**DATED September 2014**

**TESCO PLC**

**BARCLAYS BANK PLC,  
BNP PARIBAS LONDON BRANCH  
GOLDMAN SACHS BANK USA,  
HSBC BANK PLC  
and   
JPMORGAN CHASE BANK, N.A.  
(as Original Lenders)**

**BARCLAYS BANK PLC  
(as Facility Agent)**

**BARCLAYS BANK PLC  
(as *US$ Base Rate Agent*)**

**£5,000,000,000  
REVOLVING FACILITY AGREEMENT**

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**AGREEMENT** dated  September 2014

**PARTIES**

1. **TESCO PLC** (the ***Company***);
2. **TESCO PLC**, **TESCO STORES LIMITED** and **TESCO CORPORATE TREASURY SERVICES PLC** as original borrowers (in such capacity each as a ***Borrower***);
3. **TESCO PLC** and **TESCO STORES LIMITED** as guarantors (in such capacity each a ***Guarantor***);
4. **BARCLAYS BANK PLC, BNP PARIBAS LONDON BRANCH, GOLDMAN SACHS BANK USA, HSBC BANK PLC** and **J. P. MORGAN LIMITED** as mandated lead arrangers and bookrunners (in such capacity, the ***Mandated Lead Arrangers***)
5. **THE FINANCIAL INSTITUTIONS** listed in Schedule 1 as lenders (in such capacity the ***Original Lenders***);
6. **BARCLAYS BANK PLC** as agent of the Lenders (in such capacity the ***Facility Agent***); and
7. **BARCLAYS BANK PLC** as agent of the Lenders in respect of the US$ Base Rate Facility (in such capacity the ***US$ Base Rate Agent***).

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION
   1. Definitions In this Agreement:
2. ***Acceptable Bank*** means a bank or financial institution which has a rating for its long-term unsecured and non credit-enhanced debt obligations of A or higher by S&P, A or higher by Fitch or A2 or higher by Moody's or a comparable rating from an internationally recognised credit rating agency.
3. ***Adjusted Capital and Reserves*** means at any relevant time the amount of the issued and paid up share capital of the Company (for which purpose an issue or proposed issue of share capital for cash which has been unconditionally underwritten shall be deemed paid up to the extent that the underwriters are liable therefor and that such capital will be paid up within six months from the date when such underwriting liability becomes unconditional) and the aggregate amount standing to the credit of the consolidated reserves of the Company and its Subsidiary Undertakings (including for the purpose hereof any share premium account, capital redemption reserve, revaluation reserve, the unappropriated balance of investment grants and the amount standing to the credit of its profit and loss account) all as shown in the Latest Consolidated Balance Sheet but:
   1. adjusted as may be appropriate to take account of (a) any increase in or reduction of such share capital and reserves (other than in respect of any unaudited profit or loss attributable to the ordinary course of trading) since the date to which the Latest Consolidated Balance Sheet shall have been made up (b) any distributions in cash or in specie made (otherwise than to the Company or to a Subsidiary Undertaking) from such reserves or profit and loss account since such date and not provided for therein (c) any Subsidiary Undertaking not consolidated in the Latest Consolidated Balance Sheet, any companies which since the date thereof have ceased to be Subsidiary Undertakings and any companies which will become or will cease to be Subsidiary Undertakings as a result of the transaction in relation to which the calculation falls to be made and (d) any other variation in the Company’s interests in Subsidiary Undertakings since the date of the Latest Consolidated Balance Sheet;
   2. after excluding any sums set aside for taxation (including deferred tax) and any amount attributable to minority interests in Subsidiary Undertakings;
   3. after deducting all amounts (if any) attributable to any debit balance on profit and loss account or other reserve account;
   4. after deducting an amount equal to such part of the interests of the Company or any of its Subsidiary Undertakings in an associated company as is attributable to any post-acquisition undistributed profits and reserves, but including such interests at original cost or, if lower, book value;
   5. after deducting (if not otherwise deducted) such amount (if any) as the Auditors shall consider appropriate in respect of any contingent taxation liabilities on the net amount by which the fixed assets of the Company and its Subsidiary Undertakings shall have been written up as a result of any revaluation; and
   6. after making such other adjustments (if any) as the Auditors may consider appropriate.
4. ***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.
5. ***Agency Fee Letter*** means the letter dated on or about the date of this Agreement between the Facility Agent and the Company setting out the agency fee referred to in Clause 12.1 (*Agency fee*).
6. ***Agent*** means the Facility Agent or the US$ Base Rate Agent, as the case may be.
7. ***Arrangement Fee Letter*** means the letter dated on or about the date of this Agreement between the Facility Agent on behalf of the Original Lenders and the Company setting out the arrangement fee referred to in Clause 12.2 (*Arrangement fee*).
8. ***Auditors*** means the auditors for the time being of the Company or, in the event of their being unable or unwilling to carry out any action requested of them pursuant to the terms of this Agreement, such other firm of accountants as may be selected by the Company and approved by the Facility Agent (such approval not to be unreasonably withheld).
9. ***Availability Period*** means the period from and including the date of this Agreement to and including the date which is one week before the Repayment Date, or any other period as agreed between the Company and the Facility Agent (acting on the instructions of all the Lenders).
10. ***Available Commitment*** means a Lender’s Commitment minus:
    1. the Base Currency Amount of its participation in any outstanding Loans; and
    2. in relation to any proposed Loan, the Base Currency Amount of its participation in any Loans that are due to be made on or before the proposed Utilisation Date other than that Lender’s participation in any Loans that are due to be repaid or prepaid on or before the proposed Utilisation Date.
11. ***Available Facility*** means the aggregate for the time being of each Lender’s Available Commitment.
12. ***Base Currency*** means sterling.
13. ***Base Currency Amount*** means, in relation to a Loan, the amount specified in the Utilisation Request delivered by a Borrower (or the Company on behalf of a Borrower) for that Loan if that amount is denominated in the Base Currency (or, if the amount requested is not denominated in the Base Currency, that amount converted into the Base Currency at the Facility Agent’s Spot Rate of Exchange on the date which is one Business Day before the Quotation Day) adjusted in each case to reflect any prepayment, consolidation or division of the Loan.
14. ***Borrowed Moneys*** means:
    1. moneys borrowed or raised;
    2. the capital portion of hire purchase and finance lease commitments;
    3. any indebtedness in respect of any debenture, loan stock, note, bond or other security or acceptance credit facility entered into primarily as a method of raising finance; and
    4. any indebtedness in respect of the acquisition cost of assets or services to the extent payable after the time of acquisition or possession thereof by the party liable where the deferred payment is arranged primarily as a method of financing the acquisition of such assets or services.
15. ***Borrowings*** shall at any date mean and be deemed to include the following except in so far as otherwise taken into account:
    1. all moneys borrowed (with or without security) by any member of the Group;
    2. the nominal amount of the issued share capital (other than equity share capital which as regards capital has rights no more favourable than those attached to its ordinary capital) of any Subsidiary Undertaking which is not beneficially owned by the Company or another Subsidiary Undertaking;
    3. the maximum amount for the time being outstanding for which any member of the Group has given security or is liable as guarantor or indemnifier in respect of:
       1. obligations for redemption of any share capital of any body corporate (other than share capital which is beneficially owned by any member of the Group); or
       2. the principal amount of borrowings or other indebtedness of any person other than a member of the Group;
    4. the principal amount raised by any member of the Group by acceptances (not being acceptances in relation to the purchase of goods or services in the ordinary course of trading which have been outstanding for 180 days or less) or under any acceptance credit opened on its behalf by a bank or accepting house; and
    5. the principal amount of any debentures (as defined by Section 738 of the Companies Act) of any member of the Group provided however that, in the case of a debenture which constitutes a deeply discounted security for the purposes of Section 430 of the Income Tax (Trading and other Income) Act 2005 as amended prior to the date hereof and contains provision for prepayment or acceleration, the principal amount shall be deemed at any relevant time to be the highest amount which would, if such debenture were then to be repaid in accordance with any such provision for prepayment or acceleration, be repayable in respect of the principal amount thereof;

but shall not include:

* 1. amounts borrowed and otherwise falling to be taken into account as Borrowings pursuant to any of the provisions set out in this definition and intended to be applied within four months of being so borrowed in the repayment of borrowings then outstanding which fall to be taken into account as Borrowings for the purpose of this paragraph pending their application for such purpose or the expiration of such period whichever shall be the earlier; and
  2. in the case of Borrowings of a Subsidiary Undertaking, a percentage (the ***minority percentage***) of whose equity share capital is beneficially owned otherwise than by a member(s) of the Group, the minority percentage of such part of those Borrowings as does not represent Borrowings by such Subsidiary Undertaking from a member(s) of the Group (such part being referred to herein as ***external Borrowings***) or, where Borrowings (***internal Borrowings***) are also owed to such Subsidiary Undertaking by any other member(s) of the Group, the minority percentage of the amount (if any) by which external Borrowings exceed the aggregate amount of internal Borrowings;

**provided that**:

* 1. any Borrowings which are owed to a person at any time (the ***lender***) in circumstances where the lender has the benefit of (a) an Encumbrance over, or (b) a valid right of set-off, lien or combination of accounts in respect of, cash (which expression includes without limitation deposits and credit balances on accounts in the same currency as that in which such Borrowings are denominated) shall be deemed reduced by an amount equal to the amount of such cash at such time but only to the extent that such Borrowings are not included under “Creditors” in the Latest Consolidated Balance Sheet (excluding any notes thereto) or would not be so included if the relevant calculation (using the same accounting principles adopted in the Latest Consolidated Balance Sheet) were made at any time other than the end of the Company’s financial year;
  2. no amount shall be taken into account more than once in the same calculation;
  3. when the aggregate amount of Borrowings required to be taken into account for the purpose of this definition on any particular day is being ascertained, any such Borrowings denominated or repayable in a currency other than Sterling shall be converted for the purpose of calculating the Sterling equivalent at the rate of exchange prevailing on that day in London (and so that for this purpose the rate of exchange shall be taken as the middle market spot rate as at the close of business on that day);
  4. a sum equal to the amount of Borrowings of a company which becomes a Subsidiary Undertaking of the Company after the date hereof and which are outstanding at the date when such company becomes a Subsidiary Undertaking shall for the period of six months from the date of such event not be deemed to be Borrowings for the purpose of this definition;
  5. if the Company has notified the Facility Agent in writing in good faith of its intention to acquire a company or undertaking which would, upon acquisition, be a Subsidiary Undertaking of the Company, or to dispose of a Subsidiary Undertaking of the Company, together with indicative figures for the effect of such acquisition or disposal on the level of Borrowings, Borrowings shall be calculated on the basis that such Subsidiary Undertaking had already become or ceased to be (as the case may be) a Subsidiary Undertaking for the period from the date of such notification until the date which is 6 months thereafter or, if earlier, the date, if any, on which the Company so notifies the Bank that such acquisition or disposal is not to proceed; and
  6. for the avoidance of doubt, amounts prospectively payable for the hire or lease of movable or immovable property shall not be deemed to be Borrowings notwithstanding that a capital amount in respect of such amounts may be included as a liability in the Latest Consolidated Balance Sheet.

1. ***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 London Interbank Market for a period starting on the date of receipt if it is practicable for it to so place such principal amount or Unpaid Sum on deposit on such day (or, if not, the next Business Day) and ending on the last day of the current Interest Period.

1. ***Business Day*** means a day (other than a Saturday or Sunday) on which banks are open for general business in London and (in relation to any day for payment or purchase of Dollars under the US$ Base Rate Facility) is a New York Banking Day.
2. ***Capital Market Proceeds*** has the meaning given to that term in Clause 8.6 (*Mandatory prepayment and cancellation*).
3. ***Capital Market Transaction*** means the issue of one or more publically listed eurobonds or other publically listed debt instruments in the debt capital markets by any member of the Group (excluding Tesco Personal Finance Group Limited, trading as Tesco Bank), other than where that issue is:
   1. made for the purpose of refinancing existing debt instruments in the debt capital markets;
   2. made:
      1. prior the date on which the Company prepays Utilisations and/or cancels Available Commitments pursuant to Clause 8.6(b)(ii) (*Mandatory prepayment and cancellation*) and is for the purpose of funding a mandatory funding contribution to the Group’s pension schemes or funding a contribution to the Group’s pension schemes where the Company reasonably believes that such funding contribution is necessary to prevent the issuance of a mandatory contribution notice; and
      2. on or after the date on which the Company prepays Utilisations and/or cancels Available Commitments pursuant to Clause 8.6(b)(ii) (*Mandatory prepayment and cancellation*) and is for the purpose of funding contributions to the Group’s pension schemes;
   3. made on or after the date on which the Company prepays and/or cancels Available Commitments pursuant to Clause 8.6(b)(ii) (*Mandatory prepayment and cancellation*) and is for the purpose of financing the acquisition of real estate where such real estate is currently leased by a member of the Group (or refinancing any indebtedness incurred in relation to the acquisition of such real estate) or for funding the capitalisation of lease payments of the Group; and
   4. individually equal to or less than £100,000,000 (or its equivalent in other currencies).
4. ***Capital Markets Reduction Amount*** has the meaning given to that term in Clause 8.6 (*Mandatory prepayment and cancellation*).

***Companies Act***  means the Companies Act 2006.

***Code*** means the US Internal Revenue Code of 1986.

1. ***Commitment*** means:
   1. in relation to an Original Lender, the amount in the Base Currency set opposite its name under the heading “Commitment” in Schedule 1 (*The Original Lenders*) and the amount of any other 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 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.

1. ***Commitment Fee Rate*** means 0.25 per cent. per annum initially and thereafter set in accordance with paragraphs (a) to (c) below to be the percentage rate per annum specified below as set out opposite the relevant rating at the relevant time given to the Company in respect of its long-term and non-credit enhanced debt obligations:

|  |  |
| --- | --- |
| 1. **Rating from S&P / Moody’s / Fitch** | 1. **Commitment Fee Rate per annum** |
| 1. BBB / Baa2 / BBB or better | 1. 0.25 per cent. |
| 1. BBB- / Baa3 / BBB- | 1. 0.35 per cent. |
| 1. BB+/Ba1/BB+ | 1. 0.50 per cent. |
| 1. BB/Ba2/BB | 1. 0.75 per cent. |
| 1. BB-/Ba3/BB- or lower | 1. 1.00 per cent. |

* 1. If there is a different rating assigned by S&P, Moody’s or Fitch, the commitment fee rate shall be the average applicable rate determined in accordance with the pricing grid above.
  2. At any time while an Event of Default has been continuing for a period of 10 consecutive days or during any period in which there is no rating assigned by S&P, Moody’s and Fitch, the commitment fee rate shall be 1.00 per cent. per annum.
  3. During any period in which there is only one or two ratings from S&P, Moody’s or Fitch, the commitment fee rate shall be calculated on the basis of those ratings.
  4. Any reduction or increase in the commitment fee rate during an Interest Period shall take effect from the date on which the relevant change in the rating was first published.

1. ***Compliance Certificate*** means a certificate substantially in the form set out in Schedule 8 (*Form of Compliance Certificate*).
2. ***Confidentiality Undertaking*** means a confidentiality undertaking substantially in a recommended form of the LMA as set out in Schedule 6 (*LMA Form of Confidentiality Undertaking*) or in any other form agreed between the Company and the Facility Agent.
3. ***Consolidated EBITDA*** has the meaning given to that term in Clause 21.2 (*Financial Definitions*).
4. ***Consolidated Net Interest Charges*** has the meaning given to that term in Clause 21.2 (*Financial Definitions*).
5. ***CTA*** means the Corporation Tax Act 2009.
6. ***Defaulting Lender*** means any Lender:
   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*);
   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:
    2. administrative or technical error; or
    3. a Disruption Event; and

payment is made within 2 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.

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

***Disposal Proceeds*** means the consideration receivable by any member of the Group in cash or cash equivalents (including any amount receivable in repayment of intercompany debt) for any Disposal made by any member of the Group except for Excluded Disposals and:

* 1. after deducting any reasonable costs expenses which are incurred by any member of the Group with respect to that Disposal;
  2. after deducting 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); and
  3. less reasonable retentions for potential warranty claims and liabilities in respect of the Disposal (provided that any retention not applied in satisfaction of such liability shall be applied in prepayment and cancellation of the Facility in accordance with Clause 8.6 (*Mandatory prepayment and cancellation*).

1. ***Disposals Reduction Amount*** has the meaning given to that term in Clause 8.6 (*Mandatory prepayment and cancellation*).
2. ***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,
   3. and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.
3. ***Dollars*** and ***US$*** means the lawful currency for the time being of the United States of America.
4. ***Encumbrance*** means any mortgage, pledge, lien, charge, assignment by way of security or subject to a proviso for redemption, hypothecation or other security interest in each case by way of security.
5. ***Event of Default*** means any event or circumstance specified as such in Clause 22 (*Events of Default*).
6. ***Excluded Disposals*** means individual Disposals where:
   1. (other than in the case of a disposal of an undertaking or business) the Disposal is made in the ordinary course of business of the Group; or
   2. the proceeds from such Disposal are in an amount less than £100,000,000, provided that for these purposes, any series of connected Disposals shall be treated as a single Disposal.
7. ***Existing RCF*** means the £2,600,000,000 multicurrency revolving credit facility made available to, amongst others, the Company pursuant to the Existing RCF Agreement as amended, extended, reduced or increased from time to time and any facility that refinances or replaces such facility.
8. ***Existing RCF*** ***Agreement*** means the revolving credit facility agreement dated 22 August 2013 between, amongst others, the Company and The Royal Bank of Scotland plc as agent.
9. ***Existing RCF Reduction Amount*** has the meaning given to that term in Clause 8.6 (*Mandatory prepayment and cancellation*).
10. ***Extension Notice*** has the meaning given to that term in Clause 7 (*Extension option*).
11. ***Facility*** means the revolving loan facility agreed to be made available pursuant to this Agreement comprising (i) the LIBOR Facility and (ii) the US$ Base Rate Facility.
12. ***Facility Agent’s*** ***Spot Rate of Exchange*** means the Facility 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.
13. ***Facility Office*** means the office or offices notified by a Lender to the Facility Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five Business Days’ written notice) as the office or offices through which it will perform its obligations under this Agreement.
14. ***FATCA*** means:
    1. sections 1471 to 1474 of the Code or any associated regulations or other official guidance;
    2. any treaty, law, regulation or other official guidance enacted in any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of paragraph (a) above; or
    3. any agreement pursuant to the implementation of paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.
15. ***FATCA Application Date*** means:
    1. in relation to a “withholdable payment” described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014;
    2. in relation to a “withholdable payment” described in section 1473(1)(A)(ii) of the Code (which relates to "gross proceeds" from the disposition of property of a type that can produce interest from sources within the US), 1 January 2017; or
    3. in relation to a “passthru payment” described in section 1471(d)(7) of the Code not falling within paragraphs (a) or (b) above, 1 January 2017,
16. or, in each case, such other date from which such payment may become subject to a deduction or withholding required by FATCA as a result of any change in FATCA after the date of this Agreement.
17. ***FATCA Deduction*** means a deduction or withholding from a payment under a Finance Document required by FATCA.
18. ***FATCA Exempt Party*** means a Party that is entitled to receive payments free from any FATCA Deduction.
19. ***Federal Funds Rate*** means, for any day, rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding New York Banking Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a New York Banking Day, the average of the quotations for the day of such transactions received by the US$ Base Rate Agent from three Federal funds brokers of recognised standing selected by the US$ Base Rate Agent.
20. ***Finance Document*** means this Agreement and any other document designated as such by the Facility Agent and the Company.
21. ***Finance Party*** means the Facility Agent, the US$ Base Rate Agent or a Lender.
22. ***Fitch*** means Fitch Ratings Limited.
23. ***GAAP*** means those generally accepted accounting principles (including IFRS) as in effect from time to time in the United Kingdom.
24. ***Group*** means the Company and its Subsidiaries for the time being.
25. ***Holding Company*** means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.
26. ***IFRS*** means international accounting standards within the meaning of the IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.
27. ***Impaired Agent*** means an 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. that Agent otherwise rescinds or repudiates a Finance Document;
    3. (if that 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 that Agent;
28. 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 2 Business Days of its due date; or

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

1. ***Increase Confirmation*** means a confirmation substantially in the form set out in Schedule 7 (*Form of Increase Confirmation*).
2. ***Increase Lender*** has the meaning given to that term in Clause 2.2 (*Increase*).
3. ***Insolvency Event*** in relation to a Finance Party means that the Finance Party:
   1. is dissolved (other than pursuant to a consolidation, amalgamation or merger);
   2. 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;
   3. makes a general assignment, arrangement or composition with or for the benefit of its creditors;
   4. 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;
   5. 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;
   6. 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. has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
   8. seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets (other than, for so long as it is required by law or regulation not to be publicly disclosed, any such appointment which is to be made, or is made, by a person or entity described in paragraph (d) above);
   9. 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;
   10. causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (h) above; or
   11. takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.
4. ***Interest Period*** means, in relation to a Loan, each period determined in accordance with Clause 10 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 9.4 (*Default interest*).
5. ***Interpolated Screen Rate*** means, in relation to LIBOR for any Loan, the rate rounded to the same number of decimal places as the two relevant Screen Rates which results from interpolating on a linear basis between:
   1. the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period of that Loan; and
   2. the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that Loan,
6. each as of the Specified Time on the Quotation Day for the currency of that Loan.
7. ***ITA*** means the Income Tax Act 2007.
8. ***Latest Consolidated Accounts*** means at any date the then latest consolidated accounts of the Company and its Subsidiary Undertakings prepared for the purposes of the Companies Act which have been audited and have been reported on by the Auditors as the main annual accounts of the Group, whether prepared in accordance with the historical cost convention or current cost convention or otherwise and ***Latest Consolidated Balance*** ***Sheet*** means the consolidated balance sheet contained in the Latest Consolidated Accounts.
9. ***Lender*** means:
   1. any Original Lender; and
   2. any bank or financial institution which has become a New Lender in accordance with Clause 2.2 (*Increase*) or Clause 23 (*Changes to the Lenders*),

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

1. ***LIBOR*** means, in relation to any LIBOR Loan:
   1. the applicable Screen Rate;
   2. (if no Screen Rate is available for the Interest Period of that Loan) the Interpolated Screen Rate for that Loan; or
   3. if:
      1. no Screen Rate is available for the currency of that Loan; or
      2. no Screen Rate is available for the Interest Period of that Loan and it is not possible to calculate an Interpolated Screen Rate for that Loan,

the Reference Bank Rate,

as of, in the case of paragraphs (a) and (c) above, the Specified Time on the Quotation Day for the currency of that Loan and for a period equal in length to the Interest Period of that Loan and, if that rate is less than zero, LIBOR shall be deemed to be zero.

1. ***LIBOR Facility*** means the committed sterling loan facility agreed to be made available under this Agreement and as described in Clause 2.1(a) (*The Facility*).
2. ***LIBOR Loan*** means a loan made or to be made under the LIBOR Facility or the principal amount outstanding for the time being of that loan.
3. ***LMA*** means the Loan Market Association.
4. ***Loan*** means a loan made or to be made under the Facility or the principal amount outstanding for the time being of that loan.
5. ***Loan Reduction Amount*** has the meaning given to that term in Clause 8.6 (*Mandatory prepayment and cancellation*).
6. ***Majority Lenders*** means:
   1. until the Total Commitments have been reduced to zero, a Lender or Lenders whose Commitments aggregate more than 662/3% of the Total Commitments (or, if the Total Commitments have been reduced to zero and there are no Loans then outstanding, aggregated more than 662/3% of the Total Commitments immediately prior to the reduction); or
   2. at any other time, a Lender or Lenders whose participations in the Loans then outstanding aggregate more than 662/3% of all the Loans then outstanding.
7. ***Margin*** means 1.25 per cent. per annum initially and thereafter set in accordance with paragraphs (a) to (d) below to be the percentage rate per annum specified below as set out opposite the relevant rating at the relevant time given to the Company in respect of its long-term and non-credit enhanced debt obligations:

|  |  |  |
| --- | --- | --- |
| 1. **Rating from S&P / Moody’s / Fitch** | 1. **Margin per annum** | |
| 1. **From the date of this Agreement to (but excluding) the date falling 12 Months after the date of this Agreement** | 1. **From the date falling 12 Months after the date of this Agreement** |
| 1. BBB / Baa2 / BBB or better | 1. 1.25 per cent. | 1. 2.00 per cent. |
| 1. BBB- / Baa3 / BBB- | 1. 1.75 per cent. | 1. 2.50 per cent. |
| 1. BB+/Ba1/BB+ | 1. 2.25 per cent. | 1. 3.00 per cent. |
| 1. BB/Ba2/BB | 1. 2.75 per cent. | 1. 3.50 per cent. |
| 1. BB-/Ba3/BB- or lower | 1. 3.25 per cent. | 1. 4.00 per cent. |

* 1. If there is a different rating assigned by S&P, Moody’s or Fitch, the Margin shall be the average applicable Margin determined in accordance with the pricing grid above.
  2. At any time while an Event of Default has been continuing for a period of 10 consecutive days or during any period in which there is no rating assigned by S&P, Moody’s and Fitch, the Margin shall be:
     1. in the period from the date of this Agreement to (but excluding) the date falling 12 Months after the date of this Agreement, 3.25 per cent. per annum;
     2. from the date falling 12 Months after the date of this Agreement, 4.00 per cent. per annum.
  3. During any period in which there is only one or two ratings from S&P, Moody’s or Fitch, the Margin shall be calculated on the basis of those ratings.
  4. Any reduction or increase in Margin during an Interest Period shall take effect from the date on which the relevant change in the rating was first published.

1. ***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. 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. notwithstanding paragraph (a) above, 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.

***Moody’s*** means Moody’s Investor Services Limited.

1. ***New Lender*** has the meaning given to it in Clause 23.1 (*Assignments* *and transfers by the Lenders*).
2. ***New Loan Commitments*** has the meaning given to that term in Clause 8.6 (*Mandatory prepayment and cancellation*).
3. ***New Loan Transaction*** means the entry into of one or more new committed syndicated or bilateral loan facility agreements after the date of this Agreement by any Obligor as borrower or guarantor for the general corporate purposes of the Group.
4. ***New York Banking Day*** means a day (other than a Saturday or Sunday) on which banks are open for business in New York City.
5. ***Obligor*** means a Borrower or a Guarantor.
6. ***OFAC*** means the Office of Foreign Assets Control of the United States Department of the Treasury (or any successor thereto).
7. ***Original Financial Statements*** means the audited consolidated financial statements of the Group for the Financial Year ended 23 February 2014 (as published).
8. ***Party*** means a party to this Agreement.
9. ***Potential Event of Default*** means any event which, with the giving of notice, expiry of any time period or expiry of any cure period, would constitute an Event of Default.
10. ***Prime Rate*** means the rate of interest per annum established from time to time by the US$ Base Rate Agent as its prime rate in effect at its principal office in the United States (the Prime Rate not being intended to be the lowest rate of interest charged by the US$ Base Rate Agent in connection with extensions of credit to debtors).
11. ***Principal Subsidiary*** means a Subsidiary Undertaking the total of whose fixed and current assets as included in the Latest Consolidated Balance Sheet represents 10% or more of the total of the consolidated fixed assets and consolidated current assets shown therein.
12. ***Qualifying Lender*** has the meaning given to it in Clause 13 (*Tax Gross up and Indemnities*).
13. ***Quotation Day*** means, in relation to any period for which an interest rate is to be determined for a LIBOR Loan in sterling, the first day of that period.

***Reference Bank Rate*** means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Facility Agent at its request by the Reference Banks in relation to LIBOR, as the rate at which the relevant Reference Bank could borrow funds in the London interbank market; in sterling 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 sterling and for that period.

1. ***Reference Banks*** means in relation to LIBOR, the principal London offices of such banks as may be appointed from time to time by the Facility Agent with the prior written consent of the Company (acting reasonably).
2. ***Relevant Period*** has the meaning given to that term in Clause 21.2 (*Financial Definitions*).
3. ***Repayment Date*** means, subject to Clause 7 (*Extension Option*) the date which is 12 Months after the date of this Agreement.
4. ***Representative*** means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.
5. ***Reservations*** means the principle that equitable remedies are remedies which may be granted or refused at the discretion of the court, any limitation on enforcement by laws relating to bankruptcy, insolvency, liquidation, reorganisation, court schemes, moratoria, administration, or other laws generally affecting the rights of creditors, the time barring of claims, the possibility that an undertaking to assume liability for or to indemnify a person against non-payment of stamp duty may be void, defences of set-off or counterclaim and similar principles and similar matters arising under the laws of any jurisdiction in which relevant obligations may have to be performed.
6. ***Restricted Party***  means a person that is:
   1. listed on, or owned or controlled by a person listed on, a Sanctions List, or a person acting on behalf of such a person;
   2. located in or organised under the laws of a country or territory that is the subject of country- or territory-wide Sanctions, or a person who is owned or controlled by, or acting on behalf of such a person; or
   3. otherwise a subject of Sanctions.
7. ***S&P*** means Standard & Poor’s Rating Services Limited.
8. ***Sanctions*** means any trade, economic or financial sanctions, laws, regulations, embargoes or restrictive measures administered, enacted or enforced by a Sanctions Authority.
9. ***Sanctions Authority*** means:
   1. the Security Council of the United Nations;
   2. the United States;
   3. the European Union;
   4. the UK; and
   5. the governments without limitation and official institutions or agencies of any of paragraphs (a) to (d) above, including OFAC, the US Department of State, and Her Majesty’s Treasury.

***Sanctions List*** means any of the lists of specifically designated nationals or designated persons or entities (or equivalent) held by a Sanctions Authority.

1. ***Screen Rate*** means in relation to LIBOR, the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for sterling for the relevant period displayed on pages LIBOR01 or LIBOR02 of the Reuters screen (or any replacement Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Reuters. If such page or service ceases to be available, the Facility Agent may specify another page or service displaying the relevant rate after consultation with the Company.
2. ***Separate Loan*** has the meaning given to that term in Clause 6 (*Repayment*).
3. ***Specified Time*** means a time determined in accordance with Schedule 5 (*Timetables*).
4. ***sterling*** or ***£*** means the lawful currency for the time being of the United Kingdom.
5. ***Subsidiary*** means a subsidiary within the meaning of section 1159 of the Companies Act
6. ***Subsidiary Undertaking*** means a subsidiary undertaking within the meaning of section 1162 of the Companies Act.
7. ***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 by an Obligor to pay or any delay by an Obligor in paying any of the same).
8. ***Total Commitments*** means the aggregate of the Commitments, being £5,000,000,000 at the date of this Agreementgggggg.
9. ***Transfer Certificate*** means a certificate substantially in the form set out in Schedule 4 (*Form of Transfer Certificate*) or a recommended form of the LMA or any other form agreed between the Facility Agent and the Company.
10. ***Transfer Date*** means, in relation to a transfer, the later of:
    1. the proposed Transfer Date specified in the Transfer Certificate; and
    2. the date on which the Facility Agent executes the Transfer Certificate.
11. ***UK*** means the United Kingdom of Great Britain and Northern Ireland.
12. ***US*** or ***United States*** means the United States of America, its territories and possessions.
13. ***Unpaid Sum*** means any sum due and payable but unpaid by an Obligor under the Finance Documents.
14. ***US Tax Obligor*** means:
    1. a Borrower which is resident for tax purposes in the United States; or
    2. an Obligor some or all of whose payments under the Finance Documents are from sources within the United States for US federal income tax purposes.
15. ***US$ Base Rate Facility*** means the committed loan facility agreed to be made available under this Agreement and as described in Clause 2.1(b) (*The Facility*).
16. ***US$ Base Rate Facility Limit*** means £2,600,000,000.
17. ***US$ Base Rate Lender*** means a Lender which has made a US$ Base Rate Loan.
18. ***US$ Base Rate Loan*** means a loan made or to be made under the US$ Base Rate Facility or the principal amount for the time being outstanding of that loan.
19. ***Utilisation*** means a utilisation of the Facility.
20. ***Utilisation Date*** means the date of a Utilisation, being the date on which the relevant Loan is to be made.
21. ***Utilisation Request*** means a notice substantially in the form set out in Schedule 3 (*Requests*).
22. ***VAT*** means:
    1. any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
    2. any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere.
    3. Construction
       1. Unless a contrary indication appears, any reference in this Agreement to:
          1. the ***Facility Agent***, the ***US$ Base Rate Agent***, any ***Finance Party***, any ***Lender***, any ***Obligor*** or any ***Party*** shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
          2. ***assets*** includes present and future properties, revenues and rights of every description;
          3. a ***Finance Document*** or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended or novated;
          4. ***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;
          5. “know your customer” requirements are the checks that a Finance Party is required by applicable law or regulation to comply with in order to meet its obligations under applicable money laundering regulations to identify a person who is (or is to become) its customer;
          6. a ***person*** includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing;
          7. a ***regulation*** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, which is generally complied with by those to whom it is addressed) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
          8. a provision of law is a reference to that provision as amended or re-enacted; and
          9. a time of day is a reference to London time.
       2. Section, Clause and Schedule headings are for ease of reference only.
       3. 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.
       4. A Potential Event of Default or an Event of Default is ***continuing*** if it has not been remedied or waived.
    4. Third Party Rights

Save as expressly provided in this Agreement, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.

1. THE FACILITY
   1. The Facility

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

* + 1. a sterling revolving loan facility under which Loans shall be made bearing interest as described in Clause 9.1(a) (*Calculation of interest*); and
    2. a US$ revolving loan facility under which Loans shall be made bearing interest as described in Clause 9.1(b) (*Calculation of interest*),

in a maximum aggregate amount equal to the Total Commitments, provided that the maximum aggregate amount of Loans to be made available under the US$ Base Rate Facility may not exceed the US$ Base Rate Facility Limit.

* 1. Increase
     1. The Company may by giving prior notice to the Facility Agent after the effective date of a cancellation of:
        1. the Available Commitments of a Defaulting Lender in accordance with paragraph (g) of Clause 8.5 (*Right of prepayment and cancellation in relation to a single Lender*); or
        2. the Commitments of a Lender in accordance with:
           1. Clause ‎8.1 (*Illegality*); or
           2. paragraph (a) of Clause 8.5 (*Right of prepayment and cancellation in relation to a single Lender*),

request that the Commitments relating to the Facility be increased (and the Commitments 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:

* + - 1. 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 Company (each of which shall not be a member of the Group) and each of which confirms in writing (whether in the relevant Increase Confirmation or otherwise) 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;
      2. 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;
      3. 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;
      4. the Commitments of the other Lenders shall continue in full force and effect; and
      5. any increase in the Commitments shall take effect on the date specified by the Company in the notice referred to above or any later date on which the conditions set out in paragraph (b) below are satisfied.
    1. An increase in the Commitments will only be effective on:
       1. the execution by the Facility Agent of an Increase Confirmation from the relevant Increase Lender;
       2. in relation to an Increase Lender which is not a Lender immediately prior to the relevant increase, the performance by the Facility 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 Facility Agent shall promptly notify to the Company and the Increase Lender.
    2. Each Increase Lender, by executing the Increase Confirmation, confirms (for the avoidance of doubt) that the Facility 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.
    3. The Company shall, within 30 days of receipt by it of a copy of the relevant invoice, pay the Facility Agent the amount of all costs and expenses (including legal fees) reasonably incurred by it in connection with any increase in Commitments under this Clause 2.2.
    4. Unless the Facility Agent otherwise agrees or the increased Commitment is assumed by an existing Lender, the Increase Lender shall, on the date upon which the increase takes effect, pay to the Facility Agent (for its own account) a fee in an amount equal to the fee which would be payable under Clause ‎‎23.3 (*Assignment or transfer fee*) if the increase was a transfer pursuant to Clause ‎‎23.5 (*Procedure for transfer*) and if the Increase Lender was a New Lender,
    5. The Company may pay to the Increase Lender a fee in the amount and at the times agreed between the Company and the Increase Lender in a Fee Letter.
    6. Clause 23.4 (*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:
       1. an ***Existing Lender*** were references to all the Lenders immediately prior to the relevant increase;
       2. the ***New Lender*** were references to that ***Increase Lender***; and
       3. a ***re-transfer*** and ***re-assignment*** were references to respectively a **transfer** and ***assignment***.
  1. Finance Parties’ rights and obligations
     1. 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.
     2. 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.
     3. A Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.
  2. Obligor’s Agent

Each Obligor (other than the Company) irrevocably authorises and instructs the Company to give all notices and instructions and to make such agreements expressed to be capable of being given or made by that Obligor under or in relation to any Finance Document, whether or not affecting that Obligor, without further reference to or the consent of that Obligor. Each such Obligor will be bound by any such notices, instructions and agreements as though it, and not the Company, had carried out the relevant action.

1. PURPOSE
   1. Purpose

Each Borrower shall apply all amounts borrowed by it under the Facility towards its general corporate purposes.

* 1. Monitoring

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

1. CONDITIONS OF UTILISATION
   1. Initial conditions precedent

No Borrower may deliver a Utilisation Request unless the Facility Agent has received all of the documents and other evidence listed in Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Facility Agent. The Facility Agent shall notify the Company and the Lenders promptly upon being so satisfied.

* 1. Further conditions precedent

The Lenders will only be obliged to comply with Clause 5.4 (*Lenders’ participation*) if on the date of the Utilisation Request and on the proposed Utilisation Date:

* + 1. no Potential Event of Default or Event of Default is continuing or would result from the proposed Loan; and
    2. the representations in Clause 19.8 (*Repetition*) (other than as specified therein) would, if made by the Company and by any other Obligor on the date of the Utilisation Request and the proposed Utilisation Date, be true and correct in all material respects on those dates.
  1. Maximum number of Loans
     1. A Borrower may not deliver a Utilisation Request if as a result of the proposed Utilisation more than 20 Loans would be outstanding.
     2. A Borrower may not request that a Loan be divided if, as a result of the proposed division, more than 20 Loans would be outstanding.
     3. Any Separate Loan shall not be taken into account in this Clause 4.3.

1. UTILISATION
   1. Delivery of a Utilisation Request
      1. A Borrower may utilise the LIBOR Facility by delivery to the Facility Agent of a duly completed Utilisation Request no later than the Specified Time.
      2. A Borrower may utilise the US$ Base Rate Facility by delivery to the US$ Base Rate Agent of a duly completed Utilisation Request no later than the Specified Time. The Borrower shall also send a copy of such Utilisation Request to the Facility Agent.
      3. The Company may (on behalf of a Borrower) deliver to the Facility Agent or the US$ Base Rate Agent (as the case may be) a duly completed Utilisation Request.
   2. Completion of a Utilisation Request
      1. Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:
         1. the proposed Utilisation Date is a Business Day within the Availability Period;
         2. the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*);
         3. the proposed Interest Period complies with Clause 10 (*Interest Periods*);
         4. it specifies if the Loan is to be drawn under the LIBOR Facility or the US$ Base Rate Facility; and
         5. it specifies the account of the Borrower and bank (which must be in the principal financial centre of the country of the currency of the Utilisation or London) to which the proceeds of the Utilisation are to be credited.
      2. Only one Loan may be requested in each Utilisation Request.
   3. Currency and amount
      1. The currency specified in a Utilisation Request must be:
         1. the Base Currency, in relation to a LIBOR Loan; and
         2. Dollars, in relation to a US$ Base Rate Loan.
      2. The amount of the proposed Loan must be a minimum of £1,000,000 or its equivalent in Dollars (if a US$ Base Rate Loan) (when converted as provided in the definition of Base Currency Amount) or, if less, the Available Facility or such equivalent and in any event such that its Base Currency Amount is less than or equal to the Available Facility.
      3. The aggregate amount of Loans outstanding under the US$ Base Rate Facility may not at any time exceed the US$ Base Rate Facility Limit.
   4. Lenders’ participation
      1. If the conditions set out in this Agreement have been met, and subject to Clause 6 (*Repayment*) each Lender shall make its participation in each Loan available by the Utilisation Date through its Facility Office, provided that any Lender which does not have a branch or an Affiliate located in the United States at the time of receipt by the US$ Base Rate Agent of the relevant Utilisation Request (and has notified the Company and each Agent of that fact) shall not be obliged to participate in a US$ Base Rate Loan.
      2. Subject to paragraph (a) above, 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 minus, in the case of a US$ Base Rate Loan, the Available Commitments of those Lenders not obliged to participate in such US$ Base Rate Loan pursuant to paragraph (a) above, in each case immediately prior to making the Loan.
      3. The US$ Base Rate Agent shall determine the Base Currency Amount of each US$ Base Rate Loan and shall notify each Lender of such amount, the Dollar amount of its participation in that US$ Base Rate Loan and, if different, the amount of the participation to be made available in cash, in each case by the Specified Time.
      4. Each Lender confirms that as at the date of this Agreement it has a branch or an Affiliate located in the United States and each Lender agrees that it will forthwith notify the Company and each Agent (i) if at any time it does not have a branch or an Affiliate located in the United States or (ii) thereafter it does have a branch or an Affiliate located in the United States.
2. REPAYMENT
   * 1. Subject to paragraph (c) below, each Borrower which has drawn a Loan shall repay that Loan on the last day of its Interest Period.
     2. Without prejudice to each Borrower’s obligation under paragraph (a) above:
        1. if one or more Loans are to be made available to a Borrower:
           1. on the same day that a maturing Loan is due to be repaid by that Borrower;
           2. in the same currency as the maturing Loan;
           3. in whole or in part for the purpose of refinancing the maturing Loan; and
        2. the proportion borne by each Lender’s participation in the maturing Loan to the amount of that maturing Loan is the same as the proportion borne by that Lender’s participation in the new Loans to the aggregate amount of those new Loans,

the aggregate amount of the new Loans shall, unless the Company notifies the Facility Agent to the contrary in the relevant Utilisation Request, be treated as if applied in or towards repayment of the maturing Loan so that:

(D) if the amount of the maturing Loan exceeds the aggregate amount of the new Loans:

the relevant Borrower will only be required to make a payment under Clause 28.1 (*Payments to the Agents*) in an amount in the relevant currency equal to that excess; and

each Lender’s participation in the new 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 Loan and that Lender will not be required to make a payment under Clause 28.1 (*Payments to the Agents*) in respect of its participation in the new Loans; and

(E) if the amount of the maturing Loan is equal to or less than the aggregate amount of the new Loans:

the relevant Borrower will not be required to make a payment under Clause 28.1 (*Payments to the Agents*); and

each Lender will be required to make a payment under Clause 28.1 (*Payments to the Agents*) in respect of its participation in the new Loans only to the extent that its participation in the new Loans exceeds that Lender’s participation in the maturing Loan and the remainder of that Lender’s participation in the new 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 Loan.

* + 1. At any time when a Lender becomes a Defaulting Lender, the maturity date of each of the participations of that Lender in the Loans then outstanding will be automatically extended to the Repayment Date and will be treated as separate Loans (the ***Separate Loans***) denominated in the currency in which the relevant participations are outstanding.
    2. A Borrower to whom a Separate Loan is outstanding may prepay that Loan by giving 2 Business Days’ prior notice to the Facility Agent. The Facility 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.
    3. 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 Facility Agent (acting reasonably) and will be payable by the Borrower to the Defaulting Lender on the last day of each Interest Period of that Loan.
    4. The terms of this Agreement relating to 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.
    5. If a US$ Base Rate Loan is not repaid in full on its due date, the Facility Agent shall (if requested to do so in writing by any affected US$ Base Rate Lender) set a date (the ***Loss Sharing Date***) on which payments shall be made between the Lenders to redistribute the Unpaid Amount between them. The Facility Agent shall give at least 3 Business Days’ notice to each affected Lender of the Loss Sharing Date and notify it of the amounts to be paid or received by it.
    6. On the Loss Sharing Date each Lender must pay to the Facility Agent its Proportion of the Unpaid Amount minus its Unpaid US$ Base Rate Participation (if any). If this produces a negative figure for a Lender, no amount need be paid by that Lender.

The ***Proportion*** of a Lender means the proportion borne by:

* + - 1. its Commitment (or, if the Total Commitments are then zero, its Commitment immediately prior to their reduction to zero) minus the Base Currency Amount of its participation in any outstanding Loans (but ignoring its participation in the unpaid US$ Base Rate Loan): to
      2. the Total Commitments (or, if the Total Commitments are then zero, the Total Commitments immediately prior to their reduction to zero) minus any outstanding Loans (but ignoring the unpaid US$ Base Rate Loan).

The ***Unpaid Amount*** means, in relation to a US$ Base Rate Loan, any principal not repaid and/or any interest accrued but unpaid on that US$ Base Rate Loan calculated from the Utilisation Date to the Loss Sharing Date.

The ***Unpaid US$ Base Rate Participation*** of a Lender means that part of the Unpaid Amount (if any) owed to that Lender (before any redistribution under this Clause 6 (*Repayment*).

* + 1. Out of the funds received by the Facility Agent pursuant to paragraph (h) above the Facility Agent shall pay to each US$ Base Rate Lender an amount equal to the Shortfall (if any) of that US$ Base Rate Lender where the ***Shortfall*** of a US$ Base Rate Lender is an amount equal to its Unpaid US$ Base Rate Participation minus its Proportion of the Unpaid Amount.
    2. If the amount actually received by the Facility Agent from the Lenders is insufficient to pay the full amount of the Shortfall of all US$ Base Rate Lenders, then the amount actually received will be distributed amongst the US$ Base Rate Lenders pro rata to the Shortfall of each US$ Base Rate Lender.
    3. On a payment under paragraph (h) above, the paying Lender will be subrogated to the extent of the payment to the rights of the US$ Base Rate Lenders which have shared in the payment received.
       1. If and to the extent a paying Lender is not able to rely on its rights under sub‑paragraph (i) above, the relevant Borrower shall be liable to the paying Lender for a debt equal to the amount the paying Lender has paid under paragraph (h) above and, in this event, the liability of the relevant Borrower to a Lender which has shared or is entitled to share in the payment received shall be reduced to the extent of the debt created under this sub-paragraph (ii).
       2. Any payment under paragraph (h) above does not reduce the obligations in aggregate of any Obligor.

1. Extension option
   * 1. The Company may determine, by notifying the Facility Agent in writing (an **Extension Notice**) not earlier than 60 days and no later than 30 days before the date falling 12 Months after the date of this Agreement, that the Repayment Date for all or part of the Facility be extended by an additional 365 day period.
     2. If an Extension Notice is delivered pursuant to paragraph (a) above, the Facility Agent will promptly notify the Lenders to that effect. An Extension Request once delivered is irrevocable.
     3. Provided no Event of Default is then continuing, an extension of the Repayment Date shall take effect on the then current Repayment Date.
2. PREPAYMENT AND CANCELLATION
   1. Illegality

If it becomes unlawful in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in any Loan:

* + 1. that Lender shall promptly notify the Facility Agent upon becoming aware of that event;
    2. upon the Facility Agent notifying the Company, the Commitment of that Lender will be immediately cancelled; and
    3. each Borrower shall prepay that Lender’s participation in the Loans on the last day of each Interest Period for each Loan occurring after the Facility Agent has notified the Company or, if earlier, the date specified by the Lender in the notice delivered to the Facility Agent (being no earlier than the last day of any applicable grace period permitted by law).
  1. Change of control
     1. If any person or group of persons associated with such person within the meaning of Section 256 of the Companies Act who or which does not have control of the Company at the date of this Agreement acquires control of the Company then:
        1. the Company shall promptly notify the Facility Agent upon becoming aware of that event; and
        2. the Company and the Facility Agent (acting on the instructions of the Lenders) shall enter into negotiations in good faith with a view to agreeing alternative terms for continuing the Facility.
     2. Any Lender unable to agree alternative terms under sub-paragraph (ii) of paragraph (a) above within 30 days of the Company’s notification under sub-paragraph (i) of paragraph (a) above may, by notice to each Borrower (or the Company on behalf of each Borrower) and each Agent given within 10 days of the expiry of such 30 day period, cancel its Commitment and declare all of its outstanding participations in the Loans, together with accrued interest and all other amounts accrued to it under the Finance Documents immediately due and payable, whereupon on the date falling 50 days after the date of the Company’s notification under sub‑paragraph (i) of paragraph (a) above its Commitment will be cancelled and all such outstanding amounts will become immediately due and payable.
     3. For the purpose of paragraph (a) above ***control*** means a person holding beneficially more than 50 per cent. of the issued share capital of the Company (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), provided that no person will for this purpose be deemed to have gained control of the Company if (i) the Company becomes a wholly-owned Subsidiary of a new Holding Company for the Group which is owned by substantially the same shareholders as those who previously owned the Company and (ii) that new Holding Company becomes a guarantor of the obligations of the Company under this Agreement. The Parties agree to negotiate in good faith to agree amendments to any relevant provisions of this Agreement to take into account the fact that there is a new Holding Company of the Group provided that such amendments shall not be materially more onerous on the Company, the Holding Company or the other Obligors than the position prior to such amendments.
  2. Voluntary cancellation

The Company may, if it gives the Facility Agent not less than 2 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 £5,000,000) of the Available Facility. Any cancellation under this Clause 8.3 shall reduce the Commitments of the Lenders rateably.

* 1. Voluntary prepayment of Loans

A Borrower may, if it gives the Facility Agent not less than 2 Business Days’ (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of a Loan (but if in part, being an amount that reduces the Base Currency Amount of the Loan by a minimum amount of £5,000,000).

* 1. Right of prepayment and cancellation in relation to a single Lender
     1. If:
        1. any sum payable to any Lender by an Obligor is required to be increased under paragraph (c) of Clause 13.2 (*Tax gross-up*); or
        2. any Lender claims indemnification from the Company under Clause 13.3 (*Tax indemnity*) or Clause 14.1 (*Increased costs*),

the Company may, whilst the circumstance giving rise to the requirement or indemnification continues, give the Facility Agent notice of cancellation of the Commitment of that Lender and its intention to procure the prepayment of that Lender’s participation in the Loans.

* + 1. On receipt of a notice referred to in paragraph (a) above, the Commitment of that Lender shall immediately be reduced to zero.
    2. On the last day of each Interest Period which ends after the Company has given notice under paragraph (a) above (or, if earlier, the date specified by the Company in that notice), each Borrower to which a Loan is outstanding shall prepay that Lender’s participation in that Loan.
    3. The Company may, in the circumstances set out in paragraph (a) above, on 2 Business Days’ prior notice to the Facility Agent and that Lender, replace that Lender by requiring that Lender to (and, to the extent permitted by law, that Lender shall) transfer pursuant to Clause 23 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement to a Lender or other bank, financial institution, trust, fund or other entity selected by the Company which confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with Clause 23 (*Changes to the Lenders*) for a purchase price in cash or other cash payment payable at the time of the transfer equal to the outstanding principal amount of such Lender’s participation in the outstanding Loans and all accrued interest (to the extent that the Facility Agent has not given a notification under Clause 23.8 (*Pro rata interest settlement*)), Break Costs and other amounts payable in relation thereto under the Finance Documents.
    4. The replacement of a Lender pursuant to paragraph (d) above shall be subject to the following conditions:
       1. the Company shall have no right to replace an Agent;
       2. neither the Facility Agent nor any Lender shall have any obligation to find a replacement Lender;
       3. in no event shall the Lender replaced under paragraph (d) above be required to pay or surrender any of the fees received by such Lender pursuant to the Financial Documents; and
       4. a Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (d) above once it is satisfied that it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to that transfer.
    5. A Lender shall perform the checks described in paragraph (e)(iv) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (d) above and shall notify the Agent and the Company when it is satisfied that it has complied with those checks.
    6. 1. If any Lender becomes a Defaulting Lender, the Company may, at any time whilst the Lender continues to be a Defaulting Lender, give the Agents 2 Business Days’ notice of cancellation of each Available Commitment of that Lender.
       2. On the notice referred to in (i) above becoming effective, each Available Commitment of the Defaulting Lender shall immediately be reduced to zero.
       3. The Agents shall as soon as practicable after receipt of a notice referred to in paragraph (i) above, notify all the Lenders.
  1. Mandatory prepayment and cancellation
     1. The Company shall notify the Facility Agent as soon as practicable and in any event not later than two Business Days after the date:
        1. of entering into any New Loan Transaction of such New Loan Transaction (but only until such time as the Total Commitments have been cancelled by at least £1,300,000,000 pursuant to Clause 8.6(b)(i)) specifying the aggregate amount of commitments to be made available to any member of the Group under such New Loan Transaction (net of all costs, taxes, fees and expenses fairly attributable to such New Loan Transaction) (the ***New Loan Commitments***) and if such amount is not in the Base Currency, the Facility Agent shall promptly calculate and notify the Company of the sterling equivalent amount of New Loan Commitments on receipt of such notice from the Company using the Facility Agent’s Spot Rate of Exchange (the sterling or sterling equivalent amount of such New Loan Commitments being the ***Loan Reduction Amount***);
        2. on which it is satisfied that the Existing RCF is available to it and/or any other member(s) of the Group for utilisation;
        3. of actual receipt of the proceeds of any Capital Market Transaction received by the Group specifying the amount of cash proceeds net of all costs, taxes, fees and expenses fairly attributable to such Capital Market Transaction (the ***Capital Market Proceeds***) and if such amount is not in the Base Currency the Facility Agent shall promptly calculate and notify the Company of the sterling equivalent amount of Capital Market Proceeds on receipt of such notice from the Company using the Facility Agent’s Spot Rate of Exchange (the sterling or sterling equivalent amount of such proceeds being the ***Capital Markets Reduction Amount***); and/or
        4. of actual receipt of Disposal Proceeds received by the Group and if such amount is not in the Base Currency the Facility Agent shall promptly calculate and notify the Company of the sterling equivalent amount of Disposal Proceeds on receipt of such notice from the Company using the Facility Agent’s Spot Rate of Exchange (the sterling or sterling equivalent amount of such proceeds being the ***Disposals Reduction Amount***).
     2. The Company shall prepay Loans and/or cancel Available Commitments in amounts equal to the following amounts and at the times contemplated by paragraph (c) below:
        1. following any New Loan Transaction, the Loan Reduction Amount but only until Total Commitments have been cancelled by £1,300,000,000 or more as a result of entering into New Loan Transactions;
        2. following its satisfaction that the Existing RCF is available to it and/or any other member(s) of the Group for utilisation, in an amount equal to the amount available to it for utilisation under the Existing RCF (the ***Existing RCF Reduction Amount***);
        3. following any Capital Markets Transaction, the Capital Market Reduction Amount; and
        4. following any Disposal (other than an Excluded Disposal):
           1. whilst the Existing RCF remains unavailable to the Company for utilisation, 90% of the Disposals Reduction Amount;
           2. if the Total Commitments have been reduced by the Existing RCF Reduction Amount, but remain in excess of £1,000,000,000, 50% of the Disposals Reduction Amount; and
           3. if the Total Commitments have been reduced to £1,000,000,000 or less, 25% of the Disposals Reduction Amount.
     3. On the date falling no more than one Business Day after the date of notification under paragraph (a) above the Company shall prepay Loans and/or cancel Available Commitments by a sterling amount equal to the Loan Reduction Amount, the Existing RCF Reduction Amount, the Capital Markets Reduction Amount and/or the relevant percentage of the Disposals Reduction Amount as the case may be.
     4. A prepayment of Loans or cancellation of Available Commitments under this Clause 8.6 shall be applied in the following order:
        1. ***firstly***, towards prepayment of Loans such that outstanding Loans shall be prepaid on a *pro rata* basis and cancellation of the corresponding Commitments; and
        2. ***secondly***, towards cancellation of Available Commitments (and the Available Commitments of the Lenders will be cancelled rateably).
     5. The US$ Base Rate Facility shall cease to be available under this Agreement on the date on which the Company notifies the Facility Agent pursuant to Clause 8.6(a)(ii).
     6. If:
        1. the Existing RCF has become available to the Company and/or any other member(s) of the Group for utilisation but the amount available for utilisation is less than the total commitments (as defined in the Existing RCF); and
        2. subsequently all or any part of such restricted portion of commitments under the Existing RCF becomes available to the Company and/or any other member(s) of the Group for utilisation,

the Company shall:

* + - * 1. notify the Facility Agent of such restricted portion of commitments becoming available as soon as practicable and in any event not later than two Business Days after becoming available; and
        2. shall prepay Loans and/or cancel Available Commitments in accordance with this Clause 8.6 in an amount equal to the amount of the restricted portion of commitments that have become available on the date falling no more than one Business Day after the date of notification under paragraph (A) above.
  1. Restrictions
     1. Any notice of cancellation or prepayment given by any Party under this Clause 8 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.
     2. Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs (if any), without premium or penalty.
     3. Any part of the Facility which is prepaid pursuant to Clause 8.4 (*Voluntary prepayment of Loans*) may be reborrowed in accordance with the terms of this Agreement.
     4. No Borrower shall repay or prepay all or any part of the Loans or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.
     5. Subject to Clause 2.2 (*Increase*), no amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
     6. If the Facility Agent receives a notice under this Clause 8, it shall promptly forward a copy of that notice to either the Company or the affected Lender, as appropriate.

1. INTEREST
   1. Calculation of interest
      1. The rate of interest on each LIBOR Loan for each Interest Period is the percentage rate per annum which is the aggregate of the applicable:
         1. Margin; and
         2. LIBOR on the Quotation Day for such LIBOR Loan.
      2. The rate of interest on each US$ Base Rate Loan for each Interest Period applicable thereto shall be for each day thereof the higher of:
         1. the Federal Funds Rate in effect on such day plus 0.5 per cent per annum; and
         2. the Prime Rate in effect on such day.
   2. Changes in the Federal Funds Rate or the Prime Rate

Any change in the interest rate applicable to a US$ Base Rate Loan due to a change in the Federal Funds Rate or the Prime Rate shall be effective as of the opening of business on the day on which such change in the Federal Funds Rate or the Prime Rate, as the case may be, becomes effective. The US$ Base Rate Facility Agent shall notify the relevant Borrower, the Facility Agent and each Lender of the details of each such change as soon as practicable.

* 1. 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).

* 1. Default interest
     1. 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 the sum of one-half of one per cent per annum (1/2% p.a.) and the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan under the LIBOR Facility in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Facility Agent (acting reasonably). Any interest accruing under this Clause 9.4 shall be immediately payable by the Obligor on demand by the Facility Agent.
     2. If any overdue amount consists of all or part of a LIBOR Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:
        1. 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
        2. the rate of interest applying to the overdue amount during that first Interest Period shall be the sum of one-half of one per cent per annum (1/2% p.a.) and the rate which would have applied if the overdue amount had not become due.
     3. 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.
  2. Notification of rates of interest

Each of the Facility Agent and the US$ Base Rate Agent shall promptly notify the Lenders and the relevant Borrower of the determination of a rate of interest under this Agreement.

1. INTEREST PERIODS
   1. Selection of Interest Periods
      1. A Borrower (or the Company on behalf of a Borrower) may select an Interest Period for a Loan in the Utilisation Request for that Loan.
      2. Subject to this Clause 10, a Borrower (or the Company on behalf of the Borrower) may select an Interest Period:
         1. of 1 or 2 weeks, or 1, 2, 3 or 6 months, (in the case of a LIBOR Loan);
         2. of 1 or 2 weeks or 1 month (in the case of a US$ Base Rate Loan); or
         3. any other period agreed between the relevant Borrower (or the Company on its behalf) and the Facility Agent (in either case) acting on the instructions of all the Lenders.
      3. Any Interest Period for a Loan which would otherwise extend beyond the Repayment Date shall be of such duration that it shall end on the Repayment Date.
      4. Each Interest Period for a Loan shall start on its Utilisation Date.
      5. A Loan has one Interest Period only.
   2. 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).

1. CHANGES TO THE CaLCULATION OF INTEREST
   1. Absence of quotations

Subject to Clause 11.2 (*Market disruption*), if LIBOR is to be determined by the Reference Banks but a Reference Bank does not supply a quotation by the Specified Time on the Quotation Day, the applicable LIBOR shall be determined on the basis of the quotations of the remaining Reference Banks.

* 1. Market disruption
     1. If a Market Disruption Event occurs in relation to a LIBOR Loan for any Interest Period, then the rate of interest on each Lender’s share of that LIBOR Loan for the Interest Period shall be the rate per annum which is the sum of:
        1. the Margin; and
        2. the rate notified to the Facility Agent by that Lender as soon as practicable and in any event before 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.
     2. In this Agreement ***Market Disruption Event*** means:
        1. at or about noon on the Quotation Day for the relevant Interest Period LIBOR is to be determined by reference to the Reference Banks and none or only one of the Reference Banks supplies a rate to the Facility Agent to determine LIBOR for sterling for the relevant Interest Period; or
        2. before close of business in London on the Quotation Day for the relevant Interest Period, the Facility Agent receives notifications from a Lender or Lenders (whose participations in a LIBOR Loan exceed 35 per cent. of that Loan) that the cost to it of obtaining matching deposits in the London interbank market would be in excess of LIBOR.
  2. Alternative basis of interest or funding
     1. If a Market Disruption Event occurs and the Facility Agent or the Company so requires, the Facility Agent and the Company 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.
     2. Any alternative basis agreed pursuant to paragraph (a) above shall, with the prior consent of all the Lenders and the Company, be binding on all Parties.
  3. Break Costs
     1. Each Borrower shall, within five Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of a LIBOR Loan or an Unpaid Sum being paid by the Borrower on a day other than the last day of an Interest Period for that LIBOR Loan or that Unpaid Sum.
     2. Each Lender shall, as soon as reasonably practicable after a demand by the Facility Agent, provide a certificate confirming (in reasonable detail) the amount and basis of calculation of its Break Costs for any Interest Period in which they accrue.

1. FEES
   1. Agency fee

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

* 1. Arrangement fee

The Company shall pay to the Facility Agent (for the account of the Lenders) an arrangement fee in the amount and at the times agreed in the Arrangement Fee Letter.

* 1. Extension fee

The Company shall pay to the Facility Agent (for the account of the Lenders) an extension fee in an amount equal to:

* + 1. if the aggregate amount of Commitments requested by the Company in an Extension Notice to be extended beyond the original Repayment Date is more than £1,000,000,000, 0.50%; and
    2. if the aggregate amount of Commitments requested by the Company in an Extension Notice to be extended beyond the original Repayment Date is less than or equal to £1,000,000,000, 0.25%,

on the aggregate amount of such Commitments requested to be extended. Such fee is payable on the date of the original Repayment Date.

* 1. Commitment fee
     1. The Company shall pay to the Facility Agent (for the account of each Lender) a commitment fee in the Base Currency computed at the Commitment Fee Rate on that Lender’s Available Commitment for the Availability Period.
     2. Accrued commitment fee shall be payable on the last day of each successive period of three Months which ends during the Availability Period, on the last day of the Availability Period and, if cancelled in full, on the cancelled amount of the relevant Lender’s Commitment at the time the cancellation is effective provided that the Facility Agent shall notify the Company of the amount of such fee within five Business Days of the end of the relevant period and the Company shall pay such fee to the Facility Agent (for the account of each Lender) within five Business Days of receipt of such notification irrespective of whether such notification is given within such period.
     3. No commitment fee is payable to the Facility 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.
  2. Drawing fee
     1. The Company shall pay to the Facility Agent (for distribution to each Lender pro rata to the proportion such Lender’s Commitment bears to the aggregate Total Commitments on the relevant Utilisation Date), a drawing fee in the Base Currency computed at the following rates:
        1. on Utilisation of up to (and including) the first £500,000,000 of the Facility, 0.25 per cent.;
        2. on Utilisation in excess of £500,000,000 up to (and including) £1,500,000,000 of the Facility, 0.50 per cent.;
        3. on Utilisation of the Facility in excess of £1,500,000,000, 0.75 per cent..
     2. The drawing fee is payable in respect of each Utilisation which increases the highest amount previously utilised under the Facility, on the amount of such increase at the rates specified in paragraph (a) above.
     3. The drawing fee shall be payable on the relevant Utilisation Date.
     4. If a Loan is denominated in Dollars then, for the purposes of calculating each Lender’s participation in that Loan for the purpose of payments of drawing fee, the Facility Agent shall calculate the Base Currency Amount of that Loan at the Facility Agent’s Spot Rate of Exchange on the Utilisation Date for that Loan.

1. TAX GROSS UP AND INDEMNITIES
   1. Definitions

In this Agreement:

1. ***Borrower DTTP Filing*** means an H.M. Revenue & Customs’ form DTTP2 duly completed and filed by the relevant Borrower, which:
   1. where it relates to a Treaty Lender that is an Original Lender, contains the scheme reference number and jurisdiction of tax residence stated opposite that Lender’s name in Schedule 1 (*The Original Lenders*) and is filed with H.M. Revenue & Customs within 30 Business Days of the date of this Agreement; or
   2. where it relates to a Treaty Lender that is a New Lender or an Increase Lender, contains the scheme reference number and jurisdiction of tax residence stated in respect of that Lender in the relevant Transfer Certificate or Increase Confirmation, and is filed with H.M. Revenue & Customs within 30 Business Days of the relevant Transfer Date.
2. ***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.
3. ***Qualifying Lender*** means a Lender 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; or

* 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:
        1. a company resident in the United Kingdom for United Kingdom tax purposes; 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;
     3. a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company; or
  2. a Treaty Lender.

1. ***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.
2. ***Tax Credit*** means a credit against, relief or remission for, or repayment of any Tax.
3. ***Tax Deduction*** means a deduction or withholding for or on account of Tax from a payment under a Finance Document, other than a FATCA Deduction.
4. ***Tax Payment*** means either the increase in a payment made by an Obligor to a Finance Party under Clause 13.2 (*Tax gross-up*) or a payment under Clause 13.3 (*Tax indemnity*).
5. ***Treaty Lender*** means, in respect of each Borrower, a Lender which:
   1. is treated as a resident of a Treaty State for the purposes of the Treaty;
   2. does not carry on a business in the United Kingdom through a permanent establishment with which that Lender’s participation in the Loans is effectively connected; and
   3. fulfils all conditions which must be fulfilled under the Treaty for residents of such Treaty State to obtain full exemption from taxation imposed by the United Kingdom, except for this purpose it is assumed that there are fulfilled:
      1. any condition contained in the Treaty which relates to the amount or terms of the Loan or to there being or not being a special relationship between the Borrower and a Finance Party or between both of them and another person by reason of which the amount of interest exceeds the amount which would have been paid in the absence of such relationship; and
      2. any necessary procedural formalities.
6. ***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.
7. ***UK Non-Bank Lender*** means a Lender falling within paragraph (b) of the definition of Qualifying Lender.

Unless a contrary indication appears, in this Clause 13 a reference to ***determines*** or ***determined*** means a determination made in the absolute discretion of the person making the determination.

* 1. Tax gross-up
     1. Each Obligor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
     2. The Company 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 Facility Agent accordingly. Similarly, a Lender shall notify the Facility Agent on becoming so aware in respect of a payment payable to that Lender. If the Facility Agent receives such notification from a Lender it shall notify the Company and that Obligor.
     3. 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.
     4. 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:
        1. 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
        2. the relevant Lender is a Qualifying Lender solely by virtue of paragraph (a)(ii) of the definition of Qualifying Lender and:
           1. 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
           2. the payment could have been made to the Lender without any Tax Deduction if that Direction had not been made; or
        3. the relevant Lender is a Qualifying Lender solely by virtue of paragraph (a)(ii) of the definition of Qualifying Lender and:
           1. the relevant Lender has not given a Tax Confirmation to the Company; and
           2. 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
        4. 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) and (h) (as applicable) below.
     5. 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.
     6. 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 Facility 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.
     7. 1. 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 in a timely fashion for that Obligor to obtain authorisation to make that payment without a Tax Deduction.
        2. 1. A Treaty Lender which becomes a Party on the day on which this Agreement is entered into that holds a passport under the HMRC DT Treaty Passport scheme, and which wishes that scheme to apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence opposite its name in Schedule 1 (*The Original Lenders*); and
           2. 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 confirm its scheme reference number and its jurisdiction of tax residence in the Transfer Certificate or Increase Confirmation which it executes,

and, having done so, that Lender shall be under no obligation pursuant to paragraph (i) above.

* + 1. If a Lender has confirmed its scheme reference number and its jurisdiction of tax residence in accordance with paragraph (g)(ii) above and:
       1. a Borrower making a payment to that Lender has not made a Borrower DTTP Filing in respect of that Lender; or
       2. a Borrower making a payment to that Lender has made a Borrower DTTP Filing in respect of that Lender but:
          1. that Borrower DTTP Filing has been rejected by H.M. Revenue & Customs; or
          2. H.M. Revenue & Customs has not given the Borrower authority to make payments to that Lender without a Tax Deduction within 60 days of the date of the Borrower DTTP Filing,

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

* + 1. If a Lender has not confirmed its scheme reference number and jurisdiction of tax residence in accordance with paragraph (g)(ii) above, no Obligor shall make a Borrower DTTP Filing or file any other form relating to the HMRC DT Treaty Passport scheme in respect of that Lender's Commitment(s) or its participation in any Loan unless the Lender otherwise agrees.
    2. A Borrower shall, promptly on making a Borrower DTTP Filing, deliver a copy of that Borrower DTTP Filing to the Agent for delivery to the relevant Lender.
    3. Each Lender represents and warrants to each Obligor on the day on which this Agreement is entered into or if later the day on which that Lender becomes a Party that, unless it has prior thereto notified the Company in writing to the contrary (including appropriate details of its actual status to allow the Borrower to determine whether a Tax Deduction need be made), it is a Lender falling within paragraph (a) or (b) of the definition of Qualifying Lender.
    4. Each Lender shall promptly notify the Company and the Facility Agent if there is any change in the position from that set out in the representation and warranty given pursuant to paragraph (k) above or from that set out in the notification given to the Company pursuant to paragraph (k) above.
  1. Tax indemnity
     1. The Company shall (within five Business Days of demand by the Facility 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 relation to a sum received or receivable from an Obligor in respect of a Finance Document as a result of a change after the date it becomes a Party in (or in the interpretation, administration or application of) any law or treaty or any published practice or concession of any relevant taxing authority.
     2. Paragraph (a) above shall not apply:
        1. with respect to any Tax assessed on a Finance Party:
           1. 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
           2. 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

* + - 1. to the extent a loss, liability or cost:
         1. is compensated for by a payment or an increased payment under Clause 13.2 (*Tax gross‑up*), Clause 13.6 (*Stamp Taxes*) or Clause 13.7 (*Value added tax*);
         2. would have been compensated for by an increased payment under Clause 13.2 (*Tax gross-up*) or Clause 13.6 (*Stamp Taxes*) but was not so compensated solely because one of the exclusions in paragraph (d) of Clause 13.2 (*Tax gross-up*) or the exclusion in Clause 13.6 (*Stamp Taxes*) applied; or
         3. relates to a FATCA Deduction required to be made by a Party.
    1. A Protected Party making, or intending to make, a claim under paragraph (a) above shall promptly notify the Facility Agent of the event which will give, or has given, rise to the claim, following which the Facility Agent shall notify the Borrower.
    2. A Protected Party shall, on receiving a payment from an Obligor under this Clause 13.3, notify the Facility Agent.
  1. Tax Credit

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

* + 1. a Tax Credit is attributable either to the circumstances giving rise to the Obligor’s obligation to make a Tax Payment or to that Tax Payment; and
    2. that Finance Party has obtained and utilised (whether on an affiliated group basis or otherwise) 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.

* 1. Lender Status Confirmation

Each Lender which becomes a Party to this Agreement after the date of this Agreement shall indicate, in the Transfer Certificate or 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:

* + 1. not a Qualifying Lender;
    2. a Qualifying Lender (other than a Treaty Lender); or
    3. a Treaty Lender.

If a New Lender or an Increase Lender fails to indicate its status in accordance with this Clause ‎13.5 then such New Lender or Increase 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 or Increase Confirmation shall not be invalidated by any failure of a Lender to comply with this Clause ‎13.5.

* 1. Stamp taxes

The Company shall pay and, within five Business Days of demand, indemnify each Finance Party against any cost, loss or liability that Finance Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document provided that this Clause 13.6 shall not apply in respect of any stamp duty, registration or other similar Taxes payable in respect of an assignment or transfer or sub participation or sub contract by a Lender of any of its rights or obligations under a Finance Document.

* 1. Value added tax
     1. All amounts expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).
     2. If VAT is or becomes chargeable on any supply made by any Finance Party (the ***Supplier***) to any other Finance Party (the ***Recipient***) under a Finance Document, and any Party other than the Recipient (the ***Relevant Party***) is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):
        1. (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
        2. (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
     3. 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.
     4. Any reference in this Clause 13.7 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).
  2. FATCA Information
     1. Subject to paragraph (c) below, each Party shall, within 10 Business Days of a reasonable request by another Party:
        1. confirm to that other Party whether it is:
           1. a FATCA Exempt Party; or
           2. not a FATCA Exempt Party; and
        2. supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party’s compliance with FATCA.
     2. If a Party confirms to another Party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
     3. Paragraph (a) above shall not oblige any Party to do anything which would or might in its reasonable opinion constitute a breach of:
        1. any law or regulation;
        2. any fiduciary duty; or
        3. any duty of confidentiality.
     4. If a Party fails to confirm its status or to supply forms, documentation or other information requested in accordance with paragraph (a) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents as if it is not a FATCA Exempt Party and until such time as the Party in question provides the requested confirmation, forms, documentation or other information.
     5. If a Borrower is a US Tax Obligor, or where the Agent reasonably believes that its obligations under FATCA require it, each Lender shall, within 10 Business Days of:
        1. where a Borrower is a US Tax Obligor and the relevant Lender is an Original Lender, the date of this Agreement;
        2. where a Borrower is a US Tax Obligor and the relevant Lender is a New Lender, the relevant Transfer Date;
        3. the date a new US Tax Obligor accedes as a Borrower; or
        4. where the Borrower is not a US Tax Obligor, the date of a request from the Agent,

supply to the Agent:

* + - 1. a withholding certificate on Form W-8 or Form W-9 (or any successor form) (as applicable); or
      2. any withholding statement and other documentation, authorisations and waivers as the Agent may require to certify or establish the status of such Lender under FATCA.

The Agent shall provide any withholding certificate, withholding statement, documentation, authorisations and waivers it receives from a Lender pursuant to this paragraph (e) to the Borrower and shall be entitled to rely on any such withholding certificate, withholding statement, documentation, authorisations and waivers provided without further verification. The Agent shall not be liable for any action taken by it under or in connection with this paragraph (e).

* + 1. Each Lender agrees that if any withholding certificate, withholding statement, documentation, authorisations and waivers provided to the Agent pursuant to paragraph (e) above is or becomes materially inaccurate or incomplete, it shall promptly update such withholding certificate, withholding statement, documentation, authorisations and waivers or promptly notify the Agent in writing of its legal inability to do so. The Agent shall provide any such updated withholding certificate, withholding statement, documentation, authorisations and waivers to the Borrower. The Agent shall not be liable for any action taken by it under or in connection with this paragraph (f).
  1. FATCA Deduction
     1. Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.
     2. Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction) notify the Party to whom it is making the payment and, in addition, shall notify the Company, the Agent and the other Finance Parties.

1. INCREASED COSTS
   1. Increased costs
      1. Subject to Clause 14.3 (*Exceptions*) the Company shall, within five Business Days of a demand by the Facility 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 made after the date of this Agreement, (ii) compliance with any law or regulation made by any governmental or regulatory authority made after the date of this Agreement or (iii) the implementation or application of, or compliance with, Basel III or any other law or regulation which implements Basel III.

In this Agreement:

1. ***Basel III*** means:
   1. 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;
   2. the rules for global systemically important banks contained in “Global systemically important banks: assessment, methodology and the additional loss absorbency requirement – Rules text” published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and
   3. any further guidance or standards published by the Basel Committee on Banking Supervision relating to “Basel III”.

***Increased Costs*** means:

* + - 1. a reduction in the rate of return from the Facility or on a Finance Party’s (or its Affiliate’s) overall capital;
      2. an additional or increased cost; or
      3. a reduction of any amount due and payable under any Finance Document,

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

* 1. Increased cost claims
     1. A Finance Party intending to make a claim pursuant to Clause 14.1 (*Increased costs*) shall notify the Facility Agent of the event giving rise to the claim, following which the Facility Agent shall promptly notify the Borrower.
     2. Each Finance Party shall, as soon as practicable after giving the notification referred to in paragraph (a) above, provide a certificate confirming (without prejudice to Clause 26 (*Conduct of business by the Finance Parties*) the amount and basis of calculation of its Increased Costs showing the calculation thereof in reasonable detail.
  2. Exceptions
     1. Clause 14.1 (*Increased costs*) does not apply to the extent any Increased Cost is:
        1. attributable to a Tax Deduction required by law to be made by an Obligor;
        2. attributable to a FATCA Deduction required to be made by a Party;
        3. compensated for by Clause 13.3 (*Tax indemnity*) (or would have been compensated for under Clause 13.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 13.3 (*Tax indemnity*) applied) or by Clause 13.6 (*Stamp Taxes*) or Clause 13.7 (*Value added tax*);
        4. attributable to the wilful breach by the relevant Finance Party or any of its Affiliates of any law or regulation;
        5. in relation to Increased Costs referred to in Clause 14.1(a)(iii) only, attributable to any day more than 6 months before the first date on which the relevant Finance Party had (or, if earlier, could reasonably be expected to have) sufficient details of the relevant Increased Cost to enable it to calculate its amount; or
        6. 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).
     2. In this Clause 14.3, a reference to a ***Tax Deduction*** has the same meaning given to the term in Clause 13.1 (*Definitions*).

1. OTHER INDEMNITIES
   1. Currency indemnity
      1. 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:
         1. making or filing a claim or proof against that Obligor;
         2. obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

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

* + 1. 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.
  1. Other indemnities

The Company shall, within five Business Days of demand, indemnify each Finance Party against any cost, loss or liability incurred by that Finance Party as a result of:

* + 1. the occurrence of any Event of Default;
    2. 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 27 (*Sharing among the Finance Parties*);
    3. funding, or making arrangements to fund, its participation in a Loan 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); or
    4. a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by a Borrower or the Company.
  1. Indemnity to the Agents
     1. The Company shall promptly indemnify the Facility Agent against any out-of-pocket cost, loss or liability incurred by the Facility Agent (acting reasonably) as a result of it:
        1. investigating any event which it reasonably believes is a Potential Event of Default or an Event of Default; or
        2. acting or relying on any notice, request or instruction received from an Obligor which it reasonably believes to be genuine, correct and appropriately authorised but which is not in fact genuine, correct or appropriately authorised.
     2. The Company shall promptly indemnify the US$ Base Rate Agent against any out-of-pocket cost, loss or liability incurred by the US$ Base Rate Agent (acting reasonably) as a result of it acting or relying on any notice, request or instruction received from an Obligor which it reasonably believes to be genuine, correct and appropriately authorised but which is not in fact genuine, correct or appropriately authorised.

1. MITIGATION BY THE LENDERS
   1. Mitigation
      1. Each Finance Party shall, in consultation with the Company, 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 8.1 (*Illegality*), Clause 13 (*Tax gross-up and indemnities*) or Clause 14 (*Increased costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
      2. Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.
   2. Limitation of liability
      1. The Company shall 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 16.1 (*Mitigation*).
      2. A Finance Party is not obliged to take any steps under Clause 16.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.
2. COSTS AND EXPENSES
   1. Transaction expenses

The Company shall pay to the Facility Agent, within 30 days of receipt by it of a copy of the relevant invoice, the amount of all out-of-pocket costs and expenses (including legal fees) reasonably incurred by it in connection with the negotiation, preparation, printing and execution of this Agreement and any other documents referred to in this Agreement up to the limit stated in the Agency Fee Letter (if any).

* 1. Amendment costs

If (a) the Company (or any person authorised on behalf of the Company) requests an amendment, waiver or consent or (b) an amendment is required pursuant to Clause 28.10 (*Change of currency*), the Company shall, within 30 days of receipt by it of a copy of the relevant invoice, reimburse the Facility Agent for the amount of all out-of-pocket costs and expenses (including legal fees) reasonably incurred by the Facility Agent in responding to, evaluating, negotiating or complying with that request or requirement.

* 1. Enforcement costs

The Company shall, within 15 days of receipt by it of a copy of the relevant invoice, pay to each Finance Party the amount of all out-of-pocket costs and expenses (including legal fees) incurred by that Finance Party in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

1. GUARANTEE AND INDEMNITY
   1. Guarantee and indemnity

Each Guarantor irrevocably and unconditionally jointly and severally:

* + 1. guarantees to each Finance Party punctual performance by each Borrower of all that Borrower’s payment obligations under the Finance Documents;
    2. undertakes with each Finance Party that whenever a Borrower does not pay any amount when due under or in connection with any Finance Document, it shall immediately on demand pay that amount as if it was the principal obligor; and
    3. indemnifies each Finance Party immediately on demand against any cost, loss or liability suffered by that Finance Party if any payment obligation guaranteed by it is or becomes unenforceable, invalid or illegal. The amount of the cost, loss or liability shall be equal to the amount which that Finance Party would otherwise have been entitled to recover.
  1. 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.

* 1. Reinstatement

If any payment by an Obligor or any discharge given by a Finance Party (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is avoided or reduced as a result of insolvency or any similar event:

* + 1. the liability of each Obligor shall continue as if the payment, discharge, avoidance or reduction had not occurred; and
    2. each Finance Party shall be entitled to recover the value or amount of that security or payment from each Obligor, as if the payment, discharge, avoidance or reduction had not occurred.
  1. Waiver of defences

The obligations of each Guarantor under this Clause 18 will not be affected by an act, omission, matter or thing (other than an express release in writing) which, but for this Clause, would reduce, release or prejudice any of its obligations under this Clause 18 (without limitation and whether or not known to it or any Finance Party) including:

* + 1. any time, waiver or consent granted to, or composition with, any Obligor (except to the extent set out in such time, waiver or consent) or other person;
    2. 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;
    3. 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;
    4. 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;
    5. any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
    6. any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
    7. any insolvency or similar proceedings.
  1. 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 18. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

* 1. Appropriations

If at any time there is any amount due but unpaid by an Obligor to a Finance Party under the Finance Documents, then until such amount has been irrevocably paid in full, such Finance Party (or any trustee or agent on its behalf) may:

* + 1. 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 such amount, or apply and enforce the same in such manner and order as it sees fit (whether against such amount or otherwise); and
    2. hold in an interest-bearing suspense account any moneys (bearing interest at market rates) received from any Guarantor or on account of any Guarantor’s liability under this Clause 18.
  1. Deferral of the 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, then, unless the Facility 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:

* + 1. to be indemnified by an Obligor;
    2. to claim any contribution from any other Guarantor of any Obligor’s obligations under the Finance Documents;
    3. 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;
    4. 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 18.1 (*Guarantee and Indemnity*);
    5. to exercise any right of set-off against any Obligor; and/or
    6. 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 Facility Agent or as the Facility Agent may direct for application in accordance with Clause 28 (*Payment mechanics*).

* 1. 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.

1. REPRESENTATIONS

Each of the Obligors makes the representations set out in this Clause 19 (other than Clause 19.8 (*Latest Consolidated Accounts*) to each Finance Party on the date of this Agreement.

* 1. Status and due authorisation

It is a company duly incorporated and validly existing under English law and has the power to enter into and perform its obligations under the Finance Documents to which it is party and has taken all necessary action to authorise the execution, delivery and performance of the Finance Documents to which it is party.

* 1. Binding obligations

The Finance Documents to which it is party constitute its legal, valid and binding obligations (subject only to the Reservations and any other qualifications contained in the legal opinion referred to in paragraph 2 of Schedule 2 (*Conditions Precedent*)).

* 1. Non-conflict with other obligations

The execution, delivery and performance of the Finance Documents to which it is party does not and will not contravene:

* + 1. any law or regulation to which it is subject; or
    2. its memorandum or articles of association; or
    3. any loan stock, debenture, document, deed, contract or other undertaking to which it is a party or which is binding upon it or any of its assets, nor result in the creation or imposition of any Encumbrance on any of its assets in any such case in any manner which would materially and adversely affect its financial condition or its ability to perform its obligations under the Finance Documents to which it is party.
  1. No litigation

No litigation, arbitration or administrative proceedings are current or pending or, to its knowledge threatened, which in any such case would materially and adversely affect its financial condition or (in the case of the Company) that of the Group taken as a whole or its ability to perform its obligations under the Finance Documents to which it is party.

* 1. No default

No event has occurred which:

* + 1. constitutes a default under or in respect of any loan stock, debenture, document, deed, contract or other undertaking to which it is a party or by which it may be bound (including, inter alia, this Agreement); or
    2. with the giving of notice, lapse of time or other condition specified therein might constitute a default under or in respect thereof,

and which, in either case, would materially and adversely affect its financial condition or its ability to perform its obligations under the Finance Documents to which it is party.

* 1. Material authorisations

All (if any) material authorisations, approvals or consents required in connection with the execution, delivery and performance by it of the Finance Documents to which it is party have been obtained and are in full force and effect.

* 1. Sanctions

To the best of its knowledge (having made due enquiry), neither it nor any of its Subsidiaries:

* + 1. is a Restricted Party;
    2. is or ever has been subject to any claim, proceeding, formal notice or investigation with respect to Sanctions; or
    3. is engaging or has engaged in any transaction that has the purpose of evading or avoiding, or breaches or attempts to breach, directly or indirectly, any Sanctions applicable to it.
  1. Latest Consolidated Accounts

In the case of the Company, the Latest Consolidated Accounts delivered pursuant to Clause 20.1(a) (*Information*) after the date of this Agreement, give a true and fair view of the consolidated financial condition of the Company and its Subsidiary Undertakings as at the date at which they are prepared, subject to any matters referred to in the report of the Auditors accompanying such accounts.

* 1. Repetition
     1. The representations set out in this Clause 19 (other than Clause 19.8 (*Latest Consolidated Accounts*) shall be deemed to be made by the Company and by each other Obligor on the first day of each Interest Period by reference to the facts and circumstances then existing.
     2. The representation set out in Clause 19.8 (*Latest Consolidated Accounts*) shall be deemed to be made by the Company on the first day of each Interest Period following the delivery of the Latest Consolidated Accounts for the financial year of the Company ending February 2015 by reference to the facts and circumstances then existing.

1. UNDERTAKINGS

The undertakings in this Clause 20 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.

* 1. Information

The Company will furnish to the Facility Agent in sufficient copies for each Lender:

* + 1. at the same time as they are sent to the Company’s shareholders, but in any event no later than six months after the end of the relevant financial year, the Latest Consolidated Accounts;
    2. at the same time as they are sent to the Company’s shareholders, but in any event within 90 days of the period to which they relate, any interim statements of the Company;
    3. within nine months of the end of the relevant financial year, the audited unconsolidated financial statements of each Borrower;
    4. a copy of all notices or other documents despatched by the Company to the Company’s shareholders (or any class thereof) when despatched to the shareholders;
    5. promptly, such further information in the possession or control of the Company regarding the financial condition and operations of the Company as the Facility Agent shall from time to time reasonably require; and
    6. together with each set of consolidated financial statements delivered to the Facility Agent pursuant to paragraph (a) above, deliver to the Facility Agent a Compliance Certificate, signed by a senior financial officer and another authorised signatory which confirms that the calculations set out in the Compliance Certificate have been properly made in accordance with Clause 21 (*Financial Condition*).
  1. Requirements as to financial statements
     1. The Company shall ensure that each set of financial statements delivered by it pursuant to paragraph (a) of Clause 20.1 (*Information*) is prepared using GAAP, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements unless, in relation to any set of financial statements, it notifies the Facility Agent that there has been a change in GAAP, the accounting practices or reference periods or the application thereof and it delivers to the Facility Agent:
        1. a description of any change necessary for those financial statements to reflect the GAAP, accounting practices and reference periods or the application thereof upon which the Original Financial Statements were prepared; and
        2. sufficient information, in form and substance as may be reasonably required by the Facility Agent, to enable the Lenders to determine whether Clause 21 (*Financial Condition*) has been complied with and make an accurate comparison between the financial position indicated in those financial statements and the Original Financial Statements.

Any reference in this Agreement to financial statements to which paragraphs (i) and (ii) above apply, shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.

* + 1. If the Company notifies the Facility Agent of a change in accordance with paragraph (a) above the Company and the Facility Agent shall enter into negotiations in good faith with a view to agreeing any amendments to this Agreement which are necessary as a result of the change. To the extent practicable these amendments will be such as to ensure that the change does not result in any material alteration in the commercial effect of the obligations in this Agreement. If any amendments are agreed they shall take effect and be binding on each of the Parties in accordance with their terms.
  1. Notification of defaults

The Company will notify the Facility Agent in writing of any Event of Default promptly upon its becoming aware of the occurrence thereof.

* 1. Pari passu ranking

The Company will procure that sums owing or incurred under this Agreement by any Obligor rank at least pari passu with all other unsecured unsubordinated indebtedness in respect of moneys borrowed of that Obligor except to the extent of laws applicable to creditors’ rights generally.

* 1. Change of business

The Company hereby undertakes that, except with the prior written consent of the Facility Agent (acting on the instructions of the Majority Lenders), it will not and will procure that none of its Subsidiary Undertakings shall whether by acquisition or otherwise make any alteration to the nature of its business which would result in a fundamental change in the general nature of the business of the Company and its Subsidiary Undertakings taken as a whole from that of the manufacture and sale by retail of foods and other products.

* 1. Limitation on secured borrowings

The Company undertakes that, except with the prior written consent of the Facility Agent (acting on the instructions of the Majority Lenders), it will procure that the aggregate principal amount (together with any fixed or minimum premium payable on final repayment) for the time being outstanding in respect of all Borrowings (other than amounts for the time being owing to and beneficially owned by a member of the Group) by the Company or any member of the Group (excluding Tesco Personal Finance Group Limited, trading as Tesco Bank) which is subject to any Encumbrance over assets of a member of the Group shall not at any time exceed a sum equal to 0.5 times the Adjusted Capital and Reserves.

* 1. Use of websites
     1. The Company 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 Company and the Facility Agent (the ***Designated Website***) if:
        1. the Facility Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;
        2. both the Company and the Facility Agent are aware of the address of and any relevant password specifications for the Designated Website; and
        3. the information is in a format previously agreed between the Company and the Facility Agent.
     2. If any Lender (a ***Paper Form Lender***) does not agree to the delivery of information electronically, then the Facility Agent shall notify the Company accordingly and the Company shall supply the information to the Facility Agent (in sufficient copies for each Paper Form Lender) in paper form. In any event the Company shall supply the Facility Agent with at least one copy in paper form of any information required to be provided by it.
     3. The Facility 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 Company and the Facility Agent.
     4. The Company shall promptly upon becoming aware of its occurrence notify the Facility Agent if:
        1. the Designated Website cannot be accessed due to technical failure;
        2. the password specifications for the Designated Website change;
        3. any new information which is required to be provided under this Agreement is posted onto the Designated Website;
        4. any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or
        5. the Company 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 Company notifies the Facility Agent under paragraph (d)(i) or paragraph (d)(v) above, all information to be provided by the Company under this Agreement after the date of that notice shall be supplied in paper form unless and until the Facility Agent and each Website Lender is satisfied that the circumstances giving rise to the notification are no longer continuing.

* 1. Know your customer requirements
     1. Each Obligor must promptly on the request of any Finance Party supply to that Finance Party any documentation or other evidence within its control which is required by that Finance Party (whether for itself, on behalf of any Finance Party or any prospective new Lender) to enable a Finance Party or prospective new Lender to carry out all know your customer requirements.
     2. Each Lender must promptly on the request of the Facility Agent supply to the Facility Agent any documentation or other evidence which is reasonably required by the Facility Agent to carry out all know your customer requirements.
  2. Sanctions
     1. No member of the Group shall use, lend, contribute or otherwise make available any part of the proceeds of any Utilisation or other transaction contemplated by this Agreement directly or indirectly:
        1. to any Restricted Party; or
        2. in any other manner that, at the time of such funding, would result in a member of the Group being in breach of any Sanctions or becoming a Restricted Party.
     2. Each member of the Group must take reasonable measures to ensure that appropriate controls and safeguards are in place designed to prevent any action being taken that would be contrary to paragraph (a) above, where failure to do is reasonably likely to result in a violation by a Lender of such Sanctions.
  3. Existing RCF and New Loan Transactions
     1. The Company undertakes that it shall not (and shall procure that no other member of the Group shall) utilise the Existing RCF without cancelling an amount of the Total Commitments equal to the amount of the Existing RCF that is available to it and/or any other member(s) of the Group (including any restricted portion of the Existing RCF that has become available as contemplated in Clause 8.6(f)(ii) (*Mandatory prepayment and cancellation*)) on or before the date of receipt of proceeds by any member of the Group under the Existing RCF. Any such cancellation shall reduce the Commitments of the Lenders rateably.
     2. Until such time as at least £1,300,000,000 of the Total Commitments have been cancelled as a result of entering into New Loan Transactions, the Company undertakes that it shall not (and shall procure that no other member of the Group shall) utilise any facility provided under a New Loan Transaction without cancelling an amount of the Total Commitments equal to the Loan Reduction Amount in respect of that New Loan Transaction on or before the date of receipt of proceeds by any member of the Group under the New Loan Transaction. Any such cancellation shall reduce the Commitments of the Lenders rateably
  4. Notification of New Loan Transactions and availability of Existing RCF
     1. The Company will notify the Facility Agent in writing:
        1. promptly upon (and in any event within two Business Days of) entering into any New Loan Transaction; and
        2. promptly and in any event within two Business Days of it being satisfied that the Existing RCF is available to it for utilisation.
     2. The Company undertakes that when it considers (in its absolute discretion) that it has sufficient information available to it and a reasonable prospect of obtaining the support of the majority lenders (as defined in the Existing RCF) under the Existing RCF, it will as soon as reasonably practicable thereafter if the Company determines it is necessary in order to give the confirmation required by Clause 8.6(a)(ii) (*Mandatory prepayment and cancellation*):
        1. seek a confirmation from the majority lenders (as defined in the Existing RCF) that the Existing RCF is available to it for utilisation; or
        2. seek any necessary waiver under the Existing RCF in order to make the Existing RCF available to it for utilisation.

1. Financial condition
   1. Financial Condition

The Company shall ensure that the ratio of Consolidated EBITDA to Consolidated Net Interest Charges for each Relevant Period equals or exceeds 3:1;

* 1. Financial Definitions

In this Agreement:

***Consolidated Net Interest Charges*** means, in respect of each Relevant Period, the aggregate amount of the interest payable by the Group (excluding Tesco Personal Finance Group Limited, trading as Tesco Bank) in respect of that Relevant Period less the amount of interest receivable by the Group (excluding Tesco Personal Finance Group Limited, trading as Tesco Bank) in respect of such Relevant Period, in each case as determined from the latest consolidated financial statements of the Group delivered pursuant to paragraph (a) of Clause 20.1 (*Information*) and the Compliance Certificate delivered to the Facility Agent pursuant to paragraph (g) of Clause 20.1 (*Information*) and in each case excluding any amounts arising from fair value changes in non-hedge accounted derivative instruments and the ineffective portions of any hedge accounted financial instruments where the same are identified in the income statement, statement of comprehensive income, or statement of changes to equity, net finance pension costs and IAS 39 fair value remeasurements.

1. ***Consolidated EBITDA*** means in respect of any Relevant Period, the total operating profit of the Group (excluding Tesco Personal Finance Group Limited, trading as Tesco Bank) for continuing operations, acquisitions (as a component of continuing operations) and discontinued operations as set out in IFRS 5 attributable to that Relevant Period, calculated by reference to the relevant Latest Consolidated Accounts of the Group delivered pursuant to paragraph (a) of Clause 20.1 (*Information*) (before Tax, depreciation, amortisation, impairment, minority interests and interest payable by the Group and excluding any exceptional profits or losses on the sale of or termination of an operation, exceptional costs of a reorganisation or restructuring and any exceptional profits or losses on the disposals of fixed assets). For the avoidance of doubt, fair value adjustments relating to non-hedge accounted financial derivative instruments, non-cash increases or decreases in retirement obligations and non-cash charges in respect of equity settled employee benefit schemes shall not be reflected in the calculation of Consolidated EBITDA.

***Relevant Period*** means each period of twelve months ending on the last day of the Company's financial year (with adjustments made pursuant to Clause 21.5 (*Pro Forma Basis*)).

* 1. Accounting Terms

All expressions used in the definitions of this Clause 21 (*Financial condition*) which are not otherwise defined herein shall be construed in accordance with GAAP (as used in the Original Financial Statements).

* 1. Financial Testing

The financial covenant set out in Clause 21.1 (*Financial Condition*) shall be tested by reference to each of the financial statements and/or each Compliance Certificate delivered pursuant to paragraphs (a), (b) and (g) of Clause 20.1 (*Information*).

* 1. Pro forma Basis

Consolidated EBITDA for any Relevant Period (in which any acquisition or disposal is made by any member of the Group) will be calculated for the purposes of determining the ratio of Consolidated EBITDA on a pro forma basis as if the relevant acquisition or disposal had taken place at the beginning of the Relevant Period.

1. EVENTS OF DEFAULT

Each of the events or circumstances set out in this Clause 22 is an Event of Default (whether or not caused by any reason whatsoever outside the control of the Company or of any other person):

* 1. Failure to Pay

An Obligor fails to pay any principal or interest due under the Finance Documents within 2 Business Days of its due date or does not pay any other amount due under the Finance Documents within 10 Business Days of its due date.

* 1. Financial condition

Any requirement of Clause 20.11 (*Financial condition*) is not satisfied.

* 1. Other Obligations

An Obligor fails to perform any of its other obligations under the Finance Documents and, in the case of a failure capable of being remedied, does not, within 30 days after the relevant Obligor became aware of the failure, remedy the failure to the Facility Agent’s satisfaction.

* 1. Misrepresentation

Any representation, warranty or statement which is made by an Obligor in the Finance Documents or which is contained in any guarantee, certificate, statement, or notice provided under or pursuant to any Finance Document proves to be incorrect in any material respect when made or deemed to be made.

* 1. Cross Acceleration
     1. Any indebtedness in respect of Borrowed Moneys of an Obligor or any Principal Subsidiary becomes due and payable before its normal maturity date by reason of default of such Obligor any such Principal Subsidiary; or
     2. Any indebtedness in respect of Borrowed Moneys of an Obligor or any Principal Subsidiary is not paid when due after taking into account any applicable grace periods agreed before such indebtedness fell due; or
     3. Any guarantee or indemnity given by an Obligor or any Principal Subsidiary in respect of any Borrowed Moneys is called and the claim is not paid when due or within any applicable grace period agreed before such claim fell due for payment.
  2. Receivership

An encumbrancer takes possession of, or an administrative or other receiver or any manager or similar officer is appointed in respect of all, or any material part, of the assets of an Obligor or any Principal Subsidiary.

* 1. Execution or Distress

A distress or any other form of execution is levied or enforced upon or sued out against any material part of the assets of an Obligor or any Principal Subsidiary and is not discharged within 21 days.

* 1. Insolvency

An Obligor or any Principal Subsidiary is deemed unable to pay its debts pursuant to section 123(1)(b), (c) or (d) of the Insolvency Act 1986, or an Obligor or any Principal Subsidiary becomes unable to pay its debts as they fall due or the value of its assets falls to less than the amount of its liabilities (taking into account for both these purposes its contingent and prospective liabilities), or an Obligor or any Principal Subsidiary otherwise becomes insolvent or suspends making payments (whether of principal or interest) with respect to all or any class of its debts or announces an intention to do so.

* 1. Winding-up

Any order is made or any resolution is passed for the winding up of an Obligor or any Principal Subsidiary or an Obligor or any Principal Subsidiary or any other Subsidiary of the Company presents any petition for the winding up of such Obligor or such Principal Subsidiary provided that this Clause 22.9 does not apply to (a) a winding up of a Principal Subsidiary for the purpose of reconstruction or amalgamation the terms of which have been previously approved in writing by the Facility Agent with the approval of the Majority Lenders (such approval not to be unreasonably withheld or delayed) or (b) a voluntary solvent winding up of a Principal Subsidiary in connection with the transfer of all or any part of the assets of such Principal Subsidiary to the Company or a Subsidiary of the Company.

* 1. Administration

An administration order is made, or an Obligor or Principal Subsidiary or any other Subsidiary of the Company presents a petition for the appointment of (or appoints) an administrator, in respect of an Obligor or any Principal Subsidiary.

* 1. Rescheduling

Any kind of composition, scheme of arrangement, compromise or other similar arrangement involving an Obligor or any Principal Subsidiary and their respective creditors generally (or any class of them) is made.

* 1. Ownership of the Obligors

Any Obligor (other than the Company) ceases to be a Subsidiary of the Company.

* 1. Acceleration

On and at any time after the occurrence of an Event of Default which is continuing the Facility Agent may, and if so directed by the Majority Lenders shall, by notice to the Company:

* + 1. cancel the Total Commitments whereupon they shall immediately be cancelled;
    2. declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable; and/or
    3. declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand by the Facility Agent on the instructions of the Majority Lenders.

1. CHANGES TO THE LENDERS
   1. Assignments and transfers by the Lenders

Subject to this Clause 23, a Lender (the ***Existing Lender***) may:

* + 1. assign any of its rights; or
    2. transfer by novation any of its rights and obligations,

to another bank or financial institution or any 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 which is, in each case, a Qualifying Lender (as defined in Clause 13.1 (*Definitions*)) (the ***New Lender***).

* 1. Conditions of assignment or transfer
     1. Subject to paragraph (b) below, the prior written consent of the Company is required for an assignment or transfer by a Lender, unless:
        1. the assignment or transfer is to another Lender or an Affiliate of a Lender;
        2. the assignment or transfer occurs after the date falling 12 Months after the date of this Agreement and is to a lender under the Existing RCF or a lenders in respect of a New Loan Transaction (or in each case, an Affiliate of such a lender); or
        3. an Event of Default has occurred and been continuing for a period of 30 consecutive days at the time of the assignment or transfer.
     2. The consent of the Company to an assignment or transfer must not be unreasonably withheld or delayed. The Company will be deemed to have given its consent 5 Business Days after receipt by the Company of the request from the Lender to the Company for consent unless consent is expressly refused by the Company within that time.
     3. No assignment or transfer under this Clause 23.2 will be effective until the Facility Agent has completed all know your customer requirements relating to any person that it is required to carry out in relation to such assignment or transfer. The Facility Agent is not obliged to execute a Transfer Certificate until it has completed all know your customer requirements to its satisfaction.
     4. An assignment will only be effective on receipt by the Facility Agent of written confirmation from the New Lender (in form and substance satisfactory to the Facility Agent) that the New Lender will assume the same obligations to the other Finance Parties as it would have been under if it was an Original Lender.
     5. A transfer will only be effective if the procedure set out in Clause 23.5 (*Procedure for transfer*) is complied with and must either be for a minimum of £10,000,000 or, if less, for the full amount of the Existing Lender’s Commitment.
     6. If:
        1. a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
        2. 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 13 (*Tax gross-up and indemnities*) or Clause 14 (*Increased Costs*),

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

* 1. Assignment or transfer fee

The New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Facility Agent (for its own account) a fee of £2,500.

* 1. Limitation of responsibility of Existing Lenders
     1. Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
        1. the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;
        2. the financial condition of any Obligor;
        3. the performance and observance by any Obligor of its obligations under the Finance Documents or any other documents; or
        4. the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,

and any representations or warranties implied by law are excluded.

* + 1. Each New Lender confirms to the Existing Lender and the other Finance Parties that it:
       1. has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender in connection with any Finance Document; and
       2. 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.
    2. Nothing in any Finance Document obliges an Existing Lender to:
       1. accept a re-transfer from a New Lender of any of the rights and obligations assigned or transferred under this Clause 23; or
       2. support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under the Finance Documents or otherwise.
  1. Procedure for transfer
     1. Subject to the conditions set out in Clause 23.2 (*Conditions of assignment or transfer*) a transfer is effected in accordance with paragraph (b) below when the Facility Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Facility Agent shall, 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.
     2. Subject to Clause 23.8 (*Pro rata interest settlement*), on the Transfer Date:
        1. to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents each of the Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and their respective rights against one another under the Finance Documents shall be cancelled (being the ***Discharged Rights and Obligations***);
        2. 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 and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;
        3. the Agents, the New Lender and other Lenders shall acquire the same rights and assume the same obligations between themselves 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 Agents and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and
        4. the New Lender shall become a Party as a ***Lender***.
  2. Disclosure of information
     1. Any Lender may, in relation to paragraph (i) or (ii) below only after notification to the Company (to the extent permitted by law and regulation), disclose to any of its Affiliates, Representatives and professional advisers (and its Affiliates Representatives and professional advisers) and any other person:
        1. to (or through) whom that Lender assigns or transfers (or may potentially assign or transfer) all or any of its rights and obligations under this Agreement for the purpose of that actual or potential assignment or transfer;
        2. with (or through) whom that Lender enters into (or may potentially enter into) any sub-participation (as well as any person appointed by a Finance Party 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), or any other transaction under which payments are to be made by reference to, this Agreement or any Obligor for the purpose of that actual or potential sub-participation or transaction;
        3. to whom, and to the extent that, information is required to be disclosed by any applicable law or regulation;
        4. to whom, and to the extent that, information is required to be disclosed to a governmental, banking, taxation or other regulatory authority, including rating agencies or a direct or indirect provider of credit protection; or
        5. to whom, and to the extent that, information is required to be disclosed to its professional advisers for the purposes of this Agreement, provided that its professional advisers are made aware that that information must be kept confidential in accordance with the terms of this Clause 22,

any information about any Obligor, the Group and the Finance Documents as that Lender shall consider appropriate if, in relation to paragraph (i) or (ii) above, the person to whom the information is to be given has entered into a Confidentiality Undertaking. This Clause supersedes any previous agreement with that Lender relating to the confidentiality of this information.

* + 1. The obligations under this Clause 22.6 (*Disclosure of information*) shall cease to apply to a Lender twelve months from the earlier of (a) the date on which that Lender ceases to be a party to the Facility Agreement or (b) the Repayment Date.
  1. Confidentiality
  2. Each Finance Party undertakes with each Obligor:
     + 1. to keep confidential and not to disclose to anyone any information (including any projections) relating to the Group, any member of the Group or any Finance Document, which is provided to a Finance Party in relation to the Finance Documents in whatever form, including information given orally or in any document or electronic file or in any other way of representing or recording information which contains or is derived or copied from such information except:
          1. for any information lawfully obtained from any other source, or that is or becomes public knowledge, other than as a direct or indirect result of any breach of any obligation of confidentiality; or
          2. as permitted by Clause 23.6 (*Disclosure of information*) or by a Confidentiality Undertaking envisaged by that Clause;
       2. to ensure that such information is protected with security measures and a degree of care that would apply to that Finance Party’s own confidential information; and
       3. to use that information only for the purpose of, or as permitted by, the Finance Documents.
     1. The obligations in this Clause 23.7 (*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:
        1. the date on which all amounts payable by the Obligors under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be payable; and
        2. the date on which such Finance Party otherwise ceases to be a Finance Party.
  3. Pro rata interest settlement
     1. If the Facility 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 23.5 (*Procedure for transfer*)the Transfer Date of which, is after the date of such notification and is not on the last day of an Interest Period):
        1. 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
        2. 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:
           1. when the Accrued Amounts become payable, those Accrued Amounts will be payable to the Existing Lender; and
           2. the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 23.8, have been payable to it on that date, but after deduction of the Accrued Amounts.
     2. In this Clause 23.8 references to “Interest Period” shall be construed to include a reference to any other period for accrual of fees.

1. CHANGES TO THE OBLIGORS

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

1. ROLE OF THE AGENTS
   1. Appointment of the Agents
      1. Each other Finance Party appoints the Facility Agent to act as its agent under and in connection with the Finance Documents.
      2. Each other Finance Party appoints the US$ Base Rate Agent to act as its agent under and in connection with the US$ Base Rate Facility.
      3. Each other Finance Party authorises each Agent to exercise the rights, powers, authorities and discretions specifically given to it under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.
   2. Duties of the Agents
      1. Each Agent shall promptly forward to a Party the original or a copy of any document which is delivered to that Agent for that Party by any other Party.
      2. Except where a Finance Document specifically provides otherwise, each Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
      3. If any Agent receives notice from a Party referring to this Agreement, describing a Potential Event of Default or an Event of Default and stating that the circumstance described is a Potential Event of Default or an Event of Default, it shall promptly notify the Finance Parties.
      4. If any Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than to that Agent) under this Agreement it shall promptly notify the other Finance Parties.
      5. The Facility Agent shall provide to the Company within 5 Business Days of the end of each financial quarter of the Company a list (which may be in electronic form) setting out the names of the Lenders as at that Business Day, their respective Commitments, the address and fax number (and the department or officer, if any, for whose attention any communication is to be made) of each Lender for any communication to be made or document to be delivered under or in connection with the Finance Documents, the electronic mail address and/or any other information required to enable the 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 Facility Agent to that Lender under the Finance Documents.
      6. Each Agent’s duties under the Finance Documents are solely mechanical and administrative in nature.
   3. No fiduciary duties
      1. Nothing in this Agreement constitutes either Agent as a trustee or fiduciary of any other person.
      2. Each Agent shall not be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.
   4. Business with the Group

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

* 1. Rights and discretions of the Agents
     1. Each Agent may rely on:
        1. any representation, notice or document believed by it to be genuine, correct and appropriately authorised; and
        2. 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.
     2. Each Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:
        1. no Potential Event of Default or Event of Default has occurred (unless it has actual knowledge of a Potential Event of Default or an Event of Default arising under Clause 22.1 (*Failure to Pay*));
        2. any right, power, authority or discretion vested in any Party or the Majority Lenders has not been exercised; and
        3. any notice or request made by the Company (other than a Utilisation Request) is made on behalf of and with the consent and knowledge of all the Obligors.
     3. Each Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts.
     4. Each Agent may act in relation to the Finance Documents through its personnel and agents.
     5. Each Agent may disclose to any other Party any information it reasonably believes it has received as an Agent under this Agreement.
     6. Without prejudice to the generality of paragraph (e) above, each Agent may disclose, and on the written request of the Company or the Majority Lenders shall, as soon as reasonably practicable, disclose, the identity of a Defaulting Lender to the Company and to the other Finance Parties.
     7. Notwithstanding any other provision of any Finance Document to the contrary, each Agent is not obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
  2. Majority Lenders’ instructions
     1. Unless a contrary indication appears in a Finance Document, each 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.
     2. Unless a contrary indication appears in a Finance Document, any instructions given by the Majority Lenders will be binding on all the Finance Parties.
     3. Each 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.
     4. In the absence of instructions from the Majority Lenders (or, if appropriate, the Lenders), each Agent may act (or refrain from taking action) as it considers to be in the best interest of the Lenders.
     5. Neither Agent is 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.
  3. Responsibility for documentation

Neither Agent is responsible for:

* + 1. the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Agents, an Obligor or any other person given in or in connection with any Finance Document; or
    2. the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Finance Document.
  1. Exclusion of liability
     1. Without limiting paragraph (b) below (and without prejudice to the provisions of paragraph (e) of Clause 28.11 (*Disruption to Payment Systems etc*)), neither Agent will be liable (including, without limitation, for negligence or any other category of liability whatsoever) for any action taken by it under or in connection with any Finance Document, unless directly caused by its gross negligence or wilful misconduct.
     2. No Party (other than the relevant Agent) may take any proceedings against any officer, employee or agent of any Agent in respect of any claim it might have against such Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of such Agent may rely on this Clause 24.8.
     3. The Facility Agent will not be liable for any delay (or any related consequences) in failing to notify the Company in accordance with Clauses 12.3(b) (*Commitment fee*) or 12.5(b) (*Utilisation fee*).
     4. Nothing in this Agreement will oblige either Agent to satisfy any know your customer requirement in relation to the identity of any person on behalf of any Finance Party.
     5. Each Finance Party confirms to each Agent that it is solely responsible for any know your customer requirements it is required to carry out and that it may not rely on any statement in relation to those requirements made by any other Finance Party.
     6. Neither Agent will 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 relevant Agent if such 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 such Agent for that purpose.
  2. Lenders’ indemnity to the Agents

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 relevant 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) incurred by the relevant Agent (otherwise than by reason of the relevant Agent’s gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to 28.11 (*Disruption to Payment Systems et*c) notwithstanding the Agent’s negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) in acting as Agent under the Finance Documents (unless the relevant Agent has been reimbursed by an Obligor pursuant to a Finance Document).

* 1. Resignation of the Agents
     1. The Facility Agent may resign and appoint one of its Affiliates acting through an office in the United Kingdom as successor by giving notice to the other Finance Parties and the Company, subject to paragraph (f) below.
     2. The US$ Base Rate Agent may resign and appoint one of its Affiliates acting through an office in the United States as successor by giving notice to the other Finance Parties and the Company, subject to paragraph (f) below.
     3. Alternatively each Agent may, subject to paragraph (f) below, resign by giving notice to the other Finance Parties and the Company, in which case the Majority Lenders (after consultation with the Company) may appoint a successor Agent.
     4. If the Majority Lenders have not appointed a successor Agent in accordance with paragraph (b) above within 30 days after notice of resignation was given, the Agent (after consultation with the Company) may appoint a successor Agent (acting through an office in the United Kingdom in the case of the Facility Agent and acting through an office in the United States in the case of the US$ Base Rate Agent and in each case which has suitable experience in acting as agent for a syndicate of lenders).
     5. Any 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.
     6. Any Agent’s resignation notice shall only take effect upon the appointment of a successor.
     7. 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 25. Its 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.
     8. After consultation with the Company, the Majority Lenders may, by notice to any Agent, require it to resign in accordance with paragraph (c) above. In this event, such Agent shall resign in accordance with paragraph (c) above.
     9. An Agent shall resign in accordance with paragraph (c) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Agent pursuant to paragraph (d) above) if on or after the date which is three Months before the earliest FATCA Application Date relating to any payment to an Agent under the Finance Documents, either:
        1. an Agent fails to respond to a request under Clause 13.8 (*FATCA Information*) and the Company or a Lender reasonably believes that that Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
        2. the information supplied by an Agent pursuant to Clause 13.8 (*FATCA Information*) indicates that that Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
        3. an Agent notifies the Company and the Lenders that an Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

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

* 1. Replacement of an Agent
     1. After consultation with the Company, the Majority Lenders may, by giving 30 days' notice to that Agent (or, at any time an Agent is an Impaired Agent, by giving any shorter notice determined by the Majority Lenders) replace an Agent by appointing a successor Agent (acting through an office in the United Kingdom).
     2. 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.
     3. The appointment of the successor Agent shall take effect on the date specified in the notice from the Majority Lenders to the retiring Agent. As from this date, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) above) but shall remain entitled to the benefit of Clause ‎25.9 (*Lenders’ indemnity to the Agents*) and this Clause ‎24.11 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date).
     4. 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.
  2. Confidentiality
     1. In acting as agent for the Finance Parties, each 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.
     2. If information is received by another division or department of an Agent, it may be treated as confidential to that division or department and the relevant Agent shall not be deemed to have notice of it.
  3. Relationship with the Lenders
     1. Each Agent may treat each Lender as a Lender entitled to payments under this Agreement and acting through its Facility Office 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.
     2. Any Lender may by notice to the Facility 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 ‎30.6 (*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 30.2 (*Addresses*) and paragraph (a)(ii) of Clause ‎30.6 (*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.
  4. Credit appraisal by the 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 confirms to each Agent that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

* + 1. the financial condition, status and nature of each member of the Group;
    2. the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
    3. whether that Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the 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
    4. the adequacy, accuracy and/or completeness of any information provided by an 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.
  1. Reference Banks

If a Reference Bank (or, if a Reference Bank is not a Lender, the Lender of which it is an Affiliate) ceases to be a Lender, the Facility Agent shall (subject to the agreement of the Company (acting reasonably)) appoint another Lender or an Affiliate of a Lender to replace that Reference Bank.

* 1. Agents’ Management Time

Any amount payable to an Agent under Clause 15.3(a) (*Indemnity to the Agents*), Clause 17.3 (*Enforcement costs*) and Clause 25.9 (*Lenders’ indemnity to the Agents*) shall include the cost of utilising the relevant Agent’s management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the relevant Agent may notify to the Company and the Lenders, and is in addition to any fee paid or payable to the Facility Agent under Clause 12.1 (*Agency fee*).

* 1. Deduction from amounts payable by the Agents

If any Party owes an amount to any Agent under the Finance Documents, such Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which such 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.

1. CONDUCT OF BUSINESS BY THE FINANCE PARTIES

No provision of this Agreement will:

* + 1. interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
    2. 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
    3. oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

1. SHARING AMONG THE FINANCE PARTIES
   1. Payments to Finance Parties

If a Finance Party (a ***Recovering Finance Party***) receives or recovers any amount from an Obligor other than in accordance with Clause 28 (*Payment mechanics*) and applies that amount to a payment due under the Finance Documents then:

* + 1. the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery to the Facility Agent;
    2. the Facility 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 Facility Agent and distributed in accordance with Clause 28 (*Payment mechanics*), without taking account of any Tax which would be imposed on the Facility Agent in relation to the receipt, recovery or distribution; and
    3. the Recovering Finance Party shall, within three Business Days of demand by the Facility Agent, pay to the Facility Agent an amount (the ***Sharing Payment***) equal to such receipt or recovery less any amount which the Facility Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 28.6 (*Partial payments*).
  1. Redistribution of payments

The Facility 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) in accordance with Clause 28.6 (*Partial payments*).

* 1. Recovering Finance Party’s rights
     1. On a distribution by the Facility Agent under Clause 27.2 (*Redistribution of payments*), the Recovering Finance Party will be subrogated to the rights of the Finance Parties which have shared in the redistribution.
     2. If and to the extent that the Recovering Finance Party is not able to rely on its rights under paragraph (a) above, the relevant Obligor shall be liable to the Recovering Finance Party for a debt equal to the Sharing Payment which is immediately due and payable.
  2. 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:

* + 1. each Finance Party which has received a share of the relevant Sharing Payment pursuant to Clause 27.2 (*Redistribution of payments*) shall, upon request of the Facility Agent, pay to the Facility Agent for 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); and
    2. that Recovering Finance Party’s rights of subrogation in respect of any reimbursement shall be cancelled and the relevant Obligor will be liable to the reimbursing Finance Party for the amount so reimbursed.
  1. Exceptions
     1. This Clause 27 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.
     2. 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:
        1. it notified that other Finance Party of the legal or arbitration proceedings; and
        2. that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable after having received notice and did not take separate legal or arbitration proceedings.

1. PAYMENT MECHANICS
   1. Payments to the Agents
      1. On each date on which an Obligor or a Lender is required to make a payment under a Finance Document (other than a payment in respect of the US$ Base Rate Facility), that Obligor or Lender shall make the same available to the Facility 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 Facility Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
      2. On each date on which an Obligor or a Lender is required to make a payment in respect of the US$ Base Rate Facility, that Obligor or Lender shall make the same available to the US$ Base Rate 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 US$ Base Rate Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
      3. Payment shall be made to such account in the principal financial centre of the country of that currency with such bank as the Facility Agent or the US$ Base Rate Agent (as the case may be) specifies.
   2. Distributions by the Agents

Each payment received by an Agent under the Finance Documents for another Party shall, subject to Clause 28.3 (*Distributions to an Obligor*) and Clause 28.4 (*Clawback*), be made available by the relevant 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 relevant Agent by not less than five Business Days’ notice with a bank in the principal financial centre of the country of that currency.

* 1. Distributions to an Obligor

Each Agent may (with the consent of the Obligor or in accordance with Clause 29 (*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.

* 1. Clawback
     1. Where a sum is to be paid to an Agent under the Finance Documents for another Party, such 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.
     2. If an Agent pays an amount to another Party and it proves to be the case that such 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 such Agent shall on demand refund the same to such Agent together with interest on that amount from the date of payment to the date of receipt by such Agent, calculated by such Agent to reflect its cost of funds.
  2. Impaired Agent
     1. If, at any time, an Agent becomes an Impaired Agent, an Obligor or a Lender which is required to make a payment under the Finance Documents to that Agent in accordance with Clause ‎28.1 (*Payments to the Agents*) may instead either:
        1. pay that amount direct to the required recipient(s); or
        2. if in its absolute discretion it considers that it is not reasonably practicable to pay that amount direct to the required recipient(s), pay that amount or the relevant part of that amount to an interest-bearing account held with an Acceptable Bank in relation to which no Insolvency Event has occurred and is continuing, in the name of the Obligor or the Lender making the payment (the ***Paying Party***) and designated as a trust account for the benefit of the Party or Parties beneficially entitled to that payment under the Finance Documents (the ***Recipient Party*** or ***Recipient Parties***).

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

* + 1. All interest accrued on the amount standing to the credit of the trust account shall be for the benefit of the Recipient Party or the Recipient Parties pro rata to their respective entitlements.
    2. A Party which has made a payment in accordance with this Clause ‎27.5 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.
    3. Promptly upon the appointment of a successor Agent in accordance with Clause ‎25.11 (*Replacement of an Agent*), each Paying Party shall (other than to the extent that that Party has given an instruction pursuant to paragraph (e) below) give all requisite instructions to the bank with whom the trust account is held to transfer the amount (together with any accrued interest) to the successor Agent for distribution to the relevant Recipient Party or Recipient Parties in accordance with Clause ‎28.2 (*Distributions by the Agents*).
    4. A Paying Party shall, promptly upon request by a Recipient Party and to the extent:
       1. that it has not given an instruction pursuant to paragraph (d) above; and
       2. that it has been provided with the necessary information by that Recipient Party,

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

* 1. Partial payments
     1. If an Agent receives a payment that is insufficient to discharge all the amounts then due and payable by an Obligor under the Finance Documents, such Agent shall apply that payment towards the obligations of that Obligor under the Finance Documents in the following order:
        1. **first**, in or towards payment pro rata of any unpaid fees, costs and expenses of an Agent under the Finance Documents;
        2. **secondly**, in or towards payment pro rata of any accrued interest, fee or commission due but unpaid under this Agreement;
        3. **thirdly**, in or towards payment pro rata of any principal due but unpaid under this Agreement; and
        4. **fourthly**, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.
     2. The Facility Agent shall, if so directed by the Majority Lenders, vary the order set out in paragraphs (a)(ii) to (iv) above.
     3. Paragraphs (a) and (b) above will override any appropriation made by an Obligor.
  2. No 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.

* 1. Business Days
     1. 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).
     2. 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.
  2. Currency of account
     1. 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.
     2. A repayment of a Loan or Unpaid Sum or a part of a Loan or Unpaid Sum shall be made in the currency in which that Loan or Unpaid Sum is denominated on its due date.
     3. 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.
     4. Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
     5. Any amount expressed to be payable in a currency other than the Base Currency shall be paid in that other currency.
  3. Change of currency
     1. 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:
        1. 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 Facility Agent (after consultation with the Company); and
        2. 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 Facility Agent (acting reasonably and after consultation with the Company).
     2. If a change in any currency of a country occurs, this Agreement will, to the extent the Facility Agent (acting reasonably and after consultation with the Company) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the London Interbank Market and otherwise to reflect the change in currency.
  4. Disruption to Payment Systems etc.

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

* + 1. the Facility Agent may, and shall if requested to do so by the Company, consult with the Company with a view to agreeing with the Company such changes to the operation or administration of the Facility as the Facility Agent may deem necessary in the circumstances;
    2. subject to paragraph (d) below, the Facility Agent shall not be obliged to consult with the Company 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;
    3. the Facility 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;
    4. any such changes agreed upon by the Facility Agent and the Company 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 34 (*Amendments and Waivers*);
    5. the Facility 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 Facility Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 27.11; and
    6. the Facility Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

1. SET-OFF

Without prejudice to its rights at law, if an Event of Default is continuing, 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. That Finance Party shall promptly notify that Obligor of any such set-off or conversion.

1. NOTICES
   1. Communications in writing

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

* 1. 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:

* + 1. in the case of the Company and the Guarantors, that identified with its name below;
    2. in the case of each Lender, that notified in writing to the Facility Agent on or prior to the date on which it becomes a Party; and
    3. in the case of the Facility Agent and the US$ Base Rate Agent, that identified with its name below,

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

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

and, if a particular department or officer is specified as part of its address details provided under Clause 30.2 (*Addresses*), if addressed to that department or officer provided that any such communication or document received after business hours or on a non-working day in the place of receipt will only be deemed to be received on the next working day in such place.

* + 1. Any communication or document to be made or delivered to the Facility Agent will be effective only when actually received by the Facility Agent and then only if it is expressly marked for the attention of the department or officer identified with the Facility Agent’s signature below (or any substitute department or officer as the Facility Agent shall specify for this purpose).
    2. Any communication or document to be made or delivered to the US$ Base Rate Agent will be effective only when actually received by the US$ Base Rate Agent and then only if it is expressly marked for the attention of the department or officer identified with the US$ Base Rate Agent’s signature below (or any substitute department or officer as the US$ Base Rate Agent shall specify for this purpose).
    3. All notices from or to an Obligor shall be sent through the Facility Agent, other than notices in respect of the US$ Base Rate Facility which shall be sent through the US$ Base Rate Agent.
    4. Any communication or document made or delivered to the Company in accordance with this Clause 29.3 will be deemed to have been made or delivered to each of the Obligors.
    5. Any communication or document made or delivered to an Obligor (other than the Company) shall be copied to the Company at the same time and by the same method.
    6. Any communication or document which becomes effective, in accordance with paragraphs (a) to (f) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following Business Day.
  1. Notification of address and fax number

Promptly upon receipt of notification of an address and fax number or change of address or fax number pursuant to Clause 30.2 (*Addresses*) or changing its own address or fax number, the Facility Agent shall notify the other Parties.

* 1. Communication when Agent is Impaired Agent

If an Agent is an Impaired Agent the Parties may, instead of communicating with each other through that Agent, communicate with each other directly and (while an 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 that 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.

* 1. Electronic communication
     1. Any communication to be made between the Facility Agent and a Lender under or in connection with the Finance Documents may be made by electronic mail or other electronic means if the Facility Agent and the relevant Lender:
        1. agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
        2. notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
        3. notify each other of any change to their address or any other such information supplied by them.
     2. Any electronic communication made between the Facility Agent and a Lender will be effective only when actually received in readable form and in the case of any electronic communication made by a Lender to the Facility Agent only if it is addressed in such a manner as the Facility Agent shall specify for this purpose.
     3. Any communication or document which becomes effective, in accordance with paragraphs (a) to (b) above, after 5.00p.m. in the place of receipt shall be deemed only to become effective on the following Business Day.
  2. English language
     1. Any notice given under or in connection with any Finance Document must be in English.
     2. All other documents provided under or in connection with any Finance Document must be:
        1. in English; or
        2. if not in English, and if so required by the Facility 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.

1. CALCULATIONS AND CERTIFICATES
   1. Accounts

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

* 1. Certificates and Determinations

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is prima facie evidence of the matters to which it relates.

* 1. Day count convention
     1. Subject to Clause 31.3(b), any interest, commission or fee accruing under a Finance Document will accrue from day to day and be calculated on the basis of the actual number of days elapsed and a year of 365 days or, in any case where the practice in the London interbank market differs, in accordance with that market practice.
     2. Any interest accruing on a US$ Base Rate Loan shall be computed on the basis of a year of 365 days or, in the case of a leap year, 366 days (in the case of Prime Rate) and on the basis of a year of 360 days (in the case of Federal Funds Rate).

1. 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.

1. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under the Finance Documents shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents. No election to affirm any of the Finance Documents on the part of any Finance Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

1. AMENDMENTS AND WAIVERS
   1. Required consents
      1. Subject to Clause 34.2 (*Exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Obligors and any such amendment or waiver will be binding on all Parties.
      2. The Facility Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 33.
   2. Exceptions
      1. An amendment which in the case of paragraph (i), (vi) or (vii) below has the effect of changing or which in the case of paragraph (ii), (iii), (iv) or (v) below effects:
         1. the definition of ***Majority Lenders*** in Clause 1.1 (*Definitions*);
         2. an extension to the date of payment of any amount under the Finance Documents;
         3. a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;
         4. an increase in or an extension of any Commitment;
         5. a change to the Obligors other than in accordance with Clause 24 (*Changes to the Obligors*);
         6. any provision which expressly requires the consent of all the Lenders; or
         7. Clause 2.3 (*Finance Parties’ rights and obligations*), Clause 23 (*Changes to the Lenders*), Clause 27 (*Sharing among the Finance Parties*), or this Clause 34,

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

* + 1. An amendment or waiver which relates to the rights or obligations of the Facility Agent or the US$ Base Rate Agent may not be effected without the consent of the Facility Agent or the US$ Base Rate Agent (as the case may be).
  1. Disenfranchisement of Defaulting Lenders
     1. For so long as a Defaulting Lender has any Available Commitment, in ascertaining:
        1. the Majority Lenders; or
        2. whether:
           1. any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments under the Facility; or
           2. the agreement of any specified group of Lenders,

has been obtained to approve any request for a consent, waiver, amendment or other vote of Lenders under the Finance Documents, that Defaulting Lender’s Commitments under the Facility will be reduced by the amount of its Available Commitments under the Facility and, to the extent that that reduction results in that Defaulting Lender’s Total Commitments being zero, that Defaulting Lender shall be deemed not to be a Lender for the purposes of paragraphs (i) and (ii) above.

* + 1. For the purposes of this Clause ‎33.3, each Agent may assume that the following Lenders are Defaulting Lenders:
       1. any Lender which has notified each Agent that it has become a Defaulting Lender;
       2. 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 an Agent) or an Agent is otherwise aware that the Lender has ceased to be a Defaulting Lender.

* 1. Replacement of a Defaulting Lender
     1. The Company may, at any time a Lender has become and continues to be a Defaulting Lender, by giving 2 Business Days’ prior written notice to each Agent and such Lender:
        1. replace such Lender by requiring such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 23 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement;
        2. require such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause ‎23 (*Changes to the Lenders*) all (and not part only) of the undrawn Commitment of the Lender; or
        3. require such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause ‎23 (*Changes to the Lenders*) all (and not part only) of its rights and obligations in respect of the Facility,

to a Lender or other bank, financial institution, trust, fund or other entity (a ***Replacement Lender***) selected by the Company, which confirms its willingness to assume and does assume all the obligations, or all the relevant obligations, of the transferring Lender in accordance with Clause 23 (*Changes to the Lenders*) for a purchase price in cash payable at the time of transfer which is either:

* + - * 1. in an amount equal to the outstanding principal amount of such Lender’s participation in the outstanding Loans and all accrued interest, Break Costs and other amounts payable in relation thereto under the Finance Documents; or
        2. in an amount agreed between that Defaulting Lender, the Replacement Lender and the Company which does not exceed the amount described in paragraph (A) above.
    1. Any transfer of rights and obligations of a Defaulting Lender pursuant to this Clause ‎33.4 shall be subject to the following conditions:
       1. the Company shall have no right to replace the Facility Agent;
       2. neither the Agents nor the Defaulting Lender shall have any obligation to the Company to find a Replacement Lender;
       3. the transfer must take place no later than 60 days after the notice referred to in paragraph (a) above;
       4. in no event shall the Defaulting Lender be required to pay or surrender to the Replacement Lender any of the fees received by the Defaulting Lender pursuant to the Finance Documents; and
       5. the Defaulting Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (a) above once it is satisfied that it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to that transfer to the Replacement Lender.

The Defaulting Lender shall perform the checks described in paragraph (b)(v) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a) above and shall notify the Facility Agent and the Company when it is satisfied that it has complied with those checks.

1. 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.

1. GOVERNING LAW

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

1. JURISDICTION
   * 1. The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement) or any non-contractual obligation arising out of or in connection with this Agreement (a ***Dispute***).
     2. 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.
     3. This Clause 37 is for the benefit of the Finance Parties only. As a result, no Finance 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 may take concurrent proceedings in any number of jurisdictions.
2. SERVICE OF PROCESS
   * 1. Each Obligor not incorporated in England and Wales irrevocably appoints the Company as its agent for service of process in any proceedings before the English courts in respect of the Finance Documents.
     2. If the Company is unable for any reason to act as such agent, the Company (on behalf of all the Obligors) shall promptly appoint another such agent. Failing such appointment by the Company, the Facility Agent may appoint another agent for this purpose.
     3. Each Obligor agrees that failure by a process agent to notify it of any process will not invalidate the relevant proceedings.
     4. This Clause 37 does not affect any other method of service allowed by law.

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

1. The Original Lenders

|  |  |  |  |
| --- | --- | --- | --- |
| **Name of Original Lender** | **Commitment in £** | **Treaty Passport scheme reference number (if applicable)** | **Jurisdiction of tax residence (if applicable)** |
| Barclays Bank PLC | 1,000,000,000 |  |  |
| BNP Paribas London Branch | 1,000,000,000 |  |  |
| Goldman Sachs Bank USA | 1,000,000,000 | 013/G/0351779/DTTP | USA |
| HSBC Bank plc | 1,000,000,000 |  |  |
| JPMorgan Chase Bank, N.A. | 1,000,000,000 | 13/M/0268710/DTTP | USA |
|  | **5,000,000,000** |  |  |

1. Conditions Precedent

Conditions Precedent to First Utilisation

* + 1. Obligors

A copy of the constitutional documents of each Obligor.

A copy of a resolution of (or of a committee of) the board of directors of each Obligor:

approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party;

authorising a specified person or persons to execute the Finance Documents to which it is a party or ratifying the execution of the Finance Documents to which it is a party on its behalf by the person or persons who so executed the Finance Documents (as appropriate); and

authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including Utilisation Requests) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.

A copy of a resolution signed by all the holders of the issued shares of Tesco Stores Limited, approving the terms of, and the transactions contemplated by the Finance Documents to which it is a party.

A certificate of each Obligor (signed by an authorised signatory) confirming that borrowing or guaranteeing, as appropriate, the Total Commitments would not cause any borrowing, guaranteeing or similar limit binding on it to be exceeded.

A specimen of the signature of each specified person referred to in paragraph (b) above.

A certificate of each Obligor signed by an authorised signatory certifying that each copy document specified in paragraphs (a) and (b) of this paragraph 1 is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.

* + 1. Legal opinion

A legal opinion of Allen & Overy LLP, legal advisers to the Facility Agent in England, substantially in the form distributed to the Original Lenders prior to signing this Agreement.

* + 1. Other documents

The Original Financial Statements.

The latest audited financial statements of Tesco Stores Limited.

The Agency Fee Letter duly signed by the Company.

The Arrangement Fee Letter duly signed by the Company.

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1. Utilisation Requests

From: [Tesco PLC] or [Tesco PLC on behalf of *name of Borrower*] or [*name of Borrower*]

To: Barclays Bank PLC as Facility Agent

[And: Barclays Bank PLC (*if in respect of the US$ Base Rate Facility*)]

[And: [*name of Borrower*] (*if Tesco PLC delivers the Utilisation Request*)]

Dated:

Dear Sirs

Tesco PLC £5,000,000,000 Facility Agreement dated [●] September 2014 (the *Agreement*)

* + - 1. We refer to the Agreement. This is a Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
      2. [We/[name of Borrower]] wish to borrow a Loan on the following terms:

|  |  |
| --- | --- |
| Facility: | [LIBOR Facility] [US$ Base Rate Facility] |
| Proposed Utilisation Date: | [          ] (or, if that is not a Business Day, the next Business Day) |
| Currency of Loan: | [          ] |
| Amount: | [          ] or, if less, the Available Facility |
| Interest Period: | [          ] |

* + - 1. We confirm that, as at the date of this Utilisation Request no Potential Event of Default or Event of Default is continuing or would result from the proposed Loan.

4 We confirm that the representations set out in Clause 19 (*Representations*) of the Agreement would be true and correct in all material respects in relation to it if those representations were made by reference to the facts and circumstances now existing.

5. The proceeds of this Loan should be credited to [account].

6. This Utilisation Request is irrevocable.

Yours faithfully

[Tesco PLC]

or

[Tesco PLC on behalf of [*name of relevant Borrower*]]

or

[*name of relevant Borrower*]

1. Form of Transfer Certificate

To: Barclays Bank PLC as Facility Agent

And: Tesco PLC

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

Dated:

Tesco PLC £5,000,000,000 Facility Agreement dated [●] September 2014 (the *Agreement*)

* + - 1. We refer to the Agreement. This is a Transfer Certificate. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
      2. We refer to Clause 23.5 (*Procedure for transfer*):

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 23.5 (*Procedure for transfer*).

The proposed Transfer Date is [●].

The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 30.2 (*Addresses*) are set out in the Schedule.

* + - 1. The New Lender expressly acknowledges the limitations on the Existing Lender’s obligations set out in paragraph (c) of Clause 23.4 (*Limitation of responsibility of Existing Lenders*).
      2. The New Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:

[a Qualifying Lender (other than a Treaty Lender);]

[a Treaty Lender;]

[not a Qualifying Lender].[[1]](#footnote-1)

* + - 1. [The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:

a company resident in the United Kingdom for United Kingdom tax purposes;

a partnership each member of which is:

a company so resident in the United Kingdom; or

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

a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.][[2]](#footnote-2)

* + - 1. [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 [●], so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax and requests that the Company notifies each Borrower which a Party as a Borrower as at the Transfer Date that it wishes that scheme to apply to the Agreement.][[3]](#footnote-3)
      2. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
      3. This Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by English law.

**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 Transfer Certificate is accepted by the Facility Agent and the Transfer Date is confirmed as [ ●].

Barclays Bank PLC as Facility Agent

By:

1. Timetables

“D-” refers to the number of Business Days before the relevant Utilisation Date, the first day of the relevant Interest Period or the day of calculation (as the case may be).

|  |  |  |
| --- | --- | --- |
|  | **LIBOR FACILITY** | **US$ BASE RATE FACILITY** |
|  | **Loans in sterling** | **Loans in Dollars** |
| Delivery of a duly completed Utilisation Request under Clause 5.1 (*Delivery of Utilisation Request*). | Same day 9.30am | Same day 10.30am New York City time |
| US$ Base Rate Agent determines the Base Currency Amount of the Loan and notifies the Lenders of the amount and currency of the Loan in accordance with Clause 5.4(c) (*Lenders’ participation*) | Same day 10.15am | Same day 12.30pm New York City time |
| LIBOR is fixed | Same day 11.00am | N/A |

1. LMA Form of Confidentiality UndertakinG

**[Letterhead of Facility Agent]**

To: [insert name of prospective Transferee/sub-participant]

Dear Sirs

Tesco PLC £5,000,000,000 Facility Agreement dated [●] September 2014 (the *Facility Agreement*)

We understand that you are considering participating in the Facility (as defined in the Facility Agreement). In consideration of us agreeing to make available to you certain information, by your signature of a copy of this letter you agree as follows:

* + 1. Confidentiality Undertaking

You undertake:

to keep the Confidential Information confidential and not to disclose it to anyone except as provided for by paragraph 2 below and to ensure that the Confidential Information is protected with security measures and a degree of care that would apply to your own confidential information;

to keep confidential and not disclose to anyone except as provided for by paragraph 2 below the fact that the Confidential Information has been made available or that discussions or negotiations are taking place or have taken place between us in connection with the Facility Agreement; and

to use the Confidential Information only for the Permitted Purpose.

* + 1. Permitted Disclosure

We agree that you may disclose such Confidential Information and such of those matters referred to in paragraph 1(b) above as you shall consider appropriate:

to members of the Participant Group and their officers, directors, employees, professional advisers and auditors 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 whom information is required or requested to be disclosed by any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation; and

with the prior written consent of us and the Borrower.

* + 1. Notification of Disclosure

You agree (to the extent permitted by law and regulation) to inform us:

of the circumstances of any disclosure of Confidential Information made pursuant to paragraph 2(b) above except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and

upon becoming aware that Confidential Information has been disclosed in breach of this letter.

* + 1. Return of Copies

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

* + 1. Continuing Obligations

The obligations in this letter are continuing and, in particular, shall survive the termination of any discussions or negotiations between you and us. Notwithstanding the previous sentence, the obligations in this letter shall cease on the earlier of (a) the date on which you become a party to the Facility Agreement or (b) the date falling twelve months after the date of your final receipt (in whatever manner) of any Confidential Information.

* + 1. No Representation; Consequences of Breach, etc

You acknowledge and agree that:

neither we nor any of our officers, employees or advisers (each a ***Relevant Person***) (i) make any representation or warranty, express or implied, as to, or assume any responsibility for, the accuracy, reliability or completeness of any of the Confidential Information or any other information supplied by us or any member of the Group or the assumptions on which it is based or (ii) shall be under any obligation to update or correct any inaccuracy in the Confidential Information or any other information supplied by us or any member of the Group or be otherwise liable to you or any other person in respect of the Confidential Information or any such information; and

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

* + 1. Entire Agreement; No Waiver; Amendments, etc

This letter constitutes the entire agreement between us in relation to your obligations regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

No failure to exercise, nor any delay in exercising any right or remedy under this letter will operate as a waiver of any such right or remedy or constitute an election to affirm this letter. No election to affirm this letter will be effective unless it is in writing. No single or partial exercise of any right or remedy will prevent any further or other exercise or the exercise of any other right or remedy under this letter.

The terms of this letter and your obligations under this letter may only be amended or modified by written agreement between us.

* + 1. Inside Information

You acknowledge that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and you undertake not to use any Confidential Information for any unlawful purpose.

* + 1. Nature of Undertakings

The undertakings given by you under this letter are given to us and (without implying any fiduciary obligations on our part) are also given for the benefit of Tesco PLC, each Obligor, each Guarantor and each other member of the Group.

* + 1. Third Party Rights

Subject to this paragraph (a) and to paragraphs 6 and 9, a person who is not a party to this letter has no right under the Contracts (Rights of Third Parties) Act 1999 (the ***Third Parties Act***) to enforce or to enjoy the benefit of any term of this letter.

The Relevant Persons and each member of the Group may enjoy the benefit of the terms of paragraphs 6 and 9 subject to and in accordance with this paragraph (b) and the provisions of the Third Parties Act.

Notwithstanding any provisions of this letter, the parties to this letter do not require the consent of any Relevant Person or any member of the Group to rescind or vary this letter at any time.

* + 1. Governing Law and Jurisdiction

This letter and the agreement constituted by your acknowledgement of its terms (the ***Letter***) and any non-contractual obligations arising out of or in connection with it (including any non-contractual obligations arising out of the negotiation of the transaction contemplated by this Letter) are governed by English law.

The courts of England have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Letter (including a dispute relating to any non-contractual obligation arising out of or in connection with either this Letter or the negotiation of the transaction contemplated by this Letter).

* + 1. Definitions

In this letter (including the acknowledgement set out below):

***Confidential Information*** means all information relating to the Company, any Obligor, the Group, the Finance Documents and/or the Facility Agreement which is provided to you in relation to the Finance Documents or Facility Agreement by us or any of our affiliates or advisers, in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

is or becomes public information other than as a direct or indirect result of any breach by you of this letter; or

is identified in writing at the time of delivery as non-confidential by us or our advisers; or

is known by you before the date the information is disclosed to you by us or any of our affiliates or advisers or is lawfully obtained by you after that date, from a source which, as far as you are aware, is unconnected with the Group and which, in either case, as far as you are aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

***Finance Documents*** means the documents defined in the Facility Agreement as Finance Documents.

***Group*** means Tesco PLC and each of its holding companies and subsidiaries and each subsidiary of each of its holding companies for the time being (as such term is defined in the Companies Act 2006).

***Obligor*** means a borrower or a guarantor under the Facility Agreement.

***Participant Group*** means you, each of your holding companies and subsidiaries and each subsidiary of each of your holding companies (as each such term is defined in the Companies Act 2006).

***Permitted Purpose*** means considering and evaluating whether to enter into the Facility Agreement.

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

Yours faithfully

………………………………….  
For and on behalf of [●]

To: [●], Tesco PLC, each Borrower, each Guarantor and each other member of the Group

We acknowledge and agree to the above:

………………………………….  
For and on behalf of   
[Prospective Transferee/sub-participant]

1. FORM OF INCREASE CONFIRMATION

To: Barclays Bank PLC as Facility Agent and Tesco PLC as the Company, for and on behalf of each Obligor

From: [the Increase Lender] (the ***Increase Lender***)

Dated:

**Tesco PLC £5,000,000,000 Facility Agreement dated** [●] **September 2014 (the *Facility Agreement*)**

* + - 1. We refer to the Facility Agreement. This agreement (the ***Agreement***) shall take effect as an Increase Confirmation for the purpose of the Facility Agreement. Terms defined in the Facility Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
      2. We refer to Clause 2.2 (*Increase*) of the Facility 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 Facility 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 party to the relevant Finance Documents as a Lender.
      6. The Facility Office and address, fax number and attention details for notices to the Increase Lender for the purposes of Clause 30.2 (*Addresses*) are set out in the Schedule.
      7. The Increase Lender expressly acknowledges the limitations on the Lenders’ obligations referred to in paragraph (g) 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:

[a Qualifying Lender (other than a Treaty Lender);]

[a Treaty Lender;]

[not a Qualifying Lender].[[4]](#footnote-4)

* + - 1. [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:

a company resident in the United Kingdom for United Kingdom tax purposes; or

a partnership each member of which is:

a company so resident in the United Kingdom; or

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

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.][[5]](#footnote-5)

* + - 1. [The Increase Lender confirms for the benefit of the Agents 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 [●], so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax and requests that the Company notifies each Borrower which is a Party as a Borrower as at the Increase Date; and that it wishes that scheme to apply to the Facility Agreement.][[6]](#footnote-6)
      2. This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.
      3. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
      4. This Agreement has been entered into on the date stated at the beginning of this Agreement.**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 Facility Agreement by the Agents and the Increase Date is confirmed as [ ].

Barclays Bank PLC as Facility Agent

By:

1. Form of compliance certificate

From: Tesco PLC

To: Barclays Bank PLC as Facility Agent

Dated:

Dear Sirs

Tesco PLC £5,000,000,000 Facility Agreement dated [●] September 2014 (the *Agreement*)

* + - 1. We refer to the Agreement. This is a Compliance Certificate. Terms defined in the Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
      2. We confirm that:
      3. [We confirm that no Potential Event of Default or Event of Default is continuing.]\*

[*Insert details of covenants to be certified*]

We confirm that Interest Cover is [ ]:1.

|  |  |
| --- | --- |
| Signed | ………………….. ………………….. |
|  | [Director] Authorised signatory |
|  | of Tesco PLC of Tesco PLC |
|  |  |

NOTES:

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

Signatories

The Company

TESCO PLC

Address: Tesco House, Delamare Road, Cheshunt, Herts EN8 9SL

Fax No: 01992 635883

Attention: Treasurer

By:

The Borrowers

TESCO PLC

Address: Tesco House, Delamare Road, Cheshunt, Herts EN8 9SL

Fax No: 01992 635883

Attention: Treasurer

By:

TESCO STORES LIMITED

Address: Tesco House, Delamare Road, Cheshunt, Herts EN8 9SL

Fax No: 01992 635883

Attention: Company Secretary

By:

TESCO CORPORATE TREASURY SERVICES PLC

Address: Tesco House, Delamare Road, Cheshunt, Herts EN8 9SL

Fax No: 01992 635883

Attention: Company Secretary

By:

The Guarantors

TESCO PLC

Address: Tesco House, Delamare Road, Cheshunt, Herts EN8 9SL

Fax No: 01992 635883

Attention: Treasurer

By:

TESCO STORES LIMITED

Address: Tesco House, Delamare Road, Cheshunt, Herts EN8 9SL

Fax No: 01992 635883

Attention: Company Secretary

By:

Mandated Lead Arrangers

**BARCLAYS BANK PLC**

By:

Mandated Lead Arrangers

**BNP PARIBAS LONDON BRANCH**

By:

Mandated Lead Arrangers

**GOLDMAN SACHS BANK USA**

By:

Mandated Lead Arrangers

**HSBC BANK PLC**

By:

Mandated Lead Arrangers

**J. P. MORGAN LIMITED**

By:

Original Lenders

**BARCLAYS BANK PLC**

By:

Original Lenders

**BNP PARIBAS LONDON BRANCH**

By:

Original Lenders

**GOLDMAN SACHS BANK USA**

By:

Original Lenders

**HSBC BANK PLC**

By:

Original Lenders

**JPMORGAN CHASE BANK, N.A.**

By:

The Facility Agent

BARCLAYS BANK PLC

Address: 5 The North Colonnade  
 Canary Wharf  
 London E14 4BB

Fax No:

Attention: Estela Llandro

By:

The US$ Base Rate Agent

BARCLAYS BANK PLC

Address: 1301 Sixth Avenue  
 New York Metro Campus, New York  
 NY 10019, USA

Fax No:

Attention: Daniel Gonzales

By:

1. Delete as applicable – each New Lender is required to confirm which of these three categories it falls within. [↑](#footnote-ref-1)
2. Include only if New Lender is a UK Non-Bank Lender i.e. a Lender falling within paragraph (b) of the definition of Qualifying Lender in Clause 13.1 (*Definitions*). [↑](#footnote-ref-2)
3. Include if New Lender holds a passport under the HMRC DT Treaty Passport scheme and wishes that scheme to apply to the Agreement. [↑](#footnote-ref-3)
4. Delete as applicable – each Increase lender is required to confirm which of these three categories if falls within. [↑](#footnote-ref-4)
5. Include only if Increase Lender is a UK Non-Bank Lender i.e. a Lender falling within paragraph (b) of the definition of Qualifying Lender in Clause 13.1 (*Definitions*). [↑](#footnote-ref-5)
6. Include if Increase Lender holds a passport under the HMRC DT Treaty Passport scheme and wishes that scheme to apply to the Agreement. [↑](#footnote-ref-6)