of becoming an Additional Borrower.][[107]](#footnote-107)\*\*

[5/6]. The New Lender confirms that it [is]/[is not][[108]](#footnote-108)\*\*\* a Sponsor Affiliate.

[6/7]. [The New Lender confirms that it [is]/[is not][[109]](#footnote-109)\*\*\*\* a Non-Acceptable L/C Lender.][[110]](#footnote-110)\*\*\*\*\*

[7/8]. We refer to clause [18.5] (*Change of Senior Lender or Mezzanine Lender*) of the Intercreditor Agreement.

In consideration of the New Lender being accepted as a Senior 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 Senior Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a Senior 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.

[6/7]. This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

[8/9]. This Agreement [and any non-contractual obligations arising out of or in connection with it] [is/are][[111]](#footnote-111) governed by English law.

[9/10]. 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.**

**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 for the purposes of the Facilities Agreement by the Agent, and as a Creditor/Agent 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:

Form of Assignment Agreement

To: [ ] as Agent and [ ], [ ] as Security Agent, [ ] as Parent, for and on behalf of each Obligor

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

Dated:

**[Parent] - [ ] Senior Facilities Agreement**

**dated [ ] (the "Facilities Agreement")**

1. We refer to the Facilities Agreement and to the Intercreditor Agreement (as defined in the Facilities Agreement). This is an Assignment Agreement. This agreement (the "**Agreement**") shall take effect as an Assignment Agreement for the purpose of the Facilities Agreement and as a Creditor/Agent Accession Undertaking for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to Clause 29.6 (*Procedure for assignment*) of the Facilities Agreement:
   1. The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Facilities Agreement, the other Finance Documents and in respect of the Transaction Security which correspond to that portion of the Existing Lender's Commitments and participations in Utilisations under the Facilities Agreement as specified in the Schedule.
   2. The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender's Commitments and participations in Utilisations under the Facilities Agreement specified in the Schedule.
   3. 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.[[112]](#footnote-112)
3. The proposed Transfer Date is [ ].
4. On the Transfer Date the New Lender becomes:
   1. Party to the relevant Finance Documents (other than the Intercreditor Agreement) as a Lender; and
   2. Party to the Intercreditor Agreement as a Senior Lender.
5. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause ‎37.2 (*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 ‎29.4 (*Limitation of responsibility of Existing Lenders*).
7. The New Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:
   1. [a Qualifying Lender falling within paragraph (i)(A) [or paragraph (ii)] of the definition of Qualifying Lender;]
   2. [a Treaty Lender;]
   3. [not a Qualifying Lender].[[113]](#footnote-113)
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:
   1. a company resident in the United Kingdom for United Kingdom tax purposes; or
   2. a partnership each member of which is:
      1. a company so resident in the United Kingdom; or
      2. a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or
   3. a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.][[114]](#footnote-114)

8. [The New Lender confirms (for the benefit of the Agent and without liability to any Obligor) that it is a Treaty Lender that holds a passport under the HMRC DT Treaty Passport scheme (reference number [ ]) and is tax resident in [ ][[115]](#footnote-115)\*, so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax and notifies the Parent that:

* 1. each Borrower which is a Party as a Borrower as at the Transfer Date must, to the extent that the New Lender becomes a Lender under a Facility which is made available to that Borrower pursuant to clause ‎2.1 (*The Facilities*) of the Facilities Agreement, make an application to HM Revenue & Customs under form DTTP2 within 30 days of the Transfer Date; and
  2. each Additional Borrower which becomes an Additional Borrower after the Transfer Date must, to the extent that the New Lender is a Lender under a Facility which is made available to that Additional Borrower pursuant to clause 2.1 (*The Facilities*) of the Facilities Agreement, make an application to HM Revenue & Customs under form DTTP2 within 30 days of becoming an Additional Borrower.][[116]](#footnote-116)\*\*

[8/9] The New Lender confirms that it [is]/[is not][[117]](#footnote-117)\*\*\* a Sponsor Affiliate.

[9/10] [The New Lender confirms that it [is]/[is not][[118]](#footnote-118)\*\*\*\* a Non-Acceptable L/C Lender.][[119]](#footnote-119)\*\*\*\*\*

[10/11] We refer to clause [18.5] (*Change of Senior Lender or Mezzanine Lender*) of the Intercreditor Agreement:

In consideration of the New Lender being accepted as a Senior 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 Senior Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a Senior 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 29.7 (*Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Parent*), to the Parent (on behalf of each Obligor) 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.

[13/14] This Agreement [and any non-contractual obligations arising out of or in connection with it] [is/are][[120]](#footnote-120) 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 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 for the purposes of the Facilities Agreement by the Agent, and as a Creditor/Agent 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:

Form Of Accession Deed

To: [                   ] as Agent and [                  ] as Security Agent for itself and each of the other parties to the Intercreditor Agreement referred to below

From: [*Subsidiary*] and [*Parent*]

Dated:

Dear Sirs

**[Parent] – [ ] Senior Facilities Agreement**

**dated [ ] (the "Facilities Agreement")**

1. We refer to the Facilities Agreement and to the Intercreditor Agreement. This deed (the "**Accession Deed**") shall take effect as an Accession Deed for the purposes of the Facilities Agreement and as a Debtor Accession Deed for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Facilities Agreement have the same meaning in paragraphs 1-3 of this Accession Deed unless given a different meaning in this Accession Deed.
2. [*Subsidiary*] agrees to become an Additional [Borrower]/[Guarantor] and to be bound by the terms of the Facilities Agreement and the other Finance Documents (other than the Intercreditor Agreement) as an Additional [Borrower]/[Guarantor] pursuant to Clause [‎31.2 (*Additional Borrowers*)]/[Clause ‎31.4 (*Additional Guarantors*)] of the Facilities Agreement. [*Subsidiary*] is a company duly incorporated under the laws of [*name of relevant jurisdiction*] and is a limited liability company and registered number [                   ].
3. [*Subsidiary's*] administrative details for the purposes of the Facilities Agreement and the Intercreditor Agreement are as follows:

Address:

Fax No.:

Attention:

1. [*Subsidiary*] (for the purposes of this paragraph 4, the "**Acceding Debtor**") intends to [incur Liabilities under the following documents]/[give a guarantee, indemnity or other assurance against loss in respect of Liabilities under the following documents]:

[*Insert details (date, parties and description) of relevant documents*]

the "**Relevant Documents**".

**IT IS AGREED** as follows:

* 1. Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Accession Deed, bear the same meaning when used in this paragraph 4.
  2. The Acceding Debtor and the Security Agent agree that the Security Agent shall hold:
     1. [any Security in respect of Liabilities created or expressed to be created pursuant to the Relevant Documents;
     2. all proceeds of that Security; and][[121]](#footnote-121)
     3. all obligations expressed to be undertaken by the Acceding Debtor to pay amounts in respect of the Liabilities to the Security Agent as trustee for the Secured Parties (in the Relevant Documents or otherwise) and secured by the Transaction Security together with all representations and warranties expressed to be given by the Acceding Debtor (in the Relevant Documents or otherwise) in favour of the Security Agent as trustee for the Secured Parties,

on trust for the Secured Parties on the terms and conditions contained in the Intercreditor Agreement.

* 1. The Acceding Debtor confirms that it intends to be party to the Intercreditor Agreement as a Debtor, undertakes to perform all the obligations expressed to be assumed by a Debtor under the Intercreditor Agreement 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.
  2. [In consideration of the Acceding Debtor being accepted as an Intra‑Group Lender for the purposes of the Intercreditor Agreement, the Acceding Debtor also confirms that it intends to be party to the Intercreditor Agreement as an Intra‑Group Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by an Intra‑Group 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].[[122]](#footnote-122)

[4]/[5] This Accession Deed [and any non-contractual obligations arising out of or in connection with it] [is/are][[123]](#footnote-123) governed by English law.

**THIS ACCESSION DEED** has been signed on behalf of the Security Agent (for the purposes of paragraph 4 above only), signed on behalf of the Parent and executed as a deed by [*Subsidiary*] and is delivered on the date stated above.

**[*Subsidiary*]**

[EXECUTED AS A DEED )

By: [*Subsidiary*] )

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Director

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Director/Secretary

***OR***

|  |  |
| --- | --- |
| [EXECUTED AS A DEED  By: [*Subsidiary*] |  |
|  | Signature of Director |
| in the presence of | Name of Director |
|  | Signature of witness |
|  | Name of witness |
|  | Address of witness |
|  |  |
|  |  |
|  |  |
|  | Occupation of witness] |

**The Parent**

|  |  |
| --- | --- |
|  | [*Parent*] |

By:

**The Security Agent**

[*Full Name of Current Security Agent*]

By:

Date:

Form Of Resignation Letter

To: [ ] as Agent

From: [*resigning Obligor*] and [*Parent*]

Dated:

Dear Sirs

**[Parent] - [             ] Senior Facilities Agreement**

**dated [             ] (the "Facilities Agreement")**

1. We refer to the Facilities Agreement. This is a Resignation Letter. Terms defined in the Facilities Agreement have the same meaning in this Resignation Letter unless given a different meaning in this Resignation Letter.
2. Pursuant to [Clause ‎31.3 (*Resignation of a Borrower*)]/[Clause ‎31.5 (*Resignation of a Guarantor*)], we request that [*resigning Obligor*] be released from its obligations as a [Borrower]/[Guarantor] under the Facilities Agreement and the Finance Documents (other than the Intercreditor Agreement).
3. We confirm that:
   1. no Default is continuing or would result from the acceptance of this request; and
   2. \*[[this request is given in relation to a Third Party Disposal of [*resigning Obligor*];
   3. [the Disposal Proceeds have been or will be applied in accordance with Clause ‎12.2 (*Disposal, Insurance and Acquisition Proceeds and Excess Cashflow*);]\*\*]
   4. [             ]\*\*\*
4. This Resignation Letter [and any non-contractual obligations arising out of or in connection with it] [is/are][[124]](#footnote-124) governed by English law.

|  |  |
| --- | --- |
| [Parent] | [*resigning Obligor*] |
| By: | By: |
|  |  |

NOTES:

\* Insert where resignation only permitted in case of a Third Party Disposal.

\*\* Amend as appropriate, e.g. to reflect agreed procedure for payment of proceeds into a specified account.

\*\*\* Insert any other conditions required by the Facilities Agreement.

Form Of Compliance Certificate

To: [             ] as Agent

From: [*Parent*]

Dated:

Dear Sirs

**[Parent] - [             ] Senior Facilities Agreement**

**dated [             ] (the "Facilities Agreement")**

1. We refer to the Facilities Agreement. This is a Compliance Certificate. Terms defined in the Facilities Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
2. We confirm that:

[Insert details of covenants to be certified].

[We confirm that [Interest Cover]/[Senior [Adjusted] Leverage]/[[Adjusted] Leverage] is [ ]:1 and that, therefore, the Facility A Margin should be [ ]% and the Revolving Facility Margin should be [ ]%.]

1. [We confirm that no Default is continuing.]\*
2. [We confirm that the following companies constitute Material Companies for the purposes of the Facilities Agreement: [             ].]

[We confirm that the [aggregate of the earnings before interest, tax, depreciation and amortisation (calculated on the same basis as EBITDA, as defined in Clause ‎26 (*Financial Covenants))*] / [aggregate gross assets, aggregate net assets and aggregate turnover] of the Guarantors (calculated on an unconsolidated basis and excluding all intra-group items and investments in Subsidiaries of any member of the Group) exceeds [ ]% of the [EBITDA, as defined in Clause ‎26 (*Financial Covenants)*] [consolidated gross assets, consolidated net assets and consolidated turnover of the Group].

|  |  |  |
| --- | --- | --- |
| Signed | ………………….. | …………………….. |
|  | Director | Director |
|  | Of | Of |
|  | [Parent] | [Parent] |

[*insert applicable certification language*][[125]](#footnote-125)

……………………..

for and on behalf of

[*name of Auditors of the Parent*]\*\*

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.

\*\* Only applicable if the Compliance Certificate accompanies the audited financial statements and is to be signed by the Auditors. To be agreed with the Parent's auditor's prior to signing the Agreement.

LMA Form of Confidentiality Undertaking[[126]](#footnote-126)

Timetables[[127]](#footnote-127)

1. Loans

|  | **Loans in euro** | **Loans in sterling** | **Loans in other currencies** |
| --- | --- | --- | --- |
| Agent notifies the Parent if a currency is approved as an Optional Currency in accordance with Clause ‎4.3 (*Conditions relating to Optional Currencies*) | - | - | U-4 |
| Delivery of a duly completed Utilisation Request (Clause ‎5.1 (*Delivery of a Utilisation Request*)) or a Selection Notice (Clause ‎15.1 *(Selection of Interest Periods and Terms*)) | U-3  9.30am | U-1  9.30am | U-3  9.30am |
| Agent determines (in relation to a Utilisation) the Base Currency Amount of the Loan, if required under Clause ‎5.4 (*Lenders' participation*) and notifies the Lenders of the Loan in accordance with Clause 5.4 (*Lenders' participation*) | U-3  Noon | U-1  noon | U-3  noon |
| Agent receives a notification from a Lender under Clause ‎8.2 (*Unavailability of a currency*) | Quotation Day  9.30am | - | Quotation Day  9.30am |
| Agent gives notice in accordance with Clause ‎8.2 (*Unavailability of a currency*) | Quotation Day  5.30pm | - | Quotation Day  5.30pm |
| LIBOR or EURIBOR is fixed | Quotation Day as of 11:00 a.m. in respect of LIBOR and as of 11.00 a.m. (Brussels time) in respect of EURIBOR | Quotation Day as of 11:00 a.m. | Quotation Day as of 11:00 a.m. |

"U" = date of utilisation or, if applicable, in the case of a Term Loan that has already been borrowed, the first day of the relevant Interest Period for that Term Loan.

"U - X" = X Business Days prior to date of utilisation

1. Letters of Credit

|  |  |  |
| --- | --- | --- |
|  |  | **Letters of Credit** |
| Delivery of a duly completed Utilisation Request (Clause ‎6.2 (*Delivery of a Utilisation Request for Letters of Credit*)) |  |  |
| Agent determines (in relation to a Utilisation) the Base Currency Amount of the Letter of Credit if required under paragraph (f)[[128]](#footnote-128) of Clause ‎6.5 (*Issue of Letters of Credit*) and notifies the Issuing Bank and Lenders of the Letter of Credit in accordance with paragraph (f)[[129]](#footnote-129) of Clause ‎6.5 (*Issue of Letters of Credit*). |  |  |
| [Delivery of duly completed Renewal Request (Clause ‎6.6 (*Renewal of a Letter of Credit*))] |  |  |

"U" = date of utilisation[, or, if applicable, in the case of a Letter of Credit to be renewed in accordance with Clause ‎6.6 (*Renewal of a Letter of Credit*), the first day of the proposed term of the renewed Letter of Credit]

"U-X" = Business Days prior to date of utilisation

Form Of Letter Of Credit

To: [*Beneficiary*](the "**Beneficiary**")

Date

**Irrevocable Standby Letter of Credit no. [             ]**

At the request of [        ], [*Issuing Bank*] (the "**Issuing Bank**") issues this irrevocable standby Letter of Credit ("**Letter of Credit**") in your favour on the following terms and conditions:

1. **Definitions**

In this Letter of Credit:

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

"**Demand**" means a demand for a payment under this Letter of Credit in the form of the schedule to this Letter of Credit.

"**Expiry Date**" means [             ].

"**Total L/C Amount**" means [             ].

1. **Issuing Bank's agreement**
   1. The Beneficiary may request a drawing or drawings under this Letter of Credit by giving to the Issuing Bank a duly completed Demand. A Demand must be received by the Issuing Bank by no later than [         ] p.m. ([London] time) on the Expiry Date.
   2. Subject to the terms of this Letter of Credit, the Issuing Bank unconditionally and irrevocably undertakes to the Beneficiary that, within [ten] Business Days of receipt by it of a Demand, it must pay to the Beneficiary the amount demanded in that Demand.
   3. The Issuing Bank will not be obliged to make a payment under this Letter of Credit if as a result the aggregate of all payments made by it under this Letter of Credit would exceed the Total L/C Amount.
2. **Expiry**
   1. The Issuing Bank will be released from its obligations under this Letter of Credit on the date (if any) notified by the Beneficiary to the Issuing Bank as the date upon which the obligations of the Issuing Bank under this Letter of Credit are released.
   2. Unless previously released under paragraph (a) above, on [        ] p.m.([London] time) on the Expiry Date the obligations of the Issuing Bank under this Letter of Credit will cease with no further liability on the part of the Issuing Bank except for any Demand validly presented under the Letter of Credit that remains unpaid.
   3. When the Issuing Bank is no longer under any further obligations under this Letter of Credit, the Beneficiary must return the original of this Letter of Credit to the Issuing Bank.
3. **Payments**

All payments under this Letter of Credit shall be made in [      ] and for value on the due date to the account of the Beneficiary specified in the Demand.

1. **Delivery of Demand**

Each Demand shall be in writing, and, unless otherwise stated, may be made by letter, fax or telex and must be received in legible form by the Issuing Bank at its address and by the particular department or office (if any) as follows:

[

                         ]

1. **Assignment**

The Beneficiary's rights under this Letter of Credit may not be assigned or transferred.

1. **ISP**

Except to the extent it is inconsistent with the express terms of this Letter of Credit, this Letter of Credit is subject to the International Standby Practices (ISP 98), International Chamber of Commerce Publication No. 590.

1. **Governing Law**

This Letter of Credit 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 exclusive jurisdiction to settle any dispute arising out of or in connection with this Letter of Credit (including a dispute relating to any non-contractual obligation arising out of or in connection with this Letter of Credit).

Yours faithfully

[*Issuing Bank*]

By:

NOTES:

\* This may need to be amended depending on the currency of payment under the Letter of Credit.

**SCHEDULE**

**FORM OF DEMAND**

To: [ISSUING BANK]

[Date]

Dears Sirs

**Standby Letter of Credit no. [             ] issued in favour of [BENEFICIARY] (the "Letter of Credit")**

We refer to the Letter of Credit. Terms defined in the Letter of Credit have the same meaning when used in this Demand.

1. We certify that the sum of [       ] is due [and has remained unpaid for at least [             ] Business Days] [under [set out underlying contract or agreement]]. We therefore demand payment of the sum of [             ].
2. Payment should be made to the following account:

Name:

Account Number:

Bank:

1. The date of this Demand is not later than the Expiry Date.

Yours faithfully

|  |  |
| --- | --- |
| (Authorised Signatory) | (Authorised Signatory) |

For

[BENEFICIARY]

Material Companies

Agreed Security Principles

1. **Considerations**

In determining what Security will be provided in support of the Facilities (and any related hedging arrangements in respect of the types of liabilities and/or risks which the Hedging Letter requires to be hedged) the following matters will be taken into account. Security shall not be created or perfected to the extent that it would:

* 1. result in any breach of corporate benefit, financial assistance, fraudulent preference or thin capitalisation laws or regulations (or analogous restrictions) of any applicable jurisdiction;
  2. result in a significant risk to the officers of the relevant grantor of Security of contravention of their fiduciary duties and/or of civil or criminal liability; or
  3. result in costs that, in the opinion of the Agent, are disproportionate to the benefit obtained by the beneficiaries of that Security.

For the avoidance of doubt, in these Agreed Security Principles, "cost" includes, but is not limited to, income tax cost, registration taxes payable on the creation or enforcement or for the continuance of any Security, stamp duties, out-of-pocket expenses, and other fees and expenses directly incurred by the relevant grantor of Security or any of its direct or indirect owners, subsidiaries or Affiliates.

1. **Obligations to be Secured**
2. Subject to (A) (*Considerations*) and to paragraph 2 below, the obligations to be secured are the Secured Obligations (as defined below). The Security is to be granted in favour of the Security Agent on behalf of each Lender from time to time, and the Agent, the Arranger, the Issuing Bank, any Hedge Counterparty and the agent and the lenders under the Mezzanine Facility Agreement.

For ease of reference, the following definitions should, to the extent legally possible, be incorporated into each Transaction Security Document (with the capitalised terms used in them having the meaning given to them in the Intercreditor Agreement):

"**Secured Obligations**" means all the Liabilities and all other present and future obligations at any time due, owing or incurred by any member of the Group and by each Debtor to any Secured Party under the Debt Documents, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity.[[130]](#footnote-130)

"**Secured Parties**" means the Security Agent, any Receiver or Delegate and each of the Agents, the Arrangers and the Primary Creditors from time to time but, in the case of each Agent, Arranger or Primary Creditor, only if it is a party to the Intercreditor Agreement or (in the case of an Agent or a Primary Creditor) has acceded to the Intercreditor Agreement, in the appropriate capacity, pursuant to clause [18.11] (*Creditor/Agent Accession Undertaking*) of the Intercreditor Agreement.[[131]](#footnote-131)

1. The secured obligations will be limited:
   1. to avoid any breach of corporate benefit, financial assistance, fraudulent preference, thin capitalisation rules or the laws or regulations (or analogous restrictions) of any applicable jurisdiction; and
   2. to avoid any risk to officers of the relevant member of the Group that is granting Transaction Security of contravention of their fiduciary duties and/or civil or criminal or personal liability.
2. **General**

Where appropriate, defined terms in the Transaction Security Documents should mirror those in this Agreement.

The parties to this Agreement agree to negotiate the form of each Transaction Security Document in good faith and will ensure that all documentation required to be entered into as a condition precedent to first drawdown under this Agreement (or immediately thereafter) is in a finally agreed form as soon as reasonably practicable after the date of this Agreement. The form of guarantee is set out in Clause ‎23 (*Guarantee and Indemnity*) of this Agreement and, with respect to any Additional Guarantor, is subject to any limitations set out in the Accession Deed applicable to such Additional Guarantor.

The Security shall, to the extent possible under local law, be enforceable on the occurrence of [an Event of Default] / [an Event of Default in respect of which notice has been served by the Agent in accordance with Clause ‎28.20 (*Acceleration*) or clause [    ] of the Mezzanine Facility Agreement].

1. **Undertakings/Representations and Warranties**

Any representations, warranties or undertakings which are required to be included in any Transaction Security Document shall reflect (to the extent to which the subject matter of such representation, warranty and undertaking is the same as the corresponding representation, warranty and undertaking in this Agreement) the commercial deal set out in this Agreement (save to the extent that Secured Parties' local counsel deem it necessary to include any further provisions (or deviate from those contained in this Agreement) in order to protect or preserve the Security granted to the Secured Parties).

1. [          ]

[Alternative Reference Banks]

1. [Alternative Reference Banks in relation to Loans in currencies other than euro]

[            ][[132]](#footnote-132)

1. [Alternative Reference Banks in relation to Loans in euro]

[           ][[133]](#footnote-133)

Form of Increase Confirmation

To: [ ] as Agent, [     ] as Security Agent, [[ ] as Issuing Bank][[134]](#footnote-134)\* and [ ] as Parent, for and on behalf of each Obligor

From: [the *Increase Lender*] (the "**Increase Lender**")

Dated:

**[Parent] - [ ] Senior Facilities Agreement**

**dated [ ] (the "Facilities Agreement")**

1. We refer to the Facilities Agreement and to the Intercreditor Agreement (as defined in the Facilities Agreement). This agreement (the "**Agreement**") shall take effect as an Increase Confirmation for the purpose of the Facilities Agreement and as a Creditor/Agent Accession Undertaking for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to clause 2.2 (*Increase*) of the Facilities Agreement.
3. The Increase Lender agrees to assume and will assume all of the obligations corresponding to the Commitment specified in the Schedule (the "**Relevant Commitment**") as if it was an Original Lender under the Facilities Agreement.
4. The proposed date on which the increase in relation to the Increase Lender and the Relevant Commitment is to take effect (the "**Increase Date**") is [ ].
5. On the Increase Date, the Increase Lender becomes:
   1. party to the relevant Finance Documents (other than the Intercreditor Agreement) as a Lender; and
   2. party to the Intercreditor Agreement as a Senior Lender.
6. The Facility Office and address, fax number and attention details for notices to the Increase Lender for the purposes of Clause ‎37.2 (*Addresses*) are set out in the Schedule.
7. The Increase Lender expressly acknowledges the limitations on the Lenders' obligations referred to in paragraph (f) of Clause ‎2.2 (*Increase*).
8. The Increase Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:
   1. [a Qualifying Lender (other than a Treaty Lender);]
   2. [a Treaty Lender;]
   3. [not a Qualifying Lender].[[135]](#footnote-135)
9. [The Increase Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:
   1. a company resident in the United Kingdom for United Kingdom tax purposes; or
   2. a partnership each member of which is:
      1. a company so resident in the United Kingdom; or
      2. a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or
   3. a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.][[136]](#footnote-136)

9. [The Increase Lender confirms (for the benefit of the Agent and without liability to any Obligor) that it is a Treaty Lender that holds a passport under the HMRC DT Treaty Passport scheme (reference number [ ]) and is tax resident in [ ][[137]](#footnote-137)\*, so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax and notifies the Parent that:

* 1. each Borrower which is a Party as a Borrower as at the Increase Date must, to the extent that the Increase Lender becomes a Lender under a Facility which is made available to that Borrower pursuant to clause ‎2.1 (*The Facilities*) of the Facilities Agreement, make an application to HM Revenue & Customs under form DTTP2 within 30 days of the Increase Date; and
  2. each Additional Borrower which becomes an Additional Borrower after the Increase Date must, to the extent that the Increase Lender is a Lender under a Facility which is made available to that Additional Borrower pursuant to clause 2.1 (*The Facilities*) of the Facilities Agreement, make an application to HM Revenue & Customs under form DTTP2 within 30 days of becoming an Additional Borrower.][[138]](#footnote-138)\*\*

[9/10]. The Increase Lender confirms that it is not a Sponsor Affiliate.

[10/11].[The Increase Lender confirms that it [is]/[is not][[139]](#footnote-139)\*\*\* a Non-Acceptable L/C Lender.][[140]](#footnote-140)\*\*\*\*

[11/12] We refer to clause [18.11] (*Creditor/Agent Accession Undertaking*) of the Intercreditor Agreement:

In consideration of the Increase Lender being accepted as a Senior Lender for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement), the Increase Lender confirms that, as from the Increase Date, it intends to be party to the Intercreditor Agreement as a Senior Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a Senior 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.

[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.

[13/14].This Agreement [and any non-contractual obligations arising out of or in connection with it] [is/are][[141]](#footnote-141) 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 Increase Confirmation may not be sufficient for the Increase Lender to obtain the benefit of the Transaction Security in all jurisdictions. It is the responsibility of the Increase Lender to ascertain whether any other documents or other formalities are required to obtain the benefit of the Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.**

**THE SCHEDULE**

**Relevant Commitment/rights and obligations to be assumed by the Increase Lender**

[*insert relevant details*]

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

|  |  |
| --- | --- |
| [Increase Lender] |  |
| By: |  |

This Agreement is accepted as an Increase Confirmation for the purposes of the Facilities Agreement by the Agent [and the Issuing Bank]\*, and as a Creditor/Agent Accession Undertaking for the purposes of the Intercreditor Agreement by the Security Agent and the Increase Date is confirmed as [     ].

|  |  |
| --- | --- |
| Agent | [Issuing Bank |
| By: | By:]\* |

|  |  |
| --- | --- |
| Security Agent |  |
| By: |  |

NOTE:

\* Only if increase in the Total Revolving Facility Commitments.

Forms of Notifiable Debt Purchase Transaction Notice

1. Form of Notice on Entering into Notifiable Debt Purchase Transaction

To: [             ] as Agent

From: [*The Lender*]

Dated:

**[Parent] – [**           **] Senior Facilities Agreement**

**dated [**           **] (the "Facilities Agreement")**

1. We refer to paragraph (b) of Clause ‎30.2 (*Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates*) of the Facilities Agreement. Terms defined in the Facilities Agreement have the same meaning in this notice unless given a different meaning in this notice.
2. We have entered into a Notifiable Debt Purchase Transaction.
3. The Notifiable Debt Purchase Transaction referred to in paragraph 2 above relates to the amount of our Commitment(s) as set out below.

|  |  |
| --- | --- |
| **Commitment** | **Amount of our Commitment to which Notifiable Debt Purchase Transaction relates (Base Currency)** |
| [Facility A Commitment | [*insert amount (of that Commitment) to which the relevant Debt Purchase Transaction applies*] |
| Facility B Commitment | [*insert amount (of that Commitment) to which the relevant Debt Purchase Transaction applies*] |
| Facility C Commitment][[142]](#footnote-142)\* | [*insert amount (of that Commitment) to which the relevant Debt Purchase Transaction applies*] |

[Lender]

By:

1. Form of Notice on Termination of Notifiable Debt Purchase Transaction /  
   Notifiable Debt Purchase Transaction ceasing to be with Sponsor Affiliate

To: [             ] as Agent

From: [*The Lender*]

Dated:

**[Parent] – [**           **] Senior Facilities Agreement**

**dated [**           **] (the "Facilities Agreement")**

1. We refer to paragraph (c) of Clause ‎30.2 (*Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates*) of the Facilities Agreement. Terms defined in the Facilities Agreement have the same meaning in this notice unless given a different meaning in this notice.
2. A Notifiable Debt Purchase Transaction which we entered into and which we notified you of in a notice dated [ ] has [terminated]/[ceased to be with a Sponsor Affiliate].[[143]](#footnote-143)\*
3. The Notifiable Debt Purchase Transaction referred to in paragraph 2 above relates to the amount of our Commitment(s) as set out below.

|  |  |
| --- | --- |
| **Commitment** | **Amount of our Commitment to which Notifiable Debt Purchase Transaction relates (Base Currency)** |
| [Facility A Commitment | [*insert amount (of that Commitment) to which the relevant Debt Purchase Transaction applies*] |
| Facility B Commitment | [*insert amount (of that Commitment) to which the relevant Debt Purchase Transaction applies*] |
| Facility C Commitment][[144]](#footnote-144)\*\* | [*insert amount (of that Commitment) to which the relevant Debt Purchase Transaction applies*] |

[Lender]

By:

**SIGNATURES**

**THE PARENT**

[**INSERT NAME OF PARENT**]

By:

Address:

Fax:

**THE ORIGINAL BORROWERS**

[**INSERT NAMES OF ORIGINAL BORROWERS**]

By:

Address:

Fax:

**THE ORIGINAL GUARANTORS**

[**INSERT NAMES OF ORIGINAL GUARANTORS**]

By:

Address:

Fax:

**THE ARRANGER**

**[             ]**

By:

Address:

Fax:

Attention:

**THE AGENT**

[**INSERT NAME OF AGENT**]

By:

Address:

Fax:

Attention:

**THE SECURITY AGENT**

[**INSERT NAME OF SECURITY AGENT**]

By:

Address:

Fax:

Attention:

**THE ISSUING BANK[S]**

[]

By:

Address:

Fax:

Attention:

**THE ORIGINAL LENDERS**

**[                    ]**

**[THE ORIGINAL HEDGE COUNTERPARTIES][[145]](#footnote-145)**

[ ]

1. Delete if no Hedge Counterparties are party to this Agreement at signing. [↑](#footnote-ref-1)
2. \* The Agreement assumes that various amounts are held in accounts with the Agent (e.g. a Holding Account). If the Agent is not able to maintain such accounts amendments will be needed. [↑](#footnote-ref-2)
3. \*\*The Agreement does not contain provisions for appointment of the Security Agent or other trust provisions. It is assumed these are contained in the Intercreditor Agreement. (The LMA recommended form of Intercreditor Agreement for Leveraged Acquisition Finance Transactions contains such trust provisions). Note that if security is granted over assets subject to non-English law a trustee arrangement may not be appropriate. [↑](#footnote-ref-3)
4. NB - It is the intention that this will be a wider group of reference banks than the Base Reference Banks taken from the syndicate. [↑](#footnote-ref-4)
5. Select alternative to be used. This permits parties to use either a Screen Rate or Base Reference Bank Rate. NB: use of Base Reference Bank Rate may have implications for hedging. [↑](#footnote-ref-5)
6. Delete if no Hedge Counterparties are Party to this Agreement at signing. [↑](#footnote-ref-6)
7. Users should note that the Banking Act 2009 allows for the effectiveness of this limb to be disapplied in certain circumstances and that it is possible that, in some contexts, regulators may constrain borrowers from agreeing to its inclusion. [↑](#footnote-ref-7)
8. This definition (other than paragraph (f)) is based on the Bankruptcy event of default definition contained in ISDA Master Agreement documentation. [↑](#footnote-ref-8)
9. Delete if no Hedge Counterparties will be party to the Intercreditor Agreement at signing. [↑](#footnote-ref-9)
10. This Agreement assumes that the Intercreditor Agreement is prepared using the recommended form of LMA Intercreditor Agreement for Leveraged Acquisition Finance Transactions. [↑](#footnote-ref-10)
11. Select alternative to be used. This permits parties to select either a Screen Rate or a Base Reference Bank Rate. NB: use of Base Reference Bank Rate may have implications for hedging. [↑](#footnote-ref-11)
12. Events (such as the occurrence of material adverse change) under the Acquisition Agreement which may prevent Completion occurring may be included here. [↑](#footnote-ref-12)
13. NB If there are assets subject to fixed charges under any Transaction Security Document consider excluding them from these paragraphs due to risk of fixed charges being characterised as floating charges. [↑](#footnote-ref-13)
14. To the extent that there are to be further restrictions on payments of dividends on the Preference Shares these should be set out in the Intercreditor Agreement. [↑](#footnote-ref-14)
15. To the extent that there are to be further restrictions on payments of these dividends these should be set out in the Intercreditor Agreement. [↑](#footnote-ref-15)
16. NB If there are assets subject to fixed charges under any Transaction Security Document consider excluding them from these paragraphs due to risk of fixed charges being characterised as floating charges. [↑](#footnote-ref-16)
17. The proviso is aimed at excluding CDOs of sponsors which are run independently to their private equity business. [↑](#footnote-ref-17)
18. Users should consider defining currency terms used in the Agreement. These should be considered carefully in the context of the transaction in question. [↑](#footnote-ref-18)
19. Note that some Lenders take the view that once an Event of Default has occurred it should be continuing unless the Lenders have waived it in accordance with Clause ‎41 (*Amendments and Waivers*). [↑](#footnote-ref-19)
20. The Transaction Security and guarantees provided under this Agreement may not in all jurisdictions continue to secure or guarantee the Increased Commitment or be for the benefit of the Increase Lender. It is the responsibility of the Increase Lender to ascertain whether any other documents or other formalities are required to confirm the Transaction Security/guarantees in any jurisdiction and/or for it to benefit from such Transaction Security and/or guarantees and, if so, to arrange for execution of those documents and completion of those formalities. [↑](#footnote-ref-20)
21. The funding of acquisitions may fall within the scope of general corporate purposes depending on the company's objects (which may be restricted by its Constitutional Documents) and, therefore, should be expressly excluded if the Revolving Facility is not intended to be used to fund acquisitions. [↑](#footnote-ref-21)
22. Consider in light of *Triodos Bank NV v. Ashley Charles Dobbs*. [↑](#footnote-ref-22)
23. Lenders may wish to consider any credit risk connected with depositing an amount in an account with the Issuing Bank. [↑](#footnote-ref-23)
24. This may need to refer to "applicable regulatory authorities". [↑](#footnote-ref-24)
25. Loss sharing may not be appropriate in all circumstances. Where it is considered to be appropriate it may be necessary to discuss whether sharing arrangements between the Lenders and Ancillary Lenders in relation to remuneration are also appropriate. [↑](#footnote-ref-25)
26. Users should note that the inclusion of this automatic term‑out mechanic in respect of a Defaulting Lender's participation in Revolving Facility Loans may have the result that the Revolving Facility is not always drawn on a pro rata basis and that, accordingly, a Defaulting Lender whose participation in Revolving Facility Loans is termed out in this way may suffer a disproportionate loss if the Borrower defaults when the only Loans outstanding under the Revolving Facility are Separate Loans. [↑](#footnote-ref-26)
27. There may be a different treatment for voluntary and mandatory prepayments in which case this paragraph may need to be split in two. [↑](#footnote-ref-27)
28. This period needs to be an appropriate period in the context of the notice period for voluntary prepayments. [↑](#footnote-ref-28)
29. Delete as appropriate. [↑](#footnote-ref-29)
30. NB The intention is that this percentage will be higher than the percentage specified in the definition of "Market Disruption Event". [↑](#footnote-ref-30)
31. NB: This does not include commitment fee on any Revolving Facility Commitment blocked for use as an Ancillary Facility. Commitment fees on Ancillary Facilities are to be dealt with in Ancillary Documents. [↑](#footnote-ref-31)
32. This clause is drafted on the assumption that payments made by the Obligor(s) may be subject to withholding tax (if any) under United Kingdom law and not under the law of any other jurisdiction. If this is not the case and the Obligor(s) is/are to gross-up payments, this Clause will need to be modified, in particular paragraphs ‎(d), ‎(g), ‎(h), ‎(i), ‎(j), ‎(k) and (l) of Clause ‎18.2 (*Tax Gross-up*) and the related definitions. If the "Treaty Lender" concept is used, always check the wording of relevant Treaties.

    **This clause, and in particular the definition of "Qualifying Lender", should always be considered on a case-by-case basis. Consideration should also be given as to whether the representation in Clause 24.10 (*Deduction of Tax*) requires amendment.** [↑](#footnote-ref-32)
33. This is a complex area and in each case relevant treaties should be reviewed and, if appropriate, additional wording inserted to apportion risk as agreed by the Parties. [↑](#footnote-ref-33)
34. If UK Non-Bank Lenders are to be envisaged and this definition is, therefore, included but no Original Lender is a UK Non-Bank Lender:

    delete this paragraph (i);

    delete Part III of Schedule 1 (*The Original Parties*); and

    delete the words "other than UK Non-Bank Lenders" from the heading of Part II of Schedule 1 (*The Original Parties*).

    **Do not**, however, delete this definition, as a UK Non-Bank Lender may become a Lender after the date of this Agreement. [↑](#footnote-ref-34)
35. The publication by the Basel Committee on Banking Supervision of its proposed new standards for bank capital and liquidity requirements (labelled "**Basel III**") has brought the increased costs clause into sharp focus, especially in light of the supra-national nature of those proposals.

    The form of increased costs clause in this Agreement is drafted in deliberately wide terms in an attempt to cover all circumstances which could increase a Lender's costs as a result of a change in law or regulation. The balance of views in the market is that costs arising from Basel III are likely to fall within the scope of the increased costs clause. However, if the commercial agreement is that Basel III costs are to fall within the scope of the increased costs clause, users should note that some market participants consider that it is helpful to supplement the clause to expressly specify this. [↑](#footnote-ref-35)
36. Basel II was finalised in 2004 and implemented in Europe during 2007 and so it may not be necessary to include a Basel II carve out from the increased costs clause where the syndicate consists of European Lenders. If it is agreed by the parties to exclude Basel II from the increased costs clause, and for example this may be relevant where there are US Lenders in the syndicate as Basel II has not been fully implemented in the US, then users should note that elements of the Basel III papers amend the Basel II paper and so care needs to be taken with the drafting of the carve out. The following provision may be inserted at the end of this paragraph (a) of Clause ‎19.3 (*Exceptions*) to address this point:

    "(v) attributable to the implementation or application of or compliance with the "International Convergence of Capital Measurement and Capital Standards, a Revised Framework" published by the Basel Committee on Banking Supervision 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)."

    The following definition should be added to paragraph (b) of Clause ‎19.1 (*Increased costs*):

    ""**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; and

    (b) any further guidance or standards published by the Basel Committee on Banking Supervision relating to "Basel III"."

    Users should note that this definition of Basel III is deliberately wide and includes future Basel III publications. It is, therefore, unlikely to be suitable to describe Basel III in the context of **excluding** Basel III costs from the scope of the increased costs clause generally. [↑](#footnote-ref-36)
37. To the extent that an equivalent indemnity is included in the Intercreditor Agreement the indemnity in this Clause 20.4 (*Indemnity to the Security Agent*) can be removed to avoid unnecessary overlap. (The recommended forms of LMA Intercreditor Agreement for Leveraged Acquisition Finance Transactions contain an equivalent indemnity at clause 20.1 (*Debtors' indemnity*)) [↑](#footnote-ref-37)
38. To the extent that an equivalent indemnity to the Security Agent is included in the Intercreditor Agreement the Security Agent can be removed from the coverage of the indemnity in this clause 22.1 (*Transaction expenses*) to avoid unnecessary overlap. (The recommended form of LMA Intercreditor Agreement for Leveraged Acquisition Finance Transactions contains an equivalent indemnity to the Security Agent at clause 19.2 (*Transaction expenses*)). [↑](#footnote-ref-38)
39. To the extent that an equivalent provision is included in the Intercreditor Agreement this provision can be removed to avoid unnecessary overlap. (The recommended form of LMA Intercreditor Agreement for Leveraged Acquisition Finance Transactions contains an equivalent provision at clause 19.1 (*Security Agent's on-going costs*)). [↑](#footnote-ref-39)
40. To the extent that an equivalent indemnity to the Security Agent is included in the Intercreditor Agreement, the Security Agent can be removed from the coverage of the indemnity in this clause 22.4 (*Enforcement and preservation costs*) to avoid unnecessary overlap. (The recommended form of LMA Intercreditor Agreement for Leveraged Acquisition Finance Transactions contains an equivalent indemnity to the Security Agent at clause 19.5 (*Enforcement and preservation costs*). [↑](#footnote-ref-40)
41. To the extent that any limitations are to apply to this guarantee, consideration should be given to whether those limitations should be extended to all indemnities and other assurances against loss in the Finance Documents, Hedging Agreements and the Mezzanine Finance Documents. [↑](#footnote-ref-41)
42. If any Obligor is an overseas company and grants security over property situated in the UK, users should consider including the following representation to ascertain whether that Obligor has registered an "establishment" with the Registrar of Companies which would trigger a requirement for that security to be registered at Companies House under the Overseas Companies (Execution of Documents and Registration of Charges) Regulations 2009 and to ascertain the correct registration details of any such establishment.

    "**Non-UK Obligors**

    It has not registered one or more "establishments" (as that term is defined in Part 1 of the Overseas Companies Regulations 2009) with the Registrar of Companies or, if it has so registered, it has provided to the [Agent] sufficient details to enable an accurate search against it to be undertaken by the Lenders at the Companies Registry." [↑](#footnote-ref-42)
43. This representation should be considered on a case-by-case basis and modified or deleted as appropriate. If tax other than UK tax may be relevant, this should be taken into account. [↑](#footnote-ref-43)
44. Include if paragraph (i)(B) of the definition of Qualifying Lender is included in Clause 18.1 (*Definitions*). [↑](#footnote-ref-44)
45. Include if paragraph (ii) of the definition of Qualifying Lender is included in Clause 18.1 (*Definitions*). [↑](#footnote-ref-45)
46. This representation should only be included if there are not and never have been any defined benefit occupational pension schemes (i.e. final salary pension schemes) within the Group (other than to the extent disclosed) and the Lenders want this position confirmed by the Obligors at the outset. This representation does not need to be repeated if the undertaking contained in paragraph (b) of Clause ‎27.26 (*Pensions*) is included because the undertaking provides the ongoing obligation on the Group not to have such pension schemes.

    This representation has been included to take account of the Pensions Act 2004, which effectively makes all members of the Group responsible for the deficits in any defined benefit occupational pension schemes which are operated by any member of the Group. [↑](#footnote-ref-46)
47. With regard to Original Obligors, it is assumed that "know your customer" identification procedures will be complied with prior to execution of this Agreement. [↑](#footnote-ref-47)
48. Consider whether other types of shares/investments which might be classified as debt under GAAP should be included. [↑](#footnote-ref-48)
49. **NB**: See paragraphs (e) and (f) of "EBIT". If (e) of "EBIT" is not included or the second alternative in (f) of EBIT is used this may need to be amended. [↑](#footnote-ref-49)
50. See paragraph (b) of "Excess Cashflow". If included in Debt Service here no need to deal separately with voluntary prepayments in "Excess Cashflow". [↑](#footnote-ref-50)
51. See footnote to "[Net] Finance Charges". No need to add here if already included there. [↑](#footnote-ref-51)
52. See footnote to paragraph (d) of "Cashflow". [↑](#footnote-ref-52)
53. See footnote to paragraph (d) of "Cashflow". [↑](#footnote-ref-53)
54. NB: See footnote to paragraph (b) of "Debt Service". [↑](#footnote-ref-54)
55. NB: If included here may be deleted from paragraph (c) of "Debt Service". [↑](#footnote-ref-55)
56. Remove reference to Mezzanine Facility if Mezzanine buyback is covered in the definition of "Debt Purchase Transaction" and related restrictions. [↑](#footnote-ref-56)
57. Content of this provision will need to be considered on a case-by-case basis. [↑](#footnote-ref-57)
58. This provision is of limited value as a scheme can be fully funded but still have a deficit. In the context of the Pensions Act 2004, what is more important is whether the Group has sufficient reserves/assets to meet the contingent pension liabilities if those liabilities are crystallised at any time during the life of the loan. [↑](#footnote-ref-58)
59. This undertaking has been adapted to take account of the Pensions Act 2004. Its purpose is to complement the pensions representation, to ensure that, other than to the extent disclosed, no Group member has or has had any connection or association with a defined benefit pension scheme. This undertaking is also intended to ensure that no company which subsequently becomes a member of the Group has or has had any connection or association with such a pension scheme. Its purpose is to try to ensure that (other than to the extent disclosed) there will be no Group liability for defined benefit pension scheme deficits. [↑](#footnote-ref-59)
60. Paragraphs (e) and (f) of Clause ‎27.26 (*Pensions*) should only be included if there is a defined benefit occupational pension scheme within the Group. [↑](#footnote-ref-60)
61. Materiality may not be appropriate where Intellectual Property is a key part of the security package. [↑](#footnote-ref-61)
62. This Clause should be deleted if there is a separate syndication side letter. [↑](#footnote-ref-62)
63. Subject to negotiation as no grace periods apply to breaches of the clauses referred to in Clause 28.2. [↑](#footnote-ref-63)
64. This Event of Default should only be included if there is a defined benefit occupational pension scheme within the Group or if this Agreement does **not** contain a covenant prohibiting the existence within the Group of defined benefit pension schemes in the future. This Event of Default takes account of the Pensions Act 2004 and the power of the Pensions Regulator to require other members of the Group to provide financial support for the deficits in defined benefit pension schemes operated by other Group members. [↑](#footnote-ref-64)
65. Two (alternative) forms of Clause 30 are provided (see footnote 64). Clause ‎29.1 (*Assignments and transfers by the Lenders*) should refer to whichever one is chosen to be included in the Agreement. [↑](#footnote-ref-65)
66. Include if the second form of Clause ‎30 (*Debt Purchase Transactions*) is used. [↑](#footnote-ref-66)
67. If the Assignment Agreement is used in place of a Transfer Certificate in order to avoid a novation of rights/obligations for reasons relevant to a civil jurisdiction, local law advice should be sought to check the suitability of the Assignment Agreement due to the assumption of obligations referred to in paragraph c(iii) of Clause 29.6 (*Procedure for assignment*). [↑](#footnote-ref-67)
68. Two (alternative) forms of Clause ‎30 are provided. The first option (entitled "*Restriction on Debt Purchase Transactions*") envisages that members of the Group are not allowed to purchase their own debt under the Agreement and, depending on the definition of "*Debt Purchase Transaction*", the Mezzanine Facility Agreement.

    The second option (entitled "*Debt Purchase Transactions*") envisages that Borrowers are allowed, in certain circumstances, to purchase their own debt under the Agreement and regulates that process.

    The two forms of Clause ‎30 are mutually exclusive. Accordingly, it is **NOT** recommended that users include both forms in the same Agreement.

    The Agreement envisages that one of the two alternative forms of Clause ‎30 is included in the Agreement. [↑](#footnote-ref-68)
69. Would also need to apply to a "Super Majority Lenders" concept if that is used (or other majority voting concepts which may be used). [↑](#footnote-ref-69)
70. Purchases of Revolving Facility Loans have not been permitted as purchase by assignment would, in any event, leave the assignor with the obligation to lend. The same rationale applies to other undrawn facilities (e.g. capex facilities). If a second lien facility is included provision would need to be made so that it could not be purchased while the "senior" facilities were outstanding. Consideration may also be given to further restrictions (if any) as to the order in which Facilities may be bought. [↑](#footnote-ref-70)
71. It should be explicitly stated that for Financial Years prior to the first year that it is swept, Excess Cashflow shall be deemed to be zero. [↑](#footnote-ref-71)
72. If included the bracketed wording would effectively block purchases for the period from the end of one Financial Year until the annual accounts for that Financial Year are delivered. [↑](#footnote-ref-72)
73. Bracketed wording to be included for amortising term loan facilities. [↑](#footnote-ref-73)
74. Depending on the exact undertakings contained within Clause ‎27 (*General Undertakings)* consider whether all or specified undertakings should be the subject of the exemption. [↑](#footnote-ref-74)
75. Would also need to apply to a "Super Majority Lenders" concept if that is used (or other majority voting concepts which may be used). [↑](#footnote-ref-75)
76. To be used where Borrowers may resign (under paragraph (b)) when they are the subject of a Third Party Disposal. [↑](#footnote-ref-76)
77. It is assumed that release of Security over assets disposed of in accordance with the terms of the Agreement (or pursuant to enforcement of Transaction Security) is dealt with in the trustee provisions of the Intercreditor Agreement. Clauses 13.1 (*Non-Distressed Disposals*) and 13.2 (*Distressed Disposals*) of the recommended form of LMA Intercreditor Agreement for Leveraged Acquisition Finance Transactions are intended to cover these areas. [↑](#footnote-ref-77)
78. The square bracketed provisions in this Clause 31.7 (*Resignation [and release of security on disposal]*) may be removed to the extent that the Intercreditor Agreement covers these areas.

    Clause 13.1 (*Non-Distressed Disposals*) of the recommended form of LMA Intercreditor Agreement for Leveraged Acquisition Finance Transactions is intended to cover these areas. [↑](#footnote-ref-78)
79. Delete as appropriate. [↑](#footnote-ref-79)
80. Only include words in brackets if optional Clause ‎35.11 has been included. [↑](#footnote-ref-80)
81. Only include words in brackets if optional Clause ‎35.11 has been included. [↑](#footnote-ref-81)
82. Only include words in brackets if optional Clause ‎35.11 has been included. [↑](#footnote-ref-82)
83. Parties to consider if appropriate if optional Clause ‎35.11 has been included. [↑](#footnote-ref-83)
84. Clause ‎35.6 (*Partial payments*) is not intended to include the ranking of Obligor liabilities under the Hedging Documents in an enforcement scenario. (It is assumed that this will be contained in the Intercreditor Agreement - this is the case in the recommended form of LMA Intercreditor Agreement for Leveraged Acquisition Finance Transactions). If it is used in this way (by cross-reference or otherwise) the Clause may require amendment. [↑](#footnote-ref-84)
85. Consider whether other Finance Documents should not require Majority Lender consent to be amended. [↑](#footnote-ref-85)
86. Lenders should consider sensitivities which they may have to the consequences of such amendments or waivers which change or relate to Clause ‎12 (*Mandatory Prepayment*) being subject to Majority Lender consent only. For example, an individual Lender may be sensitive to the consequences of being unwillingly bound by a Majority Lender decision in respect of a waiver of, or amendment to: (i) any threshold levels set under Clause ‎12.2 (*Disposal, Insurance and Acquisition Proceeds and Excess Cashflow)*; and (ii) the Obligors' obligation to prepay the Facilities on a change of control, flotation or sale of all the Group's assets under Clause ‎12.1 (*Exit*). [↑](#footnote-ref-86)
87. The square bracketed paragraphs may be removed if the Intercreditor Agreement regulates these matters. (Clause 24 (*Consents, Amendments and Override*) of the recommended form of LMA Intercreditor Agreement for Leveraged Acquisition Finance Transactions is intended to cover these matters). [↑](#footnote-ref-87)
88. This paragraph may be removed if the Intercreditor Agreement covers this area. (Clause 24 (*Consents, Amendments and Override*) of the recommended form of LMA Intercreditor Agreement for Leveraged Acquisition Finance Transactions is intended to cover this area). [↑](#footnote-ref-88)
89. NB This provision may not be appropriate in all cases. Consider also whether there are any provisions which cannot be waived or amended using this Clause. [↑](#footnote-ref-89)
90. Would also need to apply to a "Super Majority Lenders" concept if that is used (or other majority voting concepts which may be used). [↑](#footnote-ref-90)
91. Include if optional Clause 29.9 (*Security over Lenders' rights*) is included. [↑](#footnote-ref-91)
92. Term/Revolver etc. [↑](#footnote-ref-92)
93. This wording has been included to ensure that disclosure is made only for the purposes of enabling a numbering service provider to allocate an identification number to a syndicated facility agreement, one or more facilities made available under such facility agreement or any Obligor party to such facility agreement. The purpose of disclosure is not therefore to enable products that are directly or indirectly related to a facility agreement, its facilities or its Obligors to be allocated an identification number. [↑](#footnote-ref-93)
94. The information listed in paragraph (a) reflects the information that is likely to be required to enable a numbering service provider ("**NSP**") to assign identification numbers/codes to this Agreement, the Facilities and their ranking. Disclosure has been restricted to descriptive information about the Facility Agreement (including changes to that information) for two main reasons. Firstly, because once delivered to the NSP that information will not be subject to any confidentiality obligations on the part of the NSP or subscribers to the NSP. It has been assumed that as the NSP needs to disclose the information to its subscribers they would not be prepared to sign up to a confidentiality undertaking or require their subscribers to do so to protect Borrower confidential information. However, no dialogue has been had with NSP's in this regard.

    The second reason for restricting the information that can be disclosed to NSP's is to limit the risk of that information being unpublished price-sensitive or inside-information (meaning, if it were known to the public it would be likely to have an effect on the price of securities issued by the relevant Borrower that are publicly traded). If unpublished price-sensitive or inside information were disclosed to a NSP (with or without the consent of the Borrower) by a Lender in circumstances where that information will be disclosed only to subscribers of the NSP (and not to the public), that Lender and the individuals concerned could be guilty of an offence under the insider dealing/market abuse regime in the UK. Restricting the information that can be disclosed by Lenders to NSP's to relatively anodyne and descriptive information helps to minimise the risk that the information will be unpublished price-sensitive or inside information.

    However, because of the potential seriousness of this issue, because it is possible to envisage circumstances where all or part of the information specified in paragraph (a) may be unpublished price-sensitive or inside information and because only the Obligors can know with certainty whether any of that information is unpublished price-sensitive or inside information, the permission also requires the Obligors to represent to the Lenders that none of that information is unpublished price-sensitive information. The representation is contained in paragraph (c) as a means of ensuring reasonable steps have been taken to avoid inside or price-sensitive information being selectively disclosed with no confidentiality restrictions.

    In most cases where the relevant Obligor has publicly traded securities, the information that is listed in paragraph (a) would, in any event, need to be disclosed by that Obligor in accordance with the UK disclosure requirements on issuers of listed securities and so the representation should not be onerous for such Obligors. [↑](#footnote-ref-94)
95. This requirement has been limited to the Agent on the assumption that if the Agent requests an identification number, it will, in any event, require all Parties to use that number in communications etc. If this is not the case, this clause can be deleted. [↑](#footnote-ref-95)
96. This wording is intended to make non-contractual obligations arising out of or in connection with the agreement subject to English law. However, if the document is used in a cross-border transaction where different transaction documents are governed by different governing laws, consider whether it is appropriate, in the context of that transaction, for English law to apply to non-contractual obligations arising out of or in connection with the transaction documents which are not governed by English law. [↑](#footnote-ref-96)
97. To the extent that the square bracketed wording relating to non-contractual obligations in Clause ‎44 (*Governing Law*) is included, this wording should be included in paragraph (a) of Clause ‎45.1 (*Jurisdiction of English Courts*). [↑](#footnote-ref-97)
98. If no Original Lender is a UK Non-Bank Lender, delete the words in square brackets from the heading of this Part. [↑](#footnote-ref-98)
99. Each of these must be included if the Original Lender holds a passport under the HMRC DT Treaty Passport scheme and wishes that scheme to apply to the Agreement. [↑](#footnote-ref-99)
100. If no Original Lender is a UK Non-Bank Lender, delete this part of the Schedule and all references to it in the body of the Agreement. [↑](#footnote-ref-100)
101. If no Hedge Counterparties are Party to this Agreement at signing delete this part of the Schedule and all references to it in the body of the Agreement. [↑](#footnote-ref-101)
102. If any Obligor is an overseas company and grants security over property situated in the UK, users should consider including the following condition precedent. See also the footnote to Clause 24 (*Representations*).

     "*A certificate of each Obligor that is incorporated outside the UK (signed by a director) certifying either that (i) it has not registered one or more "establishments" (as that term is defined in Part 1 of the Overseas Companies Regulations 2009) with the Registrar of Companies; or (ii) it has such an establishment and specifying the name and registered number under which it is registered with the Registrar of Companies.****"*** [↑](#footnote-ref-102)
103. If any Additional Obligor is an overseas company and grants security over property situated in the UK, users should consider including the following condition precedent. See also the footnote to Clause 24 (*Representations*).

     "*A certificate of each Additional Obligor that is incorporated outside the UK (signed by a director) certifying either that (i) it has not registered one or more "establishments" (as that term is defined in Part 1 of the Overseas Companies Regulations 2009) with the Registrar of Companies; or (ii) it has such an establishment and specifying the name and registered number under which it is registered with the Registrar of Companies.****"*** [↑](#footnote-ref-103)
104. Delete as applicable - each New Lender is required to confirm which of these three categories it falls within. [↑](#footnote-ref-104)
105. Include if New Lender comes within paragraph (i)(B) of the definition of Qualifying Lender in Clause 18.1 (*Definitions*). [↑](#footnote-ref-105)
106. \* Insert jurisdiction of tax residence. [↑](#footnote-ref-106)
107. \*\* This confirmation must be included if the New Lender holds a passport under the HMRC DT Treaty Passport scheme and wishes that scheme to apply to the Facilities Agreement. [↑](#footnote-ref-107)
108. \*\*\* Delete as applicable. [↑](#footnote-ref-108)
109. \*\*\*\* Delete as applicable [↑](#footnote-ref-109)
110. \*\*\*\*\* Include only if the transfer includes the transfer of a Revolving Facility Commitment/a participation in the Revolving Facility. [↑](#footnote-ref-110)
111. This clause should follow the approach adopted as regards non-contractual obligations in Clause ‎44 (*Governing Law*). This should be done (and this footnote deleted) before the Agreement is signed. [↑](#footnote-ref-111)
112. If the Assignment Agreement is used in place of a Transfer Certificate in order to avoid a novation of rights/obligations for reasons relevant to a civil jurisdiction, local law advice should be sought to check the suitability of the Assignment Agreement due to the assumption of obligations contained in paragraph 2(c). This issue should be addressed at Primary documentation stage. This footnote is not intended to be included in the scheduled form of Assignment Agreement in the signed Facilities Agreement. [↑](#footnote-ref-112)
113. Delete as applicable - each New Lender is required to confirm which of these three categories it falls within. [↑](#footnote-ref-113)
114. Include only if New Lender is a UK Non-Bank Lender ie falls within paragraph (i)(B) of the definition of Qualifying Lender in Clause 18.1 (*Definitions*). [↑](#footnote-ref-114)
115. \* Insert jurisdiction of tax residence. [↑](#footnote-ref-115)
116. \*\* This confirmation must be included if the New Lender holds a passport under the HMRC DT Treaty Passport  scheme and wishes that scheme to apply to the Facilities Agreement. [↑](#footnote-ref-116)
117. \*\*\* Delete as applicable. [↑](#footnote-ref-117)
118. \*\*\*\* Delete as applicable. [↑](#footnote-ref-118)
119. \*\*\*\*\* Include only if the assignment includes the assignment of a Revolving Facility Commitment / a participation in the Revolving Facility. [↑](#footnote-ref-119)
120. This clause should follow the approach adopted as regards non-contractual obligations in Clause ‎44 (*Governing Law*). This should be done (and this footnote deleted) before the Agreement is signed. [↑](#footnote-ref-120)
121. Include to the extent that the Security created in the Relevant Documents is expressed to be granted to the Security Agent as trustee for the Secured Parties. [↑](#footnote-ref-121)
122. Include this paragraph in this Accession Deed if the Subsidiary is also to accede as an Intra‑Group Lender to the Intercreditor Agreement. [↑](#footnote-ref-122)
123. This clause should follow the approach adopted as regards non-contractual obligations in Clause ‎44 (*Governing Law*). This should be done (and this footnote deleted) before the Agreement is signed. [↑](#footnote-ref-123)
124. This clause should follow the approach adopted as regards non-contractual obligations in Clause ‎44 (*Governing Law*). This should be done (and this footnote deleted) before the Agreement is signed. [↑](#footnote-ref-124)
125. To be agreed with the Parent's Auditors and the Lenders prior to signing the Agreement. [↑](#footnote-ref-125)
126. The current form of LMA Confidentiality Letter (Seller) or Confidentiality Letter (Purchaser) for the secondary trading of loans should be included in this Schedule. In the case where primary syndication takes place after the Facility Agreement is signed, the current LMA Confidentiality and Front Running Letter should also be included to avoid confusion over which form of confidentiality letter is appropriate. [↑](#footnote-ref-126)
127. When completing the timetables, not all times should be determined by reference to the Utilisation Date. In certain cases (ie in relation to Clause 8.2 (*Unavailability of a Currency*) the time inserted should be determined by reference to the Quotation Day or the relevant day during the Interest Period. [↑](#footnote-ref-127)
128. NB may need to be renumbered if paragraphs (c) and (d) of Clause 6.5 (*Issue of Letters of Credit*) are not included. [↑](#footnote-ref-128)
129. NB may need to be renumbered if paragraphs (c) and (d) of Clause 6.5 (*Issue of Letters of Credit*) are not included. [↑](#footnote-ref-129)
130. This definition matches the definition of "Secured Obligations" in the LMA recommended form of Intercreditor Agreement for Leveraged Acquisition Finance Transactions. It may need to be amended if that form of Intercreditor Agreement is not used on the transaction documented by this Agreement. [↑](#footnote-ref-130)
131. This definition matches the definition of "Secured Parties" in the LMA recommended form of Intercreditor Agreement for Leveraged Acquisition Finance Transactions. It may need to be amended if that form of Intercreditor Agreement is not used on the transaction documented by this Agreement. [↑](#footnote-ref-131)
132. Insert the names of the initial alternative reference banks in relation to Loans in currencies other than euro. [↑](#footnote-ref-132)
133. Insert the names of the initial alternative reference banks in relation to Loans in euro. [↑](#footnote-ref-133)
134. \* Only if increase in the Total Revolving Facility Commitments. [↑](#footnote-ref-134)
135. Delete as applicable - each Increase Lender is required to confirm which of these three categories it falls within. [↑](#footnote-ref-135)
136. 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 ‎18.1 (*Definitions*). [↑](#footnote-ref-136)
137. \* Insert jurisdiction of tax residence. [↑](#footnote-ref-137)
138. \*\* This confirmation must be included if the Increase Lender holds a passport under the HMRC DT Treaty    Passport scheme and wishes that scheme to apply to the Facilities Agreement. [↑](#footnote-ref-138)
139. \*\*\* Delete as applicable. [↑](#footnote-ref-139)
140. \*\*\*\* Include only if the increase involves the assumption of a Revolving Facility Commitment. [↑](#footnote-ref-140)
141. This clause should follow the approach adopted as regards non-contractual obligations in Clause ‎44 (*Governing Law*). This should be done (and this footnote deleted) before the Facility Agreement is signed. [↑](#footnote-ref-141)
142. \* Delete as applicable [↑](#footnote-ref-142)
143. \* Delete as applicable [↑](#footnote-ref-143)
144. \*\* Delete as applicable [↑](#footnote-ref-144)
145. Delete if no Hedge Counterparties are party to this Agreement at signing. [↑](#footnote-ref-145)