

# Project Caledonia £28,500,000 Senior Facilities Agreement

Caledonia Topco Limited  
As Parent

Crescent Capital Group LP

The Royal Bank of Scotland Plc  
As Arrangers

Agensynd S.L.  
As Facility Agent

Agensynd S.L.  
As Security Agent

## CONTENTS

CLAUSE	PAGE
1. DEFINITIONS AND INTERPRETATION .....	1
2. THE FACILITIES .....	50
3. CAR FACILITY .....	53
4. PURPOSE .....	56
5. CONDITIONS OF UTILISATION .....	57
6. UTILISATION – LOANS .....	59
7. OPTIONAL CURRENCIES .....	61
8. ANCILLARY FACILITIES .....	61
9. REPAYMENT .....	66
10. ILLEGALITY, VOLUNTARY PREPAYMENT AND CANCELLATION .....	68
11. MANDATORY PREPAYMENT AND CANCELLATION .....	70
12. RESTRICTIONS .....	76
13. INTEREST .....	77
14. INTEREST PERIODS .....	78
15. CHANGES TO THE CALCULATION OF INTEREST .....	79
16. FEES .....	80
17. TAX GROSS-UP AND INDEMNITIES .....	82
18. INCREASED COSTS .....	91
19. OTHER INDEMNITIES .....	93
20. MITIGATION BY THE LENDERS .....	95
21. COSTS AND EXPENSES .....	95
22. GUARANTEE AND INDEMNITY .....	96
23. REPRESENTATIONS .....	100
24. INFORMATION UNDERTAKINGS .....	108
25. FINANCIAL COVENANTS .....	113
26. GENERAL UNDERTAKINGS .....	127
27. EVENTS OF DEFAULT .....	140
28. CHANGES TO THE LENDERS .....	146
29. DEBT PURCHASE TRANSACTIONS .....	152
30. CHANGES TO THE OBLIGORS .....	156
31. ROLE OF THE FACILITY AGENT, THE ARRANGERS AND OTHERS .....	159
32. CONDUCT OF BUSINESS BY THE SENIOR FINANCE PARTIES .....	169
33. SHARING AMONG THE SENIOR FINANCE PARTIES .....	170
34. PAYMENT MECHANICS .....	171
35. SET-OFF .....	175
36. NOTICES .....	176
37. CALCULATIONS AND CERTIFICATES .....	179
38. PARTIAL INVALIDITY .....	179
39. REMEDIES AND WAIVERS .....	179
40. AMENDMENTS AND WAIVERS .....	179
41. CONFIDENTIALITY .....	187
42. DISCLOSURE OF LENDER DETAILS BY FACILITY AGENT .....	191
43. COUNTERPARTS .....	192
44. GOVERNING LAW .....	192
45. ENFORCEMENT .....	192
SCHEDULE 1 .....	194
The Original Parties .....	194
Part 1 – The Original Obligors .....	194
Part 2 – The Original Lenders .....	194
Part 3 – The Original Hedge Counterparties .....	194
SCHEDULE 2 .....	195
Conditions Precedent .....	195

Part 1 – Conditions Precedent to Utilisation of the Agreement.....	195
Part 2 – Conditions Precedent Required to be Delivered by an Additional Obligor .....	199
SCHEDULE 3 .....	201
Requests and Notices .....	201
Part 1 – Utilisation Request Loans .....	201
Part 2 – Selection Notice.....	202
SCHEDULE 4 .....	203
Form of Transfer Certificate.....	203
THE SCHEDULE.....	206
Commitment/Rights and Obligations to be Transferred .....	206
SCHEDULE 5 .....	209
Form of Assignment Agreement.....	209
THE SCHEDULE.....	212
Commitment/rights and obligations to be transferred by assignment, release and assumption...	212
SCHEDULE 6 .....	214
Form of Accession Deed.....	214
SCHEDULE 7 .....	218
Form of Resignation Letter .....	218
SCHEDULE 8 .....	219
Form of Compliance Certificate .....	219
SCHEDULE 9 .....	220
Timetables .....	220
Part 1 – Loans .....	220
SCHEDULE 10.....	221
Agreed Security Principles.....	221
SCHEDULE 11.....	228
Forms of Notifiable Debt Purchase Transaction Notice.....	228
Part – 1 .....	228
Form of Notice on Entering into Notifiable Debt Purchase Transaction .....	228
Part – 2 .....	229
Form of Notice on Termination of Notifiable Debt Purchase Transaction/Notifiable Debt Purchase Transaction ceasing to be with Sponsor Affiliate.....	229
SCHEDULE 12.....	230
Form of Increase Confirmation.....	230
SCHEDULE 13.....	233
CAR Facility Establishment Notice .....	233

**THIS AGREEMENT** is made on

2016

**BETWEEN:**

- (1) **CALEDONIA TOPCO LIMITED** (a company incorporated under the laws of England and Wales with registered number 10084852) (the "**Parent**");
- (2) **THE COMPANY** listed in part 1 of schedule 1 (The Original Parties) as the original borrower (the "**Original Borrower**");
- (3) **THE COMPANIES** listed in part 1 of schedule 1 (The Original Parties) as original guarantors (the "**Original Guarantors**");
- (4) **CRESCENT CAPITAL GROUP LP and THE ROYAL BANK OF SCOTLAND PLC** as arrangers (the "**Arrangers**");
- (5) **THE FINANCIAL INSTITUTIONS** listed in part 2 of schedule 1 (The Original Parties) as lenders (the "**Original Lenders**");
- (6) **THE PERSONS** listed in part 3 of schedule 1 (The Original Parties) as hedge counterparties (the "**Original Hedge Counterparties**");
- (7) **AGENSYND S.L.** as facility agent of the other Senior Finance Parties (the "**Facility Agent**"); and
- (8) **AGENSYND S.L.** as security agent of the other Secured Parties (the "**Security Agent**").

**THE PARTIES AGREE AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this agreement:

**"Acceptable Bank"** means:

- (a) a bank or financial institution which has a rating for its long-term unsecured and non-credit enhanced debt obligations of A or higher by Standard & Poor's Rating Services or Fitch Ratings Ltd or A2 or higher by Moody's Investors Service Limited or a comparable rating from an internationally recognised credit rating agency
- (b) any Lender; or
- (c) any other bank or financial institution approved by the Facility Agent;

**"Accession Deed"** means a document substantially in the form set out in schedule 6 (Form of Accession Deed);

**"Accountants' Report"** means the report by HMT LLP dated on or about the date of this agreement and capable of being relied upon by the Reliance Parties and their respective successors, assigns and transferees;

**"Accounting Principles"** means generally accepted accounting principles in the United Kingdom (including for the avoidance of doubt IFRS) or in the case of any relevant member of the Group incorporated outside the United Kingdom, generally accepted accounting principles in its jurisdiction of incorporation or establishment;

**"Acquisition"** means the acquisition by the Company of the Target Shares on the terms of the Acquisition Documents;

**"Acquisition Agreement"** means the agreement dated on or about the date of this agreement relating to the sale and purchase of the Target Shares and made between the Company and the Vendor;

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

**"Acquisition Documents"** means the Acquisition Agreement, the Disclosure Letter, any related warranty and indemnity agreement (or similar) if any and any other document designated as an **"Acquisition Document"** by the Facility Agent and the Parent;

**"Acquisition Purpose"** means the purposes set out in clause 4.1(a)(i) (Purpose);

**"Additional Borrower"** means a company which becomes a Borrower in accordance with clause 30 (Changes to the Obligors);

**"Additional Guarantor"** means a company which becomes a Guarantor in accordance with clause 30 (Changes to the Obligors);

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

**"Affiliate"** means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company. Notwithstanding the foregoing, in relation to The Royal Bank of Scotland plc, the term "Affiliate" shall not include (i) the UK government or any member or instrumentality thereof, including Her Majesty's Treasury and UK Financial Investments Limited (or any directors, officers, employees or entities thereof) or (ii) any persons or entities controlled by or under common control with the UK government or any member or instrumentality thereof (including Her Majesty's Treasury and UK Financial Investments Limited) and which are not part of The Royal Bank of Scotland Group plc and its subsidiaries or subsidiary undertakings;

**"Agreed Security Principles"** means the Agreed Security principles set out in schedule 10 (Agreed Security Principles);

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

**"Ancillary Commitment"** means, in relation to an Ancillary Lender and an Ancillary Facility, the maximum Base Currency Amount which that Ancillary Lender has agreed (whether or not subject to satisfaction of conditions precedent) to make available from time to time under an Ancillary Facility and which has been authorised as such under clause 8 (Ancillary Facilities), to the extent that amount is not cancelled or reduced under this agreement or the Ancillary Documents relating to that Ancillary Facility;

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

**"Ancillary Facility"** means any ancillary facility made available by an Ancillary Lender in accordance with clause 8 (Ancillary Facilities);

**"Ancillary Lender"** means each Lender (or Affiliate of a Lender) which makes available an Ancillary Facility in accordance with clause 8 (Ancillary Facilities);

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

- (a) the principal amount under each overdraft facility or other on-demand short term loan facility (net of any Available Credit Balance);
- (b) the face amount of each guarantee, bond and letter of credit under that Ancillary Facility (to the extent not repaid or prepaid); and
- (c) the amount fairly representing the aggregate exposure (excluding interest and similar charges) of that Ancillary Lender under each other type of accommodation provided under that Ancillary Facility,

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

**"Annual Financial Statements"** has the meaning given to that term in clause 24 (Information Undertakings);

**"Approved Country"** means the United Kingdom;

**"Approved List"** means the list of banks and financial institutions and entities in agreed form and as amended from time to time in accordance with clause 40.5 (Approved List);

**"Assignment Agreement"** means an agreement substantially in the form set out in schedule 5 (Form of Assignment Agreement) or any other form agreed between the relevant assignor and assignee provided that if that other form does not contain the undertaking set out in the form set out in schedule 5 (Form of Assignment Agreement) it shall not be a Creditor Accession Undertaking as defined in, and for the purposes of, the Intercreditor Agreement;

**"Auditors"** means any of:

- (a) PricewaterhouseCoopers, Ernst & Young, KPMG, Deloitte & Touche, Grant Thornton LLP or BDO LLP; or
- (b) any other firm of auditors appointed by the Parent;

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

**"Availability Period"** means:

- (a) in relation to Facility A the period from and including the date of this agreement to and including the earlier of the Closing Date and the date falling 30 days after the date of this agreement;
- (b) in relation to any CAR Facility, subject to Clause 3 (CAR Facility), the period specified in the CAR Facility Establishment Notice; and
- (c) in relation to the Revolving Facility, the period from and including the date of this agreement to and including the date falling one month prior to the Termination Date for the Revolving Facility;

**"Available Commitment"** means, in relation to a Facility, a Lender's Commitment under that Facility minus:

- (a) the Base Currency Amount of its participation in any outstanding Utilisations under that Facility and, in the case of the Revolving Facility only, the Base Currency Amount of the aggregate of its (and its Affiliate's) Ancillary Commitments; and
- (b) in relation to any proposed Utilisation, the Base Currency Amount of its participation in any other Utilisations that are due to be made under that Facility on or before the proposed Utilisation Date and, in the case of the Revolving Facility only, the Base Currency Amount of its (and its Affiliate's) Ancillary Commitment in relation to any new Ancillary Facility that is due to be made available on or before the proposed Utilisation Date.

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

- (i) that Lender's participation in any Revolving Facility Utilisations that are due to be repaid or prepaid on or before the proposed Utilisation Date; and
- (ii) that Lender's (and its Affiliate's) Ancillary Commitments to the extent that they are due to be reduced or cancelled on or before the proposed Utilisation Date;

**"Available Credit Balance"** means, in relation to an Ancillary Facility, credit balances on any account of any Borrower of that Ancillary Facility with the Ancillary Lender making available that Ancillary Facility to the extent that those credit balances are freely available to be set off by that Ancillary Lender against liabilities owed to it by that Borrower under that Ancillary Facility;

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

**"Base Case Model"** means the financial model including profit and loss (or equivalent income statement), balance sheet and cash flow projections in agreed form relating to the Group (for these purposes assuming completion of the Acquisition);

**"Base Currency"** means sterling;

**"Base Currency Amount"** means:

- (a) in relation to a Utilisation, the amount specified in the Utilisation Request delivered by a Borrower for that Utilisation (or, if the amount requested is not denominated in the Base Currency, that amount converted into the Base Currency at the Facility Agent's Spot Rate of Exchange on the date which is three Business Days before the Utilisation Date or, if later, on the date the Facility Agent receives the Utilisation Request in accordance with the terms of this agreement); and
- (b) in relation to an Ancillary Commitment, the amount specified as such in the notice delivered to the Facility Agent by the Parent pursuant to clause 8.2 (Availability) (or, if the amount specified 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 three Business Days before the Ancillary Commencement Date for that Ancillary Facility or, if later, the date the Facility Agent receives the notice of the Ancillary Commitment in accordance with the terms of this agreement),

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

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

- (a) in relation to LIBOR, as the rate at which the relevant Base Reference Bank could borrow funds in the London interbank market; or
- (b) in relation to EURIBOR, as the rate at which the relevant Base Reference Bank could borrow funds in the European interbank market,

in the relevant currency and for the relevant period, were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size in that currency and for that period;

**"Base Reference Banks"** means, in relation to LIBOR and EURIBOR, the principal London offices of such banks as may be appointed by the Facility Agent in consultation with the Parent;

**"Borrower"** means the Original Borrower or an Additional Borrower unless it has ceased to be a Borrower in accordance with clause 30 (Changes to the Obligors) and, in respect of an Ancillary Facility only, any Affiliate of a Borrower that becomes a borrower of that Ancillary Facility with the approval of the relevant Lender pursuant to the provisions of clause 8.9 (Affiliates of Borrowers);

**"Borrowings"** has the meaning given to that term in clause 25.1 (Financial Definitions);

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

- (a) 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:

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

**"Budget"** means:

- (a) in relation to the period beginning on the Closing Date and ending on 31 March 2017, the Base Case Model in agreed form to be delivered by the Parent to the Facility Agent pursuant to clause 5.1 (Initial Conditions Precedent); and
- (b) in relation to any other period, any budget delivered by the Parent to the Facility Agent in respect of that period pursuant to clause 24.4 (Budget);

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

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



**"Capital Expenditure"** has the meaning given to that term in clause 25.1 (Financial Definitions);

**"Capex Budget"** has the meaning given to that term in clause 24.4 (Budget) save for the period from the Closing Date to 31 March 2017 it shall mean the amount of Capital Expenditure which the Group is expected to occur for such period as set out in the Base Case Model;

**"CAR Facility"** means the uncommitted term loan facility that may be made available in accordance with Clause 3 (CAR Facility) as described in Clause 2 (The Facilities) below.

**"CAR Facility Commitment"** means:

- (a) in relation to any CAR Facility Lender identified in a CAR Facility Establishment Notice, the amount set opposite its name under the heading "CAR Facility Commitment" in that CAR Facility Establishment Notice and the amount of any other CAR Facility transferred to it under this agreement or assumed by it, in accordance with Clause 2.2 (Increase); and
- (b) in relation to any other Lender, the amount in Sterling of any CAR Facility Commitment transferred to it under this agreement or assumed by it in accordance with Clause 2.2 (Increase),

to the extent:

- (i) not cancelled, reduced or transferred by it under this agreement; and
- (ii) not deemed to be zero pursuant to Clause 29 (Debt Purchase Transactions);

**"CAR Facility Date"** has the meaning given to that term in Clause 3.4(c) (CAR Facility);

**"CAR Facility Documents"** means any CAR Facility Fee Letter, any CAR Facility Establishment Notice and any related documents;

**"CAR Facility Establishment Notice"** means a notice substantially in the form set out in Schedule 13 (CAR Facility Establishment Notice) delivered by the Company to the Facility Agent in accordance with Clause 3 (CAR Facility);

**"CAR Facility Fee Letter"** means any fee letter or letters between any CAR Facility Lender and the Parent setting out any arrangement fees payable to that CAR Facility Lender in consideration of the CAR Facility Lender agreeing to make the CAR Facility Commitment available;

**"CAR Facility Lender"** has the meaning given to that term in Clause 3.1 (CAR Facility);

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

**"CAR Facility Margin"** means in relation to any CAR Facility Loan, the percentage rate per annum set out in the CAR Facility Establishment Notice, subject to any margin adjustment mechanism also specified therein;

**"CAR Facility Maximum Amount"** means the aggregate of the CAR Facility Commitments from time to time up to a maximum aggregate amount of £5,000,000;

**"CAR Facility Maximum Margin"** means an amount which is up to 1 per cent. higher than the highest Margin in respect of Facility A;

**"CAR Facility Repayment Date"** means each date set out in a CAR Facility Establishment Notice as being a CAR Facility Repayment Date;

**"CAR Facility Terms"** has the meaning given to it in Clause 3.3 (CAR Facility);

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

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

in each case, to which any Group Company is alone (or together with other Group Companies) beneficially entitled at that time and which is not issued or guaranteed by any Group Company or subject to any Security (other than Security arising under the Transaction Security Documents);

**"Cashflow"** has the meaning given to that term in clause 25.1 (Financial Definitions);

**"Change of Control"** means:

- (a) the Original Investors or any funds controlled by the Original Investors cease directly or indirectly (including via their shareholding in the Parent) to:
  - (i) have the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the Parent; or
  - (ii) hold beneficially more than 50% of the issued share capital of the Parent (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- (b) the Original Investors cease to hold beneficial title to more than 50% of the aggregate principal amount of the Loan Notes.

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

**"Clean-up Date"** means the date falling (i) in the case of the Acquisition, 60 days after the Closing Date and (ii) in the case of any other acquisition permitted under and in accordance with paragraph (f) of the definition of "Permitted Acquisition", 45 days after the date of completion of such acquisition;

**"Clean-up Default"** means an Event of Default other than an Event of Default pursuant to clauses 27.1 (Non-Payment), 27.2 (Financial Covenants and Other Obligations), clause 27.4 (Misrepresentation) but only to the extent that such Event of Default has been caused by a misrepresentation in respect of clause 23.2 (Status) to clause 23.7 (Governing Law and Enforcement) (inclusive), clause 27.5 (Cross Default), clause 27.6 (Insolvency), clause 27.7 (Insolvency Proceedings), clause 27.8 (Creditors' Process), clause 27.10 (Unlawfulness and Invalidity) or clause 27.12 (Cessation of Business);

**"Clean-Up Representation"** means any of the Representations;

**"Clean-Up Undertaking"** means any of the undertakings made by or in respect of the Target Group and specified in clause 26 (General Undertakings);

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

**"Code"** means the US Internal Revenue Code of 1986;

**"Commitment"** means a Facility A Commitment, a CAR Facility Commitment or a Revolving Facility Commitment;

**"Company"** means Caledonia Bidco Limited, a company incorporated in England and Wales with registered number 10089477;

**"Completion"** means the completion of the Acquisition in accordance with clause 4 of the Acquisition Agreement;

**"Compliance Certificate"** means a certificate substantially in the form set out in schedule 8 (Form of Compliance Certificate), (in form and substance satisfactory to the Facility Agent);

**"Confidential Information"** means all information relating to the Parent, any Obligor, the Group, the Target Group, the Senior Finance Documents or a Facility of which a Senior Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Senior

Finance Party or which is received by a Senior Finance Party in relation to, or for the purpose of becoming a Senior Finance Party under, the Senior Finance Documents or a Facility from either:

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

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

- (i) is or becomes public information other than as a direct or indirect result of any breach by that Senior Finance Party of clause 41 (Confidentiality); or
- (ii) is identified in writing at the time of delivery as non-confidential by any Group Company or the Target Group or any of its advisers; or
- (iii) is known by that Senior Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Senior Finance Party after that date, from a source which is, as far as that Senior Finance Party is aware, unconnected with the Group or the Target Group and which, in either case, as far as that Senior Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality;

**"Confidentiality Undertaking"** means a confidentiality undertaking substantially in a recommended form of the LMA or in any other form agreed between the Parent and the Facility Agent;

**"Constitutional Documents"** means the articles of association of the Parent;

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

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

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

any Commitment or amount outstanding under this agreement;

**"Declared Default"** means an Event of Default in respect of which any notice has been issued or rights exercised by the Facility Agent under clause 27.19 (Acceleration) (b) to (g) or 27.20 (Revolving Facility Acceleration) (b) to (g);

**"Default"** means an Event of Default or any event or circumstance specified in clause 27 (Events of Default) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Senior Finance Documents or any combination of any of the foregoing) be an Event of Default;

**"Defaulting Lender"** means any Lender (other than a Lender which is a Sponsor Affiliate):

- (a) which has failed to make its participation in a Loan available or has notified the Facility Agent or the Parent (which has notified the Facility Agent) that it will not make its participation in a Loan available by the Utilisation Date of that Loan in accordance with clause 6.4 (Lenders' Participation);
- (b) which has otherwise rescinded or repudiated a Senior Finance Document; or
- (c) with respect to which an Insolvency Event has occurred and is continuing;

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

**"Designated Gross Amount"** means the amount notified by the Parent to the Facility Agent upon the establishment of a Multi-account Overdraft as being the maximum amount of Gross Outstandings that will, at any time, be outstanding under that Multi-account Overdraft;

**"Designated Net Amount"** means the amount notified by the Parent to the Facility Agent upon the establishment of a Multi-account Overdraft as being the maximum amount of Net Outstandings that will, at any time, be outstanding under that Multi-account Overdraft;

**"Disclosure Letter"** has the meaning given to that term in the Acquisition Agreement;

**"Disposal"** has the meaning given to that term in clause 11.2 (Disposal, Insurance and Acquisition Proceeds and Excess Cashflow);

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

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

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

**"Earn-Out Consideration"** has the meaning given to that term in clause 25.1 (Financial Definitions);

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

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

**"Environmental Claim"** means any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law;

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

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

**"Environmental Permits"** means any permit and other Authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of any Group Company conducted on or from the properties owned or used by any Group Company;

**"Equity Documents"** means the Constitutional Documents, the Loan Note Documents and any other Investor Instruments, the Shareholders' Agreement and any other document designated as an equity document by the Facility Agent and the Parent;

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

- (a) the applicable Screen Rate;
- (b) (if no Screen Rate is available for the Interest Period of that Loan) the Interpolated Screen Rate for that Loan; or
- (c) if:
  - (i) no Screen Rate is available for the Interest Period of that Loan; and
  - (ii) it is not possible to calculate an Interpolated Screen Rate for that Loan,the Base Reference Bank Rate,

as of, in the case of paragraphs (a) and (c) above, the Specified Time on the Quotation Day for euro and for a period equal in length to the Interest Period of that Loan;

**"Event of Default"** means any event or circumstance specified as such in clause 27 (Events of Default);

**"Excess Cashflow"** has the meaning given to that term in clause 25.1 (Financial Definitions);

**"Facility"** means a Term Facility, the CAR Facility or the Revolving Facility;

**"Facility A"** means the term loan facility made available under this agreement as described in clause 2.1(a)(i) (The Facilities);

**"Facility A Commitment"** means:

- (a) in relation to an Original Lender, the amount in the Base Currency set opposite its name under the heading "Facility A Commitment" in part 2 of schedule 1 (The Original Parties) and the amount of any other Facility A Commitment transferred to it under this agreement or assumed by it in accordance with clause 2.2 (Increase); and
- (b) in relation to any other Lender, the amount in the Base Currency of any Facility A Commitment transferred to it under this agreement or assumed by it in accordance with clause 2.2 (Increase),

to the extent not cancelled, reduced or transferred by it under this agreement;

**"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;

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

**"Facility Office"** means:

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

**"FATCA"** means:

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

**"FATCA Application Date"** means:

- (a) in relation to a "withholdable payment" described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014;
- (b) in relation to a "withholdable payment" described in section 1473(1)(A)(ii) of the Code (which relates to "gross proceeds" from the disposition of property of a type that can produce interest from sources within the US), no earlier than 1 January 2019; or

- (c) in relation to a "passthru payment" described in section 1471(d)(7) of the Code not falling within paragraphs (a) or (b) above, no earlier than 1 January 2017,

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

**"FATCA Deduction"** means a deduction or withholding from a payment under a Senior Finance Document required by FATCA;

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

**"Fee Letter"** means:

- (a) any letter or letters dated on or about the date of this agreement between the Arrangers and the Parent (or the Facility Agent and the Parent or the Security Agent and the Parent) setting out any of the fees referred to in clause 16 (Fees);
- (b) a CAR Facility Fee Letter; and
- (c) any other agreement setting out fees payable to a Senior Finance Party referred to in paragraph (e) of clause 2.2 (Increase) or clause 16.5 (Interest, Commission and Fees on Ancillary Facilities) of this agreement or under any other Senior Finance Document;

**"Finance Lease"** has the meaning given to that term in clause 25.1 (Financial Definitions);

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

- (a) monies borrowed and debit balances at banks or other financial institutions;
- (b) any amount raised by acceptance under any acceptance credit facility or bill discounting facility (or dematerialised equivalent);
- (c) any note purchase facility or the issue of bonds (but not Trade Instruments), notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any Finance Lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis and meet any requirements for de-recognition under the Accounting Principles);
- (f) any Treasury Transaction (and, when calculating the value of that Treasury Transaction, only the marked to market value as at the relevant date on which Financial Indebtedness is calculated (or, if any actual amount is due as a result of the termination or close-out of that Treasury Transaction, that amount) shall be taken into account);
- (g) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution in respect of:
  - (i) an underlying liability (but not, in any case, Trade Instruments) of an entity which is not a Group Company which liability would fall within some of the other paragraphs of this definition; or



- (ii) any liabilities of any Group Company relating to any post-retirement benefit scheme;
- (h) any amount raised by the issue of shares which are redeemable (other than at the option of the issuer) before the Termination Date for Facility A (or are otherwise classified as borrowings under the Accounting Principles);
- (i) any amount of any liability under an advance or deferred purchase agreement if:
  - (i) one of the primary reasons behind entering into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question; or
  - (ii) the agreement is in respect of the supply of assets or services and payment is due from the relevant Group Company more than six months after the date of supply to it or is due to the relevant Group Company more than six months before the date of supply by it;
- (j) any amount raised under any other transaction (including any forward sale or purchase, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing or otherwise classified as borrowing under the Accounting Principles; and
- (k) the amount of any liability in respect of any guarantee for any of the items referred to in paragraphs (a) to (j) (inclusive) above,

but excluding any liability (i) under any lease of Real Property which is or would be treated as an operating lease in accordance with the Accounting Principles as applied by the Group as at the date of this Agreement but which would as a result of any change in Accounting Principles in effect after the date of this Agreement be treated as a finance or capital lease in accordance with the Accounting Principles as applied by the Group as at any relevant date after the date of this Agreement and (ii) in respect of deferred consideration for a Permitted Acquisition which is to be funded entirely by any Original Investors by a New Shareholder Injection (such undertaking from the Original Investors to the Parent to be in form and substance satisfactory to the Facility Agent, acting reasonably and to be supported by confirmation acceptable to the Facility Agent, acting reasonably, that the Original Investors have and will have sufficient funds available to meet such undertaking).

**"Financial Quarter"** has the meaning given to that term in clause 25.1 (Financial Definitions);

**"Financial Year"** has the meaning given to that term in clause 25.1 (Financial Definitions);

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

**"Gross Outstandings"** means, in relation to a Multi-account Overdraft, the Ancillary Outstandings of that Multi-account Overdraft but calculated on the basis that the words "(net of any Available Credit Balance)" in paragraph (a) of the definition of "Ancillary Outstandings" were deleted;

**"Group"** means the Parent and each of its Subsidiaries for the time being;

**"Group Company"** means a member of the Group;

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

**"Guarantor"** means an Original Guarantor or an Additional Guarantor, unless it has ceased to be a Guarantor in accordance with clause 30 (Changes to the Obligors);

**"Hedge Counterparty"** means:

- (a) any Original Hedge Counterparty; and
- (b) any entity which has become a Party as a Hedge Counterparty in accordance with clause 28.9 (Accession of Hedge Counterparties),

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

**"Hedging Agreement"** means any master agreement, confirmation, schedule or other agreement entered into or to be entered into by the Company and a Hedge Counterparty for the purpose of hedging the types of liabilities and/or risks in relation to the Term Facility or a CAR Facility which the Hedging Letter (by reference to its form at the time that agreement is entered into) either requires or had required, to be hedged;

**"Hedging Letter"** means the letter dated on or before the date of this agreement and made between the Arrangers and the Parent describing the hedging arrangements to be entered into in respect of the interest rate liabilities of the Borrower of, and in relation to, the Term Facility or a CAR Facility;

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

- (a) held by a Group Company with the Facility Agent or Security Agent;
- (b) designated by the Parent and the Facility Agent as a Holding Account; and
- (c) subject to Security in favour of the Security Agent which Security is in form and substance satisfactory to the Security Agent and in accordance with the Agreed Security Principles,

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

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

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

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

- (a) it has failed to make (or has notified a Party that it will not make) a payment required to be made by it under the Senior Finance Documents by the due date for payment;
- (b) the Facility Agent otherwise rescinds or repudiates a Senior Finance Document;
- (c) (if the Facility Agent is also a Lender) it is a Defaulting Lender under paragraph (a) or (b) of the definition of "Defaulting Lender"; or
- (d) an Insolvency Event has occurred and is continuing with respect to the Facility Agent;

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

- (i) its failure to pay is caused by:

(A) administrative or technical error; or

(B) a Disruption Event; and

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

(ii) the Facility Agent is disputing in good faith whether it is contractually obliged to make the payment in question;

**"Increase Confirmation"** means a confirmation substantially in the form set out in schedule 12 (Form of Increase Confirmation);

**"Increase Lender"** has the meaning given to that term in clause 2.2 (Increase);

**"Information Package"** means the Reports and the Base Case Model;

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

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official;
- (e) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition is instituted or presented by a person or entity not described in paragraph (d) above and:
  - (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or
  - (ii) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof;
- (f) has exercised in respect of it one or more of the stabilisation powers pursuant to part 1 Banking Act 2009 and/or has initiated against it any bank insolvency proceeding pursuant to part 2 Banking Act 2009 or a bank administration pursuant to part 3 Banking Act 2009;
- (g) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (h) 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);

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

**"Insurance Proceeds"** has the meaning given to that term in clause 11.2 (Disposal, Insurance and Acquisition Proceeds and Excess Cashflow);

**"Insurance Report"** means the insurance report prepared by Equity Risk Partners Global and dated on or around the date of this agreement and addressed to, and/or capable of being relied upon by the Reliance Parties;

**"Intellectual Property"** means:

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

**"Intercreditor Agreement"** means the intercreditor agreement dated the same date as this agreement and made between, among others, the Parent, the Debtors (as defined therein), AgenSynd S.L. as Security Agent, AgenSynd S.L. as Agent, the Lenders, the Arranger, (each as defined therein), the holders of legal and beneficial title to the Loan Notes and Management Loan Notes and the Intra-Group Lenders (as defined therein);

**"Interest Period"** means, in relation to a Loan, each period determined in accordance with clause 14 (Interest Periods) and, in relation to an Unpaid Sum, each period determined in accordance with clause 13.3 (Default Interest);

**"Interpolated Screen Rate"** means, in relation to LIBOR or EURIBOR for any Loan, the rate which results from interpolating on a linear basis, using the method recommended by the International Swaps and Derivatives Association (ISDA), between:

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

each as of the Specified Time on the Quotation Day for the currency of that Loan;

**"Investors"** mean the Original Investors and their or any subsequent successors or assigns or transferees;

**"Investor Instruments"** means the Loan Notes and any other subordinated debt instruments by which any New Shareholder Injection is made;

**"ITA"** means the Income Tax Act 2007;

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

**"Legal Due Diligence Report"** means the legal due diligence report prepared by Eversheds LLP in respect of the Target Group, and dated on or about the date of this agreement and capable of being relied upon by the Reliance Parties and their respective successors, assigns and transferees;

**"Legal Opinion"** means any legal opinion delivered to the Facility Agent under clause 5.1 (Initial Conditions Precedent) or clause 26.38(e) (Conditions Subsequent) or clause 30 (Changes to the Obligors);

**"Legal Reservations"** means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to court protection, court schemes, insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (b) the time barring of claims under applicable statutes of limitation, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of stamp duty may be void and defences of set-off or counterclaim; and
- (c) similar principles, rights and defences under the laws of any Relevant Jurisdiction;
- (d) the principle that any additional interest or payment of compensation imposed under any relevant agreement may be held to be unenforceable on the grounds that is a penalty and this void;
- (e) the principle that in certain circumstances Security granted by way of fixed charge may be characterised as a floating charge or that security purported to be constituted by way of an assignment may be recharacterised as a charge;
- (f) the principle that the creation or purported creation of Security over any contract or agreement which is subject to a prohibition against transfer, assignment or charging may be void, ineffective or invalid and may give rise to a breach entitling the contracting party to terminate or take any other action in relation to such contract or agreement;
- (g) the principle that an English Court may not give effect to an indemnity for legal costs incurred by an unsuccessful litigant or the court itself has made an order for costs;
- (h) the principle that the legality, validity, binding nature or enforceability of any Security under a Transaction Security Document which is not governed by the laws of the jurisdiction where the asset or assets purported to be secured under that Transaction Security Document are situated may be flawed; and
- (i) any other matters or general principles which are set out as qualifications or reservations (howsoever described) as to matters of law of general application in the Legal Opinions and any other legal opinion delivered to a Senior Finance Party under the Senior Finance Documents;

**"Lender"** means:

- (a) any Original Lender;
- (b) any CAR Facility Lender; and
- (c) any bank, financial institution, trust, fund or other entity which has become a Party as a Lender in accordance with clause 2.2 (Increase) or clause 28 (Changes to the Lenders),

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

**"Leverage"** has the meaning given to that term in clause 25.1 (Financial Definitions);

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

- (a) the applicable Screen Rate;
- (b) (if no Screen Rate is available for the Interest Period of that Loan) the Interpolated Screen Rate for that Loan; or
- (c) if:
  - (i) no Screen Rate is available for the currency of that Loan; or
  - (ii) 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 Base 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 but such that in the case of a Facility A Loan if the relevant amount is less than 1 per cent per annum, then LIBOR shall be 1 per cent per annum;

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

**"Loan"** means a Term Loan, CAR Facility Loan or a Revolving Facility Loan;

**"Loan Note Documents"** means the Loan Notes, Loan Note Instruments, the Management Loan Notes, Subordinated Security Documents, and when entered into, any New Shareholder Injection Documents made in the form of a debt instrument and any other documents entered into pursuant to any of them;

**"Loan Note Instruments"** means the instruments dated on or before the Closing Date pursuant to which the Loan Notes are, or are to be, constituted;

**"Loan Notes"** means:

- (a) the investor series A1 £6,923,929 secured loan stock 2023 of the Company to be constituted by the Loan Note Instruments; and
- (b) the investor series B1 £10,385,894 unsecured loan stock 2023 of the Company to be constituted by the Loan Note Instruments;

**"Loan Note Security Documents"** means the second ranking debenture and guarantee ranking behind the Transaction Security granted by the Obligors in favour of the Loan

Note Security Trustee as security trustee for the holders of the Loan Notes provided that such security and guarantee is subject to the Intercreditor Agreement;

**"Loan Note Security Trustee"** means the Security Trustee (as that term is defined in the Loan Note Security Documents);

**"Majority Lenders"** means:

- (a) (for the purposes of clause 40.2 (Required Consents) in the context of a waiver in relation to a proposed Utilisation of the Revolving Facility (other than a Utilisation on the Closing Date) of the conditions in clause 5.2 (Further Conditions Precedent)), a Lender or Lenders whose Revolving Facility Commitments aggregate more than 66⅔ per cent of the Total Revolving Facility Commitments; and
- (b) (in any other case), a Lender or Lenders whose Commitments aggregate more than 66⅔ per cent of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 66⅔ per cent of the Total Commitments immediately prior to that reduction);

**"Majority Revolving Facility Lenders"** means a Revolving Facility Lender or Revolving Facility Lenders whose Commitments aggregate more than 66⅔ per cent of the Total Revolving Facility Commitments (or, if the Revolving Facility Total Commitments have been reduced to zero, aggregated more than 66⅔ per cent of the Revolving Facility Total Commitments immediately prior to that reduction);

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

- (a) held with the Facility Agent or Security Agent;
- (b) designated by the Parent and the Facility Agent as a Mandatory Prepayment Account;
- (c) subject to Security in favour of the Security Agent which Security is in form and substance satisfactory to the Facility Agent and Security Agent and in accordance with the Agreed Security Principles; and
- (d) from which no withdrawals may be made by any Group Company except as contemplated by this agreement,

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

**"Management Loan Note Documents"** means the Management Loan Notes and Management Loan Note Instruments in agreed form and any other documents entered into pursuant to any of them;

**"Management Loan Note Instruments"** means the instruments dated on or before the Closing Date pursuant to which the Management Loan Notes are, or are to be, constituted;

**"Management Loan Note Security Documents"** means the second ranking debenture and guarantee ranking behind the Transaction Security granted by the Obligors in favour of the Management Loan Note Security Trustee as security trustee for the holders of the Management Loan Notes provided that such security and guarantee is subject to the Intercreditor Agreement;

**"Management Loan Note Security Trustee"** means the Security Trustee (as that term is defined in the Management Loan Note Security Documents);

**"Management Loan Notes"** means:

- (a) the management series A2 £144,686 secured loan stock 2023 of the Company to be constituted by the Management Loan Note Instruments; and
- (b) the management series B2 £217,029 secured loan stock 2023 of the Company to be constituted by the Management Loan Note Instruments;

**"Margin"** means:

- (a) in relation to any Facility A Loan, 7.00 per cent per annum;
- (b) in relation to any Revolving Facility Loan, 3.00 per cent per annum;
- (c) in relation to any CAR Facility Loan, the CAR Facility Margin but subject always to the CAR Facility Maximum Margin;
- (d) in relation to any Unpaid Sum relating or referable to a Facility, the rate per annum specified above for that Facility; and
- (e) in relation to any other Unpaid Sum, the highest rate specified above,

but if:

- (f) no Event of Default has occurred and is continuing;
- (g) a period of at least 12 Months has expired since the Closing Date; and
- (h) Leverage in respect of the most recently completed Relevant Period is within a range set out below,

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

Leverage	Facility A Margin % p.a.
Greater than 3.00:1	7.00
Equal to or less than 3.00:1 but greater than 2.50:1	6.75
Equal to or less than 2.50:1 but greater than 2.00:1	6.50
Equal to or less than 2.00:1	6.25

and the Margin for a Loan under any CAR Facility will be the percentage per annum set out in the CAR Facility Establishment Notice.

However:

- (i) any increase or decrease in the Margin for a Loan shall take effect on the date (the **"reset date"**) which is five Business Days after receipt by the



Facility Agent of the Compliance Certificate for that Relevant Period pursuant to clause 24.2 (Provisions and Contents of Compliance Certificate);

- (ii) if the effect of the above would be to cause the Margin to reduce by more than one level on any reset date then the Margin will decrease to the relevant level (even if it involves more reducing by more than one level) on that reset date;
- (iii) if, following receipt by the Facility Agent of the Compliance Certificate related to the relevant Annual Financial Statements, that Compliance Certificate does not confirm the basis for the Margin, then clause 13.2(b) (Payment of Interest) shall apply and the Margin for that Loan shall be the percentage per annum determined using the table above and the revised ratio of Leverage calculated using the figures in that Compliance Certificate;
- (iv) while an Event of Default is continuing, the Margin for each Loan under Facility A and the CAR Facility shall be the highest percentage per annum set out above (or in the relevant CAR Facility Establishment Notice) for a Loan under that Facility provided that once the Event of Default is no longer continuing, the Margin shall immediately revert to the level calculated pursuant to the most recent Compliance Certificate delivered under this agreement; and
- (v) for the purpose of determining the Margin, Leverage and Relevant Period shall be determined in accordance with clause 25.1 (Financial Definitions);

**"Market Report"** means the market report prepared by Apex Insight Ltd and dated on or about the date of this agreement and addressed to, and/or capable of being relied upon by the Reliance Parties;

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

- (a) the business, operations, assets, financial condition or prospects of the Group taken as a whole; or
- (b) the ability of the Obligors (taken as a whole) to perform their payment obligations under the Senior Finance Documents; or
- (c) subject to the Legal Reservations and any Perfection Requirements, the validity or enforceability of any Senior Finance Document or the effectiveness or ranking of any Security granted or purporting to be granted pursuant to any of, the Senior Finance Documents which if capable of remedy is not remedied within 20 Business Days of the Facility Agent giving notice to the Parent or the relevant Obligor;

**"Material Company"** means, at any time:

- (a) an Obligor; or
- (b) a Group Company that holds shares in an Obligor; or
- (c) a Subsidiary of the Parent which has earnings before interest, tax, depreciation and amortisation calculated on the same basis as Consolidated EBITDA (as defined in clause 25.1 (Financial Definitions)) representing 5 per cent or more of Consolidated EBITDA, as defined in clause 25.1 (Financial Definitions) or has gross assets representing 5 per cent, or more of the gross assets of the Group, calculated on a consolidated basis (but excluding intra-group items and goodwill).

Compliance with the conditions set out in paragraph (c) above shall be determined by reference to the most recent Compliance Certificate supplied by the Parent and/or the

latest audited financial statements of that Subsidiary (consolidated in the case of a Subsidiary which itself has Subsidiaries) and the latest audited consolidated financial statements of the Group. However, if a Subsidiary has been acquired since the date as at which the latest audited consolidated financial statements of the Group were prepared, the financial statements shall be deemed to be adjusted in order to take into account the acquisition of that Subsidiary (that adjustment being certified by the Group's Auditors as representing an accurate reflection of the revised Consolidated EBITDA (as defined in clause 25.1 (Financial Definitions) or gross assets of the Group);

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

**"Material Event of Default"** means:

- (a) An Event of Default under clause 27.1 (Non-Payment) in relation to non-payments in respect of any amounts due in respect of the Revolving Facility, provided that where such Event of Default is in respect of a non-payment of fees due under the Revolving Facility (a **"Fee Default"**), no such Material Event of Default shall occur unless (i) the amount of such Fee Default exceeds £25,000, or (ii) at any time during the term of this agreement, more than four Fee Defaults occur;
- (b) an Event of Default under clause 27.2 (Financial Covenants and Other Obligations) insofar as it relates to a failure to comply with clause 25.2(d) (Super Senior EBITDA);
- (c) an Event of Default under clause 27.3 (Other Obligations) in respect of a failure to comply with clause 24.1 (Financial Statements) or a failure to comply with clause 24.2 (Provision and Contents of Compliance Certificate), provided that if the relevant certificates or financial statements are provided after the date falling 30 days after the date they were originally due to be delivered under such clause, such Material Event of Default shall be deemed to be cured, provided that such cure right shall only be permitted up to 3 times prior to the Termination Date for the Revolving Facility;
- (d) an Event of Default under clause 27.6 (Insolvency) or clause 27.7 (Insolvency Proceedings) in relation to (A) a Borrower which has any Revolving Facility Loans outstanding or (B) any Significant Company;
- (e) an Event of Default under clause 27.16 (Repudiation and Rescission of Agreements);
- (f) the granting of Significant Security by any Group Company;
- (g) the occurrence of a Significant Disposal, which the Majority Revolving Facility Lenders have not consented to; and
- (h) in relation to the failure to obtain the consent of the Majority Revolving Facility Lenders as expressly required by the terms of this agreement.

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

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

- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- (c) if 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 exceptions will only apply to the last Month of any period;

**"Monthly Financial Statements"** means the financial statements delivered pursuant to clause 24.1(b) (Financial Statements);

**"Multi-account Overdraft"** means an Ancillary Facility which is an overdraft facility comprising more than one account;

**"Net Outstandings"** means, in relation to a Multi-account Overdraft, the Ancillary Outstandings of that Multi-account Overdraft;

**"New Lender"** has the meaning given to that term in clause 28 (Changes to the Lenders);

**"New Shareholder Injections"** has the meaning given to that term in clause 25.1 (Financial Definitions);

**"Non-Consenting Lender"** has the meaning given to that term in clause 40.8 (Replacement of Lender).

**"Notifiable Debt Purchase Transaction"** has the meaning given to that term in clause 29.2 (Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates).

**"Non-Obligor"** means a Group Company which is not an Obligor;

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

**"Obligors' Agent"** means Parent, appointed to act on behalf of each Obligor in relation to the Senior Finance Documents pursuant to clause 2.4 (Obligors' Agent);

**"Optional Currency"** means a currency (other than the Base Currency) which complies with the conditions set out in clause 5.3 (Conditions Relating to Optional Currencies);

**"Original Financial Statements"** means:

- (a) in relation to the Target:
  - (i) its consolidated audited financial statements for its financial year ended 31 March 2015 (the **"Original Audited Financial Statements"**); and
  - (ii) its unaudited consolidated monthly management accounts for the period ended 29 February 2016 (the **"Original Unaudited Financial Statements"**);
- (b) in relation to any Additional Obligor, its audited financial statements delivered to the Facility Agent as required by clause 30 (Changes to the Obligors).

**"Original Investors"** means Sovereign Capital IV Limited Partnership, Stewart Odes, SCLP IV Investment LP and any Sovereign Co-Investor;

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

**"Original Obligor"** means the Original Borrower or an Original Guarantor;

**"Overfund Amount"** means the aggregate of:

- (a) the overfund amount as set out in the Funds Flow Statement; and
- (b) any amount of the figure for Acquisition Costs set out in the Funds Flow Statement not spent on Acquisition Costs,

as reduced from time to time by its application in accordance with the terms of this agreement;

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

**"Party"** means a party to this agreement;

**"Perfection Requirements"** means any and all registrations, filings, notices and other actions and steps required to be made in any jurisdiction in order to perfect security created by the Transaction Security Documents or in order to achieve the relevant priority for such Security;

**"Permitted Acquisition"** means:

- (a) the Acquisition;
- (b) an acquisition by a Group Company of an asset (including shares in another Group Company) sold, leased, transferred or otherwise disposed of by another Group Company in circumstances constituting a Permitted Disposal;
- (c) an acquisition of shares or securities pursuant to a Permitted Share Issue;
- (d) an acquisition of securities which are Cash Equivalent Investments so long as those Cash Equivalent Investments become subject to the Transaction Security as soon as reasonably practicable;
- (e) the incorporation of a limited liability company or the purchase of shares in an off the shelf limited liability company which becomes a Group Company so long as the aggregate amount by which such companies (if they are Non-Obligors) are first capitalised (when added to the aggregate amounts guaranteed pursuant to paragraph (f) of the definition of "Permitted Guarantees" and the aggregate amount of Permitted Loans which are permitted pursuant to paragraph (e) of the definition of "Permitted Loans") does not at any time exceed £400,000 or its equivalent in other currencies;
- (f) an acquisition (not being an acquisition by the Parent), for cash consideration, of:
  - (i) all of the issued share capital of a limited liability company; or
  - (ii) (if the acquisition is made by a limited liability company whose sole purpose is to make the acquisition) a business or undertaking carried on as a going concern,

but only if (in each case):

- (A) the total cash and non-cash consideration (including associated costs and expenses) and liabilities assumed by the Group (the "**Total Consideration**") does not exceed (i) £10,000,000 for any single acquisition and (ii) £12,000,000 in aggregate in any rolling 12 Month period;
- (B) no Default is continuing on the closing date for the acquisition or would occur as a result of the acquisition;
- (C) the acquired company, business or undertaking is incorporated in or is established, and carries on its principal business in an Approved Country and is engaged in a business substantially the same as or complimentary to that carried on by the Group;
- (D) any Financial Indebtedness or other assumed actual or contingent liability remaining in the acquired company or business at the date of acquisition together with any other Financial Indebtedness or other assumed actual or contingent liability remaining in any other company (or business) acquired in the same Financial Year does not in any Financial Year of the Group exceed in aggregate £400,000, and such Financial Indebtedness is provided for by way of (i) cash held in escrow, (ii) the purchase price as demonstrated in the completion accounts of the target, (iii) Permitted Financial Indebtedness, (iv) insurance, (v) is met by a New Shareholder Injection made for this purpose or (vi) is guaranteed by an Investor or (vii) would otherwise be permitted under this agreement as Permitted Financial Indebtedness;
- (E) the earnings before interest, Tax, depreciation and amortisation (calculated in the same manner as EBITDA) of the company or business so acquired are positive in the 12 Months immediately preceding such acquisition taking into account of pro forma adjustments reasonably identifiable, supportable, achievable and sustainable cost synergies provided that:
  - (aa) such cost savings or cost synergies shall be set out in reasonable detail and certified by the finance director of the Parent in a certificate detailing such pro forma adjustments together with all reasonable detail; and
  - (bb) cost savings or cost synergies that are greater than 10% of the earnings before interest, tax, depreciation and amortisation (calculated in the same manner as EBITDA) of the company or business being so acquired shall be identified in a report prepared by the Groups Auditors or other applicable due diligence report provider satisfactory to the Facility Agent (acting reasonably) and as verified by the Auditors (or other such report provider) as being reasonable as regards assumptions and methodology of combining the operations of such acquired;
- (F) EBITDA of the Group will be increased as a result of the relevant acquisition having regard to both the pro forma cost savings (if any) reasonably identifiable, supportable, achievable and sustainable cost synergies and the cost of achieving those savings of pro forma adjustments provided that:

- (aa) such cost savings or cost synergies shall be set out in reasonable detail and certified by the finance director of the Parent in a certificate detailing such pro forma adjustments together with all reasonable detail; and
  - (bb) cost savings or cost synergies that are greater than 10% of the earnings before interest, tax, depreciation and amortisation (calculated in the same manner as EBITDA) of the company or business being so acquired shall be identified in a report prepared by the Groups Auditors or other applicable due diligence report provider satisfactory to the Facility Agent (acting reasonably) and as verified by the Auditors (or other such report provider) as being reasonable as regards assumptions and methodology of combining the operations of such acquired entity;
- (G) the Parent has delivered to the Facility Agent not later than five (5) Business Days before legally committing to make the acquisition:
- (aa) the relevant board report (incorporating a summary business plan) with reasonable details of the acquisition including details of the business to be acquired, the Total Consideration to be paid (including details of any deferred consideration and any Earn-Out Consideration);
  - (bb) a new base case model in the agreed form containing amendments reflecting the financial impact of the proposed acquisition for any acquisition for which the Total Consideration exceeds £5,000,000 and it is funded by solely by Retained Excess Cashflow;
  - (cc) copies of each due diligence report which the Parent and/or an Original Investor received in relation to the relevant acquisition;
  - (dd) a certificate signed by a director of the Parent, showing that (giving calculations) the Parent would have remained in compliance with its obligations under clause 25 (Financial Covenants) if the covenant tests were recalculated for the Relevant Period ending on the most recent Quarter Date consolidating the financial statements of the target company (consolidated if it has Subsidiaries) or business with the financial statements of the Group for such period on a pro forma basis and as if the consideration for the proposed acquisition had been paid at the start of that Relevant Period and each financial covenant in clause 25.2 (Financial Condition) (calculated on a pro forma basis) is forecast (based on reasonable assumptions) to be complied with in the twelve Month period immediately following the relevant acquisition provided that for the purposes of calculating Consolidated EBITDA for such pro forma compliance, all increases in Consolidated EBITDA run rate are reasonably achievable, such adjustments are set out in reasonable detail and certified by the finance director of the Parent and if the increase is greater than 10% of the earnings before interest, tax, appreciation and amortisation (calculated in the same manner as EBITDA) assessed in a report prepared by the Groups Auditors or other applicable due diligence report provider satisfactory to the

Facility Agent (acting reasonably) and as verified by the Auditors (or other such report provider) as being reasonable as regards assumptions and methodology combining the operations at the acquired entity;

- (H) other than in respect of an acquisition solely funded by New Shareholder Injections, the Parent shall deliver to the Facility Agent not later than five (5) Business Days before legally committing to make the acquisition a certificate signed by a director of the Parent, showing that (giving calculations) Leverage, adjusted so as to include the proposed New Shareholder Injections and the proposed acquisition and after taking into account the proposed targets earnings before interest, tax, depreciation and amortisation (calculated in the same manner as EBITDA) and taking into account the calculations certified or verified as the case may be in accordance with paragraph (G)(dd) above) as if such funding had occurred during that Relevant Period does not to exceed the lower of:
  - (aa) 4.40:1;
  - (bb) 90% of the Leverage ratio for that Relevant Period as set out in clause 25.2(c) (Leverage);
- (I) if any of the consideration for the acquisition (including associated costs and expenses) constitutes Earn-Out Consideration, the Parent must demonstrate at the time of the relevant acquisition that it will at the time the relevant Earn-Out Consideration becomes payable be able to fund the payment of the Earn-Out Consideration by New Shareholder Injections or from the target entity's own performance;
- (J) no more than four acquisitions are made in any period of 12 Months;
- (K) in the case of any Permitted Acquisition in respect of which the Total Consideration for the proposed target entity is equal to or greater than £5,000,000, the Parent has delivered to the Facility Agent not later than five (5) Business Days before legally committing to make the acquisition, copies of each legal and financial due diligence report which the Parent and/or the Original Investors receive in relation to the relevant acquisition addressed to and/or capable of being relied upon by the Reliance Parties;
- (L) all deferred consideration is in form and substance satisfactory to the Majority Lenders and is subject to the Intercreditor Agreement, and the beneficiaries of such deferred consideration are party to the Intercreditor Agreement as Subordinated Creditors;
- (M) the aggregate amount of all outstanding deferred consideration in respect of all Permitted Acquisitions (save for the Acquisition), (except those funded by New Shareholder Injections) shall not at any time exceed in aggregate £1,000,000; and
- (N) the Parent has delivered a certificate signed by the finance director of the Parent certifying the percentage of the Total Consideration for the relevant acquisition which has been funded from the proceeds of New Shareholder Injections (the **"Equity Contribution Percentage"**) and the percentage (if any) which has been funded by the Lenders from any Utilisations,

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

- (g) an investment in a Permitted Joint Venture;
- (h) any acquisition by a Group Company of shares or Loan Notes or Management Loan Notes (in each case, issued by a Group Company) or similar of any director or employee whose appointment and/or service contract with the Group is terminated, net of cash subscriptions for shares or Loan Notes or Management Loan Notes issued by a Group Company to any new, replacement or existing director or employee up to, in aggregate, up to £400,000 in total (or its equivalent in other currencies);
- (i) the redemption of any share capital of any member of the Group (other than the Parent) to the extent permitted by this agreement and the redemption of any share capital of the Parent that constitutes a Permitted Payment;
- (j) the acquisition of shares in the Parent by the Parent for employees of the Group or for or by a trustee of an employee benefit trust up to a maximum amount of £250,000 at any time; and
- (k) any acquisition in respect of which the Lenders have given their written consent;

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

- (a) of trading stock or cash made by any Group Company in the ordinary course of trading of the disposing entity;
- (b) of any asset by a Group Company (the **"Disposing Company"**) to another Group Company (the **"Acquiring Company"**), but if:
  - (i) the Disposing Company is an Obligor, the Acquiring Company must also be an Obligor;
  - (ii) the Disposing Company had given Security over the asset, the Acquiring Company must give equivalent Security over that asset; and
  - (iii) the Disposing Company is a Guarantor, the Acquiring Company must be a Guarantor guaranteeing at all times an amount no less than that guaranteed by the Disposing Company; and
  - (iv) the Disposing Company is an Obligor and the Acquiring Company is not an Obligor, the aggregate amount transferred (net of the value of any assets transferred from any members of the Group which are not Obligors to Obligors) must not exceed £160,000 (or its equivalent at any time;
- (c) of cash which would otherwise be permitted under any Senior Finance Document;
- (d) of assets (other than shares or businesses) in exchange for other assets comparable or superior as to type, value or quality;
- (e) of obsolete or redundant vehicles, plant and equipment for cash (unless it is not commercially feasible to dispose of such assets for cash);
- (f) of Cash Equivalent Investments for cash or in exchange for other Cash Equivalent Investments;
- (g) constituted by a licence of intellectual property rights permitted by clause 26.28 (Intellectual Property);



- (h) to a Joint Venture, to the extent permitted by clause 26.10 (Joint Ventures);
- (i) arising as a result of any Permitted Security;
- (j) of any asset (other than shares or a business) pursuant to a contractual arrangement to which a member of the Target Group is party as at the Closing Date (or in respect of a company or business acquired as a Permitted Acquisition which it or any of its Subsidiaries is party to as at the date it was acquired by the Group);
- (k) of assets compulsorily acquired by any governmental authority and which does not result in and is not reasonably likely to lead to a Material Adverse Effect;
- (l) which is a lease or licence of Real Property in the ordinary course of business other than a lease or licence of any Real Property which is the subject of any fixed Security under the Transaction Security or which has a value of more than £400,000 (or its equivalent in other currencies);
- (m) a licence of Real Property to a member of the Group;
- (n) of assets by way of sale and leaseback where the aggregate proceeds of all such disposals does not exceed £160,000 (or its equivalent) in each Financial Year provided that any such transaction would not result in the occurrence of Financial Indebtedness which is not Permitted Financial Indebtedness and/or the granting of Quasi-Security which is not Permitted Security;
- (o) of assets (other than shares) for cash where the higher of the market value and net consideration receivable (when aggregated with the higher of the market value and net consideration receivable for any other sale, lease, licence, transfer or other disposal not allowed under the preceding paragraphs or as a Permitted Transaction) does not exceed £400,000 (or its equivalent in other currencies) in any Financial Year of the Parent; and
- (p) in respect of which the Majority Lenders and (in the case of a Significant Disposal) the Majority Revolving Facility Lenders have given their written consent (as appropriate);

**"Permitted Distribution"** means:

- (a) the payment of a dividend to the Company or any of its Subsidiaries; and
- (b) any distribution which is a Permitted Payment;

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

- (a) arising under any of the Equity Documents, and subject always to the terms of this agreement and the Intercreditor Agreement;
- (b) to the extent covered by a letter of credit, guarantee or indemnity issued under an Ancillary Facility;
- (c) arising under a foreign exchange transaction for spot or forward delivery entered into in connection with protection against fluctuation in currency rates where that foreign exchange exposure arises in the ordinary course of trade or in respect of Utilisations made in Optional Currencies, but not a foreign exchange transaction for investment or speculative purposes;
- (d) arising under a Permitted Loan or a Permitted Guarantee or as permitted by clause 26.34 (Treasury Transactions);

- (e) of any person acquired by a Group Company after the Closing Date which is incurred under arrangements in existence at the date of acquisition, but not incurred or increased or having its maturity date extended in contemplation of, or since, that acquisition, and outstanding only for a period of three months following the date of acquisition;
- (f) under finance or capital leases (as treated as such by the Accounting Principles in force at the date of this agreement) of vehicles, plant, equipment or computers, provided that the aggregate capital value of all such items so leased under outstanding leases by Group Companies does not exceed £1,000,000 (or its equivalent in other currencies) at any time;
- (g) arising under any of the Senior Finance Documents;
- (h) any deferred or other consideration incurred in respect of (and permitted by) the definition of Permitted Acquisition;
- (i) permitted under paragraphs (d) and (e) of the definition of Permitted Loan;
- (j) arising under the grant from the Regional Growth Fund to Dalepak Limited provided that the aggregate amount of all such indebtedness does not exceed £898,189 at any time;
- (k) in respect of any payment of Deferred Consideration (as such term is defined in the Acquisition Agreement) to any or all Vendors which is funded solely from the Retention Fund (as such term is defined in the Acquisition Agreement); or
- (l) not permitted by the preceding paragraphs or as a Permitted Transaction and the outstanding amount of which does not exceed £200,000 (or its equivalent in other currencies) in aggregate for the Group at any time;

**"Permitted Gross Outstandings"** means, in relation to a Multi-account Overdraft, any amount, not exceeding its Designated Gross Amount, which is the amount of the Gross Outstandings of that Multi-account Overdraft;

**"Permitted Guarantee"** means:

- (a) the endorsement of negotiable instruments in the ordinary course of trade;
- (b) any performance or similar bond or guarantees (or counter-indemnity) guaranteeing performance by a Group Company under any contract entered into in the ordinary course of trade;
- (c) any guarantee of a Joint Venture to the extent permitted by clause 26.10 (Joint Ventures);
- (d) any guarantee permitted under clause 26.22 (Financial Indebtedness);
- (e) any guarantee given in respect of the netting or set-off arrangements permitted pursuant to paragraph (b) of the definition of "Permitted Security";
- (f) a guarantee by an Obligor of a Non-Obligor's obligations provided the aggregate amount guaranteed when added to the aggregate amount of Permitted Loans which are permitted pursuant to paragraph (e) of the definition of "Permitted Loan" does not at any time exceed £160,000 (or its equivalent in other currencies);
- (g) any guarantee or indemnity given by a person acquired pursuant to a Permitted Acquisition and existing at the time of that Permitted Acquisition provided such

guarantee is discharged within three months of the Permitted Acquisition completing;

- (h) any guarantee or indemnity given in the ordinary course of the documentation of an acquisition or disposal transaction which is a Permitted Acquisition or Permitted Disposal which guarantee or indemnity is in a customary form and subject to customary limitations;
- (i) any guarantee or indemnity (other than a guarantee of Financial Indebtedness) entered into by an Obligor under any contract entered into in the ordinary course of business of the Group on or before the Closing Date, or thereafter in the ordinary course of business (excluding, for the avoidance of doubt, with any Investor);
- (j) a guarantee by a member of the Group of the obligations of an Obligor provided that such Obligor has acceded to the Intercreditor Agreement;
- (k) a guarantee by a member of the Group which is not an Obligor of the obligations of another member of the Group which is not an Obligor;
- (l) guarantees to landlords and/or guarantees or counter indemnities in favour of financial institutions which have guaranteed rent obligations of a member of the Group (other than the Parent);
- (m) any indemnity granted to the trustee of any employee share option or unit trust scheme;
- (n) any guarantee granted in favour of the trustee of any pension scheme of any member of the Group (other than the Parent) arising as a result of operation of law or to comply with law;
- (o) any guarantee granted in connection with arbitration proceedings;
- (p) any indemnity in favour of the liquidator of a member of the Group whose liquidation constitutes a Permitted Transaction;
- (q) any authorised guarantee agreement (as such term is used in the Landlord and Tenant (Covenants) Act 1995) entered into in respect of leasehold property disposed of in accordance with this agreement;
- (r) any guarantee or indemnity in the Subordinated Security Documents; and
- (s) any guarantee not permitted by the preceding paragraphs or as a Permitted Transaction provided that the total aggregate amount permitted under this paragraph (s) may not exceed £200,000 (or its equivalent in other currencies) in aggregate for the Group at any time;

**"Permitted Joint Venture"** means any Joint Venture where:

- (a) the Joint Venture is incorporated, or established, and carries on its principal business in an Approved Country;
- (b) the Joint Venture is engaged in a business complementary to or substantially the same as that carried on by the Group; and

- (c) in any Financial Year of the Parent, the aggregate (the **"Joint Venture Investment"**) of:
  - (i) all amounts subscribed for shares in, lent to, or invested in all such Joint Ventures by any Group Company;
  - (ii) the contingent liabilities of any Group Company under any guarantee given in respect of the liabilities of any such Joint Venture; and
  - (iii) the market value of any assets transferred by any Group Company to any such Joint Venture (other than a transfer of goods or assets for value and cash in the normal course of trading),

does not (net of repayments of loans and investments and terminated guarantees) exceed £250,000 (or its equivalent in other currencies) in that Financial Year (and does not cumulatively exceed £500,000 (or its equivalent in other currencies));

**"Permitted Loan"** means:

- (a) any trade credit or advance payments extended by any Group Company to its customers on normal commercial terms and in the ordinary course of its trading activities and advance payments made in relation to capital expenditure in the ordinary course of business;
- (b) Financial Indebtedness which is referred to in the definition of, or otherwise constitutes, "Permitted Financial Indebtedness" (except under paragraph (d) of that definition);
- (c) a loan made to a Joint Venture to the extent permitted under clause 26.10 (Joint Ventures);
- (d) a loan made by an Obligor to another Obligor or made by a Non-Obligor to another Group Company (other than the Parent);
- (e) any loan made by an Obligor to a Non-Obligor so long as the aggregate amount of the Financial Indebtedness under any such loans (when added to the aggregate amounts guaranteed pursuant to paragraph (f) of the definition of "Permitted Guarantee" does not exceed £160,000 (or its equivalent in other currencies) at any time;
- (f) a loan made by a Group Company to an employee or director of any Group Company if the amount of that loan when aggregated with the amount of all loans to employees and directors by Group Companies does not exceed £80,000 (or its equivalent in other currencies) at any time;
- (g) any loan made to an employee benefit trust or similar for the purpose of the operation of an employee share scheme or similar subject to the maximum total amount of all such loans not exceeding £150,000 (or its equivalent in other currencies) at any time;
- (h) any deferred consideration on Permitted Disposals and/or any loans or other extensions of credit made by a member of the Group that are or may become due or remain outstanding as a result of or following such disposal provided that the aggregate outstanding amount of such credit or consideration does not at any time exceed £200,000;
- (i) loans or extensions of credit resulting from any guarantee, netting or set-off under arrangements described under paragraph (e) of the definition of "Permitted Guarantee";

- (j) any loan made by a member of the Group for the purposes of enabling the Parent or an Obligor to meet its payment obligations under the Senior Finance Documents or to make a Permitted Payment;
- (k) loans to the extent constituted by an investment in Cash Equivalent Investments or positive cash balances on bank accounts; and
- (l) any loan not permitted by the preceding paragraphs (other than a loan made by a Group Company to another Group Company) so long as the aggregate amount of the Financial Indebtedness under any such loans does not exceed £200,000 (or its equivalent in other currencies) at any time,

so long as the provision of such loan or other credit is not made in breach of the Intercreditor Agreement and, in the case of paragraphs (d), (e) and (f) above:

- (i) the creditor of such Financial Indebtedness shall (if it is an Obligor) grant security over its rights in respect of such Financial Indebtedness in favour of the Secured Parties on terms acceptable to the Facility Agent (acting on the instructions of the Majority Lenders); and
- (ii) to the extent required by the Intercreditor Agreement the creditor and the debtor of such Financial Indebtedness are or become party to the Intercreditor Agreement as an Intra-Group Lender and a Debtor (as defined, in each case, in the Intercreditor Agreement) respectively;

**"Permitted Payment"** means:

- (a) the payment of a dividend, payment of interest, repayment of principal or loan or fee by Parent to any Holding Company or shareholder of Parent:
  - (i) to meet:
    - (A) administrative costs, directors' fees and other out of pocket expenses (up to £20,000 in each Financial Year plus VAT); and
    - (B) an arrangement fee payable to the Investors in the amount of £1,196,597 on or before the Closing Date;
  - (ii) any arrangement fee (funded in full by a New Shareholder Injection) relating to any New Shareholder Injection in connection with the funding of a Permitted Acquisition up to the higher of:
    - (A) 3% of the enterprise value of any target company or business which is the subject of such an acquisition; and
    - (B) 7% of such New Shareholder Injection; and
  - (iii) an arrangement fee (funded in full by a New Shareholder Injection) in respect of any guarantee issued by the Investors or its Sponsor Affiliates in respect of the obligations of any Group Company up to a maximum of 3% of the guaranteed liabilities arising under such guarantee,

in each case, as increased by up any increase in the UK's retail price index in each Financial Year and irrespective of whether any Event of Default is continuing at such time;

- (b) a payment by way of capitalisation of interest and/or any related PIK note in accordance with the Loan Notes, Management Loan Notes or any other Investor Instrument;

- (c) payment of fees and costs for the Acquisition as set out in the Funds Flow Statement and for any other Permitted Acquisition as set out in the related funds flow statement for that Permitted Acquisition;
- (d) the payment of fees, costs, and expenses in respect of New Shareholder Injections by way of deduction from such New Shareholder Injection (but so that only the net amount received by the Group shall be treated as the amount of the New Shareholder Injection for the purposes of this Agreement);
- (e) subject to paragraph (h) below, the payment by the Parent of scheduled cash-pay interest (quarterly and in arrears, save in respect of the first payment due on 30 June 2016 which shall accrue from the Closing Date) on Investor Instruments or Management Loan Notes (except for those used to remedy a breach of a financial covenant pursuant to clause 25.4 (Equity Cure)) (a **"Proposed Payment"**), provided that:
  - (i) the Parent has been in compliance with its obligations under clause 25 (Financial Covenants) for the Relevant Period prior to making the relevant payment (calculated as if the Proposed Payment and any Unpaid Interest, as defined below had been paid at the end of that Relevant Period);
  - (ii) EBITDA of the Group for the Relevant Period ending on or around the date on which such scheduled interest payment is due is not lower than the amount set out in column 2 below opposite that Relevant Period (the **"EBITDA Test"**).

<b>Column 1</b>	<b>Column 2</b>
<b>Relevant Period</b>	<b>£</b>
Relevant Period expiring 30 June 2016	£3,739,422
Relevant Period expiring 30 September 2016	£3,773,692
Relevant Period expiring 31 December 2016	£4,493,562
Relevant Period expiring 31 March 2017	£4,800,299
Relevant Period expiring 30 June 2017	£5,016,634
Relevant Period expiring 30 September 2017	£5,204,829
Relevant Period expiring 31 December 2017	£5,318,657
Relevant Period expiring 31 March 2018	£5,328,708
Relevant Period expiring 30 June 2018	£5,493,834
Relevant Period expiring 30 September 2018	£5,639,064
Relevant Period expiring 31 December 2018	£5,790,271
Relevant Period expiring 31 March 2019	£5,970,787
Relevant Period expiring 30 June 2019	£6,115,229
Relevant Period expiring 30 September 2019	£6,239,082

Column 1	Column 2
Relevant Period	£
Relevant Period expiring 31 December 2019	£6,368,286
Relevant Period expiring 31 March 2020	£ 6,528,966
Relevant Period expiring 30 June 2020	£6,696,616
Relevant Period expiring 30 September 2020	£6,842,483
Relevant Period expiring 31 December 2020	£6,993,777
Relevant Period expiring 31 March 2021 and each Relevant Period expiring thereafter	£7,178,367

- (iii) the Parent forecasts that it will comply with its obligations under clause 25 (Financial Covenants) for the 12 month period following the relevant payment (calculated after taking account of the Proposed Payment and any Unpaid Interest, as defined below);
  - (iv) no Default is continuing or would occur as a result of the Proposed Payment;
  - (v) only one payment may be made under this paragraph (e) in any Financial Quarter; and
  - (vi) the Parent has delivered the Compliance Certificate required pursuant to clause 24.2 (Provision and Contents of Compliance Certificate) for the Relevant Period that ended on or around the date on which such scheduled interest payment is due, at least 10 days prior to the date of payment confirming compliance with the requirements specified above.
- (f) Any Proposed Payment or payment of Unpaid Interest (as defined below) or payment of capitalised interest on any Investor Instrument or Management Loan Note, provided that in each case it is made solely from the cash receipts of a New Shareholder Injection solely for the purposes of making (and in an amount not exceeding) as the case may be, such Proposed Payment paid pursuant to paragraph (e) above or Payment of Unpaid Interest or payment of capitalised interest in cash prior to the date payment is made, as certified by the Parent period to the date payment is made.
- To the extent a Proposed Payment made in full would cause a breach of paragraph (i) to (vi) above but a partial payment would not, a partial payment may be made (the unpaid amount being the "**Unpaid Interest**"). Any Unpaid Interest may subsequently be paid along with any Proposed Payment, if when added to the Proposed Payment it would meet the relevant tests at paragraphs (i) to (vi) above. The Compliance Certificate delivered pursuant to this paragraph shall specify the amount of the Proposed Payment and any Unpaid Interest to be paid at the same time;
- (g) Subject to paragraph (h) below any payment of principal or scheduled cash-pay interest or capitalised interest (and any related PIK notes) in respect of any Investor Instruments or Management Loan Notes and payment of any dividend to any shareholder of the Parent if:
- (i) funded entirely from the Overfund Amount; or

- (ii) funded entirely from Excess Cashflow not required to repay the Term Loans pursuant to clause 11.2 (Disposal, Insurance and Acquisition Proceeds and Excess Cashflow) and provided that:
    - (A) no Default is continuing or would occur immediately after making such payment; and
    - (B) the Leverage ratio is equal to or less than 2.5:1 (as at the most recently completed Relevant Period and pro forma for such distribution);
- (h) no payment pursuant to paragraph (e), (f) or (g) above shall be permitted at any time when the Parent or any Borrower has elected to have an Interest Period of longer than 3 months for any Facility A Loan and the payment would occur during such Interest Period;
- (i) a payment made to a director or other employee in respect of shares in a Group Company and any purchase or repayment of any Loan Notes or Management Loan Notes or shareholder or similar loans made by such person to a Group Company (and/or to make any compensation payments to such departing directors and/or employees) net of cash subscriptions for shares or Loan Notes or Management Loan Notes issued by a Group Company to any new, replacement or existing director or employee up to, in aggregate, £400,000 in total (or its equivalent in other currencies) in total and provided no Declared Default is continuing at such time;
- (j) the redemption of Investor Loan Notes (together with accrued interest thereon) up to a maximum aggregate amount of £192,000 which is funded entirely by a corresponding new subscription of Management Loan Notes funded by the bonuses or salary of those investing for such Management Loan Notes;
- (k) the payment of a dividend or distribution of share premium reserve or redemption, repurchase, defeasement, retirement or repayment of its share capital by a member of the Group (other than the Parent), provided that if such a member of the Group is not a wholly-owned Subsidiary of its Holding Company, the dividend or distribution or other payment attributable to its minority shareholders shall be proportionate to their shareholding;
- (l) a payment or reasonable fees to the trustee or any employee share option scheme established by a member of the Group;
- (m) any payment to a shareholder of the Parent for the purpose of this paragraph in its capacity as an employee or consultant of a member of the Group and pursuant to an arms-length service contract or consultancy agreement but excluding for the avoidance of doubt in respect of any shares or Loan Notes or Management Loan Notes held by (or on behalf of) such employee;
- (n) a payment by the Parent of a fee to any or all the Original Investors in connection with a Permitted Acquisition provided that:
  - (i) no Default is continuing or would occur immediately after making of such payment; and
  - (ii) that fee is payable on or within 3 Business Days of the date the Permitted Acquisition completes; and
- (o) any payment of Deferred Consideration (as such term is defined in the Acquisition Agreement) to any or all Vendors which is funded solely from the Retention Fund (as such term is defined in the Acquisition Agreement);



**"Permitted Security"** means:

- (a) any lien arising by operation of law and in the ordinary course of trading and not as a result of any default or omission by any Group Company;
- (b) any netting or set-off arrangement entered into by any Group Company in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances of Group Companies (including a Multi-account Overdraft) but only so long as:
  - (i) such arrangement does not permit credit balances of Obligors to be netted or set off against debit balances of Non-Obligors; and
  - (ii) such arrangement does not give rise to other Security over the assets of Obligors in support of liabilities of Non-Obligors;
- (c) any payment or close-out netting or set-off arrangement pursuant to any Treasury Transaction or foreign exchange transaction entered into by a Group Company which constitutes Permitted Financial Indebtedness, excluding any Security or Quasi-Security under a credit support arrangement;
- (d) any Security or Quasi-Security over or affecting any asset acquired by a Group Company after the Closing Date if:
  - (i) the Security or Quasi-Security was not created in contemplation of the acquisition of that asset by a Group Company;
  - (ii) the principal amount secured has not been increased in contemplation of or since the acquisition of that asset by a Group Company; and
  - (iii) the Security or Quasi-Security is removed or discharged within three months of the date of acquisition of such asset;
- (e) any Security or Quasi-Security over or affecting any asset of any company which becomes a Group Company after the Closing Date, where the Security or Quasi-Security is created prior to the date on which that company becomes a Group Company if:
  - (i) the Security or Quasi-Security was not created in contemplation of the acquisition of that company;
  - (ii) the principal amount secured has not been increased in contemplation of or since the acquisition of that company; and
  - (iii) the Security or Quasi-Security is removed or discharged within three months of that company becoming a Group Company;
- (f) any Security or Quasi-Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a Group Company in the ordinary course of trading and on the supplier's standard or usual terms and not arising as a result of any default or omission by any Group Company;
- (g) any Security or Quasi-Security (existing as at the date of this agreement) over assets of any member of the Target Group securing Permitted Financial Indebtedness, so long as the Security or Quasi-Security is irrevocably removed or discharged by no later than 15 days following the Closing Date;
- (h) any Quasi-Security arising as a result of a disposal which is a Permitted Disposal;

- (i) any Security or Quasi-Security arising as a consequence of any finance or capital lease permitted pursuant to paragraph (f) of the definition of "Permitted Financial Indebtedness";
- (j) any Security over bank accounts or retention rights in respect of deposits granted in favour of the account bank as part of that bank's standard terms and conditions;
- (k) any Security over any rental deposits in respect of any property leased or licensed by a member of the Group in respect of amounts representing not more than 12 months' rent for that property;
- (l) any Security over documents of title and goods as part of a documentary credit transaction;
- (m) any Security arising by operation of law in respect of Taxes being contested in good faith or that are not yet due;
- (n) any Security arising in respect of any judgment, award or order for which an appeal of proceedings for review are being diligently pursued;
- (o) any Security or Quasi-Security constituted by the Transaction Security Documents;
- (p) any Security granted in favour of a lender over any shares, interest or participation in Joint Ventures;
- (q) any Security or Quasi-Security constituted by the Subordinated Security Documents; or
- (r) any Security or Quasi-Security securing indebtedness the outstanding principal amount of which (when aggregated with the outstanding principal amount of any other indebtedness which has the benefit of Security given by any Group Company other than any permitted under paragraphs (a) to (q) (inclusive) above) does not exceed £200,000 (or its equivalent in other currencies);

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

- (a) ordinary shares by the Parent, paid for in full in cash upon issue and which by their terms are not redeemable and where:
  - (i) such shares are of the same class and on the same terms as those initially issued by the Parent; and
  - (ii) such issue does not lead to a Change of Control of the Parent;
- (b) shares by the Parent to any employee share scheme or benefit trust or related trustee;
- (c) shares by a Group Company which is a Subsidiary of the Parent to its immediate Holding Company where (if the existing shares of the Subsidiary are the subject of the Transaction Security) the newly-issued shares also become subject to the Transaction Security on the same terms;
- (d) shares by the Parent to employees or directors of the Group where such shares are of the same class and on the same terms as those initially issued by the Parent or are on terms which are not as good for the relevant shareholder as those initially issued by the Parent and in addition those terms could not be reasonably expected to materially and adversely affect the interests of the Lenders;

- (e) shares by a member of the Group (other than the Parent) where the issuance is a consequence of an investment in a Permitted Joint Venture; and
- (f) shares by a member of the Group (other than the Parent) pursuant to a Permitted Acquisition;

**"Permitted Transaction"** means:

- (a) any disposal required, Financial Indebtedness incurred, guarantee, indemnity or Security or Quasi-Security given, or other transaction arising, under the Senior Finance Documents;
- (b) the solvent liquidation or reorganisation of any Non-Obligor so long as any payments or assets distributed as a result of such liquidation or reorganisation are distributed to other Group Companies;
- (c) provided no Default is continuing a re-organisation on a solvent basis of an Obligor (the **"Old Obligor"**) if:
  - (i) the Old Obligor is not a Borrower;
  - (ii) the re-organisation takes place within (and the entity which results from the re-organisation is also incorporated in) the same jurisdiction as the jurisdiction of incorporation of the Old Obligor; and
  - (iii) the reorganisation will not have a materially adverse impact on the Transaction Security or on any guarantee granted in favour of the Senior Finance Parties; and
- (d) the listing of any Loan Notes or Management Loan Notes on any recognised stock exchange provided that such listing does not prejudice the subordination of the Loan Notes or Management Loan Notes under the Intercreditor Agreement;
- (e) any buy-back of shares by the Parent for the purpose of issuing the same number and class of such shares in the Parent to Sovereign Co-Investors paid for in cash in full and where the proceeds of such subscription are applied by the Parent in full satisfaction of such buyback in accordance with the Shareholders' Agreement;

**"Properties"** means each of the properties listed in the debenture and any other Real Property acquired by an Obligor after the date of this agreement. A reference to a **"Property"** is a reference to any of the Properties;

**"Qualifying Lender"** has the meaning given to that term in clause 17 (Tax Gross-Up and Indemnities);

**"Quarter Date"** has the meaning given to that term in clause 25.1 (Financial Definitions);

**"Quarterly Financial Statements"** means the Monthly Financial Statements ending on a Quarter Date;

**"Quasi-Security"** has the meaning given to that term in clause 26.15 (Negative Pledge);

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

- (a) (if the currency is sterling) the first day of that period;
- (b) (if the currency is euro) two TARGET Days before the first day of that period; or

(c) (for any other currency) two Business Days before the first day of that period,

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

**"Real Property"** means:

- (a) any freehold property or leasehold property or immovable property; and
- (b) any buildings, fixtures, fittings, fixed plant or machinery from time to time situated on or forming part of that freehold, leasehold or immovable property;

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

**"Recovery Claim"** has the meaning given to that term in clause 11.2 (Disposal, Insurance and Acquisition Proceeds and Excess Cashflow);

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

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

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

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

**"Relevant Period"** has the meaning given to that term in clause 25.1 (Financial Definitions);

**"Reliance Parties"** means the Facility Agent, the Arranger, the Security Agent, each Hedge Counterparty, each Ancillary Lender and each Original Lender;

**"Repayment Date"** means the Termination Date for Facility A or as the case may be a CAR Facility Repayment Date or as the case may be the last day of an Interest Period for a Revolving Facility Loan;

**"Repeating Representations"** means each of the representations set out in clause 23.2 (Status) to clause 23.7 (Governing Law and Enforcement) (inclusive), clause 23.11 (No Default), clause 23.13(c) and (d) (Original Financial Statements) and clause 23.20 (Ranking) to clause 23.22 (Legal and Beneficial Ownership) and clause 23.28 (Centre of Main Interests and Establishments);

**"Reports"** means the Accountants' Report, the Legal Due Diligence Report, the Insurance Report and the Market Report;

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

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

**"Restricted Country"** means any country or jurisdiction listed on:

- (a) the OFAC Sanctions Programs List as published by OFAC, save to the extent that any country or jurisdiction is listed only for the purpose of restricting real persons within such country or jurisdiction; or
- (b) a Sanctions List, save to the extent that any country or jurisdiction is listed only:
  - (i) for the purpose of restricting real persons within such country or jurisdiction; or
  - (ii) in relation to specific businesses or activities which are not relevant or applicable to the business or operations of the Group,

or whose government is otherwise the subject of Sanctions.

**"Restricted Person"** means any Holding Company of the Parent, any Investor, any Sponsor Affiliate, or any other person with an interest (direct or indirect) in the shares of the Parent, except to the extent any such person is acting in its capacity as a Senior Finance Party.

**"Retained Excess Cashflow"** has the meaning given to that term in clause 25.1 (Financial Definitions);

**"Revolving Facility"** means the revolving credit facility made available under this agreement as described in clause 2.1(a)(ii) (The Facilities);

**"Revolving Facility Commitment"** means:

- (a) in relation to an Original Lender, the amount in the Base Currency set opposite its name under the heading "Revolving Facility Commitment" in part 2 of schedule 1 (The Original Parties) and the amount of any other Revolving Facility Commitment transferred to it under this agreement or assumed by it in accordance with clause 2.2 (Increase); and
- (b) in relation to any other Lender, the amount in the Base Currency of any Revolving Facility Commitment transferred to it under this agreement or assumed by it in accordance with clause 2.2 (Increase),

to the extent not cancelled, reduced or transferred by it under this agreement and not deemed to be zero pursuant to clause 29.2 (Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates);

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

**"Revolving Facility Lenders"** means the entity or entities which are Lenders under the Revolving Facility from time to time;

**"Revolving Facility Standstill Period"** has the meaning given to that term in the Intercreditor Agreement;

**"Revolving Facility Utilisation"** means a Revolving Facility Loan;

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

- (a) made or to be made on the same day that a maturing Revolving Facility Loan is due to be repaid;
- (b) the aggregate amount of which is equal to or less than the maturing Revolving Facility Loan;
- (c) in the same currency as the maturing Revolving Facility Loan (unless it arose as a result of the operation of clause 7.2 (Unavailability of a Currency)); and
- (d) made or to be made to the same Borrower for the purpose of refinancing that maturing Revolving Facility Loan;

**"Sanctions"** means any economic or financial sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by: (i) the United States government; (ii) the United Nations; (iii) the European Union (including under Council Regulation (EC) No. 194/2008); (iv) the United Kingdom; or (v) the respective governmental institutions and agencies of any of the foregoing, including, without limitation, the Office of Foreign Assets Control of the US Department of Treasury ("**OFAC**"), the United States Department of State, and Her Majesty's Treasury (together, "**Sanctions Authorities**").

**"Sanctions List"** means the "Specially Designated Nationals and Blocked Persons" list issued by OFAC, the Consolidated List of Financial Sanctions Targets issued by Her Majesty's Treasury, or any similar list issued or maintained or made public by any of the Sanctions Authorities each as amended, supplemented or substituted from time to time.

**"Screen Rate"** means:

- (a) 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 the relevant currency and period displayed on pages LIBOR01 or LIBOR02 of the Reuters screen (or any replacement Reuters page which displays that rate) ; and
- (b) in relation to EURIBOR, the euro interbank offered rate administered by the Banking Federation of the European Union (or any other person which takes over the administration of that rate) for the relevant period displayed on page EURIBOR01 of the Reuters screen (or any replacement Reuters page which displays that rate),

or, in each case, 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 Parent;

**"Secured Parties"** means each Senior Finance Party from time to time party to this agreement, any Receiver or Delegate;

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

**"Selection Notice"** means a notice substantially in the form set out in part 2 of schedule 3 (Requests and Notices) given in accordance with clause 14 (Interest Periods) in relation to a Term Facility;

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

- (a) the definition of "Material Adverse Effect";
- (b) paragraph (a) of the definition of "Permitted Transaction";
- (c) the definition of "Transaction Document";
- (d) the definition of "Transaction Security Document";
- (e) clause 1.2(a)(i) (Construction);
- (f) clause 22 (Guarantee and Indemnity); and
- (g) clause 27 (Events of Default) (other than clause 27.16(b) (Repudiation and Rescission of Agreements), clause 27.19 (Acceleration) and clause 27.20 (Revolving Facility Acceleration));

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

- (a) the definition of "Secured Parties";
- (b) clause 1.2(a)(i) (Construction);
- (c) paragraph (c) of the definition of "Material Adverse Effect";
- (d) clause 22 (Guarantee and Indemnity); and
- (e) clause 32 (Conduct of Business by the Senior Finance Parties);

**"Senior Management"** means each and all of David Tracey, Nick Frogbrook, Scott McGinley, Scott Merrick and Stewart Oades and any of their replacements from time to time;

**"Separate Loan"** has the meaning given to that term in clause 9.3 (Repayment of Revolving Facility Loans);

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

**"Shareholders' Agreement"** means the subscription and shareholders agreement dated the same date as this agreement;

**"Significant Assets"** means any assets representing in aggregate 10 per cent or more of consolidated gross assets or EBITDA of the Group or any assets in respect of which the aggregate proceeds exceed £3,000,000 over the lifetime of the Facilities (excluding Permitted Disposals as defined at the date of the this agreement);

**"Significant Company"** means a member of the Group which has (or members of the Group that together contribute) earnings before interest, tax, depreciation and amortisation (calculated on the same basis as EBITDA) representing 10% or more of EBITDA or gross assets representing 10% or more of the gross assets of the Group;

**"Significant Disposal"** means the disposal of:

- (a) Significant Assets (whether in a single transaction or a series of related transactions);
- (b) a Material Company on more than one occasion over the lifetime of the Facilities;  
or
- (c) a Significant Company;

**"Significant Security"** means security or quasi security granted by Group Companies, which is not permitted by clause 26.15 (Negative Pledge) as at the date of this agreement, which when aggregated with all such other security and quasi security could be materially adverse to the interests of the Lenders under the Revolving Facility;

**"Sovereign Co-Investor"** means any member of the co-investment scheme for Sovereign Capital IV Limited Partnership open to Sovereign Executives (as such term is defined in the terms of that scheme) who accedes to the Intercreditor Agreement as an Investor within 6 weeks of the Closing Date;

**"Specified Time"** means a time determined in accordance with schedule 9 (Timetables);

**"Sponsor Affiliate"** means any Original Investor, each of its Affiliates, any trust of which any Original Investor or any of its Affiliates is a trustee, any partnership of which any Original Investor or any of its Affiliates is a partner and any trust, fund or other entity which is managed by, or is under the control of, any Original Investor or any of its Affiliates provided that any such trust, fund or other entity which has been established for at least six months solely for the purpose of making, purchasing or investing in loans or debt securities and which is managed or controlled independently from all other trusts, funds or other entities managed or controlled by any Original Investor or any of its Affiliates which have been established for the primary or main purpose of investing in the share capital of companies shall not constitute a Sponsor Affiliate shall not constitute a Sponsor Affiliate;

**"Subordinated Security Documents"** means the Loan Note Security Documents, Management Loan Note Security Documents and any other Security or guarantee granted by any Material Company in respect of certain of the Equity Documents, provided that they are subject to the terms of the Intercreditor Agreement;

**"Subsidiary"** means a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006 which for this purpose shall be treated as providing that:

- (a) an undertaking which has granted Security over its shares or other ownership interest in another undertaking, by which the recipient of the Security (or its nominee) holds the legal title to that interest, shall nevertheless be treated as a member of that other undertaking; and
- (b) rights attached to shares or other ownership interests which are subject to Security shall be treated as held by the grantor of Security;



**"Target"** means Dalepak Holdings Limited, a company incorporated in England and Wales with registered number 03516003;

**"Target Group"** means the Target and its Subsidiaries;

**"Target Shares"** means all of the shares of the Target;

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

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

**"Tax"** means any tax, levy, impost, duty, deduction or other charge or withholding, assessment or fee of a similar nature imposed by any taxing authority (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same);

**"Term Facility"** means Facility A;

**"Term Lender"** means a Lender under Facility A and a Lender under the CAR Facility (as applicable);

**"Termination Date"** means:

- (a) in relation to Facility A, seven years from the Closing Date;
- (b) in relation to the CAR Facility, the date set out in the CAR Facility Establishment Notice; and
- (c) in relation to the Revolving Facility, six years and six months from the Closing Date;

**"Term Loan"** means a Facility A Loan;

**"Total Commitments"** means the aggregate of the Total Facility A Commitments and the Total Revolving Facility Commitments, being £23,500,000 at the date of this agreement or as subsequently increased in accordance with Clause 3 (CAR Facility);

**"Total Facility A Commitments"** means the aggregate of the Facility A Commitments, being £20,000,000 at the date of this agreement;

**"Total CAR Facility Commitments"** the aggregate of the CAR Facility Commitments, being £5,000,000 at the date of this agreement and being no more than the CAR Facility Maximum Amount at any time;

**"Total Revolving Facility Commitments"** means the aggregate of the Revolving Facility Commitments, being £3,500,000 at the date of this agreement;

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

**"Transaction Documents"** means the Senior Finance Documents, the Acquisition Documents and the Equity Documents;

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

**"Transaction Security Documents"** means each of the documents listed as being a Transaction Security Document in paragraph 3 of part 1 schedule 2 (Conditions Precedent) and any document required to be delivered to the Facility Agent under paragraph 12 of part 2 of schedule 2 (Conditions Precedent) or clause 26.38(e) (Conditions Subsequent) together with any other document entered into by any Obligor creating or expressed to create any Security over all or any part of its assets in respect of the obligations of any of the Obligors under any of the Senior Finance Documents;

**"Transfer Certificate"** means a certificate substantially in the form set out in schedule 4 (Form of Transfer Certificate) or any other form agreed between the Facility Agent and the Parent;

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

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

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

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

**"US"** or **"USA"** means the United States of America;

**"Utilisation"** means a Loan;

**"Utilisation Date"** means the date of a Utilisation, being the date on which the relevant Loan is to be made;

**"Utilisation Request"** means a notice substantially in the relevant form set out in part 1 (as the context requires) of schedule 3 (Requests and Notices);

**"VAT"** means:

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

**"Vendor"** means Mick White and the other persons named in schedule 1 to the Acquisition Agreement as Sellers.

## 1.2 Construction

- (a) Unless a contrary indication appears, a reference in this agreement to:
  - (i) any **"Arranger"**, the **"Facility Agent"**, any **"Hedge Counterparty"**, any **"Lender"**, any **"Obligor"**, any **"Party"**, any **"Secured Party"**, the **"Security Agent"**, any **"Senior Finance Party"** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Senior Finance Documents and, in the case of the Security Agent, any person for

the time being appointed as Security Agent or Security Agents in accordance with the Senior Finance Documents;

- (ii) a document in **"agreed form"** is a document which is previously agreed in writing by or on behalf of the Parent and the Facility Agent;
  - (iii) **"amendment"** includes any amendment, supplement, variation, novation, modification, replacement or restatement and **"amend"**, **"amending"** and **"amended"** shall be construed accordingly;
  - (iv) **"assets"** includes present and future properties, revenues and rights of every description;
  - (v) a **"Senior Finance Document"** or a **"Transaction Document"** or any other agreement or instrument is a reference to that Senior Finance Document or Transaction Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
  - (vi) **"guarantee"** means (other than in clause 22 (Guarantee and Indemnity)) any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
  - (vii) **"including"** means including without limitation and **"includes"** and **"included"** shall be construed accordingly;
  - (viii) **"indebtedness"** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
  - (ix) a **"person"** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture consortium or partnership or other entity (whether or not having separate legal personality);
  - (x) a **"regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but if not having the force of law then being of a type with which persons to which it applies customarily comply) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
  - (xi) a provision of law is a reference to that provision as amended or re-enacted. Where such a reference is to a provision of law other than the laws of England, then that provision shall have the meaning given to it in the relevant jurisdiction;
  - (xii) a time of day is a reference to London time; and
  - (xiii) an Obligor of a particular nationality will be construed as a reference to an Obligor incorporated in the corresponding jurisdiction.
- (b) Section, clause and schedule headings are for ease of reference only.
- (c) Unless a contrary indication appears, a term used in any other Senior Finance Document or in any notice given under or in connection with any Senior Finance

Document has the same meaning in that Senior Finance Document or notice as in this agreement.

- (d) A Borrower providing "**cash cover**" for an Ancillary Facility means a Borrower paying an amount in the currency of the Ancillary Facility to an interest-bearing account in the name of the Borrower and the following conditions being met:
  - (i) the account is with the Security Agent or with the Ancillary Lender;
  - (ii) until no amount is or may be outstanding under the Ancillary Facility, withdrawals from that account may only be made to pay that Ancillary Lender amounts due and payable to it in respect of that Ancillary Facility or to pay the relevant third party; and
  - (iii) the Borrower has executed a security document over that account, in form and substance satisfactory to the Senior Finance Party with which that account is held, creating a first ranking security interest over that account.
- (e) A Default, an Event of Default or Material Event of Default is "**continuing**" if it has not been waived in writing by the Facility Agent or remedied.
- (f) A Borrower "**repaying**" or "**prepaying**" an Ancillary Outstandings means:
  - (i) that Borrower providing cash cover for the Ancillary Outstandings;
  - (ii) the maximum amount payable under the Ancillary Facility being reduced or cancelled in accordance with its terms; or
  - (iii) the Ancillary Lender being satisfied that it has no further liability under the Ancillary Facility,and the amount by which Ancillary Outstandings are repaid or prepaid under paragraphs (i) and (ii) above is the amount of the relevant cash cover, reduction or cancellation.
- (g) An amount borrowed includes any amount utilised under an Ancillary Facility.

### 1.3 **Currency symbols and definitions**

"**\$**", "**USD**" , "**US dollars**" and "**dollars**" denote the lawful currency of the United States of America, "**£**", "**GBP**" and "**sterling**" denote the lawful currency of the United Kingdom, and "**€**", "**EUR**" and "**euro**" denote the single currency of the Participating Member States.

### 1.4 **Third Party Rights**

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

### 1.5 **Provision of Information by Directors**

If any provision of a Senior Finance Document requires a director or secretary of any member of the Group to provide any information , to certify any matter or to make any

presentation, any such provision, notification or presentation shall, provided that it is made in good faith, be made without personal liability on the part of such director or secretary (other than in the case of fraud, wilful default or gross negligence).

## **2. THE FACILITIES**

### **2.1 The Facilities**

- (a) Subject to the terms of this agreement, the Lenders make available:
  - (i) a Base Currency term loan facility in an aggregate principal amount equal to the Total Facility A Commitments;
  - (ii) a multicurrency revolving credit facility in an aggregate principal amount the Base Currency Amount of which is equal to the Total Revolving Facility Commitments; and
  - (iii) a CAR Facility, to the extent established, will be available to such Borrowers as approved by all Lenders of such CAR Facility.
- (b) The Term Facility will be available to the Company and the Revolving Facility will be available to all the Borrowers, but for the avoidance of doubt, the Revolving Facility shall not be available to the Company until such time as the Revolving Facility Lender has confirmed that it has received all necessary "know your customer" information.
- (c) Subject to the terms of this agreement and the Ancillary Documents, an Ancillary Lender may make all or part of its Revolving Facility Commitment available to any Borrower as an Ancillary Facility.
- (d) Subject to the terms of this agreement, a CAR Facility Lender (or CAR Facility Lenders) which has or, as applicable, have agreed to establish and participate in a CAR Facility in accordance with Clause 3 (CAR Facility) below, may make available to the Borrowers, a Sterling term loan facility or facilities in a maximum aggregate amount which, when aggregated amount of all other CAR Facilities established under Clause 3 (CAR Facility), does not exceed the Total CAR Facility Commitments.

### **2.2 Increase**

- (a) The Parent may, by giving prior notice to the Facility Agent by no later than the date falling 15 Business Days after the effective date of a cancellation of:
  - (i) the Available Commitments of a Defaulting Lender in accordance with clause 10.6 (Right of Cancellation in Relation to a Defaulting Lender); or
  - (ii) the Commitments of a Lender in accordance with:
    - (A) clause 10.1 (Illegality); or
    - (B) clause 10.5(a) (Right of Replacement or Repayment and Cancellation in Relation to a Single Lender),

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

- (iii) the increased Commitments will be assumed by one or more Lenders or other banks, financial institutions, trusts, funds or other entities (each an **"Increase Lender"**) selected by the Parent (each of which shall not be a Sponsor Affiliate or a Group Company) 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;
  - (iv) 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;
  - (v) each Increase Lender shall become a Party as a "Lender" and any Increase Lender and each of the other Senior Finance Parties shall assume obligations towards one another and acquire rights against one another as that Increase Lender and those Senior Finance Parties would have assumed and/or acquired had the Increase Lender been an Original Lender;
  - (vi) the Commitments of the other Lenders shall continue in full force and effect; and
  - (vii) any increase in the Commitments relating to a Facility shall take effect on the date specified by the Parent in the notice referred to above or any later date on which the conditions set out in paragraph (b) below are satisfied.
- (b) An increase in the Commitments relating to a Facility will only be effective on:
- (i) the execution by the Facility Agent of an Increase Confirmation from the relevant Increase Lender;
  - (ii) in relation to an Increase Lender which is not a Lender immediately prior to the relevant increase:
    - (A) the Increase Lender entering into the documentation required for it to accede as a party to the Intercreditor Agreement; and
    - (B) the Facility Agent being satisfied that it has complied with 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 Facility Agent shall promptly notify the Parent and the Increase Lender upon being so satisfied.
- (c) 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.
- (d) The Parent shall within 3 Business Days of demand pay the Facility Agent and the Security Agent the amount of all costs and expenses (including legal fees subject to any agreed cap) reasonably and properly incurred by either of them and, in the case of the Security Agent, by any Receiver or Delegate in connection with any increase in Commitments under this clause 2.2.
- (e) 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 28.3 (Assignment or Transfer Fee) if the increase was a transfer pursuant to clause 28.5 (Procedure for Transfer) and if the Increase Lender was a New Lender.

- (f) Clause 28.4 (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:
  - (i) an **"Existing Lender"** were references to all the Lenders immediately prior to the relevant increase;
  - (ii) the **"New Lender"** were references to that **"Increase Lender"**; and
  - (iii) a **"re-transfer"** and **"re-assignment"** were references to respectively a **"transfer"** and **"assignment"**.

## 2.3 Senior Finance Parties Rights and Obligations

- (a) The obligations of each Senior Finance Party under the Senior Finance Documents are several. Failure by a Senior Finance Party to perform its obligations under the Senior Finance Documents does not affect the obligations of any other Party under the Senior Finance Documents. No Senior Finance Party is responsible for the obligations of any other Senior Finance Party under the Senior Finance Documents.
- (b) The rights of each Senior Finance Party under or in connection with the Senior Finance Documents are separate and independent rights and any debt arising under the Senior Finance Documents to a Senior Finance Party from an Obligor shall be a separate and independent debt.
- (c) A Senior Finance Party may, except as otherwise stated in the Senior Finance Documents, separately enforce its rights under the Senior Finance Documents.

## 2.4 Obligors' Agent

- (a) Each Obligor (other than the Parent) by its execution of this agreement or an Accession Deed irrevocably appoints the Parent (acting through one or more authorised signatories) to act on its behalf as its agent in relation to the Senior Finance Documents and irrevocably authorises:
  - (i) the Parent on its behalf to supply all information concerning itself contemplated by this agreement to the Senior Finance Parties and to give all notices and instructions (including, in the case of a Borrower, Utilisation Requests), to execute on its behalf any Accession Deed, to make such agreements and to effect the relevant amendments, supplements and variations (in each case, however fundamental) capable of being given, made or effected by any Obligor (notwithstanding that they may increase the Obligor's obligations including increasing interest and fees payable, amounts borrowed, guaranteed or incurred or the terms relating to them or otherwise affect the Obligor) and to give confirmation as to continuation of surety obligations, without further reference to or the consent of that Obligor; and
  - (ii) each Senior Finance Party to give any notice, demand or other communication to that Obligor pursuant to the Senior Finance Documents to the Parent,

and in each case the Obligor shall be bound as though the Obligor itself had given the notices and instructions (including, without limitation, any Utilisation Requests)

or executed or made the agreements or effected the amendments, supplements or variations, or received the relevant notice, demand or other communication.

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

### 3. **CAR FACILITY**

- 3.1 Provided that it has complied with its obligation under Clause 3.20 (Lenders' right in relation a CAR Facility) below, the Parent may establish a CAR Facility (or if it has already established a CAR Facility it may increase the CAR Facility Commitments) by delivering to the Facility Agent not later than 5 (five) Business Days prior to the relevant CAR Facility Date (or prior to the relevant date when the increase to the CAR Facility Commitments is to become effective) a CAR Facility Establishment Notice duly signed by the Parent, the relevant Borrower and the Lenders and/or any other entities which have agreed to participate in the relevant CAR Facility (the **"CAR Facility Lenders"**).
- 3.2 A CAR Establishment Notice can only be delivered if no Event of Default is continuing and no Default would result from a CAR Facility being made available or being utilised by any member of the Group. No more than 5 (five) CAR Establishment Notices can be delivered during the term of this agreement.
- 3.3 Each CAR Facility Establishment Notice will not be regarded as having been duly completed unless it specifies the following matters in respect of the relevant CAR Facility (the **"CAR Facility Terms"**):
  - (a) whether it relates to a new CAR Facility or to an increase in commitments under a CAR Facility which has already been established (and in this case identifying such CAR Facility), the CAR Facility Date and the applicable Availability Period;
  - (b) the amount of the CAR Facility Commitments being a minimum of £1,000,000 (or its equivalent in other currencies);
  - (c) the identity(ies) of the Borrower(s) under the CAR Facility;
  - (d) the amount of the CAR Facility Commitment allocated to each CAR Facility Lender;
  - (e) the Margin (and any applicable adjustment mechanism to the Margin) applicable to each CAR Facility Loan;
  - (f) all fees (including for the avoidance of doubt any arrangement or upfront fee or similar fees and commitment fees) payable to each CAR Facility Lender in connection with the provision of the CAR Facility;
  - (g) that the CAR Facility Loans comply with Clause 5.4 (Maximum Number of Utilisations) and Clause 6.3 (Currency and Amount);
  - (h) repayment terms and final repayment date which should be the Termination Date for Facility A or later;



- (i) if applicable, any further conditions precedent to the CAR Facility Loan not set out in Schedule 2 (Conditions Precedent and Conditions Subsequent) as agreed between the Company and the relevant CAR Facility Lenders.

3.4 The CAR Facility Establishment Notice shall only be valid if:

- (a) the aggregate of all CAR Facility Commitments (including those specified in the relevant CAR Facility Establishment Notice), whether utilised or unutilised is less than or equal to the CAR Facility Maximum Amount;
- (b) it records the other CAR Facility terms required by Clause 3.3 above;
- (c) the relevant CAR Facility Date occurs after completion of all of the steps (if any) under Clause 3.12 below (the "**CAR Facility Date**");
- (d) the CAR Facility Margin shall not exceed the CAR Facility Maximum Margin;
- (e) the terms offered for the CAR Facility are not being more favourable than the terms of Facility A (except as set out above); and
- (f) it confirms that no Event of Default is continuing or no Default would result from a CAR Facility being made available or being utilised by any member of the Group; and
- (g) the Parent has delivered to the Facility Agent a certificate signed by an authorised signatory of the Parent confirming that, and providing calculations showing in reasonable detail that, the Leverage recalculated for the 12 Months ending on the most recent Quarter Date for which a Compliance Certificate has been delivered on a pro forma basis assuming a Utilisation in full of the proposed CAR Facility (including giving effect to the use of proceeds and assuming that the full proceeds are immediately used for the purposes for which they are intended and not as Cash or to purchase Cash Equivalent Investments) shall not exceed the lower of 4.4:1 or 90% of the ratio of the previous covenant tested under clause 25.2(c) (Leverage).

3.5 The arrangement fee (and all other fees other than the Margin) for the relevant tranche of CAR Facility will be set out in a separate CAR Facility Fee Letter entered into by the Parent and the relevant CAR Facility Lenders provided that the aggregate amount of all such fees shall not be greater than 100 basis points higher than the arrangement fee paid to the Lenders under Facility A.

3.6 Each CAR Facility Establishment Notice shall be countersigned by each CAR Facility Lender to which CAR Facility Commitments are allocated. By countersigning the CAR Facility Establishment Notice each such CAR Facility Lender agrees to commit the CAR Facility Commitments set out against its name and in the case of an entity which is not already a Lender, to become a Lender and party to this agreement and to the Intercreditor Agreement as a Lender in accordance with Clause 28.8 (New CAR Facility Lender).

3.7 Upon receipt of a duly completed CAR Facility Establishment Notice, the Facility Agent and the Security Agent shall acknowledge receipt of that notice and, if appropriate, the accession of the relevant CAR Facility Lenders to each of this agreement and the Intercreditor Agreement and the Facility Agent shall inform the Lenders of that receipt. The Facility Agent and the Security Agent are authorised to disclose details of the CAR Facility Establishment Notice and in relation to any CAR Facility to the Lenders on request. The Facility Agent and the Security Agent shall only be obliged to sign a CAR Facility Establishment Notice upon its completion of all "know your customer" or other similar checks relating to any person that it is required to carry out in relation to the accession of any entity as a Lender.

- 3.8 The Facility Agent shall notify the Parent and the Lenders of the changed amounts of the CAR Facility Commitments promptly after receipt of each CAR Facility Establishment Notice.
- 3.9 The terms and conditions relating to each CAR Facility are set out in this agreement with specific detail set out in each separate CAR Facility Establishment Notice entered into by the Parent and the CAR Facility Lenders or other entities providing the relevant CAR Facility Commitments.
- 3.10 The Lenders hereby authorise and empower the Security Agent to execute any necessary amendments to the Transaction Security Documents to ensure that the Loans under any CAR Facility shall rank *pari passu* with the other Senior Liabilities (as defined in the Intercreditor Agreement) and that any Transaction Security granted over any assets purchased with the proceeds of CAR Facility Loans which are required to be subject to the Transaction Security Documents is shared *pari passu* by all Finance Parties.
- 3.11 If the other provisions of this Clause 3 (CAR Facility) are complied with, each Party:
- (a) agrees that CAR Facility Commitments may be made available to the relevant Borrowers; and
  - (b) authorises and instructs the Facility Agent and the Security Agent to countersign a CAR Facility Establishment Notice to record the CAR Facility Commitments as set out in the relevant CAR Facility Establishment Notice and accordingly the establishment of (or the increase in CAR Facility Commitments in respect of) a CAR Facility.
- 3.12 Subject to the relevant CAR Facility Establishment Notice being signed by the Facility Agent, the Security Agent, the Parent and the relevant Lenders, the relevant CAR Facility and corresponding CAR Facility Commitments will be established for the purpose of this agreement and the other Senior Finance Documents as from the relevant CAR Facility Date.
- 3.13 Each Obligor:
- (a) confirms without prejudice to the obligations of each Obligor under paragraph (c) below, the authority of the Parent to agree and implement the establishment of CAR Facility Commitments and the CAR Facility in accordance with the procedures and up to the amounts permitted by this Agreement;
  - (b) confirms without prejudice to the obligations of each Obligor under paragraph (c) below, that all its guarantee and indemnity obligations recorded in Clause 22 (Guarantee and Indemnity) and/or in any Accession Deed or other Senior Finance Document will extend to include the CAR Facility Loans and other obligations arising under the CAR Facility subject to any limits as specifically recorded in Clause 22 (Guarantee and Indemnity), the relevant Accession Deed or elsewhere in the Senior Finance Documents;
  - (c) agrees to do all such acts and execute all such documents (at its cost) which any Security Agent may reasonably specify as being necessary to ensure that:
    - (i) the CAR Facility Loans shall rank *pari passu* with the other Senior Liabilities (as defined in the Intercreditor Agreement);
    - (ii) the CAR Facility Lenders will have the benefit of any existing Transaction Security; and
    - (iii) the existing Transaction Security shall not be adversely impacted by the establishment of the CAR Facility or any utilisation of any CAR Facility Loans.

- 3.14 The provisions of Clause 6 (Utilisation – Loans) will apply to all utilisations of the CAR Facility.
- 3.15 No Lender shall be obliged to participate in any CAR Facility.
- 3.16 Clause 28.4 (Limitation of Responsibility of Existing Lenders) shall apply *mutatis mutandis* in this Clause 3 in relation to a CAR Facility Lender as if references in that Clause to:
- (a) an "Existing Lender" were references to all the Lenders immediately prior to the relevant increase; and
  - (b) the "New Lender" were references to that "CAR Facility Lender".
- 3.17 The Company shall within 3 Business Days of demand pay the Facility Agent the amount of all costs and expenses (including legal fees) reasonably incurred by it in connection with any CAR Facility under this Clause 3.
- 3.18 For avoidance of doubt, the amount of all costs and expenses (including legal fees) reasonably incurred by the Facility Agent in connection with any CAR Facility under this Clause 3 shall be paid even if a CAR Facility Establishment Notice delivered pursuant to Clause 3.1 above is withdrawn.
- 3.19 Each Obligor agrees to do all such acts and execute all such documents (at its cost) as the Facility Agent and any Security Agent specify to ensure that if a CAR Facility Establishment Notice delivered pursuant to Clause 3.1 above is withdrawn, all steps taken pursuant to this Clause 3 in relation to the establishment of the CAR Facility is unwound or otherwise reversed or terminated.

***Lenders' right in relation to a CAR Facility***

- 3.20 No later than 15 Business Days prior to establishing a CAR Facility, the Parent shall notify the Facility Agent in writing of its intention to establish a CAR Facility (or to increase the commitments under a CAR Facility which has already been established) and invite the Lenders in respect of Facility A to submit an offer in relation to such CAR Facility.
- 3.21 A Lender in respect of Facility A shall have the right (but not the obligation) to notify the Parent and the Facility Agent within 5 Business Days of receipt of the notice contained in clause 3.20 above of its decision whether or not to participate in the establishment of the CAR Facility requested by the Parent and, if applicable, the maximum amount of the CAR Facility Commitments it is willing to make available (a Lender so notifying the Parent and the Facility Agent being a **"CAR Providing Lender"**).
- 3.22 No Lender in respect of Facility A is obliged to provide a CAR Facility (and the Parent is not obliged to accept an offer of a CAR Facility).
- 3.23 If 100 per cent of the CAR Facility Commitment is not allocated to CAR Providing Lenders, the Parent may offer any unallocated CAR Facility Commitments to other persons that would qualify as a New Lender under Clause 28.1 (Assignments and Transfers by the Lenders) selected by it in its sole discretion (not being a member of the Group or a Sponsor Affiliate) to participate in the establishment of such CAR Facility Commitments.

**4. PURPOSE**

**4.1 Purpose**

- (a) The Company shall apply all amounts borrowed by it under Facility A towards:
  - (i) payment to the Vendor of the purchase price for the Target Shares under the Acquisition Agreement; and

- (ii) payment of the Acquisition Costs (other than periodic fees); and
- (iii) refinancing certain Financial Indebtedness of the Target and its Subsidiaries to third parties,

as described in the Funds Flow Statement.

- (b) To the extent established, each Borrower shall apply all amounts borrowed by it under a CAR Facility towards financing:
  - (i) Permitted Acquisitions under paragraph (f) of that definition and related costs (i.e. payment of costs and expenses incurred by the Group in connection with a Permitted Acquisition and/or the refinancing or acquisition of Financial Indebtedness owing by the entities acquired and/or any of its Subsidiaries (including any broken funding costs, prepayment premiums and other fees, costs and expenses of such refinancing)); and
  - (ii) Capital Expenditure.
- (c) Each Borrower shall apply all amounts borrowed by it under the Revolving Facility, towards the general corporate and working capital purposes of the Group (but not towards the Acquisition, acquisitions of companies, businesses or undertakings, Joint Ventures, capital expenditure, any prepayment or servicing of the Investor Instruments or Management Loan Notes, debt buy-backs or prepayment or servicing of any Term Loan or refinancing any of the foregoing or, in the case of any utilisation of any Ancillary Facility, towards prepayment of any Revolving Facility Utilisation).

#### 4.2 **Monitoring**

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

### 5. **CONDITIONS OF UTILISATION**

#### 5.1 **Initial Conditions Precedent**

- (a) The Lenders will only be obliged to comply with clause 6.4 (Lenders' Participation) in relation to any Utilisation if, on or before the Utilisation Date for that Utilisation, the Facility Agent has received all of the documents and other evidence listed in part 1 of schedule 2 (Conditions Precedent) in form and substance satisfactory to the Facility Agent. The Facility Agent shall notify the Parent and the Lenders promptly upon being so satisfied.
- (b) The Lenders authorise (but do not require) the Facility Agent to give the notification referred to in paragraph (a) above. The Facility Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

#### 5.2 **Further Conditions Precedent**

Subject to clause 5.1 (Initial Conditions Precedent), the Lenders will only be obliged to comply with clause 6.4 (Lenders' Participation) if on the date of the Utilisation Request and on the proposed Utilisation Date:

- (a) in the case of a Rollover Loan, no Declared Default or Event of Default under clause 27.1 (Non-Payment) (but only where such non-payment relates to payment of interest and/or a principal amount in excess of £25,000), clause 27.6 (Insolvency) or clause 27.7 (Insolvency Proceedings) is continuing or would result from the

proposed Loan and, in the case of any other Utilisation no Default is continuing or would result from the proposed Utilisation; and

- (b) in relation to any Utilisation on the Closing Date, all the representations and warranties in clause 23 (Representations) or, in relation to any other Utilisation, the Repeating Representations, to be made by each Obligor are true in all material respects.

***Additional conditions precedent to the CAR Facility***

- (c) The CAR Facility Lenders will only be obliged to comply with Clause 6.4 (Lenders' participation) in relation to any Loan under the CAR Facility if on or before the Utilisation Date for that Loan:
  - (i) the Facility Agent has received (if any) all of the documents and other evidence listed in the CAR Facility Establishment Notice in form and substance satisfactory to the CAR Facility Lenders and the Facility Agent shall notify the Parent and the CAR Facility Lenders promptly upon being informed that the CAR Facility Lenders are so satisfied; and
  - (ii) the conditions in Clause 5.1 (Initial Conditions Precedent) and this Clause 5.2 (Further Conditions Precedent) have been met.

**5.3 Conditions Relating to Optional Currencies**

- (a) A currency will constitute an Optional Currency in relation to a Revolving Facility Utilisation if:
  - (i) it is readily available in the amount required and freely convertible into the Base Currency in the Relevant Interbank Market on the Quotation Day and the Utilisation Date for that Utilisation; and
  - (ii) it is euros or dollars or has been approved by the Facility Agent (acting on the instructions of all the Lenders) on or prior to receipt by the Facility Agent of the relevant Utilisation Request for that Utilisation.
- (b) If the Facility Agent has received a written request from the Parent for a currency to be approved under paragraph (a)(ii) above, the Facility Agent will confirm to the Parent by the Specified Time:
  - (i) whether or not the Lenders have granted their approval; and
  - (ii) if approval has been granted, the minimum amount (and, if required, integral multiple) for any subsequent Utilisation in that currency.

**5.4 Maximum Number of Utilisations**

- (a) A Borrower (or the Parent) may not deliver a Utilisation Request or request that a Term Loan be divided if as a result of the proposed Utilisation or division (as the case may be):
  - (i) more than 1 Facility A Loan would be outstanding
  - (ii) more than 5 CAR Facility Loans would be outstanding; or
  - (iii) more than 10 Revolving Facility Loans would be outstanding.
- (b) Any Loan made by a single Lender under clause 7.2 (Unavailability of a Currency) shall not be taken into account in this clause 5.4.

(c) Any Separate Loan shall not be taken into account in this clause 5.4.

## **6. UTILISATION – LOANS**

### **6.1 Delivery of a Utilisation Request**

A Borrower (or the Parent on its behalf) may utilise a Facility by delivery to the Facility Agent of a duly completed Utilisation Request in the form of part 1 of schedule 3 (Requests and Notices) not later than the Specified Time.

### **6.2 Completion of a Utilisation Request for Loans**

- (a) Each Utilisation Request for a Loan is irrevocable and will not be regarded as having been duly completed unless:
  - (i) it identifies the Facility to be utilised;
  - (ii) the proposed Utilisation Date is a Business Day within the Availability Period applicable to that Facility;
  - (iii) the currency and amount of the Utilisation comply with clause 6.3 (Currency and Amount); and
  - (iv) the proposed Interest Period complies with clause 14 (Interest Periods).
- (b) Multiple Utilisations may be requested in a Utilisation Request where the proposed Utilisation Date is the Closing Date. Only one Utilisation may be requested in each subsequent Utilisation Request.

### **6.3 Currency and Amount**

- (a) The currency specified in a Utilisation Request must be:
  - (i) the Base Currency in relation to Facility A; and
  - (ii) the Base Currency or an Optional Currency in relation to the Revolving Facility.
- (b) The amount of the proposed Loan must be:
  - (i) if the currency selected is the Base Currency, a minimum of:
    - (A) £20,000,000 for Facility A
    - (B) £1,000,000 for a CAR Facility (to the extent established); and
    - (C) £100,000 for the Revolving Facility,or in each case, if less, the Available Facility; or
  - (ii) if the currency selected is euros or US dollars, a minimum of 100,000 euros or as the case may be US dollars;
  - (iii) if the currency selected is an Optional Currency other than euros or US dollars, the minimum amount (and, if required, integral multiple) specified by the Facility Agent pursuant to clause 5.3(b)(ii) (Conditions Relating to Optional Currencies) or, if less, the Available Facility; and
  - (iv) in any event such that it's Base Currency Amount is less than or equal to the Available Facility.

#### 6.4 **Lenders' Participation**

- (a) If the conditions set out in this agreement have been met, and subject to clause 9.3 (Repayment of Revolving Facility Loans), each Lender shall make its participation in each Loan available by the Utilisation Date through its Facility Office.
- (b) Other than as set out in paragraph (c) below, the amount of each Lender's participation in each Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to making the Loan.
- (c) If a Revolving Facility Utilisation is made to repay Ancillary Outstandings, each Lender's participation in that Utilisation will be in an amount (as determined by the Facility Agent) which will result as nearly as possible in the aggregate amount of its participation in the Revolving Facility Utilisations then outstanding bearing the same proportion to the aggregate amount of the Revolving Facility Utilisations then outstanding as its Revolving Facility Commitment bears to the Total Revolving Facility Commitments.
- (d) The Facility Agent shall determine the Base Currency Amount of each Revolving Facility Loan which is to be made in an Optional Currency and notify each Lender of the amount, currency and the Base Currency Amount of each Loan and the amount of its participation in that Loan and, if different, the amount of that participation to be made available in accordance with clause 34.1 (Payments to the Facility Agent) by the Specified Time.

#### 6.5 **Limitations on Utilisations**

- (a) The Revolving Facility shall not be utilised unless Facility A has been utilised in full; and
- (b) The CAR Facility shall not be utilised unless Facility A has been utilised in full. The maximum aggregate amount of the CAR Facility Commitments of all the CAR Facility Lenders shall not at any time exceed £5,000,000.

#### 6.6 **Cancellation of Commitment**

On the last day of the Availability Period in relation to a Facility, all unutilised Commitments under that Facility will automatically be cancelled.

#### 6.7 **Clean Down**

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

- (a) all Revolving Facility Loans;
- (b) any cash loan element of the Ancillary Outstandings under all the Ancillary Facilities; LESS
- (c) any amount of cash (other than cash held in a Holding Account or a Mandatory Prepayment Account) or Cash Equivalent Investments held by wholly-owned Group Companies,

(as confirmed in a certificate signed by the finance director (unless the finance director is not available whereby it shall be signed by another executive director) of the Parent provided to the Facility Agent within five Business Days after the end of each Financial Year) shall not exceed zero for a period of not less than five successive Business Days in each of its Financial Years. Not less than three months shall elapse between two such periods.

## **7. OPTIONAL CURRENCIES**

### **7.1 Selection of Currency**

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

### **7.2 Unavailability of a Currency**

If before the Specified Time on any Quotation Day:

- (a) a Lender notifies the Facility Agent that the Optional Currency requested is not readily available to it in the amount required; or
- (b) a Lender notifies the Facility Agent that compliance with its obligation to participate in a Loan in the proposed Optional Currency would contravene a law or regulation applicable to it,

the Facility Agent will give notice to the relevant Borrower or Parent to that effect by the Specified Time on that day. In this event, any Lender that gives notice pursuant to this clause 7.2 will be required to participate in the Loan in the Base Currency (in an amount equal to that Lender's proportion of the Base Currency Amount, or in respect of a Rollover Loan, an amount equal to that Lender's proportion of the Base Currency Amount of the Rollover Loan that is due to be made) and its participation will be treated as a separate Loan denominated in the Base Currency during that Interest Period.

### **7.3 Facility Agent's Calculations**

Each Lender's participation in a Loan will be determined in accordance with clause 6.4(b) (Lenders' Participation).

## **8. ANCILLARY FACILITIES**

### **8.1 Type of Facility**

An Ancillary Facility may be by way of:

- (a) an overdraft facility;
- (b) a guarantee, bonding, documentary or stand-by letter of credit facility;
- (c) a short term loan facility;
- (d) a derivatives facility;
- (e) a foreign exchange facility; or
- (f) any other facility or accommodation required in connection with the business of the Group and which is agreed by the Parent with an Ancillary Lender.

### **8.2 Availability**

- (a) If the Parent and a Lender agree and except as otherwise provided in this agreement, the Lender may provide all or part of its Revolving Facility Commitment as an Ancillary Facility.
- (b) An Ancillary Facility shall not be made available unless, not later than three Business Days prior to the Ancillary Commencement Date for an Ancillary Facility, the Facility Agent has received from the Parent:



- (i) a notice in writing of the establishment of an Ancillary Facility and specifying:
  - (A) the proposed Borrower(s) which may use the Ancillary Facility;
  - (B) the proposed Ancillary Commencement Date and expiry date of the Ancillary Facility;
  - (C) the proposed type of Ancillary Facility to be provided;
  - (D) the proposed Ancillary Lender;
  - (E) the proposed Ancillary Commitment, the maximum amount of the Ancillary Facility and, in the case of a Multi-account Overdraft, account its Designated Gross Amount and its Designated Net Amount; and
  - (F) the proposed currency of the Ancillary Facility (if not denominated in the Base Currency); and
- (ii) any other information which the Facility Agent may reasonably request in connection with the Ancillary Facility.
- (c) The Facility Agent shall promptly notify the Ancillary Lender and the other Lenders of the establishment of an Ancillary Facility.
- (d) Subject to compliance with paragraph (b) above:
  - (i) the Lender concerned will become an Ancillary Lender; and
  - (ii) the Ancillary Facility will be available,

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

### 8.3 **Terms of Ancillary Facilities**

- (a) Except as provided below, the terms of any Ancillary Facility will be those agreed by the Ancillary Lender and the Parent.
- (b) Those terms:
  - (i) must be based upon normal commercial terms at that time (except as varied by this agreement);
  - (ii) may allow only Borrowers (or Affiliates of Borrowers nominated pursuant to clause 8.9 (Affiliates of Borrowers)) to use the Ancillary Facility;
  - (iii) may not allow the Ancillary Outstandings to exceed the Ancillary Commitment;
  - (iv) may not allow a Lender's Ancillary Commitment to exceed that Lender's Available Commitment relating to the Revolving Facility (before taking into account the effect of the Ancillary Facility on that Available Commitment); and
  - (v) must require that the Ancillary Commitment is reduced to zero, and that all Ancillary Outstandings are repaid not later than the Termination Date applicable to the Revolving Facility (or such earlier date as the Revolving

Facility Commitment of the relevant Ancillary Lender (or its Affiliate) is reduced to zero).

- (c) If there is any inconsistency between any term of an Ancillary Facility and any term of this agreement, this agreement shall prevail except for:
  - (i) clause 37.3 (Day Count Convention) which shall not prevail for the purposes of calculating fees, interest or commission relating to an Ancillary Facility;
  - (ii) an Ancillary Facility comprising more than one account where the terms of the Ancillary Documents shall prevail; and
  - (iii) where the relevant term of this agreement would be contrary to, or inconsistent with, the law governing the relevant Ancillary Document, in which case that term of this agreement shall not prevail.
- (d) Interest, commission and fees on Ancillary Facilities are dealt with in clause 16.5 (Interest, Commission and Fees on Ancillary Facilities).

#### **8.4 Repayment of Ancillary Facility**

- (a) An Ancillary Facility shall cease to be available on the Termination Date applicable to the Revolving Facility or such earlier date on which its expiry date occurs or on which it is cancelled in accordance with the terms of this agreement.
- (b) If an Ancillary Facility expires in accordance with its terms the Ancillary Commitment of the Ancillary Lender shall be reduced to zero.
- (c) No Ancillary Lender may demand repayment or prepayment of any Ancillary Outstandings prior to the expiry date of the relevant Ancillary Facility unless:
  - (i) required to reduce the Gross Outstandings of a Multi-account Overdraft to or towards an amount equal to its Net Outstandings;
  - (ii) the Total Revolving Facility Commitments have been cancelled in full or all outstanding Utilisations under the Revolving Facility have become due and payable in accordance with the terms of this agreement;
  - (iii) it becomes unlawful in any applicable jurisdiction for the Ancillary Lender to perform any of its obligations as contemplated by this agreement or to fund, issue or maintain its participation in its Ancillary Facility (or it becomes unlawful for any Affiliate of the Ancillary Lender for the Ancillary Lender to do so); or
  - (iv) both:
    - (A) the Available Commitments relating to the Revolving Facility; and
    - (B) the notice of the demand given by the Ancillary Lender,

would not prevent the relevant Borrower funding the repayment of those Ancillary Outstandings in full by way of Revolving Facility Utilisation(s).
- (d) If a Revolving Facility Utilisation is made to repay Ancillary Outstandings in full, the relevant Ancillary Commitment shall be reduced to zero.

## 8.5 Limitation on Ancillary Outstandings

Each Borrower shall procure that:

- (a) the Ancillary Outstandings under any Ancillary Facility shall not exceed the Ancillary Commitment applicable to that Ancillary Facility; and
- (b) in relation to a Multi-account Overdraft:
  - (i) the Ancillary Outstandings shall not exceed the Designated Net Amount applicable to that Multi-account Overdraft; and
  - (ii) the Gross Outstandings shall not exceed the Designated Gross Amount applicable to that Multi-account Overdraft.

## 8.6 Adjustment for Ancillary Facilities upon Acceleration

- (a) In this clause 8.6:
  - (i) **"Revolving Outstandings"** means, in relation to a Lender, the aggregate of the equivalent in the Base Currency of:
    - (A) its participation in each Revolving Facility Utilisation then outstanding (together with the aggregate amount of all accrued interest, fees and commission owed to it as a Lender under the Revolving Facility); and
    - (B) if the Lender is also an Ancillary Lender, the Ancillary Outstandings in respect of Ancillary Facilities provided by that Ancillary Lender (or by its Affiliate) (together with the aggregate amount of all accrued interest, fees and commission owed to it (or to its Affiliate) as an Ancillary Lender in respect of the Ancillary Facility); and
  - (ii) **"Total Revolving Outstandings"** means the aggregate of all Revolving Outstandings.
- (b) If a notice is served under clauses 27.19 (Acceleration) or 27.20 (Revolving Facility Acceleration) (other than a notice declaring Utilisations to be due on demand), each Lender and each Ancillary Lender shall (subject to paragraph (g) below) promptly adjust (by making or receiving (as the case may be) corresponding transfers of rights and obligations under the Senior Finance Documents relating to Revolving Outstandings) their claims in respect of amounts outstanding to them under the Revolving Facility and each Ancillary Facility to the extent necessary to ensure that after such transfers the Revolving Outstandings of each Lender bear the same proportion to the Total Revolving Outstandings as such Lender's Revolving Facility Commitment bears to the Total Revolving Facility Commitments, each as at the date the notice is served under clauses 27.19 (Acceleration) or 27.20 (Revolving Facility Acceleration).
- (c) If an amount outstanding under an Ancillary Facility is a contingent liability and that contingent liability becomes an actual liability or is reduced to zero after the original adjustment is made under paragraph (b) above, then each Lender and Ancillary Lender will make a further adjustment (by making or receiving (as the case may be) corresponding transfers of rights and obligations under the Senior Finance Documents relating to Revolving Outstandings to the extent necessary) to put themselves in the position they would have been in had the original adjustment been determined by reference to the actual liability or, as the case may be, zero liability and not the contingent liability.

- (d) Any transfer of rights and obligations relating to Revolving Outstandings made pursuant to this clause 8.6 shall be made for a purchase price in cash, payable at the time of transfer, in an amount equal to those Revolving Outstandings (less any accrued interest, fees and commission to which the transferor will remain entitled to receive notwithstanding that transfer, pursuant to clause 28.12 (Pro Rata Interest Settlement)).
- (e) Prior to the application of the provisions of paragraph (b) above, an Ancillary Lender that has provided a Multi-account Overdraft shall set-off any Available Credit Balance on any account comprised in that Multi-account Overdraft.
- (f) All calculations to be made pursuant to this clause 8.6 shall be made by the Facility Agent based upon information provided to it by the Lenders and Ancillary Lenders and the Facility Agent's Spot Rate of Exchange.
- (g) This clause 8.6 shall not oblige any Lender to accept the transfer of a claim relating to an amount outstanding under an Ancillary Facility which is not denominated (pursuant to the relevant Senior Finance Document) in either the Base Currency, a currency which has been an Optional Currency for the purpose of any Revolving Facility Utilisation or in another currency which is acceptable to that Lender.

#### **8.7 Information**

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

#### **8.8 Affiliates of Lenders as Ancillary Lenders**

- (a) Subject to the terms of this agreement, an Affiliate of a Lender may become an Ancillary Lender. In such case, the Lender and its Affiliate shall be treated as a single Lender whose Revolving Facility Commitment is the amount set out opposite the relevant Lender's name in part 2 or part 3 of schedule 1 (The Original Parties) and/or the amount of any Revolving Facility Commitment transferred to that Lender under this agreement, to the extent (in each case) not cancelled, reduced or transferred by it under this agreement.
- (b) The Parent shall specify any relevant Affiliate of a Lender in any notice delivered by the Parent to the Facility Agent pursuant to clause 8.2(b)(i) (Availability).
- (c) An Affiliate of a Lender which becomes an Ancillary Lender shall accede to the Intercreditor Agreement as an Ancillary Lender and any person which so accedes to the Intercreditor Agreement shall, at the same time, become a Party as an Ancillary Lender in accordance with clause 20.10 (Creditor Accession Undertaking) of the Intercreditor Agreement.
- (d) If a Lender assigns all of its rights and benefits or transfers all of its rights and obligations to a New Lender, its Affiliate shall cease to have any obligations under this agreement or any Ancillary Document.
- (e) Where this agreement or any other Senior Finance Document imposes an obligation on an Ancillary Lender and the relevant Ancillary Lender is an Affiliate of a Lender which is not a party to that document, the relevant Lender shall ensure that the obligation is performed by its Affiliate.

## 8.9 **Affiliates of Borrowers**

- (a) Subject to the terms of this agreement, an Affiliate (incorporated in a country on the Approved Country) of a Borrower may with the approval of the relevant Lender become a borrower with respect to an Ancillary Facility.
- (b) The Parent shall specify any relevant Affiliate of a Borrower in any notice delivered by the Parent to the Facility Agent pursuant to clause 8.2(b)(i) (Availability).
- (c) If a Borrower ceases to be a Borrower under this agreement in accordance with clause 30.3 (Resignation of a Borrower), its Affiliate shall cease to have any rights under this agreement or any Ancillary Document.
- (d) Where this agreement or any other Senior Finance Document imposes an obligation on a Borrower under an Ancillary Facility and the relevant Borrower is an Affiliate of a Borrower which is not a party to that document, the relevant Borrower shall ensure that the obligation is performed by its Affiliate.
- (e) Any reference in this agreement or any other Senior Finance Document to a Borrower being under no obligations (whether actual or contingent) as a Borrower under such Senior Finance Document shall be construed to include a reference to any Affiliate of a Borrower being under no obligations under any Senior Finance Document or Ancillary Document.
- (f) If any Affiliate of a Borrower becomes a borrower of an Ancillary Facility, the relevant Borrower shall procure that such Affiliate accedes to the Intercreditor Agreement as a Debtor (as defined in the Intercreditor Agreement) no later than contemporaneously with the date on which it becomes a borrower.

## 8.10 **Revolving Facility Commitment Amounts**

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

- (a) its Ancillary Commitment; or
- (b) the Ancillary Commitment of its Affiliate.

## 8.11 **Amendments and Waivers – Ancillary Facilities**

No amendment or waiver of a term of any Ancillary Facility shall require the consent of any Senior Finance Party other than the relevant Ancillary Lender unless such amendment or waiver itself relates to or gives rise to a matter which would require an amendment of or under this agreement (including, for the avoidance of doubt, under this clause 8 (Ancillary Facilities)). In such a case, clause 40 (Amendments and Waivers) will apply.

## 9. **REPAYMENT**

### 9.1 **Repayment of Term Loans**

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

## 9.2 **Repayment of CAR Facility Loans**

- (a) The Borrowers under the CAR Facility shall repay the aggregate CAR Loans on such date(s) as are set out in the CAR Facility Establishment Notice (being on or after the Termination Date for Facility A).
- (b) The Borrowers may not reborrow any part of the CAR Facility which is repaid.

## 9.3 **Repayment of Revolving Facility Loans**

- (a) Subject to paragraph (c) below, each Borrower which has drawn a Revolving Facility Loan shall repay that Loan on the last day of its Interest Period.
- (b) Without prejudice to each Borrower's obligation under paragraph (a) above, if:
  - (i) one or more Revolving Facility Loans are to be made available to a Borrower:
    - (A) on the same day that a maturing Revolving Facility Loan is due to be repaid by that Borrower;
    - (B) in the same currency as the maturing Revolving Facility Loan (unless it arose as a result of the operation of clause 7.2 (Unavailability of a Currency)); and
    - (C) in whole or in part for the purpose of refinancing the maturing Revolving Facility Loan; and
  - (ii) the proportion borne by each Lender's participation in the maturing Revolving Facility Loan to the amount of that maturing Revolving Facility Loan is the same as the proportion borne by that Lender's participation in the new Revolving Facility Loans to the aggregate amount of those new Revolving Facility Loans,

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

- (A) if the amount of the maturing Revolving Facility Loan exceeds the aggregate amount of the new Revolving Facility Loans:
  - (aa) the relevant Borrower will only be required to make a payment under clause 34.1 (Payments to the Facility Agent) in an amount in the relevant currency equal to that excess; and
  - (bb) each Lender's participation in the new Revolving Facility Loans shall be treated as having been made available and applied by the Borrower in or towards repayment of that Lender's participation in the maturing Revolving Facility Loan and that Lender will not be required to make a payment under clause 34.1 (Payments to the Facility Agent) in respect of its participation in the new Revolving Facility Loans; and
- (B) if the amount of the maturing Revolving Facility Loan is equal to or less than the aggregate amount of the new Revolving Facility Loans:
  - (aa) the relevant Borrower will not be required to make a payment under clause 34.1 (Payments to the Facility Agent); and

- (bb) each Lender will be required to make a payment under clause 34.1 (Payments to the Facility Agent) in respect of its participation in the new Revolving Facility Loans only to the extent that its participation in the new Revolving Facility Loans exceeds that Lender's participation in the maturing Revolving Facility Loan and the remainder of that Lender's participation in the new Revolving Facility Loans shall be treated as having been made available and applied by the Borrower in or towards repayment of that Lender's participation in the maturing Revolving Facility Loan.
- (c) At any time when a Lender becomes a Defaulting Lender, the maturity date of each of the participations of that Lender in the Revolving Facility Loans then outstanding will be automatically extended to the last day of the Availability Period applicable to the Revolving Facility and will be treated as separate Revolving Facility Loans (the **"Separate Loans"**) denominated in the currency in which the relevant participations are outstanding.
- (d) If the Borrower makes a prepayment of a Revolving Facility Utilisation pursuant to clause 10.4 (Voluntary Prepayment of Revolving Facility Utilisations), a Borrower to whom a Separate Loan is outstanding may prepay that Loan by giving not less than 5 Business Days' prior notice to the Facility Agent. The proportion borne by the amount of the prepayment of the Separate Loan to the amount of the Separate Loans shall not exceed the proportion borne by the amount of the prepayment of the Revolving Facility Utilisation to the Revolving Facility Utilisations. 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.
- (e) 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 that Borrower to the Facility Agent (for the account of that Defaulting Lender) on the last day of each Interest Period of that Loan.
- (f) The terms of this agreement relating to Revolving Facility Loans generally shall continue to apply to Separate Loans other than to the extent inconsistent with paragraphs (c) to (e) (inclusive) above, in which case those paragraphs shall prevail in respect of any Separate Loan.

## 10. **ILLEGALITY, VOLUNTARY PREPAYMENT AND CANCELLATION**

### 10.1 **Illegality**

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

- (a) that Lender shall promptly notify the Facility Agent upon becoming aware of that event;
- (b) upon the Facility Agent notifying the Parent, each Available Commitment of that Lender will be immediately cancelled; and
- (c) to the extent that the Lender's participation has not been transferred pursuant to clause 40.8 (Replacement of Lender), each Borrower shall repay that Lender's participation in the Utilisations made to that Borrower on the last day of the

Interest Period for each Utilisation occurring after the Facility Agent has notified the Parent 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) and that Lender's corresponding Commitment(s) shall be cancelled in the amount of the participations repaid.

## **10.2 Voluntary Cancellation**

The Parent may, if it gives the Facility Agent not less than five 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 £100,000) of an Available Facility. Any cancellation under this clause 10.2 shall reduce the Commitments of the Lenders rateably under that Facility.

## **10.3 Voluntary Prepayment of Term Loans and CAR Facility Loans**

- (a) Subject to (c) below, a Borrower to which a Term Loan has been made or (after the end of its Availability Period) a CAR Facility Loan has been made may, if it or the Parent gives the Facility Agent not less than five Business Days' (or such shorter period as the Majority Lenders under the relevant Facility may agree) prior notice, prepay the whole or any part of that Term Loan or CAR Facility Loan (but, if in part, being an amount that reduces the Base Currency Amount of that Term Loan or CAR Facility Loan by a minimum amount of £250,000).
- (b) A Term Loan or CAR Facility Loan may only be prepaid after the last day of the Availability Period for the applicable Facility (or, if earlier, the day on which the applicable Available Facility is zero).
- (c) A Term Loan or CAR Facility Loan may not be prepaid at any time when a Revolving Facility Standstill Period is continuing.

## **10.4 Voluntary Prepayment of Revolving Facility Utilisations**

A Borrower to which a Revolving Facility Utilisation has been made may, if it or the Parent gives the Facility Agent not less than 5 Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of a Revolving Facility Utilisation (but if in part, being an amount that reduces the Base Currency Amount of the Revolving Facility Utilisation by a minimum amount of £100,000).

## **10.5 Right of Cancellation and Repayment in Relation to a Single Lender**

- (a) If:
  - (i) any sum payable to any Lender by an Obligor is required to be increased under clause 17.2(c) (Tax Gross-up); or
  - (ii) any Lender claims indemnification from the Parent or an Obligor under clause 17.3 (Tax Indemnity) or clause 18.1 (Increased Costs),

the Parent may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Facility Agent notice (if such circumstances relate to a Lender) of cancellation of the Commitment of that Lender and its intention to procure the repayment of that Lender's participation in the Utilisations;

or may, if such circumstances relate to a Lender, instead exercise its rights under clause 40.8 (Replacement of Lender).



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

#### 10.6 **Right of Cancellation in Relation to a Defaulting Lender**

- (a) If any Lender becomes a Defaulting Lender, the Parent may, at any time whilst the Lender continues to be a Defaulting Lender, give the Facility Agent 5 Business Days' notice of cancellation of each Available Commitment of that Lender.
- (b) On the notice referred to in paragraph (a) above becoming effective, each Available Commitment of the Defaulting Lender shall immediately be reduced to zero.
- (c) The Facility Agent shall as soon as practicable after receipt of a notice referred to in paragraph (a) above, notify all the Lenders.

### 11. **MANDATORY PREPAYMENT AND CANCELLATION**

#### 11.1 **Exit**

- (a) For the purpose of this clause 11:

**"Flotation"** means:

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

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

- (b) Upon the occurrence of:
  - (i) any Flotation; or
  - (ii) a Change of Control; or
  - (iii) the sale of all or substantially all of the assets of the Group whether in a single transaction or a series of related transactions,

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

## 11.2 **Disposal, Insurance and Acquisition Proceeds and Excess Cashflow**

- (a) For the purposes of this clause 11.2, clause 11.3 (Application of Mandatory Prepayments and Cancellations) and clause 11.4 (Mandatory Prepayment Accounts and Holding Accounts) any Tax incurred (or properly reserved for in accordance with the Accounting Principles) and required to be paid by a Group Company (as reasonably determined by the relevant Group Company on the basis of existing rates and taking into account any available credit, deduction or allowance), in each case in relation to that Recovery Claim.

**"Acquisition Proceeds"** means the proceeds of a claim (the **"Recovery Claim"**) against the Vendor (or any other vendor in relation to a Permitted Acquisition) or any of their respective Affiliates (or employee, officer or adviser) in relation to the Acquisition Documents (or any other relevant acquisition document) or against the Provider of any Report (or other due diligence report relating to such Permitted Acquisition) in its capacity as a provider of that Report or report) except for Excluded Acquisition Proceeds, and after deducting:

- (i) any reasonable costs, fees and expenses which are incurred by any Group Company to persons who are not Group Companies;
- (ii) any Tax incurred (or properly reserved for in accordance with the Accounting Principles) and required to be paid by a Group Company (as reasonably determined by the relevant Group Company on the basis of existing rates and taking into account any available credit, deduction or allowance), in each case in relation to that Recovery Claim,  
  
(together with (i) above, the **"Net Recovery"**); and
- (iii) deducting an amount calculated by deducting the same percentage as (i) the Caledonia Equity Contribution Percentage in respect of the Acquisition or (ii) the applicable Equity Contribution Percentage in respect of a Permitted Acquisition (other than the Acquisition), from the relevant Net Recovery.

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

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

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

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

- (i) in payment of amounts payable to the Vendor (or vendor) pursuant to the Acquisition Agreement (or any other relevant acquisition document) by way of adjustment to the purchase price in respect of the Acquisition (or other relevant Permitted Acquisition) or relating to a working capital adjustment;

- (ii) to satisfy (or reimburse a Group Company which has discharged) any liability, charge or claim upon a Group Company by a person which is not a Group Company;
- (iii) in the replacement, reinstatement and/or repair of assets of Group Companies which have been lost, destroyed or damaged; or
- (iv) where the amount of the proceeds for any claims are less than £400,000 (or its equivalent in other currencies) in a Financial Year,

in each case as a result of the events or circumstances giving rise to that Recovery Claim, if those proceeds are so applied within 12 months of receipt (or are committed to be applied within 12 months of receipt and are actually applied within 18 months of receipt).

**"Excluded Disposal Proceeds"** means the proceeds derived from any Disposal:

- (i) arising as a result of a Permitted Disposal; or
- (ii) which are reinvested in assets to be used in the ordinary course of trading of the Group or to fund a Permitted Acquisition or Capital Expenditure in each case within 12 Months of receipt (or are committed to be applied within 12 months of receipt and are actually applied within 18 Months of receipt).

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

- (i) to meet a third party claim;
- (ii) to cover operating losses in respect of which the relevant insurance claim was made;
- (iii) in the replacement, reinstatement and/or repair of the assets or otherwise in amelioration of the loss in respect of which the relevant insurance claim was made; or
- (iv) where the amount of the proceeds for any insurance claims are less than £400,000 (or its equivalent in other currencies) in a Financial Year,

in each case within 12 Months after receipt (or are committed to be applied within 12 Months of receipt and are actually applied within 18 Months of receipt).

**"Insurance Proceeds"** means the proceeds of any insurance claim under any insurance maintained by any Group Company except for Excluded Insurance Proceeds and after deducting any reasonable costs, fees and expenses (including Tax) in relation to that claim which are incurred by any Group Company to persons who are not Group Companies.

- (b) Subject to clause 14.4 (Adjustment of Mandatory Prepayments) of the Intercreditor Agreement, the Parent shall ensure that the Borrowers prepay Utilisations, and cancel Available Commitments, in amounts equal to the following amounts at the times and in the order of application contemplated by clause 11.3 (Application of Mandatory Prepayments and Cancellations):
  - (i) the Acquisition Proceeds;
  - (ii) the Disposal Proceeds;
  - (iii) the Insurance Proceeds;

- (iv) the amount equal to the relevant percentage of Excess Cashflow for each Financial Year ending on or after 31 March 2017 where **"relevant percentage"** means:

<b>Leverage</b>	<b>Relevant percentage</b>
Greater than 2.5:1	100%
Less than or equal to 2.5:1	0%

### 11.3 **Application of Mandatory Prepayments and Cancellations**

- (a) Subject to clause 11.6 (Revolving Facility Standstill and Significant Disposals) below, a prepayment of Utilisations or cancellation of Available Commitments made under clause 11.1 (Exit) or under clause 11.2 (Disposal, Insurance and Acquisition Proceeds and Excess Cashflow) shall be applied in the following order:
- (i) first, in prepayment of Term Loans and (after the expiry of the Availability Period for the CAR Facility) in prepayment of CAR Facility Loans as contemplated in paragraphs (b) to (d) (inclusive) below;
  - (ii) secondly, in cancellation of Available Commitments under the Revolving Facility (and the Available Commitment of the Lenders under the Revolving Facility will be cancelled rateably);
  - (iii) thirdly, in prepayment of Revolving Facility Utilisations such that:
    - (A) outstanding Revolving Facility Loans shall be prepaid on a pro rata basis; and
    - (B) outstanding Revolving Facility Loans,
 and cancellation, in each case, of the corresponding Revolving Facility Commitments; and
  - (iv) then, in:
    - (A) repayment of the Ancillary Outstandings (and cancellation of corresponding Ancillary Commitments); and
    - (B) cancellation of Ancillary Commitments;
 (on a pro rata basis) and cancellation, in each case, of the corresponding Revolving Facility Commitments.
- (b) Unless the Parent makes an election under paragraph (c) below, the Borrowers shall prepay Loans at the following times:
- (i) in the case of any prepayment relating to the amounts of Acquisition Proceeds, Disposal Proceeds or Insurance Proceeds within 10 Business Days after receipt of those proceeds; and
  - (ii) in the case of any prepayment relating to an amount of Excess Cashflow, within 10 Business Days of delivery pursuant to clause 24.1 (Financial Statements) of the consolidated Quarterly Financial Statements of the Parent for the relevant Financial Quarter.

- (c) Subject to paragraph (d) below, the Parent may elect that any prepayment under clause 11.1 (Exit) or under clause 11.2 (Disposal, Insurance and Acquisition Proceeds and Excess Cashflow) be applied in prepayment of a Loan on the last day of the Interest Period relating to that Loan. If the Parent makes that election, then a proportion of the Loan equal to the amount of the relevant prepayment will be due and payable on the last day of its Interest Period.
- (d) If the Parent has made an election under paragraph (c) above but a Declared Default has occurred and is continuing, that election shall no longer apply and a proportion of the Loan in respect of which the election was made equal to the amount of the relevant prepayment shall be immediately due and payable (unless the Majority Lenders otherwise agree in writing).

#### 11.4 **Mandatory Prepayment Accounts and Holding Accounts**

- (a) Subject to clause 11.6 (Revolving Facility Standstill and Significant Disposals) below, the Parent shall ensure that:
  - (i) Disposal Proceeds, Insurance Proceeds and Acquisition Proceeds in respect of which the Parent has made an election under clause 11.3(c) (Application of Mandatory Prepayments and Cancellations) are paid into a Mandatory Prepayment Account as soon as reasonably practicable after receipt by a Group Company;
  - (ii) Excluded Disposal Proceeds, Excluded Acquisition Proceeds, and/or Excluded Insurance Proceeds which are to be applied in reinvestment, replacement, reinstatement or repair of assets or to fund a Permitted Acquisition or Capital Expenditure are paid into a Holding Account as soon as reasonably practicable after receipt by a Group Company; and
  - (iii) an amount equal to any Excess Cashflow in respect of which the Parent has made an election under clause 11.3(c) (Application of Mandatory Prepayments and Cancellations) is paid into a Mandatory Prepayment Account promptly after such election.
- (b) The Parent and each Borrower irrevocably authorise the Facility Agent to apply:
  - (i) any amounts credited to the Mandatory Prepayment Account when no Revolving Facility Standstill Period is continuing;
  - (ii) any amounts in excess of the Revolving Facility Commitments when a Revolving Facility Standstill Period is continuing; and
  - (iii) amounts credited to the Holding Account which have not been applied in replacement, reinstatement or repair or to fund a Permitted Acquisition or Capital Expenditure (as the case may be) within the requisite period (or such longer time period as the Majority Lenders may agree),

to pay amounts due and payable under clause 11.3 (Application of Mandatory Prepayments and Cancellations) and otherwise under the Senior Finance Documents. The Parent and each Borrower further irrevocably authorise the Facility Agent to so apply amounts credited to the Holding Account if a Declared Default has occurred and is continuing.
- (c) A Lender, Security Agent or Facility Agent with which a Mandatory Prepayment Account or Holding Account is held acknowledges and agrees that:
  - (i) interest shall accrue at normal commercial rates on amounts credited to those accounts and that the account holder shall be entitled to receive such

interest (which shall be paid in accordance with the mandate relating to such account) unless a Declared Default is continuing; and

- (ii) each such account is subject to the Transaction Security.

#### 11.5 **Excluded Proceeds**

Where Excluded Disposal Proceeds, Excluded Acquisition Proceeds and Excluded Insurance Proceeds include amounts which are intended to be used for a specific purpose within a specified period (as set out in the relevant definitions of "Excluded Disposal Proceeds", "Excluded Acquisition Proceeds" or "Excluded Insurance Proceeds"), the Parent shall ensure that those amounts are used for that purpose and, if requested to do so by the Facility Agent, shall as soon as reasonably practicable after a request deliver a certificate to the Facility Agent confirming the amount (if any) which has been so applied within the requisite time periods provided for in the relevant definition.

#### 11.6 **Revolving Facility Standstill and Significant Disposals**

- (a) At any time that a Revolving Facility Standstill Period is continuing, the Parent shall ensure that any proceeds received (not to exceed an amount equal to the Revolving Facility Commitments at that time):

- (i) pursuant to clause 11.2 (Disposal, Insurance and Acquisition Proceeds and Excess Cashflow); or
- (ii) from the proceeds of a Significant Disposal which the Majority Revolving Facility Lenders have not consented to,

are paid into a Mandatory Prepayment Account as soon as reasonably practicable after receipt by a Group Company and are not to be applied in accordance with clause 11.3 (Application of Mandatory Prepayments and Cancellations) above until such time as the Revolving Facility Standstill Period has ended. If, following the end of the Revolving Facility Standstill Period, the Majority Revolving Facility Lenders are:

- (i) not entitled to accelerate under the Senior Finance Documents in accordance with clause 27.20 (Revolving Facility Acceleration) and take enforcement action in accordance with clause 3.9 (Permitted Enforcement: Revolving Facility Lenders) of the Intercreditor Agreement, then the proceeds received shall be applied in accordance with clause 11.3 (Application of Mandatory Prepayments and Cancellation); or
- (ii) entitled to enforce under the Senior Finance Documents in accordance with clause 27.20 (Revolving Facility Acceleration) and take enforcement action in accordance with clause 3.9 (Permitted Enforcement: Revolving Facility Lenders) of the Intercreditor Agreement, then the proceeds received shall be applied in accordance with clause 17 (Application of Proceeds) of the Intercreditor Agreement.

- (b) The Parent shall ensure that:

- (i) if a Significant Disposal occurs it shall promptly notify the Facility Agent and/or Majority Revolving Facility Lenders; and
- (ii) any proceeds received (not to exceed an amount equal to the Revolving Facility Commitments at that time) from the proceeds of a Significant Disposal which the Majority Revolving Facility Lenders have not consented to, are paid into a Mandatory Prepayment Account as soon as reasonably practicable after receipt by a Group Company and are not to be applied in

accordance with clause 11.3 (Application of Mandatory Prepayments and Cancellations) above until 20 Business Days has elapsed from the date of the notification of the Significant Disposal referred to in sub-paragraph (i) above unless a Revolving Facility Standstill has commenced during this period whereby such proceeds will be subject to (a) above.

- (c) For the avoidance of doubt, any amounts received in excess of the Revolving Facility Commitments, shall be applied in accordance with clause 11.3 (Application of Mandatory Prepayments and Cancellations) above.

## **12. RESTRICTIONS**

### **12.1 Notices of Cancellation or Prepayment**

Any notice of cancellation or prepayment, authorisation or other election given by any Party under clause 10 (Illegality, Voluntary Prepayment and Cancellation), clause 11.3(c) (Application of Mandatory Prepayments and Cancellations) or clause 11.4 (Mandatory Prepayment Accounts and Holding Accounts) shall (subject to the terms of those clauses) be irrevocable and, unless a contrary indication appears in this agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.

### **12.2 Interest and Other Amounts**

Any prepayment under this agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs and to clause 16.6 (Prepayment Fees), without premium or penalty.

### **12.3 No Reborrowing of Term Facility**

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

### **12.4 Reborrowing of Revolving Facility**

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

### **12.5 Prepayment in Accordance with Agreement**

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

### **12.6 No Reinstatement of Commitments**

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

### **12.7 Facility Agent's Receipt of Notices**

If the Facility Agent receives a notice under clause 10 (Illegality, Voluntary Prepayment and Cancellation) or an election under clause 11.3(c) (Application of Mandatory Prepayments and Cancellations) it shall promptly forward a copy of that notice or election to either the Parent or the affected Lender, as appropriate.

## **12.8 Prepayment Elections**

The Facility Agent shall notify the Lenders as soon as possible of any proposed prepayment of any Term Loan under clause 10.3 (Voluntary Prepayment of Term Loans and CAR Facility Loans) or 11.2 (Disposal, Insurance and Acquisition Proceeds and Excess Cashflow).

## **12.9 Effect of Repayment and Prepayment on Commitments**

If all or part of any Lender's participation in a Utilisation under a Facility is repaid or prepaid and is not available for redrawing (other than by operation of clause 5.2 (Further Conditions Precedent)) an amount of that Lender's Commitment (equal to the Base Currency Amount of the amount of the participation which is repaid or prepaid) in respect of that Facility will be deemed to be cancelled on the date of repayment or prepayment.

## **12.10 Application of Prepayments**

Any prepayment of a Utilisation (other than a prepayment pursuant to clause 10.1 (Illegality) or clause 10.5 (Right of Cancellation and Repayment in Relation to a Single Lender)) shall be applied pro rata to each Lender's participation in that Utilisation.

## **13. INTEREST**

### **13.1 Calculation of Interest**

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

- (a) Margin; and
- (b) LIBOR or, in relation to any Loan in euro, EURIBOR.

### **13.2 Payment of Interest**

- (a) 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 three Monthly intervals after the first day of the Interest Period).
- (b) If the Compliance Certificate received by the Facility Agent which relates to the relevant Annual Financial Statements shows that:
  - (i) a higher Margin should have applied during a certain period, then the Parent shall (or shall ensure the relevant Borrower shall) within 3 Business Days of demand pay to the Facility Agent any amounts necessary to put the Facility Agent and the Lenders in the position they would have been in had the appropriate rate of the Margin applied during such period; and
  - (ii) a lower rate of Margin should have applied during a certain period, then the next four interest payments to the Lenders under this agreement shall be reduced rateably to put the Group in the position it would have been in had the appropriate rate of the Margin applied during the relevant Interest Period, provided that payments to a Lender will only be reduced to the extent it was a Lender during that Interest Period when a lower Margin should have applied.



### 13.3 **Default Interest**

- (a) If an Obligor fails to pay any amount payable by it under a Senior Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is 1 per cent per annum higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount and made under the Facility to which the overdue amount is, in the reasonable opinion of the Facility Agent, referable (or if there is no referable Facility, under Facility A) for successive Interest Periods, each of a duration selected by the Facility Agent (acting reasonably). Any interest accruing under this clause 13.3 shall be immediately payable by the Obligor on demand by the Facility Agent.
- (b) If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:
  - (i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
  - (ii) the rate of interest applying to the overdue amount during that first Interest Period shall be 1 per cent per annum higher than the rate which would have applied if the overdue amount had not become due.
- (c) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

### 13.4 **Notification of Rates of Interest**

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

## 14. **INTEREST PERIODS**

### 14.1 **Selection of Interest Periods and Terms**

- (a) A Borrower (or the Parent on behalf of a Borrower) may select an Interest Period for a Loan in the Utilisation Request for that Loan or (if the Loan is a Term Loan and has already been borrowed) in a Selection Notice.
- (b) Each Selection Notice for a Term Loan is irrevocable and must be delivered to the Facility Agent by the Borrower (or the Parent on behalf of the Borrower) to which that Term Loan was made not later than the Specified Time.
- (c) If a Borrower (or the Parent) fails to deliver a Selection Notice to the Facility Agent in accordance with paragraph (b) above, the relevant Interest Period will be three Months.
- (d) Subject to this clause 14, a Borrower (or the Parent) may select an Interest Period of one, two, three or six Months for a Term Loan or one, two, three or six Months for a Revolving Facility Loan or any other period agreed between the Parent and the Facility Agent (acting on the instructions of all the Lenders in relation to the relevant Loan).
- (e) An Interest Period for a Loan shall not extend beyond the Termination Date applicable to its Facility.

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

(g) A Revolving Facility Loan has one Interest Period only.

#### 14.2 **Non-Business Days**

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

### 15. **CHANGES TO THE CALCULATION OF INTEREST**

#### 15.1 **Absence of Quotations**

Subject to clause 15.2 (Market Disruption), if LIBOR or, if applicable, EURIBOR is to be determined by reference to the Base Reference Bank Rate but a Base Reference Bank does not supply a quotation by the Specified Time on the Quotation Day, the applicable LIBOR or EURIBOR shall be determined on the basis of the quotations of the remaining Base Reference Banks.

#### 15.2 **Market Disruption**

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

(i) the Margin; and

(ii) the rate notified to the Facility Agent by that Lender as soon as practicable and in any event by close of business on the date falling five Business Days after the Quotation Day (or, if earlier, on the date falling five Business Days prior to the date on which interest is due to be paid in respect of that Interest Period), to be that which expresses as a percentage rate per annum the cost to that Lender of funding its participation in that Loan from whatever source it may reasonably select.

(b) If:

(i) the percentage rate per annum notified by a Lender pursuant to paragraph (a)(ii) above is less than LIBOR or, in relation to any Loan in euro, EURIBOR; or

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

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

(c) If a Market Disruption Event occurs the Facility Agent shall, as soon as is practicable, notify the Parent.

(d) In this agreement:

**"Market Disruption Event"** means:

(i) at or about noon on the Quotation Day for the relevant Interest Period LIBOR or, if applicable, EURIBOR is to be determined by reference to the

Base Reference Banks and none or only one of the Base Reference Banks supplies a rate to the Facility Agent to determine LIBOR or, if applicable, EURIBOR for the relevant currency and Interest Period; or

- (ii) 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 Loan exceed 35 per cent of that Loan) that the cost to it of funding its participation in that Loan from whatever source it may reasonably select would be in excess of LIBOR or, if applicable, EURIBOR.

### **15.3 Alternative Basis of Interest or Funding**

- (a) If a Market Disruption Event occurs and the Facility Agent or the Parent so requires, the Facility Agent and the Parent shall enter into negotiations (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the rate of interest.
- (b) Any alternative basis agreed pursuant to paragraph (a) above shall, with the prior consent of all the Lenders and the Parent, be binding on all Parties.

### **15.4 Break Costs**

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

## **16. FEES**

### **16.1 Commitment Fee**

- (a) The Parent shall pay to the Facility Agent (for the account of each Lender) a fee in the Base Currency computed at the rate of 40 per cent per annum of the applicable Margin on that Lender's Available Commitment under the Revolving Facility for the Availability Period applicable to the Revolving Facility.
- (b) The accrued commitment fee is payable on the last day of each successive period of three Months which ends during the relevant Availability Period, on the last day of the relevant Availability Period and on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.
- (c) To the extent required pursuant to the terms applicable to a CAR Facility, the Parent shall procure that a fee is paid to the Facility Agent (for the account of each CAR Facility Lender) computed at the rate of the percentage rate per annum of the applicable Margin on that Lender's available Commitment under the CAR Facility as specified in the relevant CAR Facility Establishment Notice (but at a rate not exceeding 40 per cent of the CAR Facility Margin). The commitment fee payable under this Clause 16.1 shall accrue quarterly in arrears for the period from and including the CAR Facility Date (or such later date as specified in the CAR Facility Establishment Notice) to the expiry of the Availability Period applicable to the CAR Facility. The commitment fee set out in this Clause 16.1 is calculated on the aggregate amount of each Lender's Available Commitment under the applicable CAR Facility and is payable on the last day of each successive period of three Months following the CAR Facility Date, on the last day of the relevant Availability

Period and on the cancelled amount of the relevant Lender's CAR Facility Commitment at the time the cancellation is effective.

- (d) 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.

#### 16.2 **Arrangement Fee**

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

#### 16.3 **Agency Fee**

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

#### 16.4 **Security Agent Fee**

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

#### 16.5 **Interest, Commission and Fees on Ancillary Facilities**

The rate and time of payment of interest, commission, fees and any other remuneration in respect of each Ancillary Facility shall be determined by agreement between the relevant Ancillary Lender and the Borrower of that Ancillary Facility based upon normal market rates and terms.

#### 16.6 **Prepayment Fees**

- (a) Notwithstanding any other provision of this Agreement other than clause 16.6(c) below if all or any part of a Facility A Loan is prepaid (the amount of such prepayment being the "**Relevant Prepayment Amount**") at any time, in the case of a Facility A Loan, after the Closing Date but on or before the first anniversary of the Closing Date (the "**Non Call Period**"), from the proceeds of a refinance of Facility A by a financier which is not a Term Lender or pursuant to clause 11.1(b) (Exit) (ii) or (iii) then that prepayment may only be made if, in addition to all other sums required to be paid under the Senior Finance Documents in connection with that prepayment, the relevant Borrower pays to the Agent (for the account of the Lenders under Facility A, pro rata to their Commitments on the date of prepayment) on or before the date of such prepayment, a make whole premium in an amount equal to the amount of all interest which would otherwise have accrued and been paid or would be payable in respect of the Relevant Prepayment Amount for the period from the date of such prepayment to the expiration of the Non-Call Period. For this purpose the LIBOR part of the calculation of interest shall be the higher of (i) 1% per annum and (ii) LIBOR for an Interest Period of three months from the date of the prepayment or if no such rate can be obtained 1% per annum.
- (b) Notwithstanding any other provision of this Agreement other than clause 16.6(c) below if any amount of Facility A is prepaid from the proceeds of a refinance of Facility A by a financier which is not a Term Lender or pursuant clause 11.1(b) (Exit) (ii) or (iii), following the expiration of the Non-Call Period but on or prior to the second anniversary of the Closing Date, the Parent shall pay or procure that there is paid to the Agent (for the account of each Lender with a Facility A Commitment and to be allocated between them pro rata to their relative Facility A Commitments) an amount equal to 1 per cent of the amount so prepaid.

- (c) No repayment premium of fee shall be payable under this clause 16.6 (Prepayment Fees) in respect of a prepayment made pursuant to:
  - (i) Clause 11.3(b) (Application of Mandatory Prepayments and Cancellations);
  - (ii) Clause 25.4 (Equity Cure) but not in respect of any prepayment from an Overcure Amount, which for the avoidance of doubt will be subject to a repayment premium fee under this clause 16.6 (Prepayment Fees);
  - (iii) Clause 10.1 (Illegality) where the illegality has arisen solely as a result of a breach or failure to comply with any applicable law by the relevant Lender or, any changes in law or regulation applicable to that Lender only (and for the avoidance of doubt not the market generally);
  - (iv) Clause 11.2(b) (Exit); and
  - (v) a Flotation.

## 17. TAX GROSS-UP AND INDEMNITIES

### 17.1 Definitions

- (a) In this agreement:

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

- (i) where it relates to a Treaty Lender that is an Original Lender, contains the scheme reference number and jurisdiction of tax residence stated opposite that Lender's name in part 2 of schedule 1 (The Original Parties), and
  - (A) where the Borrower is an Original Borrower, is filed with HM Revenue & Customs within 30 days of the date of this agreement; or
  - (B) where the Borrower is an Additional Borrower, is filed with HM Revenue & Customs within 30 days of the date on which that Borrower becomes an Additional Borrower; or
- (ii) where it relates to a Treaty Lender that is a New Lender, a CAR Facility 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, Assignment Agreement, CAR Facility Establishment Notice or Increase Confirmation, and
  - (A) where the Borrower is a Borrower as at the relevant Transfer Date (or CAR Facility Date or date on which the increase in Commitments described in the relevant Increase Confirmation takes effect, as applicable) is filed with HM Revenue & Customs within 30 days of that Transfer Date (or CAR Facility Date or date on which the increase in Commitments described in the relevant Increase Confirmation takes effect, as applicable); or
  - (B) where the Borrower is not a Borrower as at the relevant Transfer Date (or CAR Facility Date or date on which the increase in Commitments described in the relevant Increase Confirmation takes effect, as applicable), is filed with HM Revenue & Customs within 30 days of the date on which that Borrower becomes an Additional Borrower.

**"Protected Party"** means a Senior 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 Senior Finance Document;

**"Qualifying Lender"** means a Lender which is beneficially entitled to interest payable to that Lender in respect of an advance under a Senior Finance Document and is:

- (i) a Lender:
  - (A) which is a bank (as defined for the purpose of section 879 of the ITA) making an advance under a Senior Finance Document and which is within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance or would be within such charge as respects such payment apart from section 18A of the CTA; or
  - (B) in respect of an advance made under a Senior 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 would be within such charge as respects such payment apart from section 18A of the CTA; or
- (ii) a Lender which is:
  - (A) a company resident in the United Kingdom for United Kingdom tax purposes;
  - (B) a partnership each member of which is:
    - (aa) a company so resident in the United Kingdom; or
    - (bb) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of part 17 of the CTA;
  - (C) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account that 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
- (iii) a Treaty Lender; or
- (iv) a Lender which is a building society (as defined for the purposes of section 880 of the ITA) making an advance under a Senior Finance Document;

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

- (i) a company resident in the United Kingdom for United Kingdom tax purposes;

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

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

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

**"Tax Payment"** means either the increase in a payment made by an Obligor to a Senior Finance Party under clause 17.2 (Tax Gross-up) or a payment under clause 17.3 (Tax Indemnity).

**"Treaty Lender"** means a Lender which:

- (i) is treated as a resident of a Treaty State for the purposes of the Treaty;
- (ii) does not carry on a business in the relevant jurisdiction through a permanent establishment with which that Lender's participation in the Loan is effectively connected; and
- (iii) meets all other conditions in the Treaty for full exemption from Tax imposed by the UK on interest, except that for this purpose it shall be assumed that the following are satisfied:
  - (A) any condition which relates (expressly or by implication) to there not being a special relationship between the Borrower and the Lender or between both of them and another person, or to the amounts or terms of any Loan or the Finance Documents, or to any other matter that is outside the control of that Lender; and
  - (B) any necessary procedural formalities; or
- (iv) is a partnership, each member of which is:
  - (A) a company so resident in the United States; or
  - (B) a company not so resident in the United States which carries on a trade in the United States through a permanent establishment and which brings into account in computing its chargeable profits the whole of any share of interest payable in respect of that advance;

**"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 such jurisdiction on interest; and

**"UK Non-Bank Lender"** means:

- (i) where a Lender becomes a Party on the day on which this agreement is entered into, a Lender listed in part 3 of schedule 1 (The Original Parties); and
  - (ii) where a Lender becomes a Party after the day on which this agreement is entered into, a Lender which gives a Tax Confirmation in the Assignment Agreement, CAR Facility Establishment Notice or Transfer Certificate which it executes on becoming a Party to this agreement;
- (b) Unless a contrary indication appears, in this clause 17 (Tax Gross-up and Indemnities) a reference to **"determines"** or **"determined"** means a determination made in the absolute discretion of the person making the determination.

## 17.2 Tax Gross-up

- (a) Each Obligor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) The Parent shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the 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 Parent and that Obligor.
- (c) If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) A payment shall not be increased under paragraph (c) above by reason of a Tax Deduction on account of Tax imposed by the United Kingdom, if on the date on which the payment falls due:
  - (i) the payment could have been made to the relevant Lender without a Tax Deduction if the Lender had been a Qualifying Lender, but on that date that Lender is not or has ceased to be a Qualifying Lender other than as a result of any change after the date it became a Lender under this agreement in (or in the interpretation, administration, or application of) any law or Treaty, or any published practice or published concession of any relevant taxing authority; or
  - (ii) the relevant Lender is a Qualifying Lender solely by virtue of paragraph (ii) of the definition of "Qualifying Lender"; and
    - (A) an officer of HM Revenue & Customs has given (and not revoked) a direction (a **"Direction"**) under section 931 of the ITA which relates to the payment and that Lender has received from the Obligor making the payment or from the Parent a certified copy of that Direction; and
    - (B) the payment could have been made to the Lender without any Tax Deduction if that Direction had not been made; or



- (iii) the relevant Lender is a Qualifying Lender solely by virtue of paragraph (ii) of the definition of "Qualifying Lender" and:
  - (A) the relevant Lender has not given a Tax Confirmation to the Parent; and
  - (B) the payment could have been made to the Lender without any Tax Deduction if the Lender had given a Tax Confirmation to the Parent, on the basis that the Tax Confirmation would have enabled the Parent to have formed a reasonable belief that the payment was an "excepted payment" for the purpose of section 930 of the ITA; or
- (iv) the relevant Lender is a Treaty Lender and the Obligor making the payment is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had that Lender complied with its obligations under paragraph (g) or (h) (as applicable) below.
- (v) for the avoidance of doubt, the Tax Deduction relates to a Tax described in clause 17.3(b) (Tax Indemnity) or is a FATCA Deduction.
- (e) If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (f) Within 30 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 Senior Finance Party entitled to the payment a statement under section 975 of the ITA or other evidence reasonably satisfactory to that Senior Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.
- (g)
  - (i) Subject to paragraph (ii) below, a Treaty Lender and each Obligor which makes a payment to which that Treaty Lender is entitled shall co-operate in completing any procedural formalities necessary for that Obligor to obtain authorisation to make that payment without a Tax Deduction.
  - (ii)
    - (A) A Treaty Lender which becomes a Party on the day on which this agreement is entered into that holds a passport under the HMRC DT Treaty Passport scheme, and which wishes that scheme to apply to this agreement, shall confirm its scheme reference number and its jurisdiction of tax residence opposite its name in part 2 of schedule 1 (The Original Parties); and
    - (B) a New Lender, CAR Facility 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, Assignment Agreement, CAR Facility Establishment Notice or Increase Confirmation which it executes,

and, having done so, that Lender shall be under no obligation pursuant to paragraph (i) above.
- (h) If a Lender has confirmed its scheme reference number and its jurisdiction of tax residence in accordance with paragraph (g)(ii) above and:
  - (i) a Borrower making a payment to that Lender has not made a Borrower DTTP Filing in respect of that Lender; or

(ii) a Borrower making a payment to that Lender has made a Borrower DTTP Filing in respect of that Lender but:

(A) that Borrower DTTP Filing has been rejected by HM Revenue & Customs; or

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

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

(i) If a Lender has not confirmed its scheme reference number and jurisdiction of tax residence in accordance with paragraph (g)(ii) above, 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 Utilisation unless the Lender otherwise agrees.

(j) A Borrower shall, promptly on making a Borrower DTTP Filing, deliver a copy of that Borrower DTTP Filing to the Facility Agent for delivery to the relevant Lender.

(k) A UK Non-Bank Lender shall promptly notify the Parent and the Facility Agent if there is any change in the position from that set out in the Tax Confirmation.

### 17.3 **Tax Indemnity**

(a) The Parent shall (within three 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 respect of a Senior Finance Document

(b) Paragraph (a) above shall not apply:

(i) with respect to any Tax assessed on a Senior Finance Party:

(A) under the law of the jurisdiction in which that Senior Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Senior Finance Party is treated as resident for tax purposes; or

(B) under the law of the jurisdiction in which that Senior 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 Senior Finance Party; or

(ii) to the extent a loss, liability or cost:

(A) is compensated for by an increased payment under clause 17.2 (Tax Gross-up);

(B) would have been compensated for by an increased payment under clause 17.2 (Tax Gross-Up) but was not so compensated solely

because one of the exclusions in clause 17.2(d) (Tax Gross-up) applied;

(C) results from a failure of the Senior Finance Party to comply with its obligations under clause 17.5 (Lender Status Confirmation); or

(D) relates to a FATCA Deduction required to be made by a Party.

(c) A Protected Party making, or intending to make a claim under paragraph (a) above shall promptly notify the Facility Agent of the event which will give, or has given, rise to the claim, following which the Facility Agent shall notify the Parent.

(d) A Protected Party shall, on receiving a payment from an Obligor under this clause 17.3 (Tax Indemnity), notify the Facility Agent.

#### **17.4 Tax Credit**

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

(a) a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and

(b) that Senior Finance Party has obtained and utilised that Tax Credit,

the Senior Finance Party shall pay the amount of such Tax Credit to the Obligor net of all out-of-pocket expenses (including Taxes) of such Senior Finance Party and without interest (other than any interest paid by the relevant governmental authority with respect to such Tax Credit) which that Senior 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. Such Obligor, within 3 Business Days following the request of such Senior Finance Party, shall repay to such Senior Finance Party the amount paid over to it pursuant to this clause 17.4 (plus any penalties, interest or other charges imposed by the relevant governmental authority) in the event that such Senior Finance Party is required to repay such Tax Credit to such governmental authority.

#### **17.5 Lender Status Confirmation**

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

(a) not a Qualifying Lender;

(b) a Qualifying Lender (other than a Treaty Lender); or

(c) a Treaty Lender.

If a New Lender, CAR Facility Lender or an Increase Lender fails to indicate its status in accordance with this clause 17.5 then such New Lender, CAR Facility 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 Facility Agent which category applies (and the Facility Agent, upon receipt of such notification, shall inform the Parent). For the avoidance of doubt, a Transfer Certificate, Assignment Agreement, CAR Facility Establishment Notice or Increase Confirmation shall not be invalidated by any failure of a Lender to comply with this clause 17.5.

## 17.6 Stamp Taxes

The Parent shall pay and, within three Business Days of demand, indemnify each Senior Finance Party and Arranger against any cost, loss or liability that Senior Finance Party or Arranger incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Senior Finance Document.

## 17.7 VAT

- (a) All amounts expressed to be payable under a Senior Finance Document by any Party to a Senior 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 Senior Finance Party to any Party under a Senior Finance Document and such Senior Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Senior 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 Senior Finance Party must promptly provide an appropriate VAT invoice to that Party).
- (b) If VAT is or becomes chargeable on any supply made by any Senior Finance Party (the "**Supplier**") to any other Senior Finance Party (the "**Recipient**") under a Senior Finance Document, and any Party other than the Recipient (the "**Relevant Party**") is required by the terms of any Senior Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):
  - (i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
  - (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- (c) Where a Senior Finance Document requires any Party to reimburse or indemnify a Senior Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Senior Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Senior Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (d) Any reference in this clause 17.7 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 or in any equivalent legislation of another jurisdiction).

- (e) In relation to any supply made by a Senior Finance Party to any Party under a Senior Finance Document, if reasonably requested by such Senior Finance Party, that Party must promptly provide such Senior Finance Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Senior Finance Party's VAT reporting requirements in relation to such supply.

#### 17.8 **FATCA Information**

- (a) Subject to paragraph (c) below, each Party shall, within ten Business Days of a reasonable request by another Party:
  - (i) confirm to that other Party whether it is:
    - (A) a FATCA Exempt Party; or
    - (B) not a FATCA Exempt Party; and
  - (ii) supply to that other Party such forms, documentation and other Information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA;
  - (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.
- (b) If a Party confirms to another Party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Paragraph (a) above shall not oblige any Senior Finance Party to do anything, and paragraph (a)(iii) above shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:
  - (i) any law or regulation;
  - (ii) any fiduciary duty; or
  - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (a)(i) or (ii) above (including, for the avoidance of doubt, where clause 17.8(c) above applies), then such Party shall be treated for the purposes of the Senior Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.

#### 17.9 **FATCA Deduction**

- (a) Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.

- (b) Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the Party to whom it is making the payment and, in addition, shall notify the Parent and the Facility Agent and the Facility Agent shall notify the other Senior Finance Parties.

## 18. **INCREASED COSTS**

### 18.1 **Increased Costs**

- (a) Subject to clause 18.3 (Exceptions) the Parent shall, within three Business Days of a demand by the Facility Agent, pay for the account of a Senior Finance Party the amount of any Increased Costs incurred by that Senior 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;
  - (ii) compliance with any law or regulation or with any requirement, direction or guidance made by a regulator pursuant to any such law or regulation; or
  - (iii) the implementation or application of, or compliance with, Basel III or CRD IV or any other law or regulation which implements Basel III or CRD IV (whether such implementation, application or compliance is by a government, regulator, that Finance Party or any of its Affiliates),

made after the date of this agreement.

- (b) In this agreement:

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

- (A) the agreements on capital requirements, a leverage ratio and liquidity standards contained in "Basel III: A global regulatory framework for more resilient banks and banking systems", "Basel III: International framework for liquidity risk measurement, standards and monitoring" and "Guidance for national authorities operating the countercyclical capital buffer" published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;
- (B) the rules for global systemically important banks contained in "Global systemically important banks: assessment methodology and the additional loss absorbency requirement – Rules text" published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and
- (C) any further guidance or standards published by the Basel Committee on Banking Supervision relating to "Basel III".

- (ii) **"CRD IV"** means Directive 2013/36/EU of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directive 2006/48/EC and 2006/49/EC.
- (iii) **"CRR"** means Regulation (EU) no. 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending regulation (EU) No. 648/2012.
- (iv) **"Increased Costs"** means:
  - (A) a reduction in the rate of return from a Facility or on a Senior Finance Party's (or its Affiliate's) overall capital;
  - (B) an additional or increased cost; or
  - (C) a reduction of any amount due and payable under any Senior Finance Document,

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

## 18.2 Increased Cost Claims

- (a) A Senior Finance Party intending to make a claim pursuant to clause 18.1 (Increased Costs) shall notify the Facility Agent of the event giving rise to the claim, following which the Facility Agent shall promptly notify the Parent.
- (b) Each Senior Finance Party shall, as soon as practicable after a demand by the Facility Agent, provide a certificate confirming the amount of its Increased Costs.

## 18.3 Exceptions

- (a) Clause 18.1 (Increased Costs) does not apply to the extent that any Increased Cost is:
  - (i) attributable to a Tax Deduction required by law to be made by an Obligor;
  - (ii) attributable to a FATCA Deduction required to be made by a Party;
  - (iii) compensated for by clause 17.3 (Tax Indemnity) (or would have been compensated for under clause 17.3 (Tax Indemnity) but was not so compensated solely because any of the exclusions in clause 17.3(b) (Tax Indemnity) applied);
  - (iv) attributable to the wilful breach by the relevant Senior Finance Party or its Affiliates of any law or regulation; or
  - (v) attributable to the implementation or application of or compliance with the "International Convergence of Capital Measurement and Capital Standards, a Revised Framework" published by the Basel Committee on Banking Supervision in June 2004 in the form existing on the date of this agreement (but excluding any amendment arising out of Basel III, CRD IV or CRR) ("**Basel II**") or any other law or regulation which implements Basel II (whether such implementation, application or compliance is by a government, regulator, Finance Party or any of its Affiliates).

- (b) In this clause 18.3, a reference to a **"Tax Deduction"** has the same meaning given to the term in clause 17.1 (Definitions).

## 19. **OTHER INDEMNITIES**

### 19.1 **Currency Indemnity**

- (a) If any sum due from an Obligor under the Senior Finance Documents (a **"Sum"**), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the **"First Currency"**) in which that Sum is payable into another currency (the **"Second Currency"**) for the purpose of:

- (i) making or filing a claim or proof against that Obligor; or
- (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

that Obligor shall as an independent obligation, within three Business Days of demand, indemnify the Arrangers and each other Secured Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between:

- (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency; and
- (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

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

### 19.2 **Other Indemnities**

- (a) The Parent shall (or shall procure that an Obligor will), within three Business Days of demand, indemnify each Senior Finance Party against any cost, loss or liability incurred by it as a result of:
- (i) the occurrence of any Event of Default;
  - (ii) a failure by an Obligor to pay any amount due under a Senior Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of clause 33 (Sharing Among the Senior Finance Parties);
  - (iii) funding, or making arrangements to fund, its participation in a Utilisation requested by a Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this agreement (other than by reason of default or negligence by that Senior Finance Party alone); or
  - (iv) a Utilisation (or part of a Utilisation) not being prepaid in accordance with a notice of prepayment given by a Borrower or the Parent.
- (b) The Parent shall within 3 Business Days of demand indemnify each Senior Finance Party, each Affiliate of a Senior Finance Party and each officer or employee of a Senior Finance Party or its Affiliate, against any cost, loss or liability incurred by that Senior Finance Party or its Affiliate (or officer or employee of that Senior Finance Party or Affiliate) in connection with or arising out of the Acquisition or the



funding of the Acquisition (including but not limited to those incurred in connection with any litigation, arbitration or administrative proceedings or regulatory enquiry concerning the Acquisition), unless such loss or liability is caused by the gross negligence or wilful misconduct of that Senior Finance Party or its Affiliate (or employee or officer of that Senior Finance Party or Affiliate). Any Affiliate or any officer or employee of a Senior Finance Party or its Affiliate may rely on this clause 19.2 subject to clause 1.4 (Third Party Rights) and the provisions of the Third Parties Act.

### **19.3 Indemnity to the Facility Agent**

The Parent shall within 3 Business Days of demand, indemnify the Facility Agent against:

- (a) any cost, loss or liability incurred by the Facility Agent (acting reasonably) as a result of:
  - (i) clause 26.26 (Access) and subject to the provisions in such clause regarding responsibility for payment of costs and liabilities;
  - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
  - (iii) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this agreement; and
- (b) any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Facility Agent (otherwise than by reason of the Facility Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to clause 34.11 (Disruption to Payment Systems, etc.) notwithstanding the Facility Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent in acting as Facility Agent under the Senior Finance Documents.

### **19.4 Indemnity to the Security Agent**

- (a) Each Obligor jointly and severally shall within 3 Business Days of demand indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability incurred by any of them as a result of:
  - (i) any failure by the Parent to comply with its obligations under clause 21 (Costs and Expenses);
  - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
  - (iii) the taking, holding, protection or enforcement of the Transaction Security;
  - (iv) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent and each Receiver and Delegate by the Senior Finance Documents or by law;
  - (v) any default by any Obligor in the performance of any of the obligations expressed to be assumed by it in the Senior Finance Documents; or
  - (vi) acting as Security Agent, Receiver or Delegate under the Senior Finance Documents or which otherwise relates to any of the Charged Property (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).

- (b) Each Obligor expressly acknowledges and agrees that the continuation of its indemnity obligations under this clause 19.4 will not be prejudiced by any release or disposal under clause 13 (Distressed Disposals and Appropriation) of the Intercreditor Agreement taking into account the operation of that clause.
- (c) The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this clause 19.4 and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all monies payable to it.

## **20. MITIGATION BY THE LENDERS**

### **20.1 Mitigation**

- (a) Each Senior Finance Party shall, in consultation with the Parent, take all reasonable steps to mitigate any circumstances which arise and which would result in any Facility ceasing to be available or any amount becoming payable under or pursuant to, or cancelled pursuant to, any of clause 10.1 (Illegality), clause 17 (Tax Gross-Up and Indemnities) or clause 18 (Increased Costs) including (but not limited to) transferring its rights and obligations under the Senior Finance Documents to another Affiliate or Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of any Obligor under the Senior Finance Documents.

### **20.2 Limitation of Liability**

- (a) The Parent shall promptly indemnify each Senior Finance Party for all costs and expenses reasonably incurred by that Senior Finance Party as a result of steps taken by it under clause 20.1 (Mitigation).
- (b) A Senior Finance Party is not obliged to take any steps under clause 20.1 (Mitigation) if, in the opinion of that Senior Finance Party (acting reasonably), to do so might be prejudicial to it.

### **20.3 Confirmation of Indemnities**

Each indemnity given by a Party under or in connection with a Senior Finance Document is a continuing obligation independent of the Party's other obligations under or in connection with that or any other Senior Finance Party to pay any amount or incur any expense before enforcing an indemnity under or in connection with a Senior Finance Document.

## **21. COSTS AND EXPENSES**

### **21.1 Transaction Expenses**

The Parent shall within 3 Business Days of demand pay the Facility Agent, the Arrangers and the Security Agent the amount of all costs and expenses (including legal fees) reasonably incurred by any of them (and, in the case of the Security Agent, by any Receiver or Delegate) in connection with the negotiation, preparation, printing, execution, syndication and perfection of:

- (a) this agreement and any other documents referred to in this agreement and the Transaction Security; and
- (b) any other Senior Finance Documents executed after the date of this agreement.

## 21.2 **Amendment Costs**

If:

- (a) an Obligor requests an amendment, waiver or consent in relation to a Senior Finance Document; or
- (b) an amendment is required pursuant to clause 34.10 (Change of Currency),

the Parent shall, within three Business Days of demand, reimburse each of the Facility Agent and the Security Agent for the amount of all costs and expenses (including legal fees) reasonably incurred by the Facility Agent and the Security Agent (and, in the case of the Security Agent, by any Receiver or Delegate) in responding to, evaluating, negotiating or complying with that request or requirement.

## 21.3 **Enforcement and Preservation Costs**

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

## 22. **GUARANTEE AND INDEMNITY**

### 22.1 **Guarantee and Indemnity**

Each Guarantor irrevocably and unconditionally jointly and severally:

- (a) guarantees to each Senior Finance Party punctual performance by each other Obligor of all that Obligor's obligations under the Senior Finance Documents;
- (b) undertakes with each Senior Finance Party that whenever another Obligor does not pay any amount when due under or in connection with any Senior Finance Document, that Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and
- (c) agrees with each Senior Finance Party that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Senior Finance Party immediately on demand against any cost, loss or liability it incurs as a result of an Obligor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Senior Finance Document on the date when it would have been due. The amount payable by a Guarantor under this indemnity will not exceed the amount it would have had to pay under this clause 22 (Guarantee and Indemnity) if the amount claimed had been recoverable on the basis of a guarantee.

### 22.2 **Continuing Guarantee**

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

### 22.3 **Reinstatement**

If any discharge, release arrangement (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is made by a Finance Party in

whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Guarantor under this clause will continue or be reinstated as if the discharge, release or arrangement had not occurred.

#### **22.4 Waiver of Defences**

The obligations of each Guarantor under this clause 22 (Guarantee and Indemnity) will not be affected by an act, omission, matter or thing which, but for this clause 22 (Guarantee and Indemnity), would reduce, release or prejudice any of its obligations under this clause 22 (Guarantee and Indemnity) (without limitation and whether or not known to it or any Senior Finance Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Obligor or other person;
- (b) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any Group Company;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over assets of, any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;
- (e) any amendment, novation, supplement, extension restatement (however fundamental and whether or not more onerous) or replacement of a Senior Finance Document or any other document or security including, without limitation, any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any Senior Finance Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Senior Finance Document or any other document or Security; or
- (g) any insolvency or similar proceedings.

#### **22.5 Guarantor Intent**

Without prejudice to the generality of clause 22.4 (Waiver of Defences), each Guarantor expressly confirms that it intends that this guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Senior Finance Documents and/or any facility or amount made available under any of the Senior Finance Documents for the purposes of or in connection with any of the following: acquisitions of any nature; increasing working capital; enabling investor or management distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

#### **22.6 Immediate Recourse**

Each Guarantor waives any right it may have of first requiring any Senior 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 22 (Guarantee and Indemnity). This waiver applies irrespective of any law or any provision of a Senior Finance Document to the contrary.

## **22.7 Appropriations**

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

- (a) refrain from applying or enforcing any other moneys, Security or rights held or received by that Senior Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Guarantor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from any Guarantor or on account of any Guarantor's liability under this clause 22 (Guarantee and Indemnity).

## **22.8 Deferral of Guarantors' Rights**

Until all amounts which may be or become payable by the Obligors under or in connection with the Senior Finance Documents have been irrevocably paid in full and 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 Senior Finance Documents or by reason of any amounts being payable, or liability arising under this clause 22 (Guarantee and Indemnity):

- (a) to be indemnified by an Obligor;
- (b) to claim any contribution from any other guarantor of any Obligor's obligations under the Senior Finance Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Senior Finance Parties under the Senior Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Senior Finance Documents by any Senior Finance Party;
- (d) to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which any Guarantor has given a guarantee, undertaking or indemnity under clause 22.1 (Guarantee and Indemnity);
- (e) to exercise any right of set-off against any Obligor; and/or
- (f) to claim or prove as a creditor of any Obligor in competition with any Senior 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 Senior Finance Parties by the Obligors under or in connection with the Senior Finance Documents to be repaid in full) on trust for the Senior 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 34 (Payment Mechanics).

## 22.9 **Release of Guarantors' Right of Contribution**

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

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

## 22.10 **Additional Security**

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

## 22.11 **Guarantee Limitations**

### (a) **Guarantee Obligations**

For the purpose of this clause 22.11 "**Guarantee Obligations**" means the obligations and liabilities of the relevant Obligor under clause 22.1 (Guarantee and Indemnity) and under any other guarantee or indemnity provision in a Senior Finance Document.

### (b) **Unlawful Financial Assistance**

Without limiting any specific exemptions set out below:

- (i) no Obligor's Guarantee Obligations will extend to include any obligation or liability; and
- (ii) no Security granted by an Obligor will secure any Guarantee Obligation,

if to do so would be unlawful financial assistance in respect of the acquisition of shares in itself or its Holding Company or any equivalent and applicable provisions under the laws of the Original Jurisdiction of the relevant Obligor.

### (c) **Severance of Obligations**

If, notwithstanding paragraph (b) above, the Guarantee Obligations or Transaction Security would be unlawful financial assistance, then, to the extent necessary to give effect to paragraph (b) above, the obligations under the Senior Finance Documents will be deemed to have been split into two tranches; "Tranche 1" comprising those obligations which may be secured by the Guarantee Obligations or Transaction Security without breaching relevant financial assistance laws and "Tranche 2" comprising the remainder of the obligations under the Senior Finance Documents. The Tranche 2 obligations will be excluded from the Guarantee Obligations and will be allocated to the Facilities to which those obligations relate, to the extent that that can be determined. To the extent that the relevant Facility

cannot be determined, the Tranche 2 obligations will be allocated pro rata across the Facilities.

## **23. REPRESENTATIONS**

### **23.1 General**

- (a) Each Obligor makes the representations and warranties set out in this clause 23 to each Senior Finance Party.
- (b) In relation to the representations and warranties made on the date of this agreement and any other date on or before the Closing Date, it is assumed that Completion has occurred and the Parent has the knowledge of Senior Management.

### **23.2 Status**

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

### **23.3 Binding Obligations**

Subject to the Legal Reservations and any Perfection Requirements:

- (a) the obligations expressed to be assumed by it in each Transaction Document to which it is a party are legal, valid, binding and enforceable obligations; and
- (b) (without limiting the generality of paragraph (a) above), each Transaction Security Document to which it is a party creates the security interests which that Transaction Security Document purports to create and those security interests are valid and effective.

### **23.4 Non-Conflict with Other Obligations**

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

- (a) any material law or regulation applicable to it;
- (b) the constitutional documents of any Group Company (save in respect of any member of the Group which is acquired as a Permitted Acquisition provided its constitutional documents are amended within 10 Business Days of it being acquired); or
- (c) any agreement or instrument binding upon it or any Group Company or any of its or any Group Company's assets or constitute a default or termination event (however described) under any such agreement or instrument in each case to an extent which has or is reasonably likely to have a Material Adverse Effect.

### **23.5 Power and Authority**

- (a) It has the power to enter into, perform and deliver, and subject to the Perfection Requirements has taken all necessary action to authorise its entry into,

performance and delivery of, the Transaction Documents to which it is or will be a party and the transactions contemplated by those Transaction Documents.

- (b) No limit on its powers will be exceeded as a result of the borrowing, grant of security or giving of guarantees or indemnities contemplated by the Transaction Documents to which it is a party.

#### 23.6 **Validity and Admissibility in Evidence**

- (a) Subject to the Legal Reservations all Authorisations required:

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

have been obtained or effected and are in full force and effect except for those necessary to satisfy the Perfection Requirements.

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

#### 23.7 **Governing Law and Enforcement**

Subject to the Legal Reservations:

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

#### 23.8 **Insolvency**

No:

- (a) formal corporate action, legal proceeding or other formal procedure or step described in clause 27.7(a) (Insolvency Proceedings); or
- (b) creditors' process described in clause 27.8 (Creditors' Process),

has been taken or, to the knowledge of the Parent, threatened in relation to a Group Company; and none of the circumstances described in clause 27.6 (Insolvency) applies to a Group Company.

#### 23.9 **No Filing or Stamp Taxes**

Under the laws of its Relevant Jurisdictions it is not necessary that the Senior Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to the Senior Finance Documents or the transactions contemplated by the Senior Finance Documents except for the Perfection Requirements and payment of associated fees, which registrations, filings, taxes and fees will be made and paid promptly (and within any mandatory time limits) after the date of the relevant Senior Finance Document.



### 23.10 Deduction of Tax

- (a) It is not required to make any deduction for or on account of Tax from any payment it may make under any Senior Finance Document to a Lender which is a Qualifying Lender:
  - (i) falling within paragraph (i)(A) of the definition of "Qualifying Lender";
  - (ii) except where a direction has been given under section 931 of the ITA in relation to the payment concerned, falling within paragraph (i)(B) of the definition of "Qualifying Lender"; or
  - (iii) falling within paragraph (ii) of the definition of "Qualifying Lender";
- (b) a Treaty Lender, and the payment is one specified in a directive given by the Commissioner of Revenue & Customs under Regulation 2 of the Double Taxation Relief (Taxation Income)] (General) Regulations 1970 (SI 1970/488).

### 23.11 No Default

- (a) No Event of Default and, on the date of this agreement and the Closing Date, no Default is continuing or is reasonably likely to result from the making of any Utilisation or the entry into, the performance of, or any transaction contemplated by, any Transaction Document.
- (b) No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or termination event (however described) under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or any of its Subsidiaries') assets are subject which has or is reasonably likely to have a Material Adverse Effect.

### 23.12 No Misleading Information

Save as disclosed in writing to the Facility Agent and the Arrangers prior to the date of this agreement:

- (a) any factual information contained in the Information Package was true and accurate in all material respects as at the date of the relevant report or document containing the information or (as the case may be) as at the date the information is expressed to be given;
- (b) the Base Case Model has been prepared in accordance with the Accounting Principles as applied to the Original Financial Statements of the Target, and the financial projections contained in the Base Case Model have been prepared on the basis of recent historical information, are fair and based on reasonable assumptions and have been approved by the board of directors of the Parent;
- (c) any financial projection or forecast contained in the Information Package has been prepared on the basis of recent historical information and on the basis of reasonable assumptions and was fair (as at the date of the relevant report or document containing the projection or forecast) and arrived at after careful consideration;
- (d) the expressions of opinion or intention provided by or on behalf of an Obligor for the purposes of the Information Package were made after careful consideration (as at the date of the relevant report or document containing the expression of opinion or intention) and were fair and based on reasonable grounds;

- (e) so far as the Parent is aware, no event or circumstance has occurred or arisen and no information has been omitted from the Information Package and no information has been given or withheld that results in the information, opinions, intentions, forecasts or projections contained in the Information Package being untrue or misleading in any material respect;
- (f) all material written information provided to a Senior Finance Party by or on behalf of the Investors or the Parent in connection with the Acquisition and/or the Target Group on or before the date of this agreement and not superseded before that date (whether or not contained in the Information Package) is accurate and not misleading in any material respect as at the date it was provided; and
- (g) so far as the Parent is aware, all other material written information provided by any Group Company (including its advisers) to a Senior Finance Party or the provider of any Report was true, complete and accurate in all material respects as at the date it was provided and is not misleading in any material respect.

The representations and warranties made with respect to the Reports are made by each Obligor in this clause 23.12 only so far as it is aware after making due and careful enquiries.

### **23.13 Original Financial Statements**

- (a) The Original Financial Statements of the Target:
  - (i) in the case of the Original Audited Financial Statements, were prepared in accordance with the Accounting Principles consistently applied and give a true and fair view of the consolidated financial condition of the Target as at the end of, and the consolidated results of operations of the Target for, the financial year to which they relate; and
  - (ii) in the case of the Original Unaudited Financial Statements, fairly present the consolidated financial condition of the Target as at the end of, and the consolidated results of operations of the Target for, the period to which they relate.
- (b) The Original Financial Statements of each Obligor (other than the Target) give a true and fair view of the financial condition of that Obligor as at the end of, and the consolidated results of operations of that Obligor for, the financial year to which they relate.
- (c) The most recent financial statements of each Obligor delivered pursuant to clause 24.1 (Financial Statements) give a true and fair view of (if audited) or fairly represent (if unaudited) the consolidated financial condition of that Obligor as at the end of, and the consolidated results of operations of that Obligor for, the period to which they relate.
- (d) The Budgets supplied under this agreement were arrived at after careful consideration and have been prepared in good faith on the basis of recent historical information and on the basis of assumptions which were reasonable as at the date they were prepared and supplied.
- (e) Since the date of the most recent financial statements delivered pursuant to clause 24.1 (Financial Statements), there has been no material adverse change in the business, assets or financial condition of the Group which is reasonably likely to have a Material Adverse Effect.

#### 23.14 **No Proceedings Pending or Threatened**

No litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which, if adversely determined, are reasonably likely to have a Material Adverse Effect have (to the best of its knowledge and belief (having made due and careful enquiry)) been started or threatened against in writing it or any of its Subsidiaries.

#### 23.15 **No Breach of Laws**

- (a) It has not (and none of its Subsidiaries has) breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.
- (b) No labour disputes are current or, to the best of its knowledge and belief (having made due and careful enquiry), threatened in writing against any Group Company which have or are reasonably likely to have a Material Adverse Effect.

#### 23.16 **Environmental Laws**

- (a) Each Group Company is in compliance with clause 26.3 (Environmental Compliance) and to the best of its knowledge and belief (having made due and careful enquiry) no circumstances have occurred which would prevent such compliance in a manner or to an extent which has or is reasonably likely to have a Material Adverse Effect.
- (b) No Environmental Claim has been commenced or (to the best of its knowledge and belief (having made due and careful enquiry)) is threatened against any Group Company where that claim has or is reasonably likely, if determined against that Group Company, to have a Material Adverse Effect.
- (c) The cost to the Group of compliance with Environmental Laws (including Environmental Permits) is (to the best of its knowledge and belief, having made due and careful enquiry) adequately provided for in the Base Case Model.

#### 23.17 **Taxation**

- (a) It is not (and none of its Subsidiaries is) materially overdue in the filing of any Tax returns and it is not (and none of its Subsidiaries is) overdue in the payment of any amount in respect of Tax of £250,000 (or its equivalent in any other currency) or more.
- (b) No claims or investigations are being, or are reasonably likely to be, made or conducted against it (or any of its Subsidiaries) with respect to Taxes such that a liability of, or claim against, any Group Company of £200,000 (or its equivalent in any other currency) or more is reasonably likely to arise.
- (c) It is resident for Tax purposes only in its Original Jurisdiction.

#### 23.18 **Anti-corruption Law**

Each Group Company has conducted its business in compliance with applicable anti-corruption laws and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws where failure to do so would have or is reasonably likely to have a Material Adverse Effect.

#### 23.19 **Security and Financial Indebtedness**

- (a) No Security or Quasi-Security exists over all or any of the present or future assets of any Group Company other than as permitted by this agreement.

- (b) No Group Company has any Financial Indebtedness outstanding other than as permitted by this agreement.

#### 23.20 **Ranking**

Subject to the Legal Reservations and the Perfection Requirements, the Transaction Security has or will have the ranking in priority which it is expressed to have in the Transaction Security Documents and it is not subject to any prior ranking or pari passu ranking Security.

#### 23.21 **Good Title to Assets**

It and each of its Subsidiaries has a good, valid and marketable title to, or valid leases or licences of, and all appropriate Authorisations to use, the assets necessary to carry on its business as presently conducted in each case if this not being the case has or is reasonably likely to have a Material Adverse Effect.

#### 23.22 **Legal and Beneficial Ownership**

- (a) Subject to paragraph (c) below, it and each of its Subsidiaries is the sole legal and beneficial owner of the respective assets over which it purports to grant Security.
- (b) Subject to paragraph (c) below, all the Target Shares are or will be on the Closing Date legally and beneficially owned by the Parent or the Group Companies specified in the Group Structure Chart as owner of those shares and assets free from any claims, third party rights or competing interests other than Permitted Security permitted under clause 26.15 (Negative Pledge).
- (c) The Target Shares are beneficially but not legally owned by the purchaser until those shares are registered in the register of shareholders of the relevant Target which registration and delivery of share certificates will be made (subject to stamping) as soon as possible after the Closing Date.

#### 23.23 **Shares**

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

#### 23.24 **Intellectual Property**

It and each of its Subsidiaries which is a Material Company:

- (a) is the sole legal and beneficial owner of or has licensed to it all the Intellectual Property which is material in the context of its business and which is necessary for it to carry on its business (taken as a whole) as it is being conducted and as contemplated in the Base Case Model where failure to do so would have or be reasonably likely to have a Material Adverse Effect;
- (b) does not, in carrying on its businesses, infringe any material Intellectual Property of any third party where such infringement would have a or would be reasonably likely to have a Material Adverse Effect; and

- (c) has taken all formal or procedural actions (including payment of fees) required to maintain any Intellectual Property owned by it where failure to do so would have or be reasonably likely to have a Material Adverse Effect.

#### **23.25 Group Structure Chart**

- (a) Assuming Completion has occurred (including for the avoidance of doubt the payment of any stamp duty charge arising on the consideration paid for the shares of the Target) have been completed, the Group Structure Chart delivered to the Facility Agent pursuant to part 1 of schedule 2 (Conditions Precedent) is true, complete and accurate in all material respects and shows the following information:
  - (i) each Group Company, including current name and company registration number, its Original Jurisdiction (in the case of an Obligor), its jurisdiction of incorporation (in the case of a Group Company which is not an Obligor) and/or its jurisdiction of establishment (in each case if not England and Wales), a list of shareholders and indicating whether a company is a Material Company or is not a company with limited liability; and
  - (ii) all minority interests in any Group Company and any person in which any Group Company holds shares in its issued share capital or equivalent ownership interest of such person.
- (b) All necessary intra-Group loans, transfers, share exchanges and other steps resulting in the final Group structure are set out in the Group Structure Chart and have been or will be taken in compliance with all relevant laws and regulations and all requirements of relevant regulatory authorities.

#### **23.26 Obligors**

- (a) Assuming the provisions of clause 26.38(e) (Conditions Subsequent) had been complied with as at the Closing Date, each Material Company is or will be an Obligor on the Closing Date.
- (b) Assuming the provisions of clause 26.38(e) (Conditions Subsequent) had been complied with on the Closing Date, the aggregate EBITDA (as defined in clause 25 (Financial Covenants)) and the aggregate gross assets of the Guarantors on the Closing Date (calculated on an unconsolidated basis and excluding all intra-Group items and investments in Subsidiaries of any Group Company) exceeds 85 per cent of Consolidated EBITDA, as defined in clause 25 (Financial Covenants) and the consolidated gross assets of the Group.

#### **23.27 Acquisition Documents, Disclosures and other Documents**

- (a) The Acquisition Documents contain all the material terms of the Acquisition.
- (b) There is no disclosure made in the Disclosure Letter or any other disclosure to the Acquisition Documents or the Equity Documents which has or would have a material adverse effect on any of the information, opinions, intentions, forecasts and projections contained or referred to in the Information Package.
- (c) The Equity Documents and the Service Contracts contain all the material terms of all the agreements and arrangements between Senior Management and the Investors and between Senior Management, the Parent and any Group Company.

#### **23.28 Centre of Main Interests and Establishments**

For the purposes of The Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings (the "Regulation"), its centre of main interest (as that term is

used in article 3(1) of the Regulation) is situated in its Original Jurisdiction and it has no "establishment" (as that term is used in article 2(h) of the Regulation) in any other jurisdiction.

#### 23.29 **Pensions**

All pension schemes operated by or maintained for the benefit of it or any of its Subsidiaries and/or any of their respective employees are fully funded to the extent required by applicable local law and regulation where failure to do so has or is reasonably likely to have a Material Adverse Effect.

#### 23.30 **No Adverse Consequences**

Subject to the Legal Reservations, it is not necessary under the laws of its Relevant Jurisdictions:

- (a) in order to enable any Senior Finance Party to enforce its rights under any Senior Finance Document; or
- (b) by reason of the execution of any Senior Finance Document or the performance by it of its obligations under any Senior Finance Document,

that any Senior Finance Party should be licensed, qualified or otherwise entitled to carry on business in any of its Relevant Jurisdictions.

#### 23.31 **Holding and Dormant Companies**

Except as may arise under the Transaction Documents and for Acquisition Costs, before the Closing Date the Parent and the Company have not traded or incurred any liabilities or commitments (actual or contingent, present or future).

#### 23.32 **Sanctions**

To the best of the knowledge and belief of the Parent, neither it nor any of its Subsidiaries has at any time had any dealings or engagement with or been connected with any Restricted Country or any business, undertaking or company incorporated in any Restricted Country.

#### 23.33 **Times when Representations Made**

- (a) All the representations and warranties in this clause 23 (Representations) are made by each Original Obligor on the date of this agreement except for the representations and warranties set out in paragraphs (a) to (e) of clause 23.12 (No Misleading Information) which are deemed to be made by each Obligor:
  - (i) with respect to the Base Case Model, on the date of this agreement and on the Closing Date; and
  - (ii) with respect to the Information Package (other than the Base Case Model), on the date of this agreement and on the date the Information Package is approved by the Parent.
- (b) All the representations and warranties in this clause 23 (Representations) are deemed to be made by each Obligor on the Closing Date.
- (c) The Repeating Representations are deemed to be made by each Obligor on the date of each Utilisation Request, on each Utilisation Date, on the first day of each Interest Period (except that those contained in paragraphs (a) and (b) of clause 23.13 (Original Financial Statements) will cease to be so made in respect of

a set of financial statements once subsequent financial statements have been delivered under this agreement).

- (d) All the representations and warranties in this clause 23 (Representations) except clause 23.12 (No Misleading Information), clause 23.25 (Group Structure Chart), clause 23.27 (Acquisition Documents, Disclosures and other Documents) and clause 23.31 (Holding and Dormant Companies) are deemed to be made by each Additional Obligor on the day on which it becomes (or it is proposed that it becomes) an Additional Obligor.
- (e) Each representation or warranty deemed to be made after the date of this agreement shall be deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made.

## **24. INFORMATION UNDERTAKINGS**

The undertakings in this clause 24 remain in force from the date of this agreement for so long as any amount is outstanding under the Senior Finance Documents or any Commitment is in force.

### **24.1 Financial Statements**

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

- (a) as soon as they are available, but in any event within 180 days after the end of each of its Financial Years:
  - (i) its audited consolidated financial statements for that Financial Year; and
  - (ii) the audited financial statements (consolidated if appropriate) of each Obligor for that Financial Year;
- (b) as soon as they are available, but in any event within 60 days for each of the 3 Months ending after the Closing Date and thereafter 30 days after the end of each subsequent Month its financial statements on a consolidated basis for that Month (to include cumulative management accounts for the Financial Year to date).

### **24.2 Provision and Contents of Compliance Certificate**

- (a) The Parent shall supply a Compliance Certificate to the Facility Agent with each set of its audited consolidated Annual Financial Statements and each set of its consolidated Quarterly Financial Statements.
- (b) The Compliance Certificate shall, amongst other things:
  - (i) set out (in reasonable detail) computations as to compliance with clause 25 (Financial Covenants);
  - (ii) notify the Facility Agent of its intention to procure the contribution of a New Shareholder Injection in accordance with the terms of clause 25.4 (Equity Cure);
  - (iii) if there have been any changes to those members of the Group which are Material Companies since the last Compliance Certificate (or in the case of the first Compliance Certificate, since the Closing Date) list all Material Companies (other than the Parent, the Company and the Target) and set out (in reasonable detail) computations which determine those companies' classification as Material Companies; and

- (iv) any payments made from the Retention Fund (as that term is defined in the Acquisition Agreement).
- (c) Each Compliance Certificate shall be signed by the finance director of the Parent (unless the finance director is not available whereby it shall be signed by another executive director) and, if required to be delivered with the consolidated Annual Financial Statements of the Parent, shall be reported on by the Parent's Auditors in the form agreed by the Parent and the Majority Lenders.

#### 24.3 Requirements as to Financial Statements

- (a) The Parent shall procure that each set of Annual Financial Statements, Quarterly Financial Statements and Monthly Financial Statements includes a balance sheet, profit and loss account (or equivalent income statement) and cashflow statement. In addition the Parent shall procure that:
  - (i) each set of Annual Financial Statements shall be audited by the Auditors; and
  - (ii) each set of Monthly Financial Statements is accompanied by a statement by the directors of the Parent commenting on the performance of the Group for the month to which the financial statements relate compared to the budget for such period and the Financial Year to date and any material developments or proposals affecting the Group or its business (including the following KPIs:
    - (A) gross and EBITDA margin;
    - (B) outstanding cash and cash conversion; and
    - (C) value of new business secured;
 in each case for the Group.
- (b) Each set of financial statements delivered pursuant to clause 24.1 (Financial Statements):
  - (i) shall be certified by a director of the relevant company as giving a true and fair view of (in the case of Annual Financial Statements for any Financial Year), or fairly presenting (in other cases), its financial condition and operations as at the date as at which those financial statements were drawn up and, in the case of the Annual Financial Statements, shall be accompanied by any letter addressed to the management of the relevant company by the Auditors and accompanying those Annual Financial Statements;
  - (ii) in the case of consolidated financial statements of the Group, shall be accompanied by a statement by the directors of the Parent comparing actual performance for the period to which the financial statements relate to:
    - (A) the projected performance for that period set out in the Budget; and
    - (B) the actual performance for the corresponding period in the preceding Financial Year of the Group; and



(iii) shall be prepared using the Accounting Principles, accounting practices and financial reference periods consistent with those applied:

- (A) in the case of the Parent, in the preparation of the Base Case Model; and
- (B) in the case of any Obligor, in the preparation of the Original Financial Statements for that Obligor,

unless, in relation to any set of financial statements, the Parent notifies the Facility Agent that there has been a change in the Accounting Principles or the accounting practices and its Auditors (or, if appropriate, the Auditors of the Obligor) deliver to the Facility Agent:

- (aa) a description of any change necessary for those financial statements to reflect the Accounting Principles or accounting practices upon which the Base Case Model or, as the case may be, that Obligor's Original Financial Statements were prepared; and
- (bb) sufficient information, in form and substance as may be reasonably required by the Facility Agent, to enable the Lenders to determine whether clause 25 (Financial Covenants) has been complied with, to determine the Margin as set out in the definition of "Margin", to determine the amount of any prepayments to be made from Excess Cashflow under clause 11.2 (Disposal, Insurance and Acquisition Proceeds and Excess Cashflow) and to make an accurate comparison between the financial position indicated in those financial statements and the Base Case Model (in the case of the Parent) or that Obligor's Original Financial Statements (in the case of any Obligor other than the Parent and the Company).

Any reference in this agreement to any financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Base Case Model or, as the case may be, the Original Financial Statements were prepared.

#### 24.4 **Budget**

- (a) The Parent shall supply to the Facility Agent in sufficient copies for all the Lenders, as soon as the same become available but in any event within 10 Business Days of the start of each Financial Year beginning on or after 1 April 2017, an annual Budget for that Financial Year.
- (b) The Parent shall ensure that each Budget:
  - (i) is in a form reasonably acceptable to the Facility Agent and includes a projected consolidated profit and loss account (or equivalent income statement), balance sheet and cashflow statement for the Group and projected financial covenant calculations;
  - (ii) is prepared in accordance with the Accounting Principles and the accounting practices and financial reference periods applied to financial statements under clause 24.1 (Financial Statements); and
  - (iii) includes a Capital Expenditure budget for the Group for that Financial Year (the "**Capex Budget**"),

and has been approved by the board of directors of the Parent.

- (c) If the Parent updates or changes the Budget to a material extent, it shall deliver to the Facility Agent, in sufficient copies for each of the Lenders, such updated or changed Budget together with a written explanation of the main changes in that Budget.
- (d) The Capex Budget must be in form and substance satisfactory to the Facility Agent (acting reasonably), and once approved it must not be increased without the prior written consent of the Facility Agent (such consent not to be unreasonably withheld or delayed).

#### **24.5 Group Companies**

The Parent shall, at the request of the Facility Agent, supply to the Facility Agent a report issued by its Auditors stating which of its Subsidiaries are Material Companies and confirming (or not as the case may be) that the aggregate EBITDA (as defined in clause 25 (Financial Covenants)) and aggregate gross assets of the Guarantors (calculated on an unconsolidated basis and excluding all intra-Group items, goodwill and investments in Subsidiaries of any Group Company) exceeds 85 per cent of Consolidated EBITDA, as defined in clause 25 (Financial Covenants) and the consolidated gross assets of the Group.

#### **24.6 Presentations**

Once in every Financial Year, or more frequently if requested to do so by the Facility Agent if the Facility Agent reasonably suspects an Event of Default is continuing or may have occurred or may occur, at least two directors of the Parent (one of whom shall be the finance director) must give a presentation to the Senior Finance Parties about the on-going business and financial performance of the Group.

#### **24.7 Year-end**

- (a) Subject to paragraph (b) below the Parent shall procure that each Financial Year-end of each Group Company falls on 31 March.
- (b) Any member of the Group acquired as a Permitted Acquisition shall have up to 90 days after it became a member of the Group to change its financial year-end to 31 March.

#### **24.8 Information: Miscellaneous**

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

- (a) at the same time as they are dispatched, copies of all documents required by law to be dispatched by the Parent to its shareholders generally (or any class of them) or dispatched by the Parent or any Obligors to its creditors generally (or any class of them);
- (b) as soon as reasonably practicable after becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any Group Company, and which, if adversely determined, are reasonably likely to have a Material Adverse Effect or which would involve a liability, or a potential or alleged liability, exceeding £200,000 (or its equivalent in other currencies);
- (c) as soon as reasonably practicable upon becoming aware of the relevant claim, the details of any claim which is current, threatened or pending against the Vendor or any other person in respect of the Acquisition Documents and details of any

disposal or insurance claim which will require a prepayment under clause 11.2 (Disposal, Insurance and Acquisition Proceeds and Excess Cashflow);

- (d) as soon as reasonably practicable, such information as the Security Agent may reasonably require about the Charged Property and compliance of the Obligors with the terms of any Transaction Security Documents; and
- (e) as soon as reasonably practicable after a request, such further information regarding the financial condition, assets and operations of the Group and/or any Group Company (including any requested amplification or explanation of any item in the financial statements, budgets or other material provided by any Obligor under this agreement, any changes to Senior Management and an up to date copy of its shareholders' register (or equivalent in its Original Jurisdiction)) as any Senior Finance Party through the Facility Agent may reasonably request.

#### **24.9 Notification of Default**

- (a) Each Obligor shall notify the Facility Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).
- (b) As soon as reasonably practicable upon a request by the Facility Agent, the Parent shall supply to the Facility Agent a certificate signed by two of its directors or senior officers on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

#### **24.10 "Know Your Customer" Checks**

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

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

- (b) Each Lender shall promptly upon the request of the Facility Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Facility Agent (for itself) in order for the Facility Agent to carry

out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Senior Finance Documents.

- (c) The Parent shall, by not less than ten Business Days' prior written notice to the Facility Agent, notify the Facility Agent (which shall promptly notify the Lenders) of its intention to request that one of its Subsidiaries becomes an Additional Obligor pursuant to clause 30 (Changes to the Obligors).
- (d) Following the giving of any notice pursuant to paragraph (c) above, if the accession of such Additional Obligor obliges the Facility Agent or any Lender to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Parent shall promptly upon the request of the Facility Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Facility Agent (for itself or on behalf of any Lender) or any Lender (for itself or on behalf of any prospective new Lender) in order for the Facility Agent or such Lender or any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the accession of such Subsidiary to this agreement as an Additional Obligor.

## 25. **FINANCIAL COVENANTS**

### 25.1 **Financial Definitions**

In this agreement:

**"Adjusted Consolidated EBITDA"** means, in relation to a Relevant Period, Consolidated EBITDA for that Relevant Period adjusted by:

- (a) including the EBITDA (but calculated on a consolidated basis) of a Group Company (or attributable to a business or assets) acquired during the Relevant Period for that part of the Relevant Period prior to its becoming a Group Company or (as the case may be) prior to the acquisition of the business or assets;
- (b) excluding the EBITDA (but calculated on a consolidated basis) attributable to any Group Company (or to any business or assets) disposed of during the Relevant Period for that part of the Relevant Period; and
- (c) taking account of any pro forma adjustments for reasonably identifiable, supportable, achievable and sustainable cost synergies and the cost of achieving those savings of pro forma adjustments of a Group Company (or attributable to a business or assets) being acquired during the Relevant Period provided that:
  - (i) such cost savings or cost synergies shall be set out in reasonable detail and certified by the finance director of the Parent in a certificate detailing such pro forma adjustments together with all reasonable detail;
  - (ii) such cost savings or cost synergies that are greater than 10% of the earnings before interest, tax, depreciation and amortisation (calculated in the same manner as EBITDA) of the company or business being so acquired shall be identified in a report prepared by the Groups Auditors or other applicable due diligence report provider satisfactory to the Facility Agent (acting reasonably) and as verified by the Auditors (or other such report provider) as being reasonable as regards assumptions and methodology of combining the operations of such acquired entity,

and calculated to give *pro forma* those synergies for each Relevant Period in which those calculations are made (including any part of that Relevant Period occurring before the closing date of that acquisition).

**"Borrowings"** means, at any time, the aggregate outstanding principal, capital or nominal amount (and any fixed or minimum premium payable on prepayment or redemption) of any indebtedness of the Group (on a consolidated basis and therefore excluding any intra-Group indebtedness) for or in respect of:

- (a) moneys borrowed and debit balances at banks or other financial institutions;
- (b) any acceptances under any acceptance credit or bill discount facility (or dematerialised equivalent);
- (c) any note purchase facility or the issue of bonds (but not Trade Instruments), notes, debentures, loan stock or any similar instrument;
- (d) any Finance Lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis and meet any requirements for de-recognition under the Accounting Principles);
- (f) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument (but not, in any case, Trade Instruments) issued by a bank or financial institution in respect of:
  - (i) an underlying liability of an entity which is not a Group Company which liability would fall within one of the other paragraphs of this definition; or
  - (ii) any liabilities of any Group Company relating to any post-retirement benefit scheme;
- (g) any amount raised by the issue of shares which are redeemable (other than at the option of the issuer) or are otherwise classified as borrowings under the Accounting Principles and which are permitted under the terms of this agreement;
- (h) any amount of any liability under an advance or deferred purchase agreement if:
  - (i) one of the primary reasons behind the entry into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question; or
  - (ii) the agreement is in respect of the supply of assets or services and payment is due more than 6 Months after the date of supply;
- (i) any amount raised under any other transaction (including any forward sale or purchase agreement, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing or otherwise classified as borrowings under the Accounting Principles; and
- (j) (without double counting) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (i) above.

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

**"Capital Expenditure"** means any expenditure or obligation in respect of expenditure (other than expenditure or obligations in respect of Business Acquisitions) which, in accordance with the Accounting Principles, is treated as capital expenditure (and (except for the purposes of paragraph (g) of the definition of "Cashflow" where it shall not be included) including the capital element of any expenditure or obligation incurred in connection with a Finance Lease).

**"Cash"** means, at any time, cash in hand or at bank and (in the latter case) credited to an account in the name of a Group Company with an Acceptable Bank or Original Lender and to which a Group Company is alone (or together with other Group Companies) beneficially entitled and for so long as:

- (a) that cash is repayable within 30 days of demand;
- (b) repayment of that cash is not contingent on the prior discharge of any other indebtedness of any Group Company or of any other person whatsoever or on the satisfaction of any other condition (other than any condition of a Senior Finance Document);
- (c) there is no Security over that cash except for Transaction Security or any Permitted Security constituted by a netting or set-off arrangement entered into by Group Companies in the ordinary course of their banking arrangements; and
- (d) the cash is freely and (except as set out in (a) above) immediately available to be applied in repayment or prepayment of the Facilities.

**"Cashflow"** means, in respect of any Relevant Period, Consolidated EBITDA for that Relevant Period after:

- (a) adding the amount of any decrease (and deducting the amount of any increase) in Working Capital for that Relevant Period;
- (b) adding the amount of any cash receipts (save (i) to the extent that those receipts are in respect of Disposal or insurance claims or proceeds and are required to be used in prepayment of the Facilities in accordance with clause 11 (Mandatory Prepayment and Cancellation) or (ii) are funded or refunded from any CAR Facility Loan) and deducting the amount of any cash payments during that Relevant Period in respect of any Exceptional Items (but not deducting Exceptional items relating to acquisitions made or to be made which are funded from either New Shareholder Injections or cash on the balance sheet at the Closing Date) and not already taken account of in calculating Consolidated EBITDA for any Relevant Period;
- (c) adding the amount of any cash receipts during that Relevant Period in respect of any Tax rebates or credits and deducting the amount actually paid or due and payable in respect of Taxes during that Relevant Period by any Group Company (including for the avoidance of doubt in connection with any VAT inquiry);
- (d) adding (to the extent not already taken into account in determining Consolidated EBITDA) the amount of any dividends or other profit distributions received in cash by any Group Company during that Relevant Period from any entity which is not itself a Group Company and deducting (to the extent not already deducted in determining Consolidated EBITDA) the amount of any dividends paid in cash during the Relevant Period by the Parent or to minority shareholders in Group Companies (other than any Permitted Payment);
- (e) adding the amount of any cash paid to a Group Company in the Relevant Period that represents repayment of any loan made to a Joint Venture;

- (f) adding the amount of any increase in provisions, other non-cash debits and other non-cash charges (which are not Current Assets or Current Liabilities) and deducting the amount of any non-cash credits (which are not Current Assets or Current Liabilities) in each case to the extent taken into account in establishing Consolidated EBITDA;
- (g) deducting the amount of any Capital Expenditure actually made in cash during that Relevant Period by any Group Company and the aggregate of any cash consideration paid for, or the cash cost of, any Business Acquisitions (net of cash on the balance sheet of any acquired business at the date it was acquired) and the amount of Permitted Joint Ventures except (in each case) to the extent funded from any or all of:
  - (i) the proceeds of any Disposal or insurance claims permitted to be retained for this purpose;
  - (ii) Retained Excess Cashflow;
  - (iii) the Overfund Amount
  - (iv) any CAR Facility Loan; or
  - (v) New Shareholder Injections;
- (h) deducting the amount of any cash costs of Pension Items during that Relevant Period to the extent not taken into account in establishing EBITDA; and
- (k) excluding the Overfund Amount; and
- (l) adding an amount not exceeding the Opening Cash Balance, as reduced from time to time,

and so that no amount shall be added (or deducted) more than once and there shall be excluded the effect of all cash movements associated with the Acquisition and the Acquisition Costs.

**"Cashflow Cover"** means the ratio of Cashflow to Debt Service in respect of any Relevant Period.

**"Consolidated EBITDA"** means, in respect of any Relevant Period, the consolidated operating profit of the Group before taxation (including the results from discontinued operations):

- (a) before deducting any interest, commission, fees, discounts, prepayment fees, premiums or charges and other finance payments whether paid, payable or capitalised by any Group Company (calculated on a consolidated basis) in respect of that Relevant Period;
- (b) not including any interest which has accrued due to any Group Company;
- (c) after adding back any amount attributable to the amortisation, depreciation or impairment of assets of Group Companies (and taking no account of the reversal of any previous impairment charge made in that Relevant Period);
- (d) before taking into account any Exceptional Items;
- (e) before taking into account any gain or loss arising from the direct or indirect acquisition of any debt or debt instrument at a discount to par;

- (f) before deducting any Acquisition Costs and costs and expenses incurred in connection with a Permitted Acquisition (whether it completed or not) and any VAT paid by the Group in connection with, or required to be paid as a result of any VAT inquiry to which the Group may be subject;
- (g) after deducting the amount of any profit (or adding back the amount of any loss) of any Group Company which is attributable to minority interests;
- (h) plus or minus the Group's share of the profits or losses (after finance costs and tax) of Non-Group Entities;
- (i) before taking into account any unrealised gains or losses on any derivative instrument (other than any derivative instrument which is accounted for on a hedge accounting basis);
- (j) before taking into account any gain or loss arising from an upward or downward revaluation of any other asset;
- (k) before taking into account any Pension Items;
- (l) excluding the charge to profit represented by the expensing of stock options; and
- (m) after including any payments made under paragraph (a) of the definition of Permitted Payment,

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

**"Current Assets"** means the aggregate (on a consolidated basis) of all inventory work in progress, trade and other receivables of each Group Company including prepayments in relation to operating items and sundry debtors (but excluding Cash and Cash Equivalent Investments) maturing within twelve months from the date of computation but excluding amounts in respect of:

- (a) receivables in relation to Tax;
- (b) Exceptional Items and other non-operating items;
- (c) insurance claims; and
- (d) any interest owing to any Group Company.

**"Current Liabilities"** means the aggregate (on a consolidated basis) of all liabilities (including trade creditors, accruals and provisions) of each Group Company expected to be settled within twelve months from the date of computation but **excluding** amounts in respect of:

- (a) liabilities for Borrowings and Finance Charges;
- (b) liabilities for Tax;
- (c) Exceptional Items and other non-operating items;
- (d) insurance claims;
- (e) liabilities in relation to dividends declared but not paid by the Parent or by a Group Company in favour of a person which is not a Group Company; and



- (f) amounts owed to the vendor in connection with the Acquisition or any other vendor or third party in connection with a Permitted Acquisition.

**"Debt Service"** means, in respect of any Relevant Period, the aggregate of:

- (a) Finance Charges for that Relevant Period;
- (b) all scheduled repayments of Borrowings (as such scheduled repayments have been adjusted as a result of any mandatory prepayment made during that or any preceding Relevant Period and as a result of any voluntary prepayment made during any preceding Relevant Period) falling due during that Relevant Period but excluding:
  - (i) any amounts falling due under any overdraft or revolving facility (including, without limitation, the Revolving Facility and any Ancillary Facility) and which were available for simultaneous redrawing according to the terms of that facility;
  - (ii) (for the avoidance of doubt), any voluntary prepayment or mandatory prepayment made pursuant to clause 11.2 (Disposal, Insurance and Acquisition Proceeds and Excess Cashflow);
  - (iii) any such obligations owed to any Group Company; and
  - (iv) any prepayment of Borrowings existing on the Closing Date which is required to be repaid under the terms of this agreement;
- (c) the amount of any cash dividends or other cash distributions (other than yield or interest payments) in respect of the Investor Instruments or the Management Loan Notes paid or made by the Parent in respect of that Relevant Period other than any amounts funded from the Overfund Account; and
- (d) the amount of the capital element of any payments in respect of that Relevant Period payable under any Finance Lease entered into by any Group Company,

and so that no amount shall be included more than once.

**"Earn-Out Consideration"** means any deferred consideration incurred by a member of the Group in relation to a Permitted Acquisition where such consideration is payable only upon the acquired entity achieving certain financial performance tests.

**"EBITDA"** means, in respect of a Group Company for any period for which it is being calculated, the operating profit of that Group Company before taxation (including the results from discontinued operations):

- (a) before deducting any interest, commission, fees, discounts, prepayment fees, premiums or charges and other finance payments whether paid, payable or capitalised by that Group Company only;
- (b) not including any interest which has accrued due to that Group Company only;
- (c) after adding back any amount attributable to the amortisation, depreciation or impairment of assets of that Group Company (determined on an unconsolidated basis) (and taking no account of the reversal of any previous impairment charge made in that period);
- (d) before taking into account any Exceptional Items;

- (e) before taking into account any gain or loss arising from the direct or indirect acquisition of any debt or debt instrument at a discount to par;
- (f) before deducting any Acquisition Costs or any expenses or costs incurred in connection with any other Permitted Acquisition (whether it completed or not) incurred by that Group Company and any VAT paid by the Group in connection with, or required to be paid as a result of any VAT inquiry to which the Group may be subject;
- (g) after deducting the amount of any profit (or adding back the amount of any loss) of that Group Company which is attributable to minority interests;
- (h) plus or minus that Group Company's share of the profits or losses (after finance costs and tax) of Non-Group Entities;
- (i) before taking into account any unrealised gains or losses on any derivative instrument (other than any derivative instrument which is accounted for on a hedge accounting basis);
- (j) before taking into account any gain or loss arising from an upward or downward revaluation of any other asset;
- (k) before taking into account any Pension Items;
- (l) before deducting any payments made under paragraph (a) of the definition of Permitted Payment;
- (m) excluding the charge to profit represented by the expensing of stock options; and
- (n) excluding any payments made in respect of expenses (as identified in the Base Case Model being but not limited to (i) corporation tax, (ii) unspent portion of the grant from the Regional Growth Fund, (iii) the historic exposure to the Regional Growth Fund, (iv) liabilities relating to Finance Leases and (v) the items referred to as the Manhattan license underspend) which are funded by the Opening Cash Balance,

in each case, to the extent added, deducted or taken into account, as the case may be, for the purposes of determining operating profits of that Group Company (determined on an unconsolidated basis) before taxation.

**"Exceptional Items"** means any exceptional, one off, non-recurring or extraordinary items which represent gains or losses including those arising on:

- (a) the restructuring of the activities of an entity and reversals of any provisions for the cost of restructuring including for the avoidance of doubt any redundancy costs;
- (b) disposals, revaluations, write downs or impairment of non-current assets or any reversal of any write down or impairment;
- (c) disposals of assets associated with discontinued operations;
- (d) any other examples of exceptional or extraordinary items which are categorised as such by the Accounting Principles; and
- (e) any office relocation costs;

**"Excess Cashflow"** means, for any period for which it is being calculated, Cashflow for that period less (except to the extent already deducted in calculating Cashflow):

- (a) Debt Service for that period;
- (b) the amount of any voluntary prepayments of Term Loans made under the Senior Finance Documents during that period;
- (c) (to the extent included in Cashflow) the amount of any New Shareholder Injections made during that period;
- (d) any Unused Amount in respect of the immediately preceding Financial Year less any Unused Amount carried forward to such Financial Year which has not been applied in payment of Capital Expenditure;
- (e) the sum of £500,000;
- (f) the Loan Stock Permitted Payment to be paid from Cashflow generated in that period; and
- (g) for the 12 months following the Closing Date, excluding the Opening Cash Balance;

**"Finance Charges"** means, for any Relevant Period, the aggregate amount of the accrued interest, commission, fees, discounts, prepayment fees, premiums or charges and other finance payments in the nature of interest in respect of Borrowings paid, or payable by any Group Company (calculated on a consolidated basis) in cash in respect of that Relevant Period:

- (a) excluding any upfront fees or costs which are included as part of the effective interest rate adjustments;
- (b) including fees payable in connection with the issue or maintenance of any bond letter of credit, guarantee or other assurance against financial loss which constitutes Borrowings and is issued by a third party on behalf of a Group Company;
- (c) including commitment, utilisation and non-utilisation fees;
- (d) including the interest (but not the capital) element of payments in respect of Finance Leases;
- (e) including any commission, fees, discounts and other finance payments payable by (and deducting any such amounts payable to) any Group Company under any interest rate hedging arrangement;
- (f) excluding any Acquisition Costs and costs incurred in connection with a Permitted Acquisition (whether it completed or not);
- (g) excluding any interest cost or expected return on plan assets in relation to any post-employment benefit schemes;
- (h) if a Joint Venture is accounted for on a proportionate consolidation basis, after adding the Group's share of the finance costs or interest receivable of the Joint Venture;
- (i) taking no account of any unrealised gains or losses on any derivative instruments other than any derivative instruments which are accounted for on a hedge accounting basis; and

- (j) excluding (i) interest (capitalised or otherwise) in respect of the Loan Note Documents,

and so that no amount shall be added (or deducted) more than once.

**"Finance Lease"** means any lease or hire purchase contract which would, in accordance with the Accounting Principles as interpreted at the date of this agreement, be treated as a finance or capital lease.

**"Financial Quarter"** means the period commencing on the day after one Quarter Date and ending on the next Quarter Date.

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

**"Interest Cover"** means the ratio of Consolidated EBITDA to Finance Charges in respect of any Relevant Period.

**"Leverage"** means, in respect of any Relevant Period, the ratio of Total Net Debt on the last day of that Relevant Period to Adjusted Consolidated EBITDA in respect of that Relevant Period.

**"New Shareholder Injections"** means the aggregate amount subscribed for by any person (other than a Group Company) for (i) ordinary shares in the Parent or (ii) subordinated loan notes or other subordinated debt instruments in the Parent on substantially the same terms as the Loan Notes or the Management Loan Notes or otherwise on terms acceptable to the Majority Lenders, acting reasonably.

**"Non-Group Entity"** means any investment or entity (which is not itself a Group Company (including associates and Joint Ventures)) in which any Group Company has an ownership interest.

**"Opening Cash Balance"** means £2,263,000 being opening cash on the balance sheet of the Target as at the Closing Date.

**"Pension Items"** means any income or charge attributable to a post-employment benefit scheme other than the current service costs and any past service costs and curtailments and settlements attributable to the scheme.

**"Permitted Carry Forward Amount"** has the meaning given to it in clause 25.2 (Financial Condition).

**"Quarter Date"** means each of 31 March, 30 June, 30 September and 31 December.

**"Relevant Period"** means:

- (a) in the case of any period (for which any financial covenant set out in clause 25.2 (Financial Condition) is tested) ending less than 12 months after the Closing Date, the periods described in paragraph (c) of clause 25.3 (Financial Testing); and
- (b) otherwise, each period of twelve months ending on or about the last day of each Financial Quarter.

**"Retained Excess Cashflow"** means the aggregate amount of Excess Cashflow arising in all previous Financial Years which is not required to be applied in making any prepayment under the Senior Finance Documents (including any de minimus amounts permitted to be deducted from Excess Cashflow) and which has not been used by the Group.

**"Total Debt"** means, at any time, the aggregate amount of all obligations of Group Companies for or in respect of Borrowings at that time but:

- (a) excluding any such obligations to any other Group Companies;
- (b) excluding any such obligations in respect of the Loan Note Documents;
- (c) including, in the case of Finance Leases only, their capitalised value;
- (d) excluding any deferred consideration relating to any Permitted Acquisition; and
- (e) excluding liabilities in respect of derivatives transactions, real estate leases and operating leases,

and so that no amount shall be included or excluded more than once.

**"Total Net Debt"** means Total Debt minus the amount of all Cash and Cash Equivalent Investments held by the Group at that time.

**"Unused Amount"** has the meaning given to it in clause 25.2 (Financial Condition).

**"Working Capital"** means, on any date, Current Assets less Current Liabilities.

## 25.2 Financial Condition

The Parent shall ensure that:

- (a) **Cashflow Cover:** Cashflow Cover in respect of any Relevant Period ending on or around or after 30 June 2016 shall not be less than 1:1.
- (b) **Interest Cover:** Interest Cover in respect of any Relevant Period specified in column 1 below shall not be less than the ratio set out in column 2 below opposite that Relevant Period.

Column 1	Column 2
Relevant Period	Ratio
Relevant Period expiring 30 June 2016	1.69:1
Relevant Period expiring 30 September 2016	1.70:1
Relevant Period expiring 31 December 2016	2.01:1
Relevant Period expiring 31 March 2017	2.15:1
Relevant Period expiring 30 June 2017	2.20:1
Relevant Period expiring 30 September 2017	2.26:1
Relevant Period expiring 31 December 2017	2.28:1
Relevant Period expiring 31 March 2018	2.26:1
Relevant Period expiring 30 June 2018	2.34:1
Relevant Period expiring 30 September 2018	2.42:1

<b>Column 1</b>	<b>Column 2</b>
<b>Relevant Period</b>	<b>Ratio</b>
Relevant Period expiring 31 December 2018	2.50:1
Relevant Period expiring 31 March 2019	2.59:1
Relevant Period expiring 30 June 2019	2.68:1
Relevant Period expiring 30 September 2019	2.76:1
Relevant Period expiring 31 December 2019	2.85:1
Relevant Period expiring 31 March 2020	2.95:1
Relevant Period expiring 30 June 2020	3.04:1
Relevant Period expiring 30 September 2020	3.10:1
Relevant Period expiring 31 December 2020	3.17:1
Relevant Period expiring on or after 31 March 2021	3.25:1

- (c) **Leverage:** Leverage in respect of any Relevant Period specified in column 1 below shall not exceed the ratio set out in column 2 below opposite that Relevant Period.

<b>Column 1</b>	<b>Column 2</b>
<b>Relevant Period</b>	<b>Ratio</b>
Relevant Period expiring 30 June 2016	7.22:1
Relevant Period expiring 30 September 2016	7.42:1
Relevant Period expiring 31 December 2016	6.45:1
Relevant Period expiring 31 March 2017	5.85:1
Relevant Period expiring 30 June 2017	5.51:1
Relevant Period expiring 30 September 2017	5.40:1
Relevant Period expiring 31 December 2017	5.36:1
Relevant Period expiring 31 March 2018	5.06:1
Relevant Period expiring 30 June 2018	4.78:1
Relevant Period expiring 30 September 2018	4.69:1
Relevant Period expiring 31 December 2018	4.59:1
Relevant Period expiring 31 March 2019	4.15:1
Relevant Period expiring 30 June 2019	3.91:1
Relevant Period expiring 30 September 2019	3.84:1
Relevant Period expiring 31 December 2019	3.77:1
Relevant Period expiring 31 March 2020	3.38:1
Relevant Period expiring 30 June 2020	3.13:1
Relevant Period expiring 30 September 2020	3.04:1
Relevant Period expiring 31 December 2020	2.96:1
Relevant Period expiring on or after 31 March 2021	2.57:1

- (d) **Super Senior EBITDA:** EBITDA for the Group for each Relevant Period ending on or after 30 June 2016 shall be at least £2,500,000.

(e) **Capital Expenditure:**

- (i) Subject to paragraph (ii) below, the aggregate Capital Expenditure of the Group (other than Capital Expenditure funded by the retention of the proceeds of Recovery Claims, Disposals and insurance claims in accordance with clause 11.5 (Excluded Proceeds) or from New Shareholder Injections or the Overfund Amount or funded or refunded from any CAR Facility Loan) in respect of any Financial Year specified in column 1 below shall not exceed the higher of: (i) 130% of the Capex Budget for that Financial Year and (ii) the amount set out in column 2 below opposite that Financial Year (the higher amount being the "**Scheduled Capex**").

<b>Column 1</b>	<b>Column 2</b>
<b>Financial Year Ending</b>	<b>Maximum Expenditure</b>
31 March 2017	£449,000
31 March 2018	£633,000
31 March 2019	£332,000
31 March 2020	£514,000
31 March 2021	£351,000
31 March 2022	£351,000
31 March 2023	£351,000

- (ii) If in any Financial Year (the "**Original Financial Year**") the amount of the Capital Expenditure actually spent is less than the Scheduled Capex for that Original Financial Year (the difference being the "**Unused Amount**"), then the Group's maximum Capital Expenditure for the immediately following Financial Year (the "**Carry Forward Year**") shall be increased by an amount (the "**Permitted Carry Forward Amount**") equal to the Unused Amount.

In any Carry Forward Year, the Permitted Carry Forward Amount shall be treated as having been incurred prior to the Scheduled Capex and no amount carried forward into that Carry Forward Year may be carried forward into a subsequent Financial Year.

An amount not exceeding 50 per cent of the Scheduled Capex for an Original Financial Year may be used for Capital Expenditure in the immediately preceding Financial Year (the "**Prior Financial Year**") in addition to the Scheduled Capex which would otherwise be permitted in that Prior Financial Year (such amount the "**Carry Back Capex**"). The Carry Back Capex shall be deemed to be used after any Permitted Carry Forward Amount and after any Scheduled Capex otherwise permitted to be spent in that Prior Financial Year. The Scheduled Capex for any Financial Year shall be reduced by the amount of any Carry Back Capex relating to such Financial Year.



### 25.3 Financial Testing

- (a) Subject to paragraph (b) below, the financial covenants set out in clause 25.2 (Financial Condition) shall be calculated in accordance with the Accounting Principles and tested by reference to each of the financial statements delivered pursuant to paragraphs (a)(i) and (b) of clause 24.1 (Financial Statements) and/or each Compliance Certificate delivered pursuant to clause 24.2 (Provision and Contents of Compliance Certificate).
- (b) If the Annual Financial Statements are not available when any covenant referred to in clause 25.2 (Financial Condition) is tested, but when those Annual Financial Statements become available, they show that the figures in any relevant Quarterly Financial Statements utilised for any such calculation cannot have been substantially accurate, the Facility Agent may require such adjustments to the calculations which it, in its discretion, acting reasonably and in good faith considers appropriate to rectify that inaccuracy and compliance with the covenants in clause 25.2 (Financial Condition) will be determined by reference to those adjusted figures.
- (c) For each of the Relevant Periods ending on a date which is less than 12 months after the Closing Date the financial covenants in clauses 24.2(a) to (c) (Financial Condition) shall be calculated for the period from the Closing Date to the end of the Relevant Period except that when calculating EBITDA for the purpose of clause 25.2(c) (Leverage), clause 25.2(d) (Super Senior EBITDA) and paragraph (f) of the definition of Permitted Payment, EBITDA will be annualised.

### 25.4 Equity Cure

- (a) If the Parent is in breach of any obligation set out in paragraphs (a) (Cashflow Cover), (b) (Interest Cover) or (c) (Leverage) of clause 25.2 (Financial Condition) (each a "Financial Covenant"), then the Parent may procure the contribution of New Shareholder Injections which, subject to the conditions in paragraphs (b) to (f) (inclusive) below, shall have the effect that each Financial Covenant is recalculated giving effect to the following adjustments:
  - (i) for the purpose of calculating Cashflow Cover, the amount of the New Shareholder Injection shall be added to the calculation of Cashflow in respect of Cashflow Cover for the Relevant Period in which the breach of Financial Covenant has occurred (the "Breach Period") and the three Relevant Periods immediately following;
  - (ii) for the purpose of calculating Leverage, the amount of the New Shareholder Injection shall be deducted from the calculation of Total Debt for the Breach Period;
  - (iii) for the purpose of calculating Interest Cover, the amount of the New Shareholder Injection shall be treated (for this purpose only) as having been applied in prepayment of the Facilities in accordance with clause 11.3(a) (Application of Mandatory Prepayments and Cancellations) on the first day of the Breach Period, and Finance Charges for the Breach Period and the three Relevant Periods immediately following shall be recalculated accordingly (without double counting any reduction in Finance Charges arising as a result of any cure amount being used in prepayment of the Facilities),

in each case making any further adjustment needed to ensure no double counting or accumulation of cure benefit, and compliance with clause 25.2 (Financial Condition) will be determined by reference to the relevant recalculation.

- (b) Any New Shareholder Injection made to effect a cure of a Financial Covenant:
  - (i) must be contributed in cash and received by the Parent no later than the date which is 15 Business Days following the date for delivery of the Compliance Certificate which relates to the Breach Period;
  - (ii) may exceed the amount required to rectify the breach of Financial Covenant (the "**Overcure Amount**");
  - (iii) 50 per cent of that New Shareholder Injection which is required to remedy the breach of a Financial Covenant must be applied in prepayment of the Facilities in the order set out in clause 11.3(a) (Application of Mandatory Prepayments and Cancellations) immediately if the New Shareholder Injection was made to cure a breach of a Financial Covenant set out in paragraphs (b) (Interest Cover) or (c) (Leverage) of clause 25.2 (Financial Condition). If applied to cure a breach of paragraph (a) (Cashflow), the New Shareholder Injection shall be retained by the Group and may be used for any purpose not prohibited by this agreement; and
  - (iv) must be made on the basis that such New Shareholder Injection shall have no cash yield until after the Senior Discharge Date has occurred (as such term is defined in the Intercreditor Agreement).
- (c) The contribution of New Shareholder Injections may only be made for the purpose of effecting a cure of a Financial Covenant breach a maximum of three times and not in two successive Relevant Periods and not more than once in each 12 Month period.
- (d) The Overcure Amount shall be applied as determined by the Parent either in or towards permanent prepayment of Term Loans under this agreement or retained by the Group for the general corporate and working capital purposes of the Group.
- (e) Any recalculation made under this clause 25.4 will be solely for the purpose of curing a breach of clause 25.2 (Financial Condition) and not for any other purpose such as calculation of Margin or Excess Cashflow or for determining application of Excess Cashflow.
- (f) If after Total Debt and Finance Charges are reduced and, as the case may be, Cashflow is increased in accordance with this clause 25.4, the financial covenants in clauses 25.4(a), (b), (c) or (d) are complied with, the Parent shall be deemed to have satisfied the requirements of those financial covenants as for the relevant testing date with the same effect as if there had been no breach of any of those financial covenants and that Default shall be deemed remedied for all purposes under the Finance Documents.

## 26. **GENERAL UNDERTAKINGS**

The undertakings in this clause 26 remain in force from the date of this agreement for so long as any amount is outstanding under the Senior Finance Documents or any Commitment is in force.

### 26.1 **Authorisations**

Each Obligor shall promptly:

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

any Authorisation required under any law or regulation of a Relevant Jurisdiction to:

- (i) enable it to perform its obligations under the Transaction Documents;
- (ii) ensure the legality, validity, enforceability or admissibility in evidence of any Transaction Document; and
- (iii) carry on its business where failure to do so has or is reasonably likely to have a Material Adverse Effect.

#### **26.2 Compliance with Laws**

Each Obligor shall (and the Parent shall ensure that each Group Company will) comply in all respects with all laws and regulations to which it may be subject, if failure so to comply has or is reasonably likely to have a Material Adverse Effect.

#### **26.3 Environmental Compliance**

Each Obligor shall (and the Parent shall ensure that each Group Company will):

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

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

#### **26.4 Environmental Claims**

Each Obligor shall (through the Parent), promptly upon becoming aware of the same, inform the Facility Agent in writing of:

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

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

#### **26.5 Anti-corruption Law**

- (a) No Obligor shall and the Parent shall ensure that no other Group Company will in respect of all the Facilities directly or in respect of the Term Facility indirectly or in respect of the Revolving Facility knowingly use the proceeds of the Facilities for any purpose which would breach the Bribery Act 2010 or other similar legislation in other jurisdictions in which the Group conducts its business.
- (b) Each Obligor shall (and the Parent shall ensure that each other Group Company will):
  - (i) conduct its businesses in compliance with applicable anti-corruption laws; and

- (ii) maintain policies and procedures designed to promote and achieve compliance with such laws,

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

## 26.6 **Taxation**

- (a) Each Obligor shall (and the Parent shall ensure that each Group Company will) pay and discharge all Taxes imposed upon it or its assets within the time period allowed (including any applicable grace period) without incurring penalties unless and only to the extent that:
  - (i) such payment is being contested in good faith;
  - (ii) adequate reserves are being maintained for those Taxes and the costs required to contest them which have been disclosed in its latest (or will be disclosed in the next) financial statements delivered to the Facility Agent under clause 24.1 (Financial Statements); and
  - (iii) such payment can be lawfully withheld and failure to pay those Taxes does not have or is not reasonably likely to have a Material Adverse Effect.
- (b) No Group Company may change its residence for Tax purposes.

## 26.7 **Merger**

No Obligor shall (and the Parent shall ensure that no other Group Company will) enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction other than a Permitted Transaction.

## 26.8 **Change of Business**

The Parent shall procure that no substantial change is made to the general nature of the business of the Parent, the Obligors or the Group taken as a whole from that carried on by the Target Group at the date of this agreement.

## 26.9 **Acquisitions and Investments**

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no other Group Company will):
  - (i) acquire or invest in a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them); or
  - (ii) incorporate a company.
- (b) Paragraph (a) above does not apply to an acquisition of a company, of shares or securities or of a business or undertaking (or, in each case, any interest in any of them) or the incorporation of a company which is:
  - (i) a Permitted Acquisition; or
  - (ii) a Permitted Transaction.

## 26.10 **Joint Ventures**

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no other Group Company will):
  - (i) enter into, invest in or acquire (or agree to acquire) any shares, stocks, securities or other interest in any Joint Venture; or
  - (ii) transfer any assets or lend to or guarantee or give an indemnity for or give Security for the obligations of a Joint Venture or maintain the solvency of or provide working capital to any Joint Venture (or agree to do any of the foregoing).
- (b) Paragraph (a) above does not apply to any acquisition of (or agreement to acquire) any interest in a Joint Venture or transfer of assets (or agreement to transfer assets) to a Joint Venture or loan made to or guarantee given in respect of the obligations of a Joint Venture if:
  - (i) such transaction is a Permitted Joint Venture; and
  - (ii) no Default is continuing at the time that the relevant Group Company makes the acquisition or transfer (or enters into the agreement to acquire or transfer) or other transaction referred to in paragraphs (a)(i) or (a)(ii) above.

## 26.11 **Holding Companies**

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

- (a) the provision of administrative services to other Group Companies of a type customarily provided by a holding company to its Subsidiaries;
- (b) in respect of any Permitted Guarantees;
- (c) ownership of shares in its Subsidiaries, intra-Group debit balances, intra-Group credit balances and other credit balances in bank accounts, cash and Cash Equivalent Investments but only if those shares, credit balances, cash and Cash Equivalent Investments are subject to the Transaction Security; and
- (d) any liabilities under the Transaction Documents to which it is a party and professional fees and administration costs incurred in the ordinary course of business as a holding company.

## 26.12 **Preservation of Assets**

Each Obligor shall (and the Parent shall ensure that each other Group Company will) maintain in good working order and condition (ordinary wear and tear excepted) all of its assets necessary or desirable in the conduct of its business where failure to do so has, or is reasonably likely to have, a Material Adverse Effect.

## 26.13 **Pari Passu Ranking**

Each Obligor shall ensure that at all times any unsecured and unsubordinated claims of a Senior Finance Party or Hedge Counterparty against it under the Senior Finance Documents rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies.

#### 26.14 **Acquisition Documents**

- (a) The Parent shall promptly pay all amounts payable to the Vendor under the Acquisition Documents as and when they become due, including allowing Permitted Payments under paragraph (o) of that definition (except to the extent that any such amounts are being contested in good faith by a Group Company and where adequate reserves are set aside for any such payment or where such amounts are subject to the terms of the Intercreditor Agreement).
- (b) The Parent shall and will procure that each relevant Group Company will, take all reasonable and practical steps to preserve and enforce its rights (or the rights of any other Group Company) and pursue any claims and remedies arising under any Acquisition Documents, save to the extent that this will not require the Group to take any action which the Parent (acting reasonably) determines is not in the best commercial interests of the Group.

#### 26.15 **Negative Pledge**

In this clause 26.15, "**Quasi-Security**" means an arrangement or transaction described in paragraph (b) below.

Except as permitted under paragraph (c) below:

- (a) No Obligor shall (and the Parent shall ensure that no other Group Company will) create or permit to subsist any Security over any of its assets.
- (b) No Obligor shall (and the Parent shall ensure that no other Group Company will):
  - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by an Obligor or any other Group Company;
  - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
  - (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
  - (iv) enter into any other preferential arrangement having a similar effect,in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.
- (c) Paragraphs (a) and (b) above do not apply to any Security or (as the case may be) Quasi-Security, which is:
  - (i) Permitted Security; or
  - (ii) a Permitted Transaction.

#### 26.16 **Disposals**

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no other Group Company will) enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset.

- (b) Paragraph (a) above does not apply to any sale, lease, transfer or other disposal which is:
  - (i) a Permitted Disposal;
  - (ii) a Permitted Transaction; or
  - (iii) a disposal giving effect to a Liabilities Acquisition which is permitted by, and as defined in, the Intercreditor Agreement.

#### **26.17 Arm's-Length Basis**

- (a) Except as permitted by paragraph (b) below, no Obligor shall (and the Parent shall ensure no other Group Company will) enter into any transaction with any person except on arm's length terms and for full market value.
- (b) The following transactions shall not be a breach of this clause 26.17:
  - (i) intra-Group loans permitted under clause 26.18 (Loans or Credit);
  - (ii) fees, costs and expenses payable under the Transaction Documents in the amounts set out in the Transaction Documents delivered to the Facility Agent under clause 5.1 (Initial Conditions Precedent) or agreed by the Facility Agent;
  - (iii) any Permitted Transaction;
  - (iv) any Liabilities Acquisition which is permitted by, and as defined in, the Intercreditor Agreement;
  - (v) any New Shareholder Injection; and
  - (vi) any charitable activities.

#### **26.18 Loans or Credit**

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

#### **26.19 No Guarantees or Indemnities**

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no other Group Company will) incur or allow to remain outstanding any guarantee in respect of any obligation of any person.
- (b) Paragraph (a) above does not apply to a guarantee which is:
  - (i) a Permitted Guarantee; or
  - (ii) a Permitted Transaction.

## 26.20 **Dividends and Share Redemption**

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no other Group Company will):
  - (i) declare, make or pay any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital);
  - (ii) repay or distribute any dividend or share premium reserve;
  - (iii) pay or allow any Group Company to pay any management, advisory or other fee or payment to or to the order of any of the shareholders of the Parent or any Holding Company of the Parent; or
  - (iv) redeem, repurchase, defease, retire or repay any of its share capital or resolve to do so.
- (b) Paragraph (a) above does not apply to:
  - (i) a Permitted Distribution; or
  - (ii) a Permitted Transaction.

## 26.21 **Investor Instruments and Management Loan Notes**

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no other Group Company will):
  - (i) repay or prepay any principal amount (or capitalised interest) outstanding under the Investor Instruments or the Management Loan Notes;
  - (ii) pay any interest, fee or charge accrued or due under the Investor Instruments or the Management Loan Notes; or
  - (iii) purchase, redeem, defease or discharge any of the Investor Instruments or the Management Loan Notes.
- (b) Paragraph (a) does not apply to a payment, repayment purchase, redemption, defeasance or discharge which is a Permitted Payment or permitted under clause 26.29(a)(iv) (Amendments).

## 26.22 **Financial Indebtedness**

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no other Group Company will) incur or allow to remain outstanding any Financial Indebtedness.
- (b) Paragraph (a) above does not apply to Financial Indebtedness which is:
  - (i) Permitted Financial Indebtedness; or
  - (ii) a Permitted Transaction.



#### 26.23 **Share Capital**

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

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

#### 26.24 **Insurance**

- (a) Each Obligor shall (and the Parent shall ensure that each other Group Company will) maintain insurances on and in relation to its business and assets against those risks and to the extent as is usual for companies carrying on the same or substantially similar business.
- (b) All insurances must be with reputable independent insurance companies or underwriters.

#### 26.25 **Pensions**

- (a) The Parent shall ensure that all pension schemes operated by or maintained for the benefit of Group Companies and/or any of their respective employees are funded in compliance with each Group Company's legal and contractual obligations and that no action or omission is taken by any Group Company in relation to such a pension scheme which has or is reasonably likely to have a Material Adverse Effect.
- (b) The Parent shall deliver to the Facility Agent at such times as those reports are prepared in order to comply with the then current statutory or auditing requirements (as applicable either to the trustees of any relevant schemes or to the Parent), actuarial reports in relation to all pension schemes mentioned in paragraph (a) above.
- (c) The Parent shall as soon as reasonably practicable notify the Facility Agent of any material change in the rate of contributions to any pension schemes mentioned in paragraph (a) above paid or recommended to be paid, in each case by the Group (whether by the scheme actuary or otherwise) or required (by law or otherwise).
- (d) The Parent shall immediately notify the Facility Agent of any investigation or proposed investigation to be carried out by or under the authority of any regulatory authority relating to any defined benefit occupational pension scheme which is maintained for the benefit of any Group Company and/or any employee of any Group Company.

#### 26.26 **Access**

- (a) Each Obligor shall, and the Parent shall ensure that each other Group Company will, if an Event Default is continuing or if the Facility Agent (acting reasonably) suspects an Event of Default is continuing, permit the Facility Agent and/or the Security Agent and/or accountants or other professional advisers and contractors of the Facility Agent or Security Agent free access at all reasonable times and on reasonable notice to:
  - (i) the premises, assets, books, accounts and records of each Group Company; and
  - (ii) meet and discuss matters with Senior Management.

If an Event of Default is continuing or is proven by such investigation to have occurred all reasonable and properly incurred costs and expenses shall be met by the Parent but in all other circumstances all costs and expenses shall be met by the Lenders.

- (b) The Facility Agent shall be entitled to: (i) consult with and advise the management of the Group upon reasonable notice and at reasonable times from time to time (but no more than once per Financial Quarter), on those matters that relate to the operation of the Group, and have the Facility Agent's representative be permitted generally to discuss the affairs, finances and accounts of the Group with the officers and other management of the members of the Group, at such times as the Facility Agent may reasonably request (but no more than once per Financial Quarter); and (ii) have its representatives visit and inspect the properties of the Group, including without limitation the books of account of the members of the Group, at such times as the Facility Agent may reasonably request (but no more than once per Financial Quarter).
- (c) All costs and expenses incurred by the Group or the Facility Agent under paragraph (b) above shall be met by the Facility Agent (or as the case may be the relevant Lender that requested the Facility Agent to take such action).

#### **26.27 Service Contracts**

- (a) The Parent must ensure that there is in place in respect of each Obligor and each other Material Company qualified management with appropriate skills.
- (b) The Parent shall ensure that the Service Contracts are on arm's length and normal commercial terms for contracts of this type with qualified management of similar businesses.

#### **26.28 Intellectual Property**

Each Obligor shall, and the Parent shall procure that each other Material Company will:

- (a) preserve and maintain the subsistence and validity of the Intellectual Property necessary for the business (taken as a whole) of the relevant Material Company;
- (b) use reasonable endeavours to prevent any infringement in any material respect of the Intellectual Property necessary for its business (taken as a whole);
- (c) make registrations and pay all registration fees and taxes necessary to maintain the Intellectual Property in full force and effect and record its interest in that Intellectual Property in each case, which is necessary for its business (taken as a whole);
- (d) not use or permit the Intellectual Property to be used in a way or take any step or omit to take any step in respect of that Intellectual Property which would materially and adversely affect the existence or value of the Intellectual Property or imperil the right of any Group Company to use such property which in each case is necessary to its business (taken as a whole); and
- (e) not discontinue the use of any Intellectual Property necessary to its business (taken as a whole);

where failure to do so in the case of paragraphs (a), (b) and (c) above, or in the case of paragraphs (d) and (e) above, such use, permission to use, omission or discontinuation is or is reasonably likely to have a Material Adverse Effect.

## 26.29 **Amendments**

- (a) No Obligor shall (and the Parent shall ensure that no other Group Company will) amend, vary, novate, supplement, supersede, waive or terminate any term of a Transaction Document or any other document delivered to the Facility Agent pursuant to clause 5.1 (Initial Conditions Precedent) or clause 30 (Changes to the Obligors) (other than a Service Contract) or enter into any agreement with any shareholders of the Parent (other than as set out in the Equity Documents) or any of their Affiliates which is not a Group Company except in writing and:
  - (i) in accordance with clause 40 (Amendments and Waivers); or
  - (ii) to the extent that that amendment, variation, novation, supplement, superseding, waiver or termination is permitted by the Intercreditor Agreement;
  - (iii) prior to or on the Closing Date, with the prior written consent of the Original Lenders; or
  - (iv) after the Closing Date, in a way which:
    - (A) could not be reasonably expected materially and adversely to affect the interests of the Lenders; and
    - (B) would not bring forward the date, increase the amount or method of payment of interest or principal on the Investor Instruments or the Management Loan Notes (it being agreed that it will not be a breach of this Agreement if the holders of the Investor Instruments or the Management Loan Notes agree to waive payment of, defer or reduce amounts due to them or convert such debts into shares in the Parent issued on substantially the same terms as those in issue on the Closing Date).
- (b) The Parent shall as soon as reasonably practicable supply to the Facility Agent a copy of any document relating to any of the matters referred to in paragraphs (i) to (iv) (inclusive) above.

## 26.30 **Financial Assistance**

Each Obligor shall (and the Parent shall procure each other Group Company will) comply in all respects with sections 678 and 679 of the Companies Act 2006 and any similar legislation (including legislation which may extend to private as well as public companies (or their respective equivalents)) in other jurisdictions including in relation to the execution of the Transaction Security Documents and payment of amounts due under this agreement.

## 26.31 **Publicity**

- (a) If any Finance Party wishes to publicise details of the transaction contemplated by the Transaction Documents it must obtain the consent of the Parent (such consent not to be unreasonably withheld or delayed). The Parent's consent shall not be required where the information is already in the public domain other than as a direct or indirect result of any breach of this clause 26.31 by that Finance Party or where such details are required by law or any, court, tribunal, government agency or regulatory authority.
- (b) The Obligors shall be entitled to make or consent to the making of any formal public announcement concerning the terms of this agreement , or the provision of the Facilities to any person including the London Stock Exchange plc, without the

consent of the Facility Agent as to the content of it except that the Obligors shall not be entitled to make or consent to the making of any formal public announcement concerning the pricing, including without limitation Margin and fees, under this agreement (save to the extent required by law).

#### 26.32 **Group Bank Accounts**

The Parent shall ensure that within 120 days of the Closing Date all bank accounts maintained by an Obligor are subject to valid Security under the Transaction Security Documents.

#### 26.33 **Cash Management**

(a) The Parent shall procure that the maximum aggregate amount of cash and Cash Equivalent Investments held or owned (legally or beneficially) by members of the Group (which are not Obligors) and not subject to valid Security under the Transaction Security Documents, does not at any time exceed the higher of:

- (i) the projected cashflow requirements of such members for the next 30 days; and
- (ii) £100,000 or its equivalent in other currencies;

the amount of any excess being the "**Cash Balance**") and any such Cash Balance shall be upstreamed (whether by way of loan, repayment of debt, payment of interest, dividend or otherwise) by such member of the Group (which is not an Obligor) to an Obligor (other than the Parent) incorporated in England and Wales.

(b) No Obligor shall be obliged at any time to procure that a Subsidiary upstream any Cash Balance under paragraph (a) above:

- (i) at a time when to do so would cause the Obligor or the Subsidiary (despite that person using all reasonable efforts to avoid the relevant Tax liability) to incur a Tax liability in respect of the Cash Balance equal to or greater than 5 per cent of the amount of the loan or transfer; or
- (ii) if (despite using all reasonable efforts to avoid the breach or result) to do so would breach any applicable law or result in personal liability for any Obligor, such Subsidiary or its directors.

#### 26.34 **Treasury Transactions**

No Obligor shall (and the Parent will procure that no other Group Company will) enter into any Treasury Transaction, other than:

- (a) the hedging transactions documented by the Hedging Agreements;
- (b) any Hedging Agreement for the purposes of hedging interest rate liabilities under the CAR Facility (including, without limitation, any hedging entered into pursuant to the Hedging Letter) and any arrangement replacing or extending such Hedging Agreement on terms permitted by the Senior Finance Documents, up to the Termination Date of the CAR Facility and, in each case, entered into with a counterparty which, at the time of entering into such Hedging Agreement, is a Lender);
- (c) spot and forward delivery foreign exchange contracts entered into in the ordinary course of business and not for speculative purposes;

- (d) any Treasury Transaction entered into for the hedging of actual or projected real exposures arising in the ordinary course of trading activities of a Group Company and not for speculative purposes; and
- (e) with a Senior Finance Party.

#### 26.35 **Compliance with Hedging Letter**

The Parent shall ensure that all exchange rate and interest rate hedging arrangements required by the Hedging Letter are implemented in accordance with the terms of the Hedging Letter and that such arrangements are not terminated, varied or cancelled without the consent of the Facility Agent (acting on the instructions of the Majority Lenders), save as permitted by the Intercreditor Agreement.

#### 26.36 **Guarantors**

- (a) Subject to paragraph (b) below, clause 26.38(e) (Conditions Subsequent) and the Agreed Security Principles, the Parent shall ensure that at all times after the Closing Date, the aggregate EBITDA (as defined in clause 25 (Financial Covenants)) of those of the Guarantors with positive EBITDA and the aggregate gross assets of those of the Guarantors with positive net worth (in each case calculated on an unconsolidated basis and excluding all intra-group items and investments in Subsidiaries of any Group Company) represents not less than 85 per cent of Consolidated EBITDA (as defined in clause 25 (Financial Covenants)) and consolidated gross assets of the Group (ignoring, for the purposes of consolidation, those Group Companies with zero or negative EBITDA or no net assets).
- (b) The Parent need only perform its obligations under paragraph (a) above if it is not unlawful for the relevant person to become a Guarantor and that person becoming a Guarantor would not result in personal liability for that person's directors or other management. Each Obligor must use, and must procure that the relevant person uses, all reasonable endeavours lawfully available to avoid any such unlawfulness or personal liability. This includes agreeing to a limit on the amount guaranteed. The Facility Agent may (but shall not be obliged to) agree to such a limit if, in its opinion, to do so would avoid the relevant unlawfulness or personal liability.

#### 26.37 **Further Assurance**

- (a) Subject to the Agreed Security Principles each Obligor shall (and the Parent shall procure that each other Group Company will) at its own expense promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may reasonably specify (and in such form as the Security Agent may reasonably require in favour of the Security Agent or its nominee(s)):
  - (i) to perfect the Security created or intended to be created under or evidenced by the Transaction Security Documents (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Transaction Security) or for the exercise of any rights, powers and remedies of the Security Agent or the Senior Finance Parties provided by or pursuant to the Senior Finance Documents or by law;
  - (ii) to confer on the Security Agent or confer on the Senior Finance Parties Security over any property and assets of that Obligor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to the Transaction Security Documents; and/or

- (iii) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Transaction Security.
- (b) Subject to the Agreed Security Principles, each Obligor shall (and the Parent shall procure that, each other Group Company will) take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Senior Finance Parties by or pursuant to the Senior Finance Documents.

#### 26.38 **Conditions Subsequent**

- (a) The Parent shall procure that, within 90 days of the Closing Date, the Company enters into the Hedging Agreements.
- (b) The Parent will, within five Business Days following Completion, submit the stock transfer form(s) relating to the acquisition of the shares of the Target to HM Revenue & Customs for adjudication and stamping and, promptly following the return to it of the stamped form(s), will deliver those form(s) to the Target, whereupon the Target will issue new share certificates in the name of the Parent and deliver those share certificates to the Security Agent.
- (c) Prior to any payment being made to a Holding Account or Mandatory Prepayment Account, the Parent will establish and provide a letter from the Parent to the Facility Agent specifying the Holding Account and the Mandatory Prepayment Account including details of each account name, account number and the name and address of the bank where each account is held.
- (d) The Parent will, within 5 Business Days deliver notices of assignment or charge to be sent under the Transaction Security Documents executed on behalf of each relevant Original Obligor in relation to the insurance policies of the Group.
- (e) The Parent shall procure that, subject to the Agreed Security Principles simultaneously with or immediately after Completion has occurred, each of the Target and its Subsidiaries accede to this agreement as an Additional Guarantor and to the Intercreditor Agreement as Debtors and Intra-Group Lenders and the Facility Agent receives all of the documents and other evidence listed in part 2 of schedule 2 (Conditions Precedent) (other than those listed at paragraph 9 if already delivered to the Facility Agent) in relation to such Additional Guarantors, each in form and substance satisfactory to the Facility Agent or in the form agreed before Completion.

#### 26.39 **Sanctions**

Neither the Parent, the Company nor any of their Subsidiaries shall (and the Parent shall ensure compliance with this provision by each other Group Company):

- (a) Directly or indirectly (as far as it is aware) use the proceeds from any Loan, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other person that is the subject of any Sanctions:
  - (i) to fund any activities or business of or with any person that at the time of such funding is the subject of Sanctions, or fund any activities or business in any country or territory subject to Sanctions or any person located in such a country or territory; or
  - (ii) in any other manner that would, to its knowledge having made such inquiries as is reasonable in the circumstances, result in a violation of Sanctions by the Group.

- (b) Each Borrower shall promptly notify the Facility Agent of any breach of the undertakings set out in paragraph (a) above (and the steps, if any, being taken to remedy it) upon becoming aware of its occurrence.

## **27. EVENTS OF DEFAULT**

Each of the events or circumstances set out in this clause 27 is an Event of Default (save for clause 27.19 (Acceleration) and 27.20 (Revolving Facility Acceleration)).

### **27.1 Non-Payment**

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

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

### **27.2 Financial Covenants and Other Obligations**

- (a) Any requirement of clause 25 (Financial Covenants) is not satisfied (subject to the provisions of clause 25.4 (Equity Cure)).
- (b) Any provision of clauses 24.1(a) and (b) (Financial Statements), 24.2 (Provision and Contents of Compliance Certificate), 24.3(a) and (b) (Requirements as to Financial Statements) and clause 24.7 (Year-end) are not complied with.

### **27.3 Other Obligations**

- (a) An Obligor does not comply with any provision of the Senior Finance Documents (other than those referred to in clause 27.1 (Non-Payment) and clause 27.2 (Financial Covenants and Other Obligations)).
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within 20 Business Days of the earlier of:
  - (i) the Facility Agent giving notice to the Parent; and
  - (ii) the Parent or an Obligor becoming aware of the failure to comply,except for where the relevant provision is specifically subject to a shorter grace period or is specifically stated to have no grace period for compliance.

### **27.4 Misrepresentation**

- (a) Any representation or statement made or deemed to be made by an Obligor in the Senior Finance Documents or any other document delivered by or on behalf of any Obligor under or in connection with any Senior Finance Document is or proves to have been incorrect or misleading when made or deemed to be made.
- (b) No Event of Default under paragraph (a) above will occur if the event or circumstance giving rise to the breach is capable of remedy and is remedied within 20 Business Days of the Facility Agent giving notice to the Parent or relevant Obligor or the Parent or an Obligor becoming aware of the breach.

## 27.5 **Cross Default**

- (a) Any Financial Indebtedness of any Material Company is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of any Material Company is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any commitment for any Financial Indebtedness of any Material Company is cancelled or suspended by a creditor of any Material Company as a result of an event of default (however described).
- (d) Any creditor of any Material Company becomes entitled to declare any Financial Indebtedness of any Material Company due and payable prior to its specified maturity as a result of an event of default (however described).
- (e) No Event of Default will occur under paragraphs (a) to (d) (inclusive) above if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) (inclusive) above is less than £200,000 (or its equivalent in any other currency or currencies) or the creditor or debt is subject to the Intercreditor Agreement.

## 27.6 **Insolvency**

- (a) A Material Company:
  - (i) is unable or admits inability to pay its debts as they fall due (save as a result of its liabilities exceeding its assets);
  - (ii) is deemed to, or is declared to, be unable to pay its debts under applicable law (save as a result of its liabilities exceeding its assets);
  - (iii) by reason of actual or anticipated financial difficulties suspends or threatens to suspend making payments on any of its debts; or
  - (iv) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (excluding any Senior Finance Party in its capacity as such) with a view to rescheduling any of its indebtedness.
- (b) A moratorium is declared in respect of any indebtedness of any Material Company. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

## 27.7 **Insolvency Proceedings**

- (a) Any corporate action, legal proceedings or other procedure or step is taken in relation to:
  - (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Material Company;
  - (ii) a composition, compromise, assignment or arrangement with any creditor of any Material Company by reason of actual or anticipated financial difficulties;



- (iii) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of any Material Company or any of its assets; or
  - (iv) enforcement of any Security over any assets with an aggregate value of £200,000 or more of any Material Company.
- (b) Paragraph (a) shall not apply to:
  - (i) any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of presentation or, if earlier, the date on which it is advertised; or
  - (ii) any step or procedure contemplated by paragraphs (b) or (c) of the definition of "Permitted Transaction".

## **27.8 Creditors' Process**

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of a Material Company having an aggregate value of £200,000 and is not discharged within 14 days.

## **27.9 Similar Events Elsewhere**

There occurs in relation to any Material Company or any of its assets in any country or territory in which it is incorporated or carries on business or to the jurisdiction of whose courts it or any of its assets is subject any event which corresponds in that country or territory with any of those mentioned in clauses 27.6 (Insolvency) to 27.8 (Creditors' Process) (inclusive).

## **27.10 Unlawfulness and Invalidity**

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

## **27.11 Intercreditor Agreement**

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

and, if the non-compliance or circumstances giving rise to the misrepresentation are capable of remedy, it is not remedied within 20 Business Days of the earlier of the Facility Agent giving notice to that party or that party becoming aware of the non-compliance or misrepresentation.

#### **27.12 Cessation of Business**

The Group (taken as a whole) or any Material Company suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business except as a result of a disposal which is a Permitted Disposal or a Permitted Transaction.

#### **27.13 Change of Ownership**

- (a) After the Closing Date, an Obligor (other than the Parent) ceases to be a wholly-owned Subsidiary of the Parent; or
- (b) an Obligor ceases to own at least the same percentage of shares in a Material Company as on the Closing Date,

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

#### **27.14 Audit Qualification**

The Auditors of the Group qualify the annual consolidated financial statements of the Parent in a manner or to an extent or manner which is materially adverse to the interests of the Senior Finance Parties in the context of the Senior Finance Documents taken as a whole.

#### **27.15 Expropriation**

The authority or ability of a Material Company to conduct its business is materially limited to wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any Material Company or any of its assets.

#### **27.16 Repudiation and Rescission of Agreements**

- (a) An Obligor (or any other relevant party) rescinds or purports to rescind or repudiates or purports to repudiate a Senior Finance Document in writing or any Transaction Security or evidences an intention, in writing, to rescind or repudiate a Senior Finance Document or any Transaction Security.
- (b) Any party to the Acquisition Documents, the Shareholders' Agreement, the Intercreditor Agreement or the Loan Note Documents rescinds or purports to rescind or repudiates or purports to repudiate any of those agreements or instruments in writing in whole or in part where to do so has or is, in the reasonable opinion of the Majority Lenders, likely to have a material adverse effect on the interests of the Lenders under the Senior Finance Documents.

#### **27.17 Litigation**

Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened in writing in relation to the Transaction Documents or the transactions contemplated in the Transaction Documents or against any Material Company or its assets which have or are reasonably likely to have a Material Adverse Effect.

**27.18 Material Adverse Change**

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

**27.19 Acceleration**

Subject to clause 27.21 (Clean-up period) on and at any time after the occurrence of an Event of Default which is continuing the Facility Agent may, and shall if so directed by the Majority Lenders, by notice to the Parent:

- (a) cancel all or part of the Commitments and/or Ancillary Commitments at which time they shall immediately be cancelled;
- (b) declare that all or part of the Utilisations, together with accrued interest, and all other amounts accrued or outstanding under the Senior Finance Documents be immediately due and payable, at which time they shall become immediately due and payable;
- (c) declare that all or part of the Utilisations be payable on demand, at which time they shall immediately become payable on demand by the Facility Agent on the instructions of the Majority Lenders;
- (d) declare all or any part of the amounts (or cash cover in relation to those amounts) outstanding under the Ancillary Facilities to be immediately due and payable, at which time they shall become immediately due and payable;
- (e) declare that all or any part of the amounts (or cash cover in relation to those amounts) outstanding under the Ancillary Facilities be payable on demand, at which time they shall immediately become payable on demand by the Facility Agent on the instructions of the Majority Lenders; and/or
- (f) exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Senior Finance Documents.

**27.20 Revolving Facility Acceleration**

Subject to the terms of the Intercreditor Agreement, on and at any time after the occurrence of a Material Event of Default which is continuing the Facility Agent may, and shall if so directed by the Majority Revolving Facility Lenders, by notice to the Parent and the Security Agent:

- (a) deliver a Revolving Facility Enforcement Notice to the Security Agent in accordance with the terms of the Intercreditor Agreement (a copy of which the Facility Agent shall also deliver to each Lender);
- (b) cancel all or part of the Total Revolving Facility Commitments and/or Ancillary Commitments at which time they shall immediately be cancelled;
- (c) declare that all or part of the Revolving Facility Loans, together with accrued interest, and all other amounts accrued or outstanding under the Senior Finance Documents in respect of the Revolving Facility Loans be immediately due and payable, at which time they shall become immediately due and payable;
- (d) declare that all or part of the Revolving Facility Loans be payable on demand, at which time they shall immediately become payable on demand by the Facility Agent on the instructions of the Majority Revolving Facility Lenders;

- (e) declare all or any part of the amounts (or cash cover in relation to those amounts) outstanding under the Ancillary Facilities to be immediately due and payable at which time they shall become immediately due and payable;
- (f) declare that all or any part of the amounts (or cash cover in relation to those amounts) outstanding under the Ancillary Facilities be payable on demand, at which time they shall immediately become payable on demand by the Facility Agent on the instructions of the Majority Revolving Facility Lenders; and/or
- (g) exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Senior Finance Documents.

#### 27.21 **Clean-up period**

Notwithstanding any other provision of any Finance Document, any Event of Default constituting a Clean-up Default will be deemed not to be a breach of representation or warranty, a breach of covenant or an Event of Default (as the case may be) if:

- (a) it would have been (if it were not for this provision) a breach of representation or warranty, a breach of covenant or an Event of Default only by reason of circumstances relating exclusively to any member to the Target Group (or any obligation to procure or ensure in relation to a member of the Target Group) (in the case of the Acquisition) or (in the case of an acquisition permitted under and in accordance with paragraph (f) of the definition of "Permitted Acquisition", an **"Acquisition Target"**) the Acquisition Target or any other person, undertaking or business which is the direct or indirect subject of the relevant acquisition (or any obligation to procure or ensure in relation to the Acquisition Target or any such other person, undertaking or business);
- (b) it is capable of remedy and reasonable steps are being taken to remedy it;
- (c) the circumstances giving rise to it have not been procured by or approved by the Parent, or any Investor (in the case of the Acquisition) or (in the case of the acquisition permitted under and in accordance with the paragraph (f) of the definition of "Permitted Acquisition" any member of the Group); and
- (d) it is not reasonably likely to have a Material Adverse Effect.

If the relevant circumstances are continuing on or after the Clean-up Date, there shall be a breach of representation or warranty, breach of covenant or Event of Default, as the case may be, notwithstanding the above (and without prejudice to the rights and remedies of the Finance Parties).

#### 27.22 **Exchange Rate Fluctuations**

When applying baskets, thresholds and other exceptions to the representations and warranties, undertakings and Events of Default under the agreement, the equivalent to an amount in the Base Currency shall be calculated as at the date of the Group incurring or making the relevant disposal, acquisition, investment, lease, loan, debt or guarantee or taking other relevant action. No Event of Default or breach of any representation and warranty or undertaking shall arise merely as a result of a subsequent change in the Base Currency equivalent of any relevant amount due to fluctuations in exchange rates.

## 28. CHANGES TO THE LENDERS

### 28.1 Assignments and Transfers by the Lenders

Subject to this clause 28 (Changes to the Lenders) and to clause 29 (Debt Purchase Transactions), a Lender (the "**Existing Lender**") may:

- (a) assign any of its rights or transfer by way of assignment and assumption any of its rights and obligations; or
- (b) transfer by novation any of its rights and obligations; or
- (c) sub-participate all or any of its rights or obligations,

under any Senior Finance Document to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (the "**New Lender**") provided subject to Clause 28.2(b) (Conditions of Assignment, Transfer or Sub-participation) below always that as a consequence of any such assignment, transfer or sub-participation there are no more than, in aggregate, 6 Term Lenders (the "**Syndicate Cap**") and each New Lender's Commitments are at least £1,000,000 (or if the New Lenders are Related Funds the aggregate amount of their Commitments is at least £1,000,000). For the avoidance of doubt, for the purposes of this clause 28 (Changes to Lenders), any Affiliate or Related Fund of any Lender shall be treated as being a single Lender (in aggregate) for the purposes of calculating the Syndicate Cap.

### 28.2 Conditions of Assignment, Transfer or Sub-Participation

- (a) An Existing Lender must obtain the prior consent of the Parent (not to be unreasonably withheld or delayed and consent shall be deemed given if no response is received by the Existing Lender within 10 Business Days of consent being requested) before it may make an assignment, sub-participation or transfer in accordance with clause 28.1 (Assignments and Transfers by the Lenders) unless the assignment, transfer or sub-participation is:
  - (i) to another Lender or an Affiliate of a Lender;
  - (ii) if the Existing Lender is a fund, to a fund which is a Related Fund of the Existing Lender;
  - (iii) to an entity on the Approved List; or
  - (iv) made at a time when an Event of Default is continuing.
- (b) If an assignment or transfer in connection with any Senior Finance Document is made at a time when an Event of Default is continuing, the Syndicate Cap shall not apply and there shall be no limit on the number Lenders. After any such Event of Default has been remedied or waived in writing, the Syndicate Cap shall be increased by the number of New Lenders who have become a New Lender pursuant to clause 28.1 (Assignments and Transfers by the Lenders) above whilst the relevant Event of Default was continuing.
- (c) Any request for consent made under paragraph (a) above must also be simultaneously sent to Jeremy Morgan at the following address [jeremymorgan@sovereigncapital.co.uk](mailto:jeremymorgan@sovereigncapital.co.uk).
- (d) Each assignment or transfer of any Lender's participation other than to an Affiliate or a Related Fund shall be in a minimum amount of £1,000,000 unless the

assignment or transfer is of the whole of that Lender's participation under this agreement.

- (e) an assignment will only be effective on:
  - (i) receipt by the Facility Agent (whether in the Assignment Agreement or otherwise) 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 Senior Finance Parties and the other Secured Parties as it would have been under if it was an Original Lender;
  - (ii) the New Lender entering into the documentation required for it to accede to the Intercreditor Agreement (which requirement will be satisfied on completion of an assignment using the form of Assignment Agreement attached as schedule 5 (Form of Assignment Agreement));
  - (iii) the performance by the Facility Agent (to the extent it thinks fit) of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Facility Agent shall promptly notify to the Existing Lender and the New Lender.
- (f) Any assignment or transfer by a Lender of rights and/or obligations (by whatever method) will be deemed to be subject (to the extent possible) to the rights and restrictions contained in the Intercreditor Agreement applicable to the Senior Lenders (as defined in the Intercreditor Agreement). If the New Lender is not already a party to the Intercreditor Agreement as a Senior Lender, then (for the benefit of the Senior Finance Parties) the New Lender agrees to become, with effect from the Transfer Date, a party to and agrees to be bound by the terms of the Intercreditor Agreement as if it had originally been party to the Intercreditor Agreement as a Senior Lender.
- (g) A transfer will only be effective if the New Lender enters into the documentation required for it to accede as a party to the Intercreditor Agreement (which requirement will be satisfied on completion of a transfer using the form of Transfer Certificate attached as schedule 4 (Form of Transfer Certificate)) and if the procedure set out in clause 28.5 (Procedure for Transfer) is complied with.
- (h) If:
  - (i) a Lender assigns or transfers any of its rights or obligations under the Senior Finance Documents or changes its Facility Office; and
  - (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under clause 18 (Increased Costs),

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

- (i) Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, 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 transfer or assignment becomes

effective in accordance with this agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

### **28.3 Assignment or Transfer Fee**

Unless the Facility Agent otherwise agrees, 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 £2,000.

### **28.4 Limitation of Responsibility of Existing Lenders**

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
  - (i) the legality, validity, effectiveness, adequacy or enforceability of the Transaction Documents, the Transaction Security or any other documents;
  - (ii) the financial condition of any Obligor;
  - (iii) the performance and observance by any Obligor or any other Group Company of its obligations under the Transaction Documents or any other documents; or
  - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Transaction Document or any other document,and any representations or warranties implied by law are excluded.
- (b) Each New Lender confirms to the Existing Lender, the other Senior Finance Parties and the Secured Parties that it:
  - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this agreement and has not relied exclusively on any information provided to it by the Existing Lender or any other Senior Finance Party in connection with any Transaction Document or the Transaction Security; and
  - (ii) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Senior Finance Documents or any Commitment is in force.
- (c) Nothing in any Senior Finance Document obliges an Existing Lender to:
  - (i) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this clause 28 (Changes to the Lenders); or
  - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under the Transaction Documents or otherwise.

### **28.5 Procedure for Transfer**

- (a) Subject to the conditions set out in clause 28.2 (Conditions of Assignment, Transfer or Sub-participation) a transfer is effected in accordance with paragraph (c) 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,

subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this agreement and delivered in accordance with the terms of this agreement, execute that Transfer Certificate.

- (b) The Facility Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.
- (c) Subject to clause 28.12 (Pro Rata Interest Settlement), on the Transfer Date:
  - (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Senior Finance Documents, each of the Obligors and the Existing Lender shall be released from further obligations towards one another under the Senior Finance Documents and their respective rights against one another under the Senior Finance Documents shall be cancelled (being the **"Discharged Rights and Obligations"**);
  - (ii) each of the Obligors and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Obligor or other Group Company and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;
  - (iii) the Facility Agent, the Arranger, the Security Agent, the New Lender, the other Lenders and any relevant Ancillary Lender shall acquire the same rights and assume the same obligations between themselves and in respect of the Transaction Security as they would have acquired and assumed had the New Lender been an Original Lender with the rights, and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Facility Agent, the Arranger, the Security Agent and any relevant Ancillary Lender and the Existing Lender shall each be released from further obligations to each other under the Senior Finance Documents; and
  - (iv) the New Lender shall become a Party as a "Lender".

## 28.6 Procedure for Assignment or Assignment and Assumption

- (a) Subject to the conditions set out in clause 28.2 (Conditions of Assignment, Transfer or Sub-Participation) an assignment may be effected in accordance with paragraph (c) below when the Facility Agent executes an Assignment Agreement delivered to it and executed by the Existing Lender and the New Lender. The Facility Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this agreement and delivered in accordance with the terms of this agreement, execute that Assignment Agreement. For the avoidance of doubt, an Assignment Agreement will be treated as duly completed notwithstanding that the Parent may not have executed that Assignment Agreement to formally acknowledge the transfer of obligations.
- (b) The Facility Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.



- (c) Subject to clause 28.12 (Pro Rata Interest Settlement), on the Transfer Date:
  - (i) the Existing Lender will assign absolutely to the New Lender its rights under the Senior Finance Documents and in respect of the Transaction Security expressed to be the subject of the assignment in the Assignment Agreement;
  - (ii) the Existing Lender will be released from the obligations (the "**Relevant Obligations**") expressed to be the subject of the release in the Assignment Agreement (and any corresponding obligations by which it is bound in respect of the Transaction Security); and
  - (iii) the New Lender shall become a Party as a "Lender" and will be bound by obligations equivalent to the Relevant Obligations.
- (d) Lenders may utilise procedures other than those set out in this clause 28.6 to assign their rights under the Senior Finance Documents provided that they comply with the conditions set out in clause 28.2 (Conditions of Assignment, Transfer or Sub-Participation).

#### 28.7 **Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Parent**

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

#### 28.8 **New CAR Facility Lender**

- (a) Each CAR Facility Lender shall, by countersigning a CAR Facility Establishment Notice and delivering it to the Facility Agent be, deemed to be a party to this agreement as a Lender from the CAR Facility Date and:
  - (i) each of the Obligors will owe obligations to the CAR Facility Lender in accordance with the terms of the Senior Finance Documents;
  - (ii) subject to any limits recorded in the Senior Finance Documents, the guarantees and security recorded in the Senior Finance Documents in favour of the Senior Finance Parties will extend to the CAR Facility Lender and the CAR Facility Loans; and
  - (iii) the Senior Finance Parties in each of their respective capacities shall acquire the rights and assume the obligations between themselves as if the CAR Facility Lender had been an original lender under this agreement in that capacity.

#### 28.9 **Accession of Hedge Counterparties**

- (a) Any person which becomes a party to the Intercreditor Agreement as a Hedge Counterparty shall at the same time, become a Party to this agreement as a Hedge Counterparty in accordance with clause 20.10 (Creditor Accession Undertaking) of the Intercreditor Agreement.
- (b) Where this agreement or any other Senior Finance Document imposes an obligation on a Hedge Counterparty and the relevant Hedge Counterparty is an Affiliate of a Lender and is not a party to that document, the relevant Lender shall ensure that the obligation is performed by its Affiliate.

## 28.10 **Security over Lenders' Rights**

In addition to the other rights provided to Lenders under this clause 28 (Changes to the Lenders), each Lender may without consulting with or obtaining consent from any Obligor, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Senior Finance Document to secure obligations of that Lender including, without limitation:

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

except that no such charge, assignment or Security shall:

- (i) release a Lender from any of its obligations under the Senior Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security for the Lender as a party to any of the Senior Finance Documents; or
- (ii) require any payments to be made by an Obligor or grant to any person any more extensive rights than those required to be made or granted to the relevant Lender under the Senior Finance Documents.

## 28.11 **Continuation of Security**

- (a) Each Obligor consents to the assignments and transfers of rights and obligations permitted under and made in accordance with this clause 28 (Changes to the Lenders). Each Obligor agrees and confirms that its guarantee and indemnity obligations under the Senior Finance Documents and any Transaction Security granted by it in support of its own borrowing obligations or its guarantee or indemnity obligations under the Senior Finance Documents will continue notwithstanding any assignment or transfer under this clause 28 (Changes to the Lenders) and will extend to cover and support obligations owed to New Lenders and to continuing Senior Finance Parties.
- (b) The Parent (for itself and as agent for the Obligors) will (at its own cost) as soon as reasonably practicable execute such documents and take such other actions as are necessary to effect or perfect an assignment or a transfer of rights and/or obligations to a New Lender under the Senior Finance Documents. Such action will include:
  - (i) promptly countersigning Assignment Agreements (although any delay or failure by the Parent to so countersign an Assignment Agreement will not invalidate its operation); and
  - (ii) subject to the Agreed Security Principles taking such steps as the Facility Agent or the Security Agent may request (including re-execution of Transaction Security Documents) for the purpose of ensuring that the New Lender has (and the other Senior Finance Parties continue to have) the benefit of the same security interests under the Transaction Security Documents as existed immediately before the relevant transfer.

## 28.12 **Pro Rata Interest Settlement**

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 28.5 (Procedure for Transfer) or any assignment pursuant to clause 28.6 (Procedure for Assignment or Assignment and Assumption) the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period):

- (a) 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
- (b) 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:
  - (i) when the Accrued Amounts become payable, those Accrued Amounts will be payable for the account of the Existing Lender; and
  - (ii) the amount payable to the New Lender on that date will be the amount which would, but for the application of this clause 28.12, have been payable to it on that date, but after deduction of the Accrued Amounts.
- (c) In this clause 28.12 references to "Interest Period" shall be construed to include a reference to any other period for accrual of fees.

## 29. **DEBT PURCHASE TRANSACTIONS**

### 29.1 **Permitted Debt Purchase Transactions**

- (a) Subject to paragraph (b) below, the Parent shall not, and shall procure that each other Group Company shall not:
  - (i) enter into any Debt Purchase Transaction other than in accordance with the other provisions of this clause 29; or
  - (ii) beneficially own all or any part of the share capital of a company that is a Lender or a party to a Debt Purchase Transaction of the type referred to in paragraphs (b) or (c) of the definition of "Debt Purchase Transaction".
- (b) A Borrower may purchase by way of assignment, pursuant to clause 28 (Changes to the Lenders), a participation in any Term Loan or after the end of its Availability Period, any CAR Facility Loan in respect of which it is the borrower and any related Commitment where:
  - (i) that purchase is made for a consideration of less than par;
  - (ii) that purchase is made using one of the processes set out at paragraphs (c) and (d) below;
  - (iii) that purchase is made at a time when no Default is continuing; and
  - (iv) the consideration for that purchase is funded from (1) Retained Excess Cashflow for the Financial Year of the Parent immediately preceding the

Financial Year of the Parent in which such purchase is to be made or (2) New Shareholder Injections.

- (c) A Debt Purchase Transaction referred to in paragraph (b) above may be entered into pursuant to a solicitation process (a **"Solicitation Process"**) which is carried out as follows:
- (i) prior to 11.00 a.m. on a given Business Day (the **"Solicitation Day"**) the Parent or a financial institution acting on its behalf (the **"Purchase Agent"**) will approach at the same time each Lender which participates in the relevant Term Facility or the CAR Facility to enable them to offer to sell to the relevant Borrower(s) an amount of their participation in one or more Term Facility or the CAR Facility. Any Lender wishing to make such an offer shall, by 11.00 a.m. on the second Business Day following that Solicitation Day, communicate to the Purchase Agent details of the amount of its participations, and in which Term Facility or CAR Facility, it is offering to sell and the price at which it is offering to sell such participations. Any such offer shall be irrevocable until 11.00 a.m. on the third Business Day following that Solicitation Day and shall be capable of acceptance by the Parent on behalf of the relevant Borrower(s) on or before such time by communicating its acceptance in writing to the Purchase Agent or, if it is the Purchase Agent, the relevant Lenders. The Purchase Agent (if someone other than the Parent) will communicate to the relevant Lenders which offers have been accepted by 12 noon on the third Business day following that Solicitation Day. In any event by 5.00 p.m. on the fourth Business Day following that Solicitation Day, the Parent shall notify the Facility Agent of the amounts of the participations purchased through the relevant Solicitation Process, the identity of the Term Facility or the CAR Facility to which they relate and the average price paid for the purchase of participations in each relevant Term Facility or CAR Facility. The Facility Agent shall promptly disclose such information to the Lenders;
  - (ii) any purchase of participations in the Term Facility or CAR Facility pursuant to a Solicitation Process shall be completed and settled on or before the fifth Business Day after the relevant Solicitation Day; and
  - (iii) in accepting any offers made pursuant to a Solicitation Process the Parent shall be free to select which offers and in which amounts it accepts but on the basis that in relation to a participation in a particular Term Facility it accepts offers in inverse order of the price offered (with the offer or offers at the lowest price being accepted first) and that if in respect of participations in a particular Term Facility it receives two or more offers at the same price it shall only accept such offers on a pro rata basis.
- (d) A Debt Purchase Transaction referred to in paragraph (b) above may also be entered into pursuant to an open order process (an **"Open Order Process"**) which is carried out as follows:
- (i) the Parent (on behalf of the relevant Borrower(s)) may by itself or through another Purchase Agent place an open order (an **"Open Order"**) to purchase participations in one or more of the Term Facility or the CAR Facility up to a set aggregate amount at a set price by notifying at the same time all the Lenders participating in the relevant Term Facility or CAR Facility of the same. Any Lender wishing to sell pursuant to an Open Order will, by 11.00 a.m. on any Business Day following the date on which the Open Order is placed but no earlier than the first Business Day, and no later than the fifth Business Day, following the date on which the Open Order is placed, communicate to the Purchase Agent details of the amount of its

participations, and in which Term Facility or CAR Facility, it is offering to sell. Any such offer to sell shall be irrevocable until 11.00 a.m. on the Business Day following the date of such offer from the Lender and shall be capable of acceptance by the Parent on behalf of the relevant Borrower(s) on or before such time by it communicating such acceptance in writing to the relevant Lender;

- (ii) any purchase of participations in the Term Facility or CAR Facility pursuant to an Open Order Process shall be completed and settled by the relevant Borrower(s) on or before the fourth Business Day after the date of the relevant offer by a Lender to sell under the relevant Open Order;
  - (iii) if in respect of participations in a Term Facility or CAR Facility the Purchase Agent receives on the same Business Day two or more offers at the set price such that the maximum amount of such Term Facility or CAR Facility to which an Open Order relates would be exceeded, the Parent shall only accept such offers on a pro rata basis; and
  - (iv) the Parent shall, by 5.00 p.m. on the sixth Business Day following the date on which an Open Order is placed, notify the Facility Agent of the amounts of the participations purchased through such Open Order Process and the identity of the Term Facility or CAR Facility to which they relate. The Facility Agent shall promptly disclose such information to the Lenders.
- (e) For the avoidance of doubt, there is no limit on the number of occasions a Solicitation Process or an Open Order Process may be implemented.
- (f) In relation to any Debt Purchase Transaction entered into pursuant to this clause 29 (Debt Purchase Transactions), notwithstanding any other term of this agreement or the other Senior Finance Documents:
- (i) on completion of the relevant assignment pursuant to clause 28 (Changes to the Lenders), the portions of the Term Loans or CAR Facility Loan to which it relates shall be extinguished;
  - (ii) that Debt Purchase Transaction and the related extinguishment referred to in paragraph (i) above shall not constitute a prepayment of the Facilities;
  - (iii) the Borrower which is the assignee shall be deemed to be an entity which fulfils the requirements of clause 28.1 (Assignments and Transfers by the Lenders) to be a New Lender;
  - (iv) no Group Company shall be deemed to be in breach of any provision of clause 26 (General Undertakings) solely by reason of that Debt Purchase Transaction;
  - (v) clause 33 (Sharing among the Senior Finance Parties) shall not be applicable to the consideration paid under such Debt Purchase Transaction; and
  - (vi) for the avoidance of doubt, any extinguishment of any part of the Term Loans or CAR Facility Loan shall not affect any amendment or waiver which prior to that extinguishment had been approved by or on behalf of the requisite Lender or Lenders in accordance with this agreement.

29.2 **Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates**

- (a) For so long as a Sponsor Affiliate:
  - (i) beneficially owns a Commitment; or
  - (ii) has entered into a sub-participation agreement relating to a Commitment or other agreement or arrangement having a substantially similar economic effect and such agreement or arrangement has not been terminated;

in ascertaining:

- (A) the Majority Lenders or the Majority Revolving Facility Lenders; or
- (B) whether:
  - (aa) any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments; or
  - (bb) the agreement of any specified group of Lenders,

has been obtained to approve any request for a consent, waiver, amendment or other vote under the Senior Finance Documents such Commitment shall be deemed to be zero and such Sponsor Affiliate or the person with whom it has entered into such sub-participation, other agreement or arrangement shall be deemed not to be a Lender for the purposes of paragraphs (A) and (B) above (unless in the case of a person not being a Sponsor Affiliate it is a Lender by virtue otherwise than by beneficially owning the relevant Commitment).

- (b) Each Lender shall, unless such Debt Purchase Transaction is an assignment or transfer, promptly notify the Facility Agent in writing if it knowingly enters into a Debt Purchase Transaction with a Sponsor Affiliate, (a **"Notifiable Debt Purchase Transaction"**), such notification to be substantially in the form set out in part 1 of schedule 11 (Forms of Notifiable Debt Purchase Transaction Notice).
- (c) A Lender shall promptly notify the Facility Agent if a Notifiable Debt Purchase Transaction to which it is a party:
  - (i) is terminated; or
  - (ii) ceases to be with a Sponsor Affiliate,

such notification to be substantially in the form set out in part 2 of schedule 11 (Forms of Notifiable Debt Purchase Transaction Notice).

- (d) Each Sponsor Affiliate that is a Lender agrees that:
  - (i) in relation to any meeting or conference call to which all the Lenders are invited to attend or participate, it shall not attend or participate in the same if so requested by the Facility Agent or, unless the Facility Agent otherwise agrees, be entitled to receive the agenda or any minutes of the same; and
  - (ii) in its capacity as Lender, unless the Facility Agent otherwise agrees, it shall not be entitled to receive any report or other document prepared at the behest of, or on the instructions of, the Facility Agent or one or more of the Lenders.

### 29.3 **Sponsor Affiliates' notification to other Lenders of Debt Purchase Transactions**

Any Sponsor Affiliate which is or becomes a Lender and which enters into a Debt Purchase Transaction as a purchaser or a participant shall, by 5.00 p.m. on the Business Day following the day on which it entered into that Debt Purchase Transaction, notify the Facility Agent of the extent of the Commitment(s) or amount outstanding to which that Debt Purchase Transaction relates. The Facility Agent shall promptly disclose such information to the Lenders.

## 30. **CHANGES TO THE OBLIGORS**

### 30.1 **Assignment and Transfers by Obligors**

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

### 30.2 **Additional Borrowers**

- (a) Subject to compliance with the provisions of clause 24.10(c) and 24.10(d) ("Know Your Customer" Checks), the Parent may request that any of its wholly owned Subsidiaries becomes a Borrower. That Subsidiary shall become a Borrower if:
  - (i) all the Lenders or, if the proposed new Borrower is incorporated in and borrows from the same jurisdiction as an existing Borrower, the Majority Lenders approve the addition of that Subsidiary;
  - (ii) the Parent and that Subsidiary deliver to the Facility Agent a duly completed and executed Accession Deed;
  - (iii) the Subsidiary is (or becomes) a Guarantor prior to becoming a Borrower;
  - (iv) the Parent confirms that no Default is continuing or would occur as a result of that Subsidiary becoming an Additional Borrower; and
  - (v) the Facility Agent has received all of the documents and other evidence listed in part 2 of schedule 2 (Conditions Precedent) in relation to that Additional Borrower, each in form and substance satisfactory to the Facility Agent.
- (b) The Facility Agent shall notify the Parent and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in part 2 of schedule 2 (Conditions Precedent).
- (c) The Lenders authorise (but do not require) the Facility Agent to give the notification described in paragraph (b) above. The Facility Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

### 30.3 **Resignation of a Borrower**

- (a) In this clause 30.3, clause 30.5 (Resignation of a Guarantor) and clause 30.7 (Resignation and Release of Security on Disposal), "**Third Party Disposal**" means the disposal of an Obligor to a person which is not a Group Company where that disposal is permitted under clause 26.16 (Disposals) or made with the approval of the Majority Lenders (and the Parent has confirmed this is the case).

- (b) If a Borrower is the subject of a Third Party Disposal, the Parent may request that such Borrower (other than the Parent) ceases to be a Borrower by delivering to the Facility Agent a Resignation Letter.
- (c) The Facility Agent shall accept a Resignation Letter and notify the Parent and the other Senior Finance Parties of its acceptance if:
  - (i) the Parent has confirmed that no Default is continuing or would result from the acceptance of the Resignation Letter;
  - (ii) the Borrower is under no actual or contingent obligations as a Borrower under any Senior Finance Document;
  - (iii) where the Borrower is also a Guarantor (unless its resignation has been accepted in accordance with clause 30.5 (Resignation of a Guarantor)), its obligations in its capacity as Guarantor continue to be legal, valid, binding and enforceable and in full force and effect (subject to the Legal Reservations) and the amount guaranteed by it as a Guarantor is not decreased (and the Parent has confirmed this is the case); and
  - (iv) the Parent has confirmed that it shall ensure that any relevant Disposal Proceeds will be applied in accordance with clause 11.3 (Application of Mandatory Prepayments and Cancellations).
- (d) Upon notification by the Facility Agent to the Parent of its acceptance of the resignation of a Borrower, that company shall cease to be a Borrower and shall have no further rights or obligations under the Senior Finance Documents as a Borrower except that the resignation shall not take effect (and the Borrower will continue to have rights and obligations under the Senior Finance Documents) until the date on which the Third Party Disposal takes effect.
- (e) The Facility Agent may, at the cost and expense of the Parent, require a legal opinion from counsel to the Facility Agent confirming the matters set out in paragraph (c)(iii) above and the Facility Agent shall be under no obligation to accept a Resignation Letter until it has obtained such opinion in form and substance satisfactory to it.

#### 30.4 **Additional Guarantors**

- (a) Subject to compliance with the provisions of clause 24.10(c) and 24.10(d) ("Know Your Customer" Checks), the Parent may request that any of its wholly owned Subsidiaries become a Guarantor.
- (b) Subject to the Agreed Security Principles and clause 26.38(e) (Conditions Subsequent) the Parent shall procure that any other Group Company shall, as soon as possible after becoming a Material Company, become an Additional Guarantor and grant any Security as the Facility Agent may require and shall accede to the Intercreditor Agreement.
- (c) A Group Company shall become an Additional Guarantor if:
  - (i) the Parent and the proposed Additional Guarantor deliver to the Facility Agent a duly completed and executed Accession Deed; and
  - (ii) the Facility Agent has received all of the documents and other evidence listed in part 2 of Schedule 2 (Conditions Precedent) in relation to that Additional Guarantor, each in form and substance satisfactory to the Facility Agent.



- (d) The Facility Agent shall notify the Parent and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in part 2 of schedule 2 (Conditions Precedent).
- (e) The Lenders authorise (but do not require) the Facility Agent to give the notification described in paragraph (d) above. The Facility Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

### 30.5 **Resignation of a Guarantor**

- (a) The Parent may request that a Guarantor (other than the Parent) ceases to be a Guarantor by delivering to the Facility Agent a Resignation Letter if:
  - (i) that Guarantor is being disposed of by way of a Third Party Disposal (as defined in clause 30.3 (Resignation of a Borrower)) and the Parent has confirmed this is the case; or
  - (ii) all the Lenders have consented to the resignation of that Guarantor.
- (b) Subject to clause 20.13(a) (Resignation of a Debtor) of the Intercreditor Agreement, the Facility Agent shall accept a Resignation Letter and notify the Parent and the Lenders of its acceptance if:
  - (i) the Parent has confirmed that no Default is continuing or would result from the acceptance of the Resignation Letter;
  - (ii) no payment is due from the Guarantor under clause 22.1 (Guarantee and Indemnity);
  - (iii) where the Guarantor is also a Borrower, it is under no actual or contingent obligations as a Borrower and has resigned and ceased to be a Borrower under clause 30.3 (Resignation of a Borrower); and
  - (iv) the Parent has confirmed that it shall ensure that the Disposal Proceeds will be applied in accordance with clause 11.3 (Application of Mandatory Prepayments and Cancellations).
- (c) The resignation of that Guarantor shall not be effective until the date of the relevant Third Party Disposal at which time that company shall cease to be a Guarantor and shall have no further rights or obligations under the Senior Finance Documents as a Guarantor.

### 30.6 **Repetition of Representations**

Delivery of an Accession Deed constitutes confirmation by the relevant Subsidiary that the representations and warranties referred to in clause 23.33(e) (Times when Representations Made) are true and correct in relation to it as at the date of delivery as if made by reference to the facts and circumstances then existing.

### 30.7 **Resignation and Release of Security on Disposal**

- (a) If an Obligor is or is proposed to be the subject of a Third Party Disposal then:
  - (i) where that Obligor created Transaction Security over any of its assets or business in favour of the Security Agent, or Transaction Security in favour of the Security Agent was created over the shares (or equivalent) of that Obligor, the Security Agent may, at the cost and request of the Parent,

release those assets, business or shares (or equivalent) and issue certificates of non-crystallisation; and

- (ii) any resignation of that Obligor and related release of Transaction Security referred to in paragraph (a) above shall become effective only on the making of that disposal.
- (b) If a Group Company disposes of any other asset to a person which is not a Group Company where that disposal is permitted under clause 26.16 (Disposals) (including with the approval of the Majority Lenders) the Security Agent will at the request and cost of the Parent, release those assets from the Transaction Security and issue any certificate of non-crystallisation of any floating charge that will, in the absolute discretion of the Security Agent, be considered necessary or desirable.

### 30.8 Further Security

- (a) Subject to the Agreed Security Principles, the Parent shall procure that any Material Company which has not entered into a Transaction Security Document over all or substantially all of its assets, the "**Relevant Assets**") shall within ten Business Days after being required to do so by the Facility Agent execute a Transaction Security Document (in form and substance satisfactory to the Security Agent) over the Relevant Assets as security for all indebtedness under the Senior Finance Documents.
- (b) When a Transaction Security Document is entered into under clause 30.8(a) above, the Parent shall subject to the Agreed Security Principles deliver to the Security Agent:
  - (i) the original Transaction Security Document executed by the relevant Group Company and the Security Agent and all other documents required to perfect the security; and
  - (ii) where the relevant Group Company is not already an Obligor, all of the documents and other evidence listed in part 2 of schedule 2 (Conditions Precedent) in relation to the relevant Group Company.

each in form and substance satisfactory to the Security Agent.

## 31. ROLE OF THE FACILITY AGENT, THE ARRANGERS AND OTHERS

### 31.1 Appointment of the Facility Agent and the Security Agent

- (a) Subject to paragraph (c) below, each of the Arrangers and the Lenders appoints the Facility Agent to act as its facility agent and each of the Senior Finance Parties appoints the Security Agent to act as its security agent under and in connection with the Senior Finance Documents.
- (b) Each of the Senior Finance Parties authorises the Facility Agent and the Security Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Facility Agent or the Security Agent (as the case may be) under or in connection with the Senior Finance Documents together with any other incidental rights, powers, authorities and discretions and on its behalf to enter into and deliver each Transaction Security Document expressed to be entered into by the Security Agent.
- (c) Each other Senior Finance Party and each Obligor acknowledges that the Original Lender shall be appointed as the Facility Agent and Security Agent under the Senior Finance Documents.

### 31.2 **Instructions**

- (a) The Facility Agent shall:
  - (i) unless a contrary indication appears in a Senior Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Facility Agent in accordance with any instructions given to it by:
    - (A) all Lenders if the relevant Senior Finance Document provides that the matter is an all Lender decision; and
    - (B) in all other cases, the Majority Lenders; and
  - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above.
- (b) The Facility Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Senior Finance Document provides that the matter is a decision for any other Lender or group of Lenders, from that Lender or group of Lenders) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Facility Agent may refrain from acting unless and until it receives those instructions or that clarification.
- (c) Save in the case of decisions which are stipulated to be a matter for any other Lender or group of Lenders under the relevant Senior Finance Document and unless a contrary indication appears in a Senior Finance Document, any instructions given to the Facility Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Senior Finance Parties save for the Security Agent.
- (d) The Facility Agent may refrain from acting in accordance with any instructions of any Lender or group of Lenders until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Senior Finance Documents and which may include payment in advance) for any cost, loss or liability which it may incur in complying with those instructions.
- (e) In the absence of instructions, the Facility Agent may act (or refrain from acting) as it considers to be in the best interest of the Lenders.
- (f) The Facility Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Senior Finance Document. This paragraph (f) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Transaction Security Documents or enforcement of the Transaction Security or Transaction Security Documents.

### 31.3 **Duties of the Facility Agent**

- (a) The Facility Agent's duties under the Senior Finance Documents are solely mechanical and administrative in nature.
- (b) Subject to paragraph (c) below, the Facility Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Facility Agent for that Party by any other Party.
- (c) Without prejudice to clause 28.7 (Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Parent), paragraph (b) above shall not

apply to any Transfer Certificate, any Assignment Agreement or any Increase Confirmation.

- (d) The Facility Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (e) If the Facility Agent receives notice from a Party referring to this agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Senior Finance Parties.
- (f) If the Facility Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Senior Finance Party (other than the Facility Agent, the Arrangers or the Security Agent) under this agreement it shall promptly notify the other Senior Finance Parties.
- (g) The Facility Agent shall have only those duties, obligations and responsibilities expressly specified in the Senior Finance Documents to which it is expressed to be a party (and no others shall be implied).

#### **31.4 Role of the Arrangers**

Except as specifically provided in the Senior Finance Documents, the Arrangers have no obligations of any kind to any other Party under or in connection with any Senior Finance Document.

#### **31.5 No Fiduciary Duties**

- (a) Nothing in any Senior Finance Document constitutes the Facility Agent or any Arranger as a trustee or fiduciary of any other person.
- (b) None of the Facility Agent, the Security Agent, the Arrangers or any Ancillary Lender shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

#### **31.6 Business with the Group**

The Facility Agent, the Security Agent, each Arranger and each Ancillary Lender may accept deposits from, lend money to and generally engage in any kind of banking or other business with any Group Company.

#### **31.7 Rights and Discretions**

- (a) The Facility Agent may:
  - (i) rely on any representation, communication, notice or document (including, without limitation, any notice given by a Lender pursuant to clause 29.2 (Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates)) believed by it to be genuine, correct and appropriately authorised;
  - (ii) assume that:
    - (A) any instructions received by it from the Majority Lenders, any Lenders or any group of Lenders are duly given in accordance with the terms of the Senior Finance Documents; and
    - (B) unless it has received notice of revocation, that those instructions have not been revoked; and

- (iii) rely on a certificate from any person:
  - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
  - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,

as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Facility Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:
  - (i) no Default has occurred (unless it has actual knowledge of a Default arising under clause 27.1 (Non-Payment));
  - (ii) any right, power, authority or discretion vested in any Party or any group of Lenders has not been exercised;
  - (iii) any notice or request made by the Parent (other than a Utilisation Request or Selection Notice) is made on behalf of and with the consent and knowledge of all the Obligors; and
  - (iv) no Notifiable Debt Purchase Transaction:
    - (A) has been entered into;
    - (B) has been terminated; or
    - (C) has ceased to be with a Sponsor Affiliate.
- (c) The Facility Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Facility Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Facility Agent (and so separate from any lawyers instructed by the Lenders) if the Facility Agent in its reasonable opinion deems this to be desirable.
- (e) The Facility Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Facility Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) The Facility Agent may act in relation to the Senior Finance Documents through its officers, employees and agents and the Facility Agent shall not:
  - (i) be liable for any error of judgment made by any such person; or
  - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of, any such person,

unless such error or loss was directly caused by the Facility Agent's gross negligence or wilful misconduct.

- (g) Unless a Senior Finance Document expressly provides otherwise the Facility Agent may disclose to any other Party any information it reasonably believes it has received as agent under this agreement.
- (h) Without prejudice to the generality of paragraph (g) above, the Facility Agent:
  - (i) may disclose; and
  - (ii) on the written request of the Parent or the Majority Lenders shall, as soon as reasonably practicable, disclose,  
  
the identity of a Defaulting Lender to the Parent and to the other Senior Finance Parties.
- (i) Neither the Facility Agent nor any Arranger is obliged to do or omit to do anything if it would, or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (j) The Facility Agent is not obliged to disclose to any Senior Finance Party any details of the rate notified to the Facility Agent by any Lender or the identity of any such Lender for the purpose of clause 15.2(a)(ii) (Market Disruption).
- (k) The Facility Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.
- (l) The Facility Agent shall be entitled to deal with money paid to it by any person for the purposes of this agreement in the same manner as other money paid to a banker by its customers except that it shall not be liable to account to any person for any interest or other amounts in respect of the money.
- (m) The fees, commissions and expenses payable to the Facility Agent for services rendered and the performance of its obligations under this agreement shall not be abated by any remuneration or other amounts or profits receivable by the Facility Agent (or by any of its Affiliates) in connection with any transaction effected by the Facility Agent with or for the Lenders or any Group Company.

### **31.8 Responsibility for Documentation**

None of the Facility Agent, the Arrangers or any Ancillary Lender is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Facility Agent, the Arranger, an Ancillary Lender, an Obligor or any other person given in or in connection with any Senior Finance Document or the Information Package or the transactions contemplated in the Senior Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Senior Finance Document; or
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Senior Finance Document or the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Senior Finance Document or the Transaction Security.

### 31.9 **No Duty to Monitor**

The Facility Agent shall not be bound to enquire:

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

### 31.10 **Exclusion of Liability**

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Senior Finance Document excluding or limiting the liability of the Facility Agent or any Ancillary Lender), none of the Facility Agent, nor any Ancillary Lender will be liable (including, without limitation, for negligence or any other category of liability whatsoever) for:

- (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Senior Finance Document or the Transaction Security, unless directly caused by its gross negligence or wilful misconduct;
- (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Senior Finance Document, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Senior Finance Document or the Transaction Security; or
- (iii) without prejudice to the generality of paragraphs (i) and (ii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:

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

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

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

- (b) No Party (other than the Facility Agent or an Ancillary Lender (as applicable)) may take any proceedings against any officer, employee or agent of the Facility Agent, the Security Agent or any Ancillary Lender, in respect of any claim it might have against the Facility Agent, the Security Agent or an Ancillary Lender or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Senior Finance Document or any Transaction Document and any officer, employee or agent of the Facility Agent, the Security Agent or any Ancillary Lender may rely on this clause subject to clause 1.4 (Third Party Rights) and the provisions of the Third Parties Act.

- (c) The Facility Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Senior Finance Documents to be paid by the Facility Agent if the Facility 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 Facility Agent for that purpose.
- (d) Nothing in this agreement shall oblige the Facility Agent or the Arrangers to carry out:
  - (i) any "know your customer" or other checks in relation to any person; or
  - (ii) any check on the extent to which any transaction contemplated by this agreement might be unlawful for any Lender.

on behalf of any Lender and each Lender confirms to the Facility Agent and the Arrangers that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Facility Agent or the Arranger.

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

### **31.11 Lenders' Indemnity to the Facility Agent**

- (a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Facility 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 Facility Agent (otherwise than by reason of the Facility Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to clause 34.11 (Disruption to Payment Systems, etc.) notwithstanding the Facility Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent in acting as Facility Agent under the Senior Finance Documents (unless the Facility Agent has been reimbursed by an Obligor pursuant to a Senior Finance Document)).
- (b) Subject to paragraph (c) below, the Parent shall immediately on demand reimburse any Lender for any payment that Lender makes to the Facility Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Facility Agent to an Obligor.



### 31.12 **Resignation of the Facility Agent**

- (a) 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 Lenders and the Parent.
- (b) Alternatively the Facility Agent may resign by giving 30 days' notice to the Lenders and the Parent, in which case the Majority Lenders (after consultation with the Parent) may appoint a successor Facility Agent.
- (c) If the Majority Lenders have not appointed a successor Facility Agent in accordance with paragraph (b) above within 30 days after notice of resignation was given, the retiring Facility Agent (after consultation with the Parent) may appoint a successor Facility Agent (acting through an office in the United Kingdom).
- (d) The retiring Facility Agent shall make available to the successor Facility Agent such documents and records and provide such assistance as the successor Facility Agent may reasonably request for the purposes of performing its functions as Facility Agent under the Senior Finance Documents. The Parent shall, within three Business Days of demand, reimburse the retiring Facility Agent for the amount of all reasonable costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
- (e) The Facility Agent's resignation notice shall only take effect upon the appointment of a successor.
- (f) Upon the appointment of a successor, the retiring Facility Agent shall be discharged from any further obligation in respect of the Senior Finance Documents (other than its obligations under paragraph (e) above) but shall remain entitled to the benefit of clause 19.3 (Indemnity to the Facility Agent) and this clause 31 (and any agency fees for the account of the retiring Facility Agent shall cease to accrue from (and shall be payable on) that date. Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (g) The Facility Agent shall resign in accordance with paragraph (b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Facility Agent pursuant to paragraph (c) above) if on or after the date which is three months before the earliest FATCA Application Date relating to any payment to the Facility Agent under the Senior Finance Documents, either:
  - (i) the Facility Agent fails to respond to a request under clause 17.8 (FATCA Information) and the Parent or a Lender reasonably believes that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
  - (ii) the information supplied by the Facility Agent pursuant to clause 17.8 (FATCA Information) indicates that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
  - (iii) the Facility Agent notifies the Parent and the Lenders that the Facility 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 Parent or a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Facility Agent were a FATCA Exempt Party, and the Parent or that Lender, by notice to the Facility Agent, requires it to resign.

### **31.13 Replacement of the Facility Agent**

- (a) After consultation with the Parent, the Majority Lenders may, by giving 30 days' notice to the Facility Agent (or, at any time the Facility Agent is an Impaired Agent, by giving any shorter notice determined by the Majority Lenders) replace the Facility Agent by appointing a successor Facility Agent (acting through an office in the United Kingdom).
- (b) The retiring Facility 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 Facility Agent such documents and records and provide such assistance as the successor Facility Agent may reasonably request for the purposes of performing its functions as Facility Agent under the Senior Finance Documents.
- (c) The appointment of the successor Facility Agent shall take effect on the date specified in the notice from the Majority Lenders to the retiring Facility Agent. As from this date, the retiring Facility Agent shall be discharged from any further obligation in respect of the Senior Finance Documents (other than its obligations under paragraph (b) above) but shall remain entitled to the benefit of clause 19.3 (Indemnity to the Facility Agent) and this clause 31 (and any agency fees for the account of the retiring Facility Agent shall cease to accrue from (and shall be payable on) that date).
- (d) Any successor Facility 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.

### **31.14 Confidentiality**

- (a) In acting as agent for the Senior Finance Parties, the Facility Agent shall be regarded as acting through its agency division (unless the Facility Agent is the Original Lender as set out in clause 31.1(c) (Appointment of the Facility Agent and the Security Agent)) and which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by another division or department of the Facility Agent, it may be treated as confidential to that division or department and the Facility Agent shall not be deemed to have notice of it.
- (c) Notwithstanding any other provision of any Senior Finance Document to the contrary, neither the Facility Agent nor the Arrangers are obliged to disclose to any other person:
  - (i) any confidential information; or
  - (ii) any other information,if the disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty.

### **31.15 Relationship with the Lenders**

- (a) Subject to clause 28.12 (Pro Rata Interest Settlement), the Facility Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Facility Agent's principal office as notified to the Senior Finance Parties from time to time) as the Lender acting through its Facility Office:
  - (i) entitled to or liable for any payment due under any Senior Finance Document on that day; and

- (ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Senior Finance Document made or delivered on that day,

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

- (b) Any Lender may by notice to the 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 Senior Finance Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under clause 36.6 (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 36.2 (Addresses) and clause 36.6(a)(ii) (Electronic Communication) and the Facility 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.

### **31.16 Credit Appraisal by the Lenders and Ancillary Lenders**

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

- (a) the financial condition, status and nature of each Group Company;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Senior Finance Document, the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Senior Finance Document or the Transaction Security;
- (c) whether that Lender or Ancillary 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 Senior Finance Document, the Transaction Security, the transactions contemplated by the Senior Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Senior Finance Document or the Transaction Security;
- (d) the adequacy, accuracy or completeness of the Information Package and any other information provided by the Facility Agent, any Party or by any other person under or in connection with any Senior Finance Document, the transactions contemplated by any Senior Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Senior Finance Document; and
- (e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property.

### **31.17 Base Reference Banks**

If a Base Reference Bank (or, if a Base Reference Bank is not a Lender, the Lender of which it is an Affiliate) ceases to be a Lender, the Facility Agent shall (in consultation with the Parent) appoint another Lender or an Affiliate of a Lender to replace that Base Reference Bank.

### **31.18 Facility Agent's Management Time**

- (a) Any amount payable to the Facility Agent under clause 19.3 (Indemnity to the Facility Agent), clause 21 (Costs and Expenses) and clause 31.11 (Lenders' Indemnity to the Facility Agent) shall include the cost of utilising the Facility Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Facility Agent shall agree with the Parent and the Lenders, and is in addition to any fee paid or payable to the Facility Agent under clause 16 (Fees).
- (b) Any cost of utilising the Facility Agent's management time or other resources shall include, without limitation, any such costs in connection with clause 29.2 (Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates).

### **31.19 Deduction from Amounts Payable by the Facility Agent**

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

### **31.20 Reliance and Engagement Letters**

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

### **31.21 Regulatory Position**

The Facility Agent is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority. Nothing in this agreement shall require the Facility Agent to carry on an activity of the kind specified by any provision of Part II (other than article 5 (accepting deposits)) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 or to lend money to any Borrower in its capacity as Facility Agent.

## **32. CONDUCT OF BUSINESS BY THE SENIOR FINANCE PARTIES**

No provision of this agreement will:

- (a) interfere with the right of any Senior Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;

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

### 33. **SHARING AMONG THE SENIOR FINANCE PARTIES**

#### 33.1 **Payments to Senior Finance Parties**

- (a) Subject to paragraph (b) below, if a Senior Finance Party (a **"Recovering Senior Finance Party"**) receives or recovers any amount from an Obligor other than in accordance with clause 34 (Payment Mechanics) (a **"Recovered Amount"**) and applies that amount to a payment due under the Senior Finance Documents then:
  - (i) the Recovering Senior Finance Party shall, within three Business Days, notify details of the receipt or recovery, to the Facility Agent;
  - (ii) the Facility Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Senior 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 34 (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
  - (iii) the Recovering Senior 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 Senior Finance Party as its share of any payment to be made, in accordance with clause 34.6 (Partial Payments).
- (b) Paragraph (a) above shall not apply to any amount received or recovered by an Ancillary Lender in respect of any cash cover provided for the benefit of that Ancillary Lender.

#### 33.2 **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 Senior Finance Parties (other than the Recovering Senior Finance Party) (the **"Sharing Senior Finance Parties"**) in accordance with clause 34.6 (Partial Payments) towards the obligations of that Obligor to the Sharing Finance Parties.

#### 33.3 **Recovering Senior Finance Party's Rights**

On a distribution by the Facility Agent under clause 33.2 (Redistribution of Payments), of a payment received by a Recovering Senior Finance Party from an Obligor, as between the relevant Obligor and the Recovering Senior Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by that Obligor.

#### 33.4 **Reversal of Redistribution**

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

- (a) each Sharing Senior Finance Party shall, upon request of the Facility Agent, pay to the Facility Agent for the account of that Recovering Senior 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 Senior Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Senior Finance Party is required to pay) (the "**Redistributed Amount**"); and

- (b) as between the relevant Obligor and each relevant Sharing Senior Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Obligor.

### 33.5 **Exceptions**

- (a) This clause 33 (Sharing Among the Senior Finance Parties) shall not apply to the extent that the Recovering Senior Finance Party would not, after making any payment pursuant to this clause, have a valid and enforceable claim against the relevant Obligor.
- (b) A Recovering Senior Finance Party is not obliged to share with any other Senior Finance Party any amount which the Recovering Senior Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
  - (i) it notified the other Senior Finance Party of the legal or arbitration proceedings; and
  - (ii) the other Senior Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

### 33.6 **Ancillary Lenders**

- (a) This clause 33 (Sharing Among the Senior Finance Parties) shall not apply to any receipt or recovery by a Lender in its capacity as an Ancillary Lender at any time prior to service of notice under either clause 27.19 (Acceleration) or clause 27.20 (Revolving Facility Acceleration).
- (b) Following service of notice under either clause 27.19 (Acceleration) or clause 27.20 (Revolving Facility Acceleration), this clause 33 (Sharing Among the Senior Finance Parties) shall apply to all receipts or recoveries by Ancillary Lenders except to the extent that the receipt or recovery represents a reduction of the Gross Outstandings of a Multi-account Overdraft to or towards an amount equal to its Net Outstandings.

## 34. **PAYMENT MECHANICS**

### 34.1 **Payments to the Facility Agent**

- (a) On each date on which an Obligor or a Lender is required to make a payment under a Senior Finance Document, excluding a payment under the terms of an Ancillary Document that Obligor or Lender shall make the same available to the Facility Agent (unless a contrary indication appears in a Senior 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.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency (or, in relation to euro, in a principal financial centre in such Participating Member State or London, as specified by the Facility Agent) and with such bank as the Facility Agent, in each case, specifies.

#### **34.2 Distributions by the Facility Agent**

Each payment received by the Facility Agent under the Senior Finance Documents for another Party shall, subject to clause 34.3 (Distributions to an Obligor) and clause 34.4 (Clawback and Pre-Funding) be made available by the Facility 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 Facility Agent by not less than five Business Days' notice with a bank specified by that Party in the principal financial centre of the country of that currency (or, in relation to euro, in the principal financial centre of a Participating Member State or London, as specified by that Party).

#### **34.3 Distributions to an Obligor**

The Facility Agent may (with the consent of the Obligor or in accordance with clause 35 (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 Senior Finance Documents or in or towards purchase of any amount of any currency to be so applied.

#### **34.4 Clawback and Pre-Funding**

- (a) Where a sum is to be paid to the Facility Agent under the Senior Finance Documents for another Party, the Facility Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) Unless paragraph (c) below applies, if the Facility Agent pays an amount to another Party and it proves to be the case that the Facility Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Facility Agent shall on demand refund the same to the Facility Agent together with interest on that amount from the date of payment to the date of receipt by the Facility Agent, calculated by the Facility Agent to reflect its cost of funds.
- (c) If the Facility Agent has notified the Lenders that it is willing to make available amounts for the account of a Borrower before receiving funds from the Lenders then if and to the extent that the Facility Agent does so but it proves to be the case that it does not then receive funds from a Lender in respect of a sum which it paid to a Borrower:
  - (i) the Facility Agent shall notify the Parent of that Lender's identity and the Borrower to whom that sum was made available shall on demand refund it to the Facility Agent; and
  - (ii) the Lender by whom those funds should have been made available or, if that Lender fails to do so, the Borrower to whom that sum was made available, shall on demand pay to the Facility Agent the amount (as certified by the Facility Agent) which will indemnify the Facility Agent against any funding cost incurred by it as a result of paying out that sum before receiving those funds from that Lender.

#### **34.5 Impaired Agent**

- (a) If, at any time, the Facility Agent becomes an Impaired Agent, an Obligor or a Lender which is required to make a payment under the Senior Finance Documents to the Facility Agent in accordance with clause 34.1 (Payments to the Facility Agent) may instead either:

- (i) pay that amount direct to the required recipient(s); or
- (ii) if in its absolute discretion it considers that it is not reasonably practicable to pay that amount direct to the required recipient(s), pay that amount or the relevant part of that amount to an interest-bearing account held with an Acceptable Bank within the meaning of paragraph (a) of the definition of "Acceptable Bank" and in relation to which no Insolvency Event has occurred and is continuing, in the name of the 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 Senior Finance Documents (the "**Recipient Party**" or "**Recipient Parties**").

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

- (b) All interest accrued on the amount standing to the credit of the trust account shall be for the benefit of the Recipient Party or the Recipient Parties pro rata to their respective entitlements.
- (c) A Party which has made a payment in accordance with this clause 34.5 shall be discharged of the relevant payment obligation under the Senior Finance Documents and shall not take any credit risk with respect to the amounts standing to the credit of the trust account.
- (d) Promptly upon the appointment of a successor Facility Agent in accordance with clause 31.13 (Replacement of the Facility 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 Facility Agent for distribution to the relevant Recipient Party or Recipient Parties in accordance with clause 34.2 (Distributions by the Facility Agent).
- (e) A Paying Party shall, promptly upon request by a Recipient Party and to the extent:
  - (i) that it has not given an instruction pursuant to paragraph (d) above; and
  - (ii) that it has been provided with the necessary information by that Recipient Party,

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

#### 34.6 **Partial Payments**

- (a) If the Facility Agent receives a payment for application against amounts due in respect of any Senior Finance Documents that is insufficient to discharge all the amounts then due and payable by an Obligor under those Senior Finance Documents, the Facility Agent shall (to the extent permitted by applicable law) apply that payment towards the obligations of that Obligor under those Senior Finance Documents in the following order:
  - (i) **first**, in or towards payment pro rata of any unpaid amount owing to the Facility Agent or the Security Agent under those Senior Finance Documents;
  - (ii) **secondly**, in or towards payment pro rata of any accrued interest, fee or commission due but unpaid under those Senior Finance Documents;



- (iii) **thirdly**, in or towards payment pro rata of any principal due but unpaid under those Senior Finance Documents; and
  - (iv) **fourthly**, in or towards payment pro rata of any other sum due but unpaid under the Senior Finance Documents.
- (b) The Facility Agent shall, if so directed by the Majority Lenders and, if that direction affects any payment to the Revolving Facility Lenders, the Majority Revolving Facility Lenders, vary the order set out in paragraphs (a)(ii) to (iv) above.
  - (c) Paragraphs (a) and (b) above will override any appropriation made by an Obligor.
  - (d) Notwithstanding this clause 34.6, upon the occurrence of any event listed in clause 11.1 (Exit), any proceeds received shall be applied in accordance with clause 17 (Application of Proceeds) of the Intercreditor Agreement.

#### 34.7 **No Set-Off by Obligors**

Save where specifically provided for in any Ancillary Facility, all payments to be made by an Obligor under the Senior Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

#### 34.8 **Business Days**

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

#### 34.9 **Currency of Account**

- (a) Subject to paragraphs (b) to (e) (inclusive) below, the Base Currency is the currency of account and payment for any sum due from an Obligor under any Senior Finance Document.
- (b) A repayment or prepayment of a Utilisation or Unpaid Sum or a part of a Utilisation or Unpaid Sum shall be made in the currency in which that Utilisation or Unpaid Sum is denominated, pursuant to this agreement, on its due date.
- (c) Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated, pursuant to this agreement, when that interest accrued.
- (d) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (e) Any amount expressed to be payable in a currency other than the Base Currency shall be paid in that other currency.

#### 34.10 **Change of Currency**

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:

- (i) any reference in the Senior Finance Documents to, and any obligations arising under the Senior 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 Parent); and
  - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Facility Agent (acting reasonably).
- (b) 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 Parent) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Interbank Market and otherwise to reflect the change in currency.

#### **34.11 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 Parent that a Disruption Event has occurred:

- (a) the Facility Agent may, and shall if requested to do so by the Parent, consult with the Parent with a view to agreeing with the Parent such changes to the operation or administration of the Facilities as the Facility Agent may deem necessary in the circumstances;
- (b) the Facility Agent shall not be obliged to consult with the Parent in relation to any changes mentioned in paragraph (a) above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) the Facility Agent may consult with the Senior Finance Parties in relation to any changes mentioned in paragraph (a) above but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- (d) any such changes agreed upon by the Facility Agent and the Parent shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Senior Finance Documents notwithstanding the provisions of clause 40 (Amendments and Waivers);
- (e) the Facility Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this clause 34.11; and
- (f) the Facility Agent shall notify the Senior Finance Parties of all changes agreed pursuant to paragraph (d) above.

#### **35. SET-OFF**

- (a) Whilst an Event of Default is continuing a Senior Finance Party may set off any matured obligation due from an Obligor under the Senior Finance Documents (to the extent beneficially owned by that Senior Finance Party) against any matured obligation owed by that Senior 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 Senior 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.

- (b) Any credit balances taken into account by an Ancillary Lender when operating a net limit in respect of any overdraft under an Ancillary Facility shall on enforcement of the Senior Finance Documents be applied first in reduction of the overdraft provided under that Ancillary Facility in accordance with its terms.

## **36. NOTICES**

### **36.1 Communications in Writing**

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

### **36.2 Addresses**

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

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

or any substitute address, fax number or department or officer as the Party may notify to the 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.

### **36.3 Delivery**

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

and, if a particular department or officer is specified as part of its address details provided under clause 36.2 (Addresses), if addressed to that department or officer.

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

- (d) Any communication or document made or delivered to the Parent in accordance with this clause 36.3 will be deemed to have been made or delivered to each of the Obligors.
- (e) Any communication or document which becomes effective, in accordance with paragraphs (a) to (d) (inclusive) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

#### 36.4 **Notification of Address and Fax Number**

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

#### 36.5 **Communication when Facility Agent is Impaired Agent**

If the Facility Agent is an Impaired Agent the Parties may, instead of communicating with each other through the Facility Agent, communicate with each other directly and (while the Facility Agent is an Impaired Agent) all the provisions of the Senior Finance Documents which require communications to be made or notices to be given to or by the Facility 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 Facility Agent has been appointed.

#### 36.6 **Electronic Communication**

Any communication to be made between any two Parties under or in connection with the Senior Finance Documents may be made by electronic mail or other electronic means:

- (a) to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication and if those two Parties:
  - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
  - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any electronic communication made between those two Parties will be effective only when actually received in readable form and in the case of any electronic communication made by a Party to the Facility Agent or the Security Agent only if it is addressed in such a manner as the Facility Agent or Security Agent shall specify for this purpose.
- (c) Any electronic communication which becomes effective, in accordance with paragraph (b) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

#### 36.7 **Use of Websites**

- (a) The Parent may satisfy its obligation under this agreement to deliver any information in relation to those Lenders (the "**Website Lenders**") who accept this method of communication by posting this information onto an electronic website designated by the Parent and the Facility Agent (the "**Designated Website**") if:
  - (i) the Facility Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;

- (ii) both the Parent and the Facility Agent are aware of the address of and any relevant password specifications for the Designated Website; and
- (iii) the information is in a format previously agreed between the Parent and the Facility Agent.

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

- (b) 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 Parent and the Facility Agent.
- (c) The Parent shall promptly upon becoming aware of its occurrence notify the Facility Agent if:
  - (i) the Designated Website cannot be accessed due to technical failure;
  - (ii) the password specifications for the Designated Website change;
  - (iii) any new information which is required to be provided under this agreement is posted onto the Designated Website;
  - (iv) any existing information which has been provided under this agreement and posted onto the Designated Website is amended; or
  - (v) the Parent becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.

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

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

### 36.8 **English Language**

- (a) Any notice given under or in connection with any Senior Finance Document must be in English.
- (b) All other documents provided under or in connection with any Senior Finance Document must be:
  - (i) in English; or
  - (ii) 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.

## 37. **CALCULATIONS AND CERTIFICATES**

### 37.1 **Accounts**

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

### 37.2 **Certificates and Determinations**

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

### 37.3 **Day Count Convention**

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

## 38. **PARTIAL INVALIDITY**

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

## 39. **REMEDIES AND WAIVERS**

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

## 40. **AMENDMENTS AND WAIVERS**

### 40.1 **Intercreditor Agreement**

This clause 40 is subject to the terms of the Intercreditor Agreement.

### 40.2 **Required Consents**

- (a) Subject to clauses 40.3 (All Lender Matters) to 40.7 (Excluded Commitments) (inclusive) and the provisions of the Intercreditor Agreement, any term of the Senior Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Parent and any such amendment or waiver will be binding on all Parties.
- (b) The Facility Agent may effect, on behalf of any Senior Finance Party, any amendment or waiver permitted by this clause 40 (Amendments and Waivers).

- (c) Without prejudice to the generality of paragraphs (c), (d) and (e) of clause 31.7 (Rights and Discretions), the Facility Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this agreement.
- (d) Each Obligor agrees to any such amendment or waiver permitted by this clause 40 (Amendments and Waivers) which is agreed to by the Parent. This includes any amendment or waiver which would, but for this paragraph (d), require the consent of all of the Guarantors.
- (e) If a decision of the Lenders is required, then each Lender which has Commitments in respect of which it is entitled to cast a vote or votes ("**Eligible Commitments**") may elect to vote all or only part of those Eligible Commitments and may also vote part of its Eligible Commitments in one way whilst voting another part of its Eligible Commitments in another way.
- (f) For the avoidance of doubt, an amendment or waiver which requires the consent of all the Lenders requires 100 per cent of Eligible Commitments to be cast in favour and not merely all of the Lender institutions to vote in favour. The same principle applies mutatis mutandis to Majority Lender and Majority Revolving Facility Lender decision making.

#### 40.3 **All Lender Matters**

An amendment, waiver or consent in relation to any term of any Senior Finance Document that has the effect of changing or which relates to:

- (a) the definition of "Hedge Counterparty", "Majority Lenders", "Majority Revolving Facility Lenders", "Material Company" and "Significant Disposal" in clause 1.1 (Definitions);
- (b) an extension to the date of payment of any amount under the Senior Finance Documents (other than in relation to clause 11 (Mandatory Prepayment and Cancellation));
- (c) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable under the Senior Finance Documents;
- (d) a change in the currency of payment of any amount under the Senior Finance Documents;
- (e) an increase in any Commitment or the Total Commitments, any extension of any Availability Period or any requirement that a cancellation of Commitments reduces the Commitments of the Lenders rateably under the relevant Facility;
- (f) a change to the Borrowers or Guarantors other than in accordance with clause 30 (Changes to the Obligors);
- (g) any provision which expressly requires the consent of all the Lenders;
- (h) the definition of "CAR Facility Maximum Amount" and/or Clause 3.4(a) (CAR Facility);
- (i) the definition of "CAR Facility Maximum Margin", Clauses 3.4(d) and/or Clauses 3.5 (CAR Facility) and 3.20 (Lender's right in relation to a CAR Facility);
- (j) clause 2.3 (Senior Finance Parties' Rights and Obligations), clause 11.3 (Application of Mandatory Prepayments and Cancellations), clause 12.10 (Application of Prepayments), clause 26.36 (Guarantors), clause 28 (Changes to the Lenders),

clause 34.6 (Partial Payments), this clause 40 (Amendments and Waivers), clause 44 (Governing Law) or clause 45.1 (Jurisdiction of English Courts)

- (k) (other than as expressly permitted by the provision of any Senior Finance Document) which relates to the nature or scope of:
  - (i) the guarantee and indemnity granted under clause 22 (Guarantee and Indemnity);
  - (ii) the Charged Property; or
  - (iii) the manner in which the proceeds of enforcement of the Transaction Security are distributed,

(except in the case of paragraphs (ii) and (iii) above, insofar as it relates to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this agreement or any other Senior Finance Document);
- (l) the release of any guarantee and indemnity granted under clause 22 (Guarantee and Indemnity) or of any Transaction Security unless relating to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this agreement or any other Senior Finance Document; or
- (m) the order of priority or subordination under the Intercreditor Agreement,

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

#### 40.4 **Majority Revolving Facility Lender matters**

An amendment, waiver or consent in relation to any term of any Senior Finance Document that has the effect of changing or which relates to:

- (a) a Material Event of Default, the definition of "Material Event of Default" or the definitions used therein;
- (b) the provisions of clause 24.1 (Financial statements) or clause 24.2 (Provision and Contents of Compliance Certificate) which has the effect of delaying the delivery of the financial statements or Compliance Certificate (as the case may be) referred to therein by more than 30 days (beyond the time limits contemplated by those provisions in their original form);
- (c) the definitions of "Permitted Security" or the provisions of clause 26.15 (Negative Pledge) to the extent that the effect of such amendment or waiver is to permit the incurrence of Security that ranks *pari passu* or in priority to the Revolving Facility and would be materially adverse to the interests of the Lenders under the Revolving Facility Lenders;
- (d) clause 27.6 (Insolvency), clause 27.7 (Insolvency Proceedings) or clause 27.8 (Creditors' Process) to the extent such change would be materially adverse to the interest of the Lenders under the Revolving Facility;
- (e) the definitions of "Change of Control", "Significant Asset" or "Significant Company";
- (f) clause 4.1(b) (Purpose);



- (g) clause 5.2 (Further Conditions Precedent) including, for the purposes of clause 5.2 (Further Conditions Precedent) only, any Default that would constitute a drawstop under that clause;
- (h) clause 6 (Utilisation – Loans);
- (i) clause 6.7 (Clean Down);
- (j) clause 9.3(c) (Voluntary Prepayment of Term Loans) or clause 11 (Mandatory Prepayment and Cancellation);
- (k) clause 27.16 (Repudiation and Rescission of Agreements);
- (l) clause 25.2(d) (Super Senior EBITDA), the definition of “Adjusted EBITDA” or “Total Net Debt” or, solely for the purposes of determining those ratios, the definitions used or clauses referred to in that paragraph or that definition;
- (m) clause 26.16 (Disposals) to the extent that such amendment or waiver is to permit Significant Disposals which are not permitted by the definition of Permitted Disposal as at the date of this agreement;
- (n) clause 27.20 (Revolving Facility Acceleration);
- (o) clause 40.4 (Majority Revolving Facility Lender matters);
- (p) clause 40.6 (Other Exceptions),

shall require the consent of the Majority Lenders and the Majority Revolving Lenders.

Any waiver of a Material Event of Default shall not require any consent of the Majority Lenders, provided that, where the event or circumstance that caused such Material Event of Default has also resulted in a Default, such Default may only be waived by the Majority Lenders, but for the avoidance of doubt any waiver of such Default by the Majority Lenders will not constitute a waiver of the corresponding Material Event of Default.

#### 40.5 **Approved List**

- (a) Subject to paragraph (b) below, the Approved List may be amended with the prior written consent of the Facility Agent (acting on the instruction of the Majority Lenders) and the Parent provided that the number of banks and financial institutions on the Approved List is not reduced at any time.
- (b) The Parent may, subject to giving five Business Days prior notice to the Facility Agent, in its sole discretion:
  - (i) add any new person to the Approved List at any time;
  - (ii) remove up to three persons from the Approved List per Financial Year (but no more than five in aggregate during the life of the Facilities) provided that the Parent shall simultaneously add a new person (chosen by the Parent in its sole discretion) to the Approved List in place of each person removed; and
  - (iii) remove a potential transferee name from the Approved List where such potential transferee has been acquired by, has merged with or has otherwise combined its operations with, a person who is not included in the Approved List.

- (c) Any person included in part 1 of the Approved List who has been acquired by, has merged with or has otherwise combined its operations with a person listed in part 2 of the Approved List or an affiliate of such person shall become considered as listed in part 2 of the Approved List.
- (d) A Lender may at any time notify the Parent of the details of any entity it wishes to be added to the Approved List. The addition of any such entities will be subject to the consent (such consent not to be unreasonably withheld) of the Parent.
- (e) Any entity consented to by the Parent as a permitted transferee or assignee under clause 28.2(a)(i) or 28.2(b) (Conditions of Assignment or Transfer) shall be automatically added to the Approved List.
- (f) For the avoidance of doubt, an amendment to the Approved List will be without prejudice to the effect of any assignment or transfer which is made in accordance with clause 28 (Changes to the Lenders) prior to the date of such amendment.
- (g) The Facility Agent shall make available the Approved List for review by a Lender or a prospective New Lender at its request for the purposes of verifying of such Lender's compliance with the provisions of this agreement.

#### 40.6 **Other Exceptions**

- (a) An amendment or waiver which relates to the rights or obligations of the Facility Agent, the Arranger, the Security Agent, any Ancillary Lender or a Hedge Counterparty (each in their capacity as such) may not be effected without the consent of the Facility Agent, the Arranger, the Security Agent, that Ancillary Lender or as the case may be, that Hedge Counterparty.
- (b) Any manifest error in the Senior Finance Documents which is of a typographical nature may be amended by agreement between the Facility Agent and the Parent and any such amendment will be binding on all Parties.

#### 40.7 **Excluded Commitments**

If:

- (a) any Defaulting Lender fails to respond to a request for a consent, waiver, amendment of or in relation to any term of any Senior Finance Document or any other vote of Lenders under the terms of this agreement within 20 Business Days of that request being made; or
- (b) any Lender which is not a Defaulting Lender fails to respond to such a request (other than an amendment, waiver or consent referred to in paragraphs (b), (c) and (e) of clause 40.3 (All Lender Matters)) or such a vote within 20 Business Days of that request being made,

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

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

#### 40.8 Replacement of Lender

- (a) If:
- (i) any Lender becomes a Non-Consenting Lender; or
  - (ii) an Obligor becomes obliged to repay any amount in accordance with clause 10.1 (Illegality) or to pay additional amounts pursuant to clause 18.1 (Increased Costs) or clause 17.2 (Tax Gross-up) or clause 17.3 (Tax Indemnity) to any Lender;

then the Parent may, on not less than 10 Business Days' prior written notice to the Facility Agent and that Lender, replace that Lender by requiring that Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to clause 28 (Changes to the Lenders) all (and not part only) of its rights and obligations under this agreement to a Lender or other bank, financial institution, trust, fund or other entity (a "**Replacement Lender**") selected by the Parent, and which confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with clause 28 (Changes to the Lenders) for a purchase price in cash payable at the time of transfer in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Utilisations and all accrued interest (to the extent that the Facility Agent has not given a notification under clause 28.12 (Pro Rata Interest Settlement)), Break Costs and other amounts payable in relation thereto under the Senior Finance Documents.

- (b) The replacement of a Lender pursuant to this clause shall be subject to the following conditions:
- (i) the Parent shall have no right to replace the Facility Agent or Security Agent;
  - (ii) neither the Facility Agent nor the Lender shall have any obligation to the Parent to find a Replacement Lender;
  - (iii) in the event of a replacement of a Non-Consenting Lender such replacement must take place no later than 60 days after the date on which that Lender is deemed a Non-Consenting Lender;
  - (iv) in no event shall the Lender replaced under this clause 40.8 be required to pay or surrender to such Replacement Lender any of the fees received by such Lender pursuant to the Senior Finance Documents; and
  - (v) the Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (a) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer.
- (c) A 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 Parent when it is satisfied that it has complied with those checks.
- (d) Subject to paragraph (e) below, if at any time any Lender becomes a Non-Consenting Lender, the Parent may, on not less than 10 Business Days' prior written notice to the Facility Agent and that Lender, prepay that Lender's participation in all (and not part only) of the Utilisations and cancel all (and not part only) of that Lender's Commitments.

- (e) Prepayments made under this clause:
  - (i) will be at par and will include all accrued interest, fees, Break Costs and other amounts payable in relation thereto under the Senior Finance Documents;
  - (ii) may be made only out of the proceeds of a New Shareholder Injection made expressly for that purpose or out of Retained Excess Cashflow (not used for any other purpose) not required to be applied in prepayment of the Facilities under clause 11.1 (Exit) (and not used for any other purpose).
- (f) In the event that:
  - (i) the Parent or the Facility Agent (at the request of the Parent) has requested the Lenders to give a consent in relation to, or to agree to a waiver or amendment of, any provisions of the Senior Finance Documents;
  - (ii) the consent, waiver or amendment in question requires the approval of all the Lenders; and
  - (iii) Lenders whose Commitments aggregate in the case of a consent, waiver or amendment requiring the approval of all the Lenders more than 90 per cent of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 90 per cent of the Total Commitments prior to that reduction) have consented or agreed to such waiver or amendment,

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

#### 40.9 **Disenfranchisement of Defaulting Lenders**

- (a) For so long as a Defaulting Lender has any Available Commitment, in ascertaining:
  - (i) the Majority Lenders; or
  - (ii) whether:
    - (A) any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments under the relevant Facility/ies; or
    - (B) 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 Senior Finance Documents, that Defaulting Lender's Commitments under the relevant Facility/ies will be reduced by the amount of its Available Commitments under the relevant Facility/ies 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.
- (b) For the purposes of this clause 40.9, the Facility Agent may assume that the following Lenders are Defaulting Lenders:
  - (i) any Lender which has notified the Facility Agent that it has become a Defaulting Lender;

- (ii) any Lender in relation to which it is aware that any of the events or circumstances referred to in paragraphs (a), (b) and (c) of the definition of "Defaulting Lender" has occurred,

unless it has received notice to the contrary from the Lender concerned (together with any supporting evidence reasonably requested by the Facility Agent) or the Facility Agent is otherwise aware that the Lender has ceased to be a Defaulting Lender.

#### 40.10 **Replacement of a Defaulting Lender**

- (a) The Parent may, at any time a Lender has become and continues to be a Defaulting Lender, by giving five Business Days' prior written notice to the Facility Agent and such Lender:

- (i) replace such Lender by requiring such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to clause 28 (Changes to the Lenders) all (and not part only) of its rights and obligations under this agreement;
- (ii) require such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to clause 28 (Changes to the Lenders) all (and not part only) of the undrawn Revolving Facility Commitment of the Lender; or
- (iii) require such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to clause 28 (Changes to the Lenders) all (and not part only) of its rights and obligations in respect of the Revolving Facility,

to a Lender or other bank, financial institution, trust, fund or other entity (a **"Replacement Lender"**) selected by the Parent, which is acceptable and 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 29 (Changes to the Lenders) for a purchase price in cash payable at the time of transfer which is either:

- (i) in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Utilisations and all accrued interest, (to the extent that the Facility Agent has not given a notification under clause 28.12 (Pro Rata Interest Settlement)), Break Costs and other amounts payable in relation thereto under the Senior Finance Documents; or
- (ii) in an amount agreed between that Defaulting Lender, the Replacement Lender and the Parent and which does not exceed the amount described in paragraph (i) above.

- (b) Any transfer of rights and obligations of a Defaulting Lender pursuant to this clause 40.10 shall be subject to the following conditions:

- (i) the Parent shall have no right to replace the Facility Agent or Security Agent;
- (ii) neither the Facility Agent nor the Defaulting Lender shall have any obligation to the Parent to find a Replacement Lender;
- (iii) the transfer must take place no later than 90 days after the notice referred to in paragraph (a) above;

- (iv) in no event shall the Defaulting Lender be required to pay or surrender to the Replacement Lender any of the fees received by the Defaulting Lender pursuant to the Senior Finance Documents; and
- (v) the Defaulting Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (a) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer to the Replacement Lender.
- (c) The Defaulting Lender shall perform the checks described in paragraph (b)(v) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a) above and shall notify the Facility Agent and the Parent when it is satisfied that it has complied with those checks.

## **41. CONFIDENTIALITY**

### **41.1 Confidential Information**

Each Senior Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by clause 41.2 (Disclosure of Confidential Information) and clause 41.3 (Disclosure to Numbering Service Providers), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

### **41.2 Disclosure of Confidential Information**

Any Senior Finance Party may disclose:

- (a) to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
  - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Senior Finance Documents or which succeeds (or which may potentially succeed) it as Facility Agent or Security Agent and, in each case, to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
  - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Senior Finance Documents and/or one or more Obligors and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
  - (iii) appointed by any Senior Finance Party or by a person to whom paragraph (b)(i) or (ii) above applies to receive communications, notices, information or documents delivered pursuant to the Senior Finance

Documents on its behalf (including, without limitation, any person appointed under clause 31.15(c) (Relationship with the Lenders));

- (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;
- (v) to whom information is required or requested to be disclosed by any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
- (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
- (vii) to whom or for whose benefit that Senior Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to clause 28.10 (Security over Lenders' Rights);
- (viii) who is a Party; or
- (ix) with the consent of the Parent,

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

- (A) in relation to paragraphs (b)(i), (b)(ii) and (b)(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
  - (B) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
  - (C) in relation to paragraphs (b)(v), (b)(vi) and (b)(vii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;
- (c) to any person appointed by that Senior Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Senior Finance Documents including without limitation, in relation to the trading of participations in respect of the Senior Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use with Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Parent and the relevant Senior Finance Party;

- (d) to the International Swaps and Derivatives Association, Inc. or any relevant committee thereof, for the purpose of determining the settlement procedures applicable to the obligations under the Senior Finance Documents which are the subject of a credit derivative transaction or other credit linked transaction;
- (e) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Senior Finance Documents and/or the Obligors if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information;
- (f) to any companies or commercial registry (or similar) where disclosure is made solely for the purpose of protecting the Senior Finance Parties' interests under the Senior Finance Documents;
- (g) any Lender may disclose the size and term of the Facilities and the name of each of the Obligors to any investor or potential investor in a securitisation (or similar transaction of broadly equivalent economic effect) of that Lender's rights or obligations under the Senior Finance Documents.

#### 41.3 **Disclosure to Numbering Service Providers**

- (a) Any Senior Finance Party may disclose to any national or international numbering service provider appointed by that Senior Finance Party to provide identification numbering services in respect of this agreement, the Facilities and/or one or more Obligors the following information:
  - (i) names of Obligors;
  - (ii) country of domicile of Obligors;
  - (iii) place of incorporation of Obligors;
  - (iv) date of this agreement;
  - (v) clause 44 (Governing Law);
  - (vi) the names of the Facility Agent and the Arranger;
  - (vii) date of each amendment and restatement of this agreement;
  - (viii) amounts of, and names of, the Facilities (and any tranches);
  - (ix) amount of Total Commitments;
  - (x) currencies of the Facilities;
  - (xi) type of Facilities;
  - (xii) ranking of Facilities;
  - (xiii) Termination Date for Facilities;
  - (xiv) changes to any of the information previously supplied pursuant to paragraphs (i) to (xiii) (inclusive) above; and
  - (xv) such other information agreed between such Senior Finance Party and the Parent,



to enable such numbering service provider to provide its usual syndicated loan numbering identification services.

- (b) The Parties acknowledge and agree that each identification number assigned to this agreement, the Facilities and/or one or more Obligors by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.
- (c) The Facility Agent shall notify the Parent and the other Senior Finance Parties of:
  - (i) the name of any numbering service provider appointed by the Facility Agent in respect of this agreement, the Facilities and/or one or more Obligors; and
  - (ii) the number or, as the case may be, numbers assigned to this agreement, the Facilities and/or one or more Obligors by such numbering service provider.

#### **41.4 Entire Agreement**

This clause 41 (Confidentiality) constitutes the entire agreement between the Parties in relation to the obligations of the Senior Finance Parties under the Senior Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

#### **41.5 Inside Information**

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

#### **41.6 Notification of Disclosure**

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

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to clause 41.2(b)(v) (Disclosure of Confidential Information) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this clause 41 (Confidentiality).

#### **41.7 Continuing Obligations**

The obligations in clause 41 (Confidentiality) are continuing and, in particular, shall survive and remain binding on each Senior Finance Party for a period of twelve months from the earlier of:

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

## 42. **DISCLOSURE OF LENDER DETAILS BY FACILITY AGENT**

### 42.1 **Supply of Lender Details to Parent**

The Facility Agent shall provide to the Parent within five Business Days of a request by the Parent (but no more frequently than once per calendar month), a list (which may be in electronic form) setting out the names of the Lenders as at the date of that request, their respective Commitments, the address and fax number (and the department or officer, if any, for whose attention any communication is to be made) of each Lender for any communication to be made or document to be delivered under or in connection with the Senior 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 Senior 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 Senior Finance Documents.

### 42.2 **Supply of Lender Details at Parent's direction**

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

### 42.3 **Supply of Lender Details to other Lenders**

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

### 42.4 **Lender Enquiry**

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

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

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

#### 42.5 **Lender Details Definitions**

In this clause 42 (Disclosure of Lender Details by Facility Agent):

**"Investment Grade Rating"** means, in relation to an entity, a rating for its long-term unsecured and non credit-enhanced debt obligations of A- or higher by Standard & Poor's Rating Services or Fitch Ratings Ltd or A2 or higher by Moody's Investors Service Limited or a comparable rating from an internationally recognised credit rating agency;

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

#### 43. **COUNTERPARTS**

Each Senior 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 Senior Finance Document.

#### 44. **GOVERNING LAW**

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

#### 45. **ENFORCEMENT**

##### 45.1 **Jurisdiction of English Courts**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this agreement (including a dispute relating to the existence, validity or termination of this agreement or any non-contractual obligation arising out of or in connection with this agreement) (a **"Dispute"**).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

##### 45.2 **Service of Process**

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in England and Wales):
  - (i) irrevocably appoints the Parent as its agent for service of process in relation to any proceedings before the English courts in connection with any Senior Finance Document (and the Parent by its execution of this agreement, accepts that appointment); and
  - (ii) agrees that failure by an agent for service of process to notify the relevant Obligor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Parent (on behalf of all the Obligors) must immediately (and in any event within five days of such event taking place) appoint another agent on terms acceptable to the Facility Agent. Failing this, the Facility Agent may appoint another agent for this purpose.

- (c) The Parent expressly agrees and consents to the provisions of this clause 45 (Enforcement) and clause 44 (Governing Law).

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

## SCHEDULE 1

### The Original Parties

#### Part 1 – The Original Obligors

<b>Name of Original Borrower</b>	<b>Registration number (or equivalent if any)</b>	<b>Jurisdiction</b>
Company	10089477	England and Wales

<b>Name of Original Guarantor</b>	<b>Registration number (or equivalent if any)</b>	<b>Jurisdiction</b>
Parent	10084852	England and Wales
Company	10089477	England and Wales

#### Part 2 – The Original Lenders

<b>Name of Original Lender</b>	<b>Facility A Commitment</b>	<b>Revolving Facility Commitment</b>
Crescent European Specialty Lending (Levered) B Sarl	£6,787,430	£nil
Crescent European Specialty Lending (Levered Unhedged) B Sarl	£3,225,415	
Crescent European Specialty Lending (Unlevered) B Sarl	£8,882,843	
Crescent/Kamehameha Schools Partnership LP	£1,104,312	
The Royal Bank of Scotland plc, as agent for National Westminster Bank plc	£nil	£3,500,000
	£20,000,000	£3,500,000

#### Part 3 – The Original Hedge Counterparties

N/A

## **SCHEDULE 2**

### **Conditions Precedent**

#### **Part 1 – Conditions Precedent to Utilisation of the Agreement**

##### **1. OBLIGORS**

- (a) A copy of the Constitutional Documents and of the constitutional documents of each other Original Obligor.
- (b) A copy of a resolution of the board of directors of each Original Obligor:
  - (i) approving the terms of, and the transactions contemplated by, the Senior Finance Documents to which it is a party and resolving that it execute, deliver and perform the Senior Finance Documents to which it is a party;
  - (ii) authorising a specified person or persons to execute the Senior Finance Documents to which it is a party on its behalf;
  - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request and Selection Notice) to be signed and/or despatched by it under or in connection with the Senior Finance Documents to which it is a party; and
  - (iv) in the case of an Obligor other than the Parent, authorising the Parent to act as its agent in connection with the Senior Finance Documents.
- (c) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above in relation to the Senior Finance Documents and related documents.
- (d) A copy of a resolution signed by all the holders of the issued shares in each Original Guarantor (other than the Parent), approving the terms of, and the transactions contemplated by, the Senior Finance Documents to which the Original Guarantor is a party.
- (e) A certificate of the Parent (signed by a director) confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on any Original Obligor to be exceeded.
- (f) A certificate of the Parent (signed by a director) or other relevant Original Obligor certifying that each copy document relating to it specified in this part 1 of this schedule 2 is correct, complete and in full force and effect and has not been amended or superseded. Such certification to be made as at a date no earlier than the date of this agreement.

##### **2. TRANSACTION DOCUMENTS**

- (a) A copy of each of the Acquisition Documents executed by the parties to those documents.
- (b) A copy of each of the Equity Documents made on or before the date of this agreement in the agreed form and executed by the parties to those documents.
- (c) A copy of each of the Service Contracts.

### 3. **SENIOR FINANCE DOCUMENTS**

- (a) The Intercreditor Agreement executed by the Group Companies party to that agreement and the holders of the Loan Notes and Management Loan Notes.
- (b) This agreement executed by the Group Companies party to this agreement.
- (c) The Fee Letters executed by the Parent.
- (d) The Hedging Letter in the agreed form and executed by the Parent.
- (e) The following Transaction Security Documents executed by the Original Obligors specified below opposite the relevant Transaction Security Document:

<b>Name of Original Obligor</b>	<b>Transaction Security Document</b>
Parent	English law debenture
Company	English law debenture

### 4. **PROTECTION OF TRANSACTION SECURITY**

- (a) Notices of assignment or charge (except in relation to the insurance policies of the Group) to be sent under the Transaction Security Documents executed on behalf of each relevant Original Obligor.
- (b) The share certificates, transfers and stock transfer forms or equivalent duly stamped and executed by the relevant Original Obligor (other than the Parent) in blank in relation to the assets subject to or expressed to be subject to the Transaction Security except for the share certificates of the Target which will be in the name of the relevant Vendor.
- (c) Any other documents of title to be provided under the Transaction Security Documents.
- (d) Written acknowledgement in the agreed form executed by the Vendor acknowledging the Transaction Security over the Acquisition Agreement.

### 5. **INSURANCE**

A letter from Vista Insurance Brokers Ltd, insurance broker dated the date of this agreement addressed to the Facility Agent, the Arranger, the Security Agent and the Lenders listing the insurance policies of the Group.

### 6. **LEGAL OPINIONS**

A legal opinion of CMS Cameron McKenna LLP, legal advisers to the Facility Agent and the Arrangers as to English law substantially in the form distributed to the Original Lenders prior to signing this agreement.

### 7. **OTHER DOCUMENTS AND EVIDENCE**

- (a) The Group Structure Chart which shows the Group assuming the Closing Date has occurred.
- (b) The Base Case Model.

- (c) The Reports.
- (d) Evidence that all Financial Indebtedness, Security and guarantees not permitted to remain outstanding under the terms of this agreement, including in respect of the Target Shares will be discharged and released on the Closing Date.
- (e) A copy, certified by a director of the Parent to be a true copy, of the Original Financial Statements of each Obligor required to accede as an Additional Obligor on or prior to the Closing Date or in accordance with clause 26.38 (Conditions Subsequent).
- (f) A certificate of the Parent (signed by a director) addressed to the Senior Finance Parties confirming (assuming the Closing Date has occurred) which companies within the Group are Material Companies.
- (g) The Approved List.
- (h) A copy of any other Authorisation or other document, opinion or assurance which the Facility Agent considers to be necessary or desirable (and which if it has notified the Parent accordingly prior to the date of this agreement) in connection with the entry into and performance of the transactions contemplated by any Senior Finance Document or for the validity and enforceability of any Senior Finance Document.
- (i) The VCOC letter.

## 8. **CLOSING AND FUNDING**

- (a) The Funds Flow Statement in a form agreed by the Parent and the Facility Agent detailing the proposed movement of funds on or before the Closing Date.
- (b) A certificate of the Parent (signed by a director) detailing the estimated Acquisition Costs.
- (c) A certificate of the Parent (signed by a director) certifying that:
  - (i) each of the matters specified in clause 4 of the Acquisition Agreement has been satisfied or, with the consent of the Facility Agent, waived (other than matters to be made pursuant to clause 3, which will be satisfied immediately following utilisation of Facility A);
  - (ii) no Acquisition Document has been amended, varied, novated, supplemented, superseded, waived or terminated except with the consent of the Facility Agent; and
  - (iii) the Parent is not aware of any breach of any warranty or any claim under the Acquisition Agreement.
- (d) A certificate of the Parent (signed by a director) certifying:
  - (i) that the Shareholders' Agreement is in full force and effect;
  - (ii) that the Investors have subscribed for at least £[ ] of ordinary shares, £[ ] of Loan Notes and £[ ] of Management Loan Notes in the Parent as required by the Shareholders' Agreement;
  - (iii) that those ordinary shares, Loan Notes and Management Loan Notes subscribed for have been issued fully paid;



- (iv) that as a result of the above subscriptions or loans the Parent has the sum of at least available to it of £[ ] made up of at least:

Ordinary Shares £[ ]

Loan Notes £[ ]

Management Loan Notes £[ ]

and that sum of at least £[ ] has been applied or will, simultaneously with first Utilisation under this agreement, be applied for the same purpose as the proceeds of Facility A; and

- (v) the percentage of the total consideration payable in respect of the Acquisition which was contributed from the proceeds of (d)(ii) to (iv) above (the "**Caledonia Equity Contribution Percentage**") is [ ]% and it will simultaneously with (or prior to) first Utilisation be applied by the Company for the same purposes as Facility A to enable Completion to occur.
- (e) Utilisation Requests relating to any Utilisations to be made on the Closing Date.
- (f) Evidence that the fees, costs and expenses then due from the Parent pursuant to clause 16 (Fees), clause 16.5 (Interest, Commission and Fees on Ancillary Facilities), clause 17.6 (Stamp Taxes) and clause 21 (Costs and Expenses) have been paid or will be paid by the first Utilisation Date.

## 9. "**KNOW YOUR CUSTOMER**" CHECKS

In relation to each Original Obligor, all necessary "know your customer" information requested by the Facility Agent for itself and/or on behalf of any other Finance Party.

## **Part 2 – Conditions Precedent Required to be Delivered by an Additional Obligor**

1. An Accession Deed executed by the Additional Obligor and the Parent.
2. A copy of the constitutional documents of the Additional Obligor.
3. A copy of a resolution of the board of directors of the Additional Obligor:
  - (a) approving the terms of, and the transactions contemplated by, the Accession Deed and the Senior Finance Documents and resolving that it execute, deliver and perform the Accession Deed and any other Senior Finance Document to which it is party;
  - (b) authorising a specified person or persons to execute the Accession Deed and other Senior Finance Documents on its behalf;
  - (c) authorising a specified person or persons, on its behalf, to sign and/or despatch all other documents and notices (including, in relation to an Additional Borrower, any Utilisation Request or Selection Notice) to be signed and/or despatched by it under or in connection with the Senior Finance Documents to which it is a party; and
  - (d) authorising the Parent to act as its agent in connection with the Senior Finance Documents.
4. A specimen of the signature of each person authorised by the resolution referred to in paragraph 3 above.
5. A copy of a resolution signed by all the holders of the issued shares of the Additional Guarantor, approving the terms of, and the transactions contemplated by, the Senior Finance Documents to which the Additional Guarantor is a party.
6. A certificate of the Additional Obligor (signed by a director) confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on it to be exceeded.
7. A certificate of the Additional Obligor (signed by a director) certifying that each copy document listed in this part 2 of this schedule 2 is correct, complete and in full force and effect and has not been amended or superseded. Such certification to be made as at a date no earlier than the date of the Accession Deed.
8. A copy of any other Authorisation or other document, opinion or assurance which the Facility Agent considers to be necessary or desirable in connection with the entry into and performance of the transactions contemplated by the Accession Deed or for the validity and enforceability of any Senior Finance Document.
9. If available, the latest audited financial statements of the Additional Obligor.
10. The following legal opinions, each addressed to the Facility Agent, the Security Agent and the Lenders:
  - (a) a legal opinion of the legal advisers to the Facility Agent in England, as to English law in the form distributed to the Lenders prior to signing the Accession Deed;
  - (b) if the Additional Obligor is incorporated in or has its "centre of main interest" or "establishment" (as referred to in clause 23.28 (Centre of Main Interests and Establishments)) in a jurisdiction other than England and Wales or is executing a Senior Finance Document which is governed by a law other than English law:

- (i) a legal opinion of the legal advisers to the Facility Agent in the jurisdiction of its incorporation or "centre of main interest" or "establishment" (as applicable) or, as the case may be, the jurisdiction of the governing law of that Senior Finance Document (the "**Applicable Jurisdiction**") as to the law of the Applicable Jurisdiction; and
- (ii) a legal opinion of the legal advisers to the Parent in relation to matters customary for a borrower's lawyers to give an opinion on in the Applicable Jurisdiction,

and each in the form distributed to the Lenders prior to signing the Accession Deed.

11. If the proposed Additional Obligor is incorporated in a jurisdiction other than England and Wales, evidence that the process agent specified in clause 45.2 (Service of Process), if not an Original Obligor, has accepted its appointment in relation to the proposed Additional Obligor.
12. Subject to the Agreed Security Principles any security documents which are required by the Facility Agent to be executed by the proposed Additional Obligor.
13. Any notices or documents required to be given or executed under the terms of those security documents.
14. Evidence that the Additional Obligor has done all that is necessary under any relevant laws relating to financial assistance or analogous processes (including without limitation for Additional Obligors incorporated in England and Wales or Scotland re-registering as a private company) in order to enable the Additional Obligor to enter into the Senior Finance Documents and perform its obligations under the Senior Finance Documents.
15. In relation to each Additional Obligor all necessary "know your customer" information requested by the Facility Agent for itself and/or on behalf of any other Finance Party.

### SCHEDULE 3

#### Requests and Notices

##### Part 1 – Utilisation Request Loans

From: [Borrower] [Parent]\*  
To: [Facility Agent]  
Dated: [●]

Dear Sirs

**[Parent] – [●] senior facilities agreement  
dated [●] (the "Facilities Agreement")**

1. We refer to the Facilities Agreement. This is a Utilisation Request. Terms defined in the Facilities Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to borrow a Loan on the following terms:
  - (a) Borrower: [●]
  - (b) Proposed Utilisation Date: [●] (or, if that is not a Business Day, the next Business Day)
  - (c) Facility to be utilised: [Facility A/[Revolving Facility]\*\*
  - (d) Currency of Loan: [●]
  - (e) Amount: [●] or, if less, the Available Facility
  - (f) Interest Period: [●]
3. We confirm that each condition specified in clause 5.2 (Further Conditions Precedent) is satisfied on the date of this Utilisation Request.
4. [This Loan is to be made in [whole]/[part] for the purpose of refinancing (identify maturing Revolving Facility Loan)./[The proceeds of this Loan should be credited to **[account]**].
5. This Utilisation Request is irrevocable.

Yours faithfully

.....  
authorised signatory for

[the Parent on behalf of **[insert name of relevant Borrower]**]/ **[insert name of Borrower]**

---

#### Notes:

- \* Amend as appropriate. The Utilisation Request can be given by the Borrower or the Parent.
- \*\* Select the Facility to be utilised and delete references to the other Facilities.

## Part 2 – Selection Notice

From: [Borrower]/[Parent]\*  
To: [Facility Agent]  
Dated: [●]

Dear Sirs

### [Parent] – [●] Senior Facilities Agreement dated [●] (the "Facilities Agreement")

1. We refer to the Facilities Agreement. This is a Selection Notice. Terms defined in the Facilities Agreement have the same meaning in this Selection Notice unless given a different meaning in this Selection Notice.
2. We refer to the following Facility [●] Loan[s] with an Interest Period ending on [●].\*\*
3. [We request that the next Interest Period for the above Facility [●] Loan[s] is [●]].\*\*\*
4. This Selection Notice is irrevocable.

Yours faithfully

.....  
authorised signatory for  
[the Parent on behalf of] [**insert name of relevant Borrower**]\*\*\*\*\*

---

#### Notes:

- \* Amend as appropriate. The Selection Notice can be given by the Borrower or the Parent.
- \*\* Insert details of all Term Loans for the relevant Facility which have an Interest Period ending on the same date.
- \*\*\* Use this option if sub-division is not required
- \*\*\*\* Amend as appropriate. The Selection Notice can be given by the Borrower or the Parent.

## SCHEDULE 4

### Form of Transfer Certificate

***[This transfer certificate operates by way of NOVATION. Execution and delivery of this transfer certificate may not of itself be sufficient to transfer the underlying security. Advice should be taken from lawyers in the jurisdictions where the security providers are incorporated.]***

***[Each of the existing lender and new lender should ensure that all regulatory requirements are satisfied in connection with this transfer certificate - including those necessary to remove the transferred assets from the regulatory balance sheet of the existing lender.]***

To: [●] as Facility Agent

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

Dated:

#### **[Parent] - [●] Senior Facilities Agreement dated [●] (the "Facilities Agreement")**

1. We refer to the Facilities Agreement and to the Intercreditor Agreement (as defined in the Facilities Agreement). This agreement (the "**Agreement**") shall take effect as a Transfer Certificate for the purpose of the Facilities Agreement and as a Creditor Accession Undertaking for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to clause 28.5 (Procedure for Transfer) of the Facilities Agreement:
  - (a) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation and in accordance with clause 28.5 (Procedure for Transfer), all of the Existing Lender's rights and obligations under the Facilities Agreement and the other Senior Finance Documents which relate to that portion of the Existing Lender's Commitment(s) and participations in Utilisations under the Facilities Agreement as specified in the Schedule.
  - (b) The proposed Transfer Date is [●].
  - (c) The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of clause 36.2 (Addresses) of the Facilities Agreement are set out in the schedule.
3. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in clause 28.4(c) (Limitation of Responsibility of Existing Lenders) of the Facilities Agreement.
4. The New Lender confirms, for the benefit of the Facility Agent and without liability to any Obligor, that it is:
  - (a) [a Qualifying Lender (other than a Treaty Lender);]
  - (b) [a Treaty Lender;]
  - (c) [not a Qualifying Lender].\*

5. [The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Senior Finance Document is either:
  - (a) a company resident in the United Kingdom for United Kingdom tax purposes;
  - (b) a partnership each member of which is:
    - (i) a company so resident in the United Kingdom; or
    - (ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or
  - (c) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.]
6. [The New Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number [●]) and is tax resident in [●], so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax and requests that the Parent notify:
  - (a) each Borrower which is a Party as a Borrower as at the Transfer Date; and
  - (b) each Additional Borrower which becomes an Additional Borrower after the Transfer Date

that it wishes the scheme to apply to the Facilities Agreement.]\*\*
7. The New Lender confirms that it [is]/[is not]\*\*\* a Sponsor Affiliate.
8. [the New Lender confirms that it [is]/[is not]\*\*\* a Non-Acceptable L/C Lender.]\*\*\*\*
9. We refer to clause [18.5] (Change of Senior Lender) of the Intercreditor Agreement:
 

In consideration of the New Lender being accepted as a Senior Lender for the purposes of the Intercreditor Agreement (and as defined therein), the New Lender confirms that, as from the Transfer Date, it intends to be party to the Intercreditor Agreement as a Senior Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a Senior Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.
10. 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.
11. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
12. This Agreement has been entered into on the date stated at the beginning of this Agreement.

**Note: The execution of this Agreement may not transfer a proportionate share of the Existing Lender's interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender's**

**Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.**

- 
- \* Delete as applicable. Each Lender is required to confirm which of these three categories it falls within.
  - \*\* Include if the New Lender holds a passport under the HMRC DT Treaty Passport Scheme and wishes that scheme to apply to the Facilities Agreement.
  - \*\*\* Delete as applicable.
  - \*\*\*\* Include only if the transfer includes the transfer of a Revolving Facility Commitment/a participation in the Revolving Facility.



## THE SCHEDULE

### Commitment/Rights and Obligations to be Transferred

#### Part 1

##### Existing Lender's existing Commitments

Existing Lender's existing Facility A Commitment: € / £ ●

Existing Lender's existing Revolving Facility Commitment: € / £ ●

#### Part 2

##### Commitments transferred

Portion of Existing Lender's existing Facility A Commitment to be transferred: € / £ ●

Portion of Existing Lender's existing Revolving Facility Commitment to be transferred: € / £ ●

#### Participation in Term Loans transferred:

Borrower	Participation	Interest Period
[ ]	[€ / £ ]	[ ]
[ ]	[€ / £ ]	[ ]

**Participation in Revolving Loans transferred:**

<b>Borrower</b>	<b>Participation</b>	<b>Interest Period</b>	<b>Maturity Date</b>
[                    ]	[                    ]	[                    ]	[                    ]
[                    ]	[                    ]	[                    ]	[                    ]

### Part 3

#### Particulars relating to the New Lender

Facility Office:

Contact Name:

Account for Payments:

Address for Notices:

Telephone:

Facsimile:

#### Signatories to Transfer Certificate

[*Existing Lender*]

By: .....

[*New Lender*]

[Executed as a deed by]

By: .....

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

[**Facility Agent**]

By:

[**Security Agent**]

By:

## SCHEDULE 5

### Form of Assignment Agreement

***[This Assignment Agreement operates by way of ASSIGNMENT AND ASSUMPTION (as opposed to novation). Care needs to be taken to ensure this does not trigger stamp duties or other transfer taxes.]***

***[Execution and delivery of this Assignment Agreement may not of itself be sufficient to transfer the underlying security. Advice should be taken from lawyers in the jurisdictions where the security providers are incorporated.]***

***[Each of the existing lender and new lender should ensure that all regulatory requirements are satisfied in connection with this Assignment Agreement – including those necessary to remove the transferred assets from the regulatory balance sheet of the existing lender.]***

To: [●] as Facility Agent and [●] as Parent, for and on behalf of each Obligor

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

Dated:

#### **[Parent – [●] Senior Facilities Agreement dated [●] (the "Facilities Agreement")**

1. We refer to the Facilities Agreement and to the Intercreditor Agreement (as defined in the Facilities Agreement). This is an Assignment Agreement. This agreement (the "**Agreement**") shall take effect as an Assignment Agreement for the purpose of the Facilities Agreement and as a Creditor Accession Undertaking for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to clause 28.6 (Procedure for Assignment or Assignment and Assumption) of the Facilities Agreement:
  - (a) The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Facilities Agreement, the other Senior Finance Documents and in respect of the Transaction Security which correspond to that portion of the Existing Lender's Commitment(s) and participations in Utilisations under the Facilities Agreement as specified in the schedule.
  - (b) The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender's Commitment(s) and participations in Utilisations under the Facilities Agreement specified in the schedule.
  - (c) The New Lender becomes a Party as a Lender, assumes and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph (b) above.
3. The proposed Transfer Date is [●].
4. On the Transfer Date the New Lender becomes:
  - (a) Party to the relevant Senior Finance Documents (other than the Intercreditor Agreement) as a Lender; and

- (b) Party to the Intercreditor Agreement as a Senior Lender, (as defined in the Intercreditor Agreement).
- 5. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in clause 28.4(c) (Limitation of Responsibility of Existing Lenders) of the Facilities Agreement.
- 6. The Existing Lender represents and warrants that:
  - (a) the rights assigned hereunder are assigned free of any rights of set-off in favour of any Obligor and free of any lien, security interest or other encumbrance; and
  - (b) immediately prior to the Transfer Date, the Existing Lender is the beneficial owner of the rights to be assigned hereunder.
- 7. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of clause 36.2 (Addresses) of the Facilities Agreement are set out in the schedule.
- 8. The New Lender confirms, for the benefit of the Facility Agent and without liability to any Obligor, that it is:
  - (a) [a Qualifying Lender (other than a Treaty Lender);]
  - (b) [a Treaty Lender;]
  - (c) [not a Qualifying Lender].\*
- 9. [The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Senior Finance Document is either:
  - (a) a company resident in the United Kingdom for United Kingdom tax purposes; or
  - (b) a partnership each member of which is:
    - (i) a company so resident in the United Kingdom; or
    - (ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or
  - (c) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.]
- 10. [The New Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number [●]) and is tax resident in [●], so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax and requests that the Parent notify:
  - (a) each Borrower which is a Party as a Borrower as at the Transfer Date; and
  - (b) each Additional Borrower which becomes an Additional Borrower after the Transfer Date

that it wishes the scheme to apply to the Facilities Agreement.] \*\*

11. The New Lender confirms that it [is]/[is not]\*\*\* a Sponsor Affiliate.
12. [The New Lender confirms that it [is]/[is not]\*\*\* a Non-Acceptable L/C Lender.]\*\*\*\*
13. We refer to clause [18.5] (Change of Senior Lender) of the Intercreditor Agreement. In consideration of the New Lender being accepted as a Senior Lender for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement), the New Lender confirms that, as from the Transfer Date, it intends to be party to the Intercreditor Agreement as a Senior Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a Senior Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.
14. This Agreement acts as notice to the Facility Agent (on behalf of each Senior Finance Party) and, upon delivery in accordance with clause 28.7 (Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Parent) of the Facilities Agreement, to the Parent (on behalf of each Obligor) of the assignment referred to in this Agreement.
15. 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.
16. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
17. This Agreement has been entered into on the date stated at the beginning of this Agreement.

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

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Notes:

- \* Delete as applicable. Each Lender is required to confirm which of these three categories it falls within.
- \*\* Include if the New Lender holds a passport under the HMRC DT Treaty Passport Scheme and wishes that scheme to apply to the Facilities Agreement.
- \*\*\* Delete as applicable.
- \*\*\*\* Include only if the assignment includes the assignment of a Revolving Facility Commitment/a participation in the Revolving Facility.

## THE SCHEDULE

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

#### Part 1

##### Existing Lender's existing Commitments

Existing Lender's existing Facility A Commitment: € / £ ●

Existing Lender's existing Revolving Facility Commitment: € / £ ●

#### Part 2

##### Commitments transferred

Portion of Existing Lender's existing Facility A Commitment to be transferred: € / £ ●

Portion of Existing Lender's existing Revolving Facility Commitment to be transferred: € / £ ●

#### Participation in Term Loans transferred:

Borrower	Participation	Interest Period
[ ]	[ € / £ ]	[ ]
[ ]	[ € / £ ]	[ ]

#### Participation in Revolving Loans transferred:

Borrower	Participation	Interest Period	Maturity Date
[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]

#### Part 3

##### Particulars relating to the New Lender

Facility Office:

Contact Name:

Account for Payments:

Address for Notices:

Telephone:

Facsimile:

### Signatories to Assignment Agreement

[Existing Lender]

By: .....

[New Lender]

[Executed as a deed by]

By: .....

We acknowledge the above and in particular the transfer of obligations to the New Lender recorded in the above certificate.

By: .....

**Parent for all the Obligors**

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

Signature of this Assignment Agreement by the Facility Agent constitutes confirmation by the Facility Agent of receipt of notice of the assignment referred to herein, which notice the Facility Agent receives on behalf of each Senior Finance Party.

**[Facility Agent]**

By:

**[Security Agent]**

By:



## SCHEDULE 6

### Form of Accession Deed

To: [●] as Facility Agent and [●] as Security Agent for itself and each of the other parties to the Intercreditor Agreement referred to below

From: [**Subsidiary**] and [**Parent**]

Dated:

Dear Sirs

#### [Parent] – [●] Senior Facilities Agreement dated [●] (the "Facilities Agreement")

1. We refer to the Facilities Agreement and to the Intercreditor Agreement. This deed (the "**Accession Deed**") shall take effect as an Accession Deed for the purposes of the Facilities Agreement and as a Debtor Accession Deed for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Facilities Agreement have the same meaning in paragraphs 1-[3]/[4] of this Accession Deed unless given a different meaning in this Accession Deed.
2. [**Subsidiary**] agrees to become an Additional [Borrower]/[Guarantor] and to be bound by the terms of the Facilities Agreement, and the other Senior Finance Documents (other than the Intercreditor Agreement) as an Additional [Borrower]/[Guarantor] pursuant to [clause 30.2 (Additional Borrowers)]/[clause 30.4 (Additional Guarantors)] of the Facilities Agreement (subject to applicable limitations set out therein): [**Subsidiary**] is a company duly incorporated under the laws of [**name of relevant jurisdiction**] and is a limited liability company and registered number [●].
3. [The Parent confirms that no Default is continuing or would occur as a result of [**Subsidiary**] becoming an Additional Borrower].\*
4. [**Subsidiary's**] administrative details for the purposes of the Facilities Agreement and the Intercreditor Agreement are as follows:

Address:

Fax No.:

Attention:

5. [**Subsidiary**] (for the purposes of this paragraph [4,]/[5], the "**Acceding Debtor**") intends to [incur Liabilities under the following documents]/[give a guarantee, indemnity or other assurance against loss in respect of Liabilities under the following documents] (subject to applicable limitations set out therein):

[**Insert details (date, parties and description) of relevant documents**]

the "**Relevant Documents**".

**IT IS AGREED** as follows:

- (a) Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Accession Deed, bear the same meaning when used in paragraph [4]/[5] above.

- (b) The Acceding Debtor and the Security Agent agree that the Security Agent shall hold:
  - (i) [any Security in respect of Liabilities created or expressed to be created pursuant to the Relevant Documents;
  - (ii) all proceeds of that Security; and]
  - (iii) all obligations expressed to be undertaken by the Acceding Debtor to pay amounts in respect of the Liabilities to the Security Agent as trustee for the Secured Parties (in the Relevant Documents or otherwise) and secured by the Transaction Security together with all representations and warranties expressed to be given by the Acceding Debtor (in the Relevant Documents or otherwise) in favour of the Security Agent as trustee for the Secured Parties,

on trust or as agent for the Secured Parties on the terms and conditions contained in the Intercreditor Agreement.
- (c) The Acceding Debtor confirms that it intends to be party to the Intercreditor Agreement as a Debtor, undertakes to perform all the obligations expressed to be assumed by a Debtor under the Intercreditor Agreement and agrees that it shall be bound by all the provisions of the Intercreditor Agreement as if it had been an original party to the Intercreditor Agreement (subject to applicable limitations set out therein).
- (d) [In consideration of the Acceding Debtor being accepted as an Intra Group Lender for the purposes of the Intercreditor Agreement, the Acceding Debtor also confirms that it intends to be party to the Intercreditor Agreement as an Intra Group Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by an Intra Group Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement (subject to applicable limitations set out therein)].

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

**THIS ACCESSION DEED** has been signed on behalf of the Security Agent (for the purposes of paragraph [4]/[5] above only), signed on behalf of the Parent and executed as a deed by [***Subsidiary***] and is delivered on the date stated above.

**[Subsidiary]**

Executed as a deed by [**insert name in** )  
**bold and upper case**] )  
acting by [a director and its )  
secretary/two directors/authorised )  
signatory (if applicable)]:

Director/Authorised signatory

Director/Secretary/Authorised signatory

**OR**

Executed as a deed by )  
[**insert name of company in bold and** )  
**upper case**] acting by [**insert name of** )  
**director/authorised signatory**]: )

Signature of director/authorised signatory .....

Signature of witness .....

Name of witness .....

Address of witness .....

.....

.....

Occupation of witness .....

**THE PARENT**

[**insert name of parent**]

By:

Address:

Fax:

Attention:

**THE SECURITY AGENT**

[**insert name of current security agent**]

By:

Address:

Fax:

Attention:

---

**Note:**

\* Include in the case of an Additional Borrower.

## SCHEDULE 7

### Form of Resignation Letter

To: [●] as Facility Agent  
From: [**resigning Obligor**] and [**Parent**]  
Dated: [●]

Dear Sirs

#### **[Parent] – [●] Senior Facilities Agreement dated [●] (the "Facilities Agreement")**

1. We refer to the Facilities Agreement. This is a Resignation Letter. Terms defined in the Facilities Agreement have the same meaning in this Resignation Letter unless given a different meaning in this Resignation Letter.
2. Pursuant to [clause 30.3 (Resignation of a Borrower)]/[clause 30.5 (Resignation of a Guarantor)], we request that [resigning Obligor] be released from its obligations as a [Borrower]/[Guarantor] under the Facilities Agreement and the other Senior Finance Documents (other than the Intercreditor Agreement).
3. We confirm that:
  - (a) no Default is continuing or would result from the acceptance of this request; and
  - (b) \*[this request is given in relation to a Third Party Disposal of [resigning Obligor];
  - (c) [the Disposal Proceeds have been or will be applied in accordance with clause 11.2 (Disposal, Insurance and Acquisition Proceeds and Excess Cashflow);]\*\*]
  - (d) [●].\*\*\*
4. This Resignation Letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

[Parent]

By:

[**resigning Obligor**]

By:

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#### Notes:

- \* Insert where resignation only permitted in case of a Third Party Disposal.
- \*\* Amend as appropriate eg to reflect agreed procedure for payment of proceeds into a specified account.
- \*\*\* Insert any other conditions required by the Facilities Agreement.

## SCHEDULE 8

### Form of Compliance Certificate

To: [●] as Facility Agent  
From: **[Parent]**  
Dated: [●]

Dear Sirs

#### **[Parent] – [●] Senior Facilities Agreement dated [●] (the "Facilities Agreement")**

1. We refer to the Facilities Agreement. This is a Compliance Certificate. Terms defined in the Facilities Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.

2. We confirm that:

**[Insert details of covenants to be certified].**

[We confirm that [Interest Cover [Leverage] is [●]:1 and that, therefore, the Facility A Margin should be [●] per cent and the Margin relating to the Revolving Facility should be 3 per cent [and the CAR Facility Margin should be [●] p.a.]

3. [We confirm that no Default is continuing.]\*

4. [We confirm that the following companies constitute Material Companies for the purposes of the Facilities Agreement: [●].]

We confirm that the aggregate EBITDA, as defined in clause 25 (Financial Covenants) and aggregate gross assets of the Guarantors (calculated on an unconsolidated basis and excluding all intra-group items and investments in Subsidiaries of any Group Company) exceeds [85] per cent of the Consolidated EBITDA, as defined in clause 25 (Financial Covenants) and consolidated gross assets of the Group].

Signed

.....  
Director  
Of  
[Parent]

.....  
Director  
of  
[Parent]

**[insert auditor's report language]**

.....  
for and on behalf of  
**[name of Auditors of the Parent]\*\***

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#### Notes:

- \* If this statement cannot be made, the certificate should identify any Default that is continuing and the steps, if any, being taken to remedy it.
- \*\* Only applicable if the Compliance Certificate accompanies the audited financial statements and is to be signed by the Auditors. To be agreed with the Parent's auditor's prior to signing the Agreement.

## SCHEDULE 9

### Timetables

#### Part 1 – Loans

	Loans in euro	Loans in sterling	Loans in other currencies
Facility Agent notifies the Parent if a currency is approved as an Optional Currency in accordance with clause 5.3 (Conditions Relating to Optional Currencies)	-	-	U-4
Delivery of a duly completed Utilisation Request (clause 6.1 (Delivery of a Utilisation Request) or a Selection Notice (clause 14.1 (Selection of Interest Periods and Terms)	U-3 9.30 a.m.	U-3 9.30 a.m.	U-3 9.30 a.m.
Facility Agent determines (in relation to a Utilisation) the Base Currency Amount of the Loan, if required under clause 6.4 (Lenders' Participation) and notifies the Lenders of the Loan in accordance with clause 6.4 (Lenders' Participation)	U-3 Noon	U-3 Noon	U-3 Noon
Facility Agent receives a notification from a Lender under clause 7.2 (Unavailability of a Currency)		Q 3.00 p.m.	Q 3.00 p.m.
Facility Agent gives notice in accordance with clause 7.2 (Unavailability of a Currency)		Q 5.00 p.m.	Q 5.00 p.m.
LIBOR or EURIBOR is fixed	Quotation Day 11.00 a.m.	Quotation Day 11.00 a.m.	Quotation Day 11.00 a.m.
<p>"Q" = Quotation Day</p> <p>"U" = date of utilisation or, if applicable in the case of a Term Loan that has already been borrowed, the first day of the relevant Interest Period for that Term Loan</p> <p>"U - X" = X Business Days prior to date of utilisation</p>			

## **SCHEDULE 10**

### **Agreed Security Principles**

#### **1. THE PRINCIPLES**

The guarantees and Security to be provided in support of the Facilities (and any related hedging arrangements In respect of the types of liabilities and/or risks which the Hedging Letter requires to be hedged) will be given in accordance with the agreed security principles set out in this schedule.

#### **2. POTENTIAL RESTRICTIONS ON CREDIT SUPPORT**

The Agreed Security Principles recognise that there may be legal and practical difficulties in obtaining security from all Obligors in every jurisdiction in which Obligors are incorporated or operate. In particular:

- (a) general statutory limitations, financial assistance, corporate benefit, fraudulent preference, thin capitalisation rules, capital maintenance, exchange control restrictions, retention of title claims and similar principles may limit the ability of a member of the Group to provide a guarantee or grant security or may require that its guarantee be limited in amount or scope. The Parent will use all reasonable endeavours to assist in demonstrating that adequate corporate benefit accrues to the Target and each Obligor;
- (b) the Security and extent of its perfection will be agreed taking into account the economic cost to the Group of providing Security and the proportionate benefit accruing to the Lenders having regard to the extent of the obligations which can be secured by that Security and the priority that will be offered by taking or perfecting the Security,
- (c) any assets subject to pre-existing third party arrangements which are permitted by this agreement and which prevent those assets from being charged will be excluded from any relevant Transaction Security Document but the Obligors must use reasonable endeavours to obtain consent to charging any such assets if the relevant asset is material;
- (d) Guarantors will not be required to give guarantees or enter into security documents if that would conflict with the mandatory fiduciary duties of their or any Affiliates' directors or contravene any legal prohibition or result in a risk of personal or criminal liability on the part of any officer or member of such company provided that the relevant Guarantor shall use reasonable endeavours to overcome any such obstacle to the extent that that can be done at reasonable cost;
- (e) Guarantors will not be required to give guarantees or enter into Security where the Guarantor can demonstrate that there would be a significant Tax cost disadvantage in doing so such that the cost of giving such guarantees or entering into such Security would be disproportionate to the benefit of such guarantee and/or Security to the Lenders, provided that the relevant Guarantor shall use reasonable endeavours to overcome any such obstacle to the extent that can be done at reasonable cost;
- (f) perfection of Security, when required, and other legal formalities will be completed as soon as practicable and, in any event, within the time periods specified in the Senior Finance Documents therefore or (If earlier or to the extent no such time periods are specified in the Senior Finance Documents) within the time periods specified by applicable law in order to ensure due perfection;



- (g) the perfection of Security granted will not be required if it would have a material adverse effect on the commercial reputation of the relevant Guarantor or on its ability to conduct its operations and business in the ordinary course as otherwise not prohibited by the Senior Finance Documents;
- (h) access to the assets of a Guarantor, the maximum guaranteed or secured amount may be restricted or limited by guarantee limitation language agreed to reflect these principles and to the extent consistent with them, customary practice in the relevant jurisdiction to minimise stamp duty, notarisation, registration or other applicable fees where the economic benefit of increasing the guaranteed or secured amount is disproportionate to the level of such fees, Taxes and duties or where registration, notarial or other fees are payable by reference to the stated amount secured in which case, any asset Security granted by that Guarantor shall be limited to the maximum recoverable amount under the guarantee;
- (i) where a class of assets to be secured includes material and immaterial assets, if the cost of granting Security over the immaterial assets is disproportionate to the benefit of such Security, Security will be granted over the material assets only;
- (j) unless granted under a global security document governed by the law of the jurisdiction of a Guarantor or under English law all Security (other than share Security over its Guarantor subsidiaries) shall be governed by the law of and secure assets located in the jurisdiction of incorporation of that Guarantor;
- (k) no perfection action will be required in jurisdictions where Guarantors are not located (other than in relation to any security over shares or equity interests or in intellectual property) but perfection action may be required in the jurisdiction of one Obligor in relation to security granted by an Obligor located in a different jurisdiction;
- (l) to the extent possible, the Security Agent will hold one set of security for the Lenders and the Hedge Counterparties;
- (m) Security over intellectual property rights will be taken on an "as is, where is" basis, and members of the Group will not be required to procure any changes to or corrections of filings on external registers;

### 3. **GUARANTEES**

To the extent legally permitted and subject to paragraph 2 above, each guarantee and security will be an upstream, cross-stream and downstream guarantee and each guarantee and security will be for all liabilities of the Obligors under the Senior Finance Documents.

### 4. **SECURITY PERFECTION**

Security will be for all liabilities of the relevant grantor (including its liabilities in respect of any guarantee) under the Senior Finance Documents in accordance with, and subject to, the requirements of the Agreed Security Principles in each relevant jurisdiction.

To the extent possible, all Security shall be given in favour of the Security Agent as agent for the Senior Finance Parties and not the Finance Parties individually. "Parallel debt" provisions will be used where necessary and not in cases where local law does not require this concept; such provisions will be contained in the Intercreditor Agreement and not the individual

Transaction Security Documents unless required under local laws. To the extent possible, there should be no action required to be taken in relation to the guarantees or Security when any Lender transfers any of Its participation in the Facilities to a new Lender.

The Guarantors will be required to pay the cost of any re-execution, notarisation, re-registration, amendment or other perfection requirement for any Security on any assignment or transfer by the Mandated Lead Arrangers to a new Lender and such cost or fee shall be for the account of the Obligors;

## 5. **TERMS OF SECURITY DOCUMENTS**

The following principles will be reflected In the terms of any Transaction Security:

- (a) the security will be first ranking, to the extent legally possible and subject to this Agreed security Principles;
- (b) security will not be enforceable until a Declared Default has occurred;
- (c) any rights of set-off will only be exercisable In respect of matured obligations and after the occurrence of a Declared Default;
- (d) representations and undertakings (such as in respect to insurances, monitoring of assets, information or payment of costs) shall only be included in each Transaction Security Document to the extent necessary under local law to confirm any registration or perfection of the Security, if required for the creation, perfection or preservation of the Security or assets subject to the Security or otherwise required by local law;
- (e) the provisions of each Transaction Security Document will not be unduly burdensome on the Guarantor or interfere unreasonably with the operation of its business or have an adverse effect on the commercial reputation of the Guarantor and will be limited to those required to create effective Security and not impose additional commercial obligations;
- (f) Permitted Disposals of assets, Permitted Transactions, the incurrence and subsistence of Permitted Financial Indebtedness and the existence and creation of Permitted Security over assets (other than shares and intercompany loans), will be permitted;
- (g) the Security Agent shall release any guarantees or Security In the event that such release Is required to permit a Permitted Disposal;
- (h) information, such as periodically updated lists of assets, will be provided if and, only to the extent, required by local law to be provided to perfect or register the Security and, that this information can be provided without breaching confidentiality requirements or damaging business relationships or commercial reputation and, unless required to be provided by local law more frequently, will be provided annually;
- (i) the Lenders and Hedge Counterparties shall only be able to exercise a power of attorney following the occurrence of a Declared Default or if the relevant Guarantor has failed to comply with a further assurance or perfection obligation within 10 Business Days of being notified of that failure (with a copy of that notice being sent to the Parent) and being requested to comply;
- (j) subject to the other provisions of these Agreed Security Principles, security will where possible automatically create Security over future assets of the same type as those already secured;
- (k) in the Transaction Security Documents there will be no repetition or extension of clauses set out In the Senior Facilities Agreement (or the Intercreditor Agreement) such as those relating to notices, cost and expenses, indemnities, tax gross up, distribution of proceeds and release of Security other than if expressly required by

local law to perfect the Security or make it enforceable or to facilitate the admissibility of a Transaction Security Document in court.

## 6. **ACQUISITION DOCUMENTS AND CLAIMS**

- (l) The rights of the Obligors under the Acquisition Documents shall be assigned •or charged.
- (m) In relation to the assignment of other rights and interests under the Acquisition Documents, if required by local law to perfect the security, notice of the security will be served on the counterparties of the Acquisition Documents as soon as reasonably practicable after signing of the relevant security document (but in any case within five Business Days of the security being granted) and the Obligors shall use their reasonable endeavours to obtain an acknowledgement of that notice within 20 Business Days of service. If the Obligors have used their reasonable endeavours but has not been able to obtain acknowledgement Its obligation to obtain acknowledgement shall cease on the expiry of that 20 Business Day period.

Proceeds of the Acquisition Documents and related claims shall be collected and retained by the relevant Obligor (until the occurrence of a Declared Default) unless such proceeds must be applied in mandatory prepayment in accordance with clause [11.2] (Disposal, Insurance or Acquisition Proceeds and Excess Cashflow).

## 7. **BANK ACCOUNTS**

- (a) Subject to these Agreed Security Principles, an Obligor shall grant Security over its bank accounts but (other than in the case of the Mandatory Prepayment Account, Holding Account or any other blocked account) it shall be free to deal with those accounts in the ordinary course of its business until a Declared Default, save to the extent agreed otherwise. In respect of cash collateral and mandatory prepayment accounts.
- (b) If required by local law to perfect the security, notice of the Security will be served on the account bank as soon as reasonably practicable (but In any case within five Business Days of the security being granted) and the Obligor shall use its reasonable endeavours to obtain an acknowledgement of that notice within 20 Business Days of service. If the Obligor has used its reasonable endeavours but has not been able to obtain acknowledgement its obligation to obtain acknowledgement shall cease on the expiry of that 20 Business Day period irrespective of whether notice of the Security is required for perfection, if the service of notice would prevent the Obligor from using a bank account, other than in the case of the Mandatory Prepayment Account, Holding Account or any other blocked account, In the ordinary course of its business no notice of security shall be served until the occurrence of a Declared Default.
- (c) Any security over bank accounts shall be subject to any prior security Interests in favour of the account bank which is created either by law or in the standard terms and conditions of the account bank. The notice of Security may request these are waived by the account bank but the Obligor shall not be required to change its banking arrangements. If these Security interests are not waived or only partially waived.
- (d) If required under local law security over bank accounts will be registered subject to the general principles set out in these Agreed Security Principles.
- (e) There will not be any blocked account other than the Mandatory Prepayment Account, Holding Account or any other blocked account permitted by this Agreement.

- (f) To the extent the standard terms and conditions of the account holding bank prohibit the granting of security over the account, this prohibition must be lifted by the account holding bank prior to the execution of the Transaction Security Document creating security over that account.

**8. FIXED ASSETS AND INVENTORY**

- (a) Subject to the Agreed Security Principles, Security may be granted over fixed assets.
- (b) No notice whether to third parties or by attaching a notice to the fixed assets or Inventory shall be prepared or given until a Declared Default.
- (c) If required under local law security over fixed assets will be registered subject to the general principles set out In these Agreed Security Principles.

**9. MATERIAL CONTRACTS AND CLAIMS (OTHER THAN TRADE RECEIVABLES)**

- (a) Transaction Security will be granted over material contracts and claims (other than trade receivables) agreed between the Security Agent and the Parent.
- (b) A counterparty to a material contract/claim (other than trade receivables) is only to be notified of the Transaction Security if a Declared Default occurs, unless if the Parent, in its reasonable opinion does not consider It to be prejudicial to the commercial Interest of the Group, necessary to ensure the creation of valid and/or perfected Security or specifically required by the Security Agent. Contracts that will require notification upon execution of the Transaction Security Documents will include the Acquisition Documents.
- (c) If required to perfect the Transaction Security, notice of the Transaction Security will be served on the relevant counterparty as soon as reasonably practicable (but In any event within five Business Days of the Transaction Security being granted) and the charging Guarantor shall use its reasonable endeavours to obtain an acknowledgement of that notice with 15 Business Days of service.

**10. INSURANCE POLICIES**

- (a) Subject to these Agreed Security Principles, an Obligor will grant Transaction Security over its material Insurance policies as agreed between the Parent and the Agent.
- (b) If required by local law to perfect the Security, notice of the Security will be served on the insurance provider as soon as reasonably practicable (but in any event within five Business Days of the Security being granted) and the Obligor shall use Its reasonable endeavours to obtain an acknowledgement of that notice within 20 Business Days of service. If the Obligor has used its reasonable endeavours but has not been able to obtain acknowledgement Its obligation to obtain acknowledgement shall cease on the expiry of that 20 Business Day period.
- (c) The chargor shall use reasonable endeavours to procure that the Security Agent is endorsed as sole loss payee in respect of all material insurance policies subject to the Transaction Security.

## 11. **INTELLECTUAL PROPERTY**

- (a) If a Guarantor grants Security over its material Intellectual Property It shall be free to deal with those assets in the ordinary course of Its business until a Declared Default (including, without limitation, allowing its Intellectual Property to lapse if no longer material to its business) in accordance with the terms of this Agreement.
- (b) No Security shall be granted over any Intellectual Property which cannot be secured under the terms of the relevant licensing agreement. No notice shall be prepared or served to any third party from whom Intellectual Property is licensed until a Declared Default.
- (c) If required under local law Security over Intellectual Property will be registered under the law of that Transaction Security Document at a relevant supra-national registry (such as the EU) or otherwise at any national registry subject to the general principles set out in these Agreed Security Principles.
- (d) Security over Intellectual Property rights will be taken on an "as is where is" basis and members of the Group will not be required to procure any changes to or corrections of filings on external registers.

## 12. **INTERCOMPANY RECEIVABLES**

- (a) Subject to these Agreed Security Principles, an Obligor shall grant Security over its material intercompany receivables but it shall be free to deal with, pay, capitalise, compromise or forgive those receivables In the ordinary course of its business until a Declared Default subject to the restrictions Imposed by the Intercreditor Agreement.
- (b) If required by local law to perfect the Security, notice of the Security will be served on the relevant lender as soon as reasonably practicable (and In any event within five Business Days of the security being granted) and the Obligor shall use its reasonable endeavours to obtain an acknowledgement of that notice within 20 Business Days of service.
- (c) If required under local law, security over Intercompany receivables will be registered subject to the general principles set out in these Agreed Security Principles.

## 13. **TRADE RECEIVABLES**

- (a) Subject to these Agreed Security Principles, an Obligor shall grant Security over Its material trade receivables but it shall be free to deal with, pay, capitalise, compromise or forgive those receivables In the ordinary course of its business until a Declared Default.
- (b) No notice of Security may be served until the occurrence of a Declared Default.
- (c) No Security will be granted over any trade receivables which cannot be secured under the terms of the relevant contract.
- (d) If required under local law Security over trade receivables will be registered subject to the general principles set out in these Agreed Security Principles.
- (e) Any list of trade receivables required shall not include details of the underlying contracts unless required In order to perfect or enforce the Security.

14. **SHARES**

- (a) Transaction Security will be granted over the shares in Material Companies (other than the Parent).
- (b) The relevant Transaction Security Document will be governed by the laws of the jurisdiction of Incorporation of the Group member whose shares are subject to the Security and not by the law of the jurisdiction of incorporation of the Group member granting the Security.
- (c) Until a Declared Default, the legal title to such shares shall remain with the relevant pledgor and the pledgor will be permitted to retain and to exercise voting rights to any shares pledged by them In a manner which does not adversely affect the validity or enforceability of the Security or cause an Event of Default to occur and the pledgers will be permitted to pay, receive and retain dividends subject to the terms of this Agreement.
- (d) Where customary the share certificate (or other documents evidencing title to the relevant shares) and a stock transfer form executed In blank (or local law equivalent) will be provided to the Security Agent and where required by law the share certificate or shareholders register will be endorsed or written up and the endorsed share certificate or a copy of the written up register provided to the Security Agent.
- (e) Unless the restriction is required by law, the constitutional documents of the Group member whose shares are to be pledged will be amended to remove any restriction on grant of security or any provision which restricts enforcement of the transaction Security, the transfer or the registration of the transfer of the shares on enforcement of the Security granted over them.

15. **REAL ESTATE**

- (a) Subject to the Agreed Security Principles, security shall be granted over freehold and leasehold property which has a higher of the market value or book value (or premium value, in the case of leasehold) in excess of £2,000,000.
- (b) There will be no obligation to investigate title,. provide surveys or other insurance or environmental due diligence.
- (c) A Group Company providing security over material real estate will be under an obligation to use reasonable endeavours to obtain any landlord consent required to grant any Security over its material real estate required pursuant to these security principles.

16. **RELEASE OF SECURITY**

Unless required by local law, the circumstances in which the Security shall be released should not be dealt with In Individual Security Documents but, if so required, shall, except to the extent required by local law, be the same as those set out in the Intercreditor Agreement.

## SCHEDULE 11

### Forms of Notifiable Debt Purchase Transaction Notice

#### Part – 1

#### Form of Notice on Entering into Notifiable Debt Purchase Transaction

To: [●] as Facility Agent

From: [The Lender]

Dated:

**[Parent] – [●] Senior Facilities Agreement dated [●] (the "Facilities Agreement")**

1. We refer to clause 29.2(b) (Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates) of the Facilities Agreement. Terms defined in the Facilities Agreement have the same meaning in this notice unless given a different meaning in this notice.
2. We have entered into a Notifiable Debt Purchase Transaction.
3. The Notifiable Debt Purchase Transaction referred to in paragraph 2 above relates to the amount of our Commitment(s) as set out below.

<b>Commitment</b>	<b>Amount of our Commitment to which Notifiable Debt Purchase Transaction relates (Base Currency)</b>
[Facility A Commitment]	<i>[insert amount (of that Commitment) to which the relevant Debt Purchase Transaction applies]</i>
Revolving Facility Commitment	<i>[insert amount (of that Commitment) to which the relevant Debt Purchase Transaction applies]</i>

[Lender]

By:

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\* Delete as applicable

## Part – 2

### Form of Notice on Termination of Notifiable Debt Purchase Transaction/Notifiable Debt Purchase Transaction ceasing to be with Sponsor Affiliate

To: [●] as Facility Agent

From: [The Lender]

Dated:

#### **[Parent] – [●] Senior Facilities Agreement dated [●] (the "Facilities Agreement")**

1. We refer to clause 29.2(c) (Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates) of the Facilities Agreement. Terms defined in the Facilities Agreement have the same meaning in this notice unless given a different meaning in this notice.
2. A Notifiable Debt Purchase Transaction which we entered into and which we notified you of in a notice dated [●] has [terminated]/[ceased to be with a Sponsor Affiliate].\*
3. The Notifiable Debt Purchase Transaction referred to in paragraph 2 above relates to the amount of our Commitment(s) as set out below.

<b>Commitment</b>	<b>Amount of our Commitment to which Notifiable Debt Purchase Transaction relates (Base Currency)</b>
[Facility A Commitment]	<i>[insert amount (of that Commitment) to which the relevant Debt Purchase Transaction applies]</i>
Revolving Facility Commitment	<i>[insert amount (of that Commitment) to which the relevant Debt Purchase Transaction applies]</i>

[Lender]

By:

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\* Delete as applicable  
\*\* Delete as applicable



## SCHEDULE 12

### Form of Increase Confirmation

To: [•] as Facility Agent, [•] as Security Agent, [[•] and [•] as Parent, for and on behalf of each Obligor

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

Dated:

#### **[Parent] – [•] Senior Facilities Agreement dated [•] (the "Facilities Agreement")**

1. We refer to the Facilities Agreement and to the Intercreditor Agreement (as defined in the Facilities Agreement). This agreement (the "**Agreement**") shall take effect as an Increase Confirmation for the purpose of the Facilities Agreement and as a Creditor Accession Undertaking for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to clause [•] (Increase) of the Facilities Agreement.
3. The Increase Lender agrees to assume and will assume all of the obligations corresponding to the Commitment specified in the Schedule (the "**Relevant Commitment**") as if it was an Original Lender under the Facilities Agreement.
4. 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:
  - 5.1 party to the relevant Finance Documents (other than the Intercreditor Agreement) as a Lender; and
  - 5.2 party to the Intercreditor Agreement as a Senior Lender (as defined in the Intercreditor Agreement).
6. The Facility Office and address, fax number and attention details for notices to the Increase Lender for the purposes of clause [•] (Addresses) are set out in the Schedule.
7. The Increase Lender expressly acknowledges the limitations on the Lenders' obligations referred to in clause [2.2] (Increase).
8. The Increase Lender confirms, for the benefit of the Facility Agent and without liability to any Obligor, that it is:
  - 8.1 [a Qualifying Lender (other than a Treaty Lender);]
  - 8.2 [a Treaty Lender;]
  - 8.3 [not a Qualifying Lender].<sup>1</sup>
9. [The Increase Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:
  - 9.1 a company resident in the United Kingdom for United Kingdom tax purposes; or

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<sup>1</sup> Delete as applicable – each Increase Lender is required to confirm which of these three categories it falls within.

- 9.2 a partnership each member of which is:
- (a) a company so resident in the United Kingdom;
  - (b) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or
- 9.3 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.]<sup>2</sup>
9. [The Increase Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number [●]) and is tax resident in [●]\*, so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax and requests that the Parent notify:
- 9.1 each Borrower which is a party as a Borrower as at the Increase Date; and
- 9.2 each Additional Borrower which becomes an Additional Borrower after the Increase, that it wishes the scheme to apply to the Facilities Agreement.\*\*
- [9/10]. The Increase Lender confirms that it is not a Sponsor Affiliate.
- [10/11].[The Increase Lender confirms that it [is]/[is not]\*\*\* a Non-Acceptable L/C Lender.]\*\*\*\*
- [11/12].We refer to clause [●] (Creditor Accession Undertaking) of the Intercreditor Agreement. In consideration of the Increase Lender being accepted as a Senior Lender for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement), the Increase Lender confirms that, as from the Increase Date, it intends to be party to the Intercreditor Agreement as a Senior Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a Senior Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.
- [12/13].This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.
- [13/14].This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
- [14/15].This Agreement has been entered into on the date stated at the beginning of this Agreement.

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<sup>2</sup> Include only if New Lender is a UK Non-Bank Lender, i.e. falls within paragraph (a)(ii) of the definition of "Qualifying Lender" in clause 1.1 (Definitions).

\* Insert jurisdiction of tax residence.

\*\* This confirmation must be included if the Increase Lender holds a passport under the HMRC DT Treaty Passport scheme and wishes that scheme to apply to the Facilities Agreement.

\*\*\* Delete as applicable.

\*\*\*\* Include only if the increase involves the assumption of a Revolving Facility Commitment.

**Note:**

The execution of this Increase Confirmation may not be sufficient for the Increase Lender to obtain the benefit of the Transaction Security in all jurisdictions. It is the responsibility of the Increase Lender to ascertain whether any other documents or other formalities are required to obtain the benefit of the Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

## SCHEDULE 13

### CAR Facility Establishment Notice

From: **[Borrower] [Parent]**

To:

Dated:

Dear Sirs

#### **[Parent] – [•] Senior Facilities Agreement dated [•] (the "Facilities Agreement")**

1. We refer to the Facilities Agreement. This is a CAR Facility Establishment Notice. Terms defined in the Facilities Agreement have the same meaning in this notice unless given a different meaning in this CAR Facility Establishment Notice.
2. We have agreed with the following institutions (the "**CAR Facility Lenders**") in respect of the CAR Facility Commitments detailed in this CAR Facility Establishment Notice) that they commit CAR Commitments as follows:

<b>Name of Institution</b>	<b>Existing Lender (yes/no)</b>	<b>CAR Facility Commitment (£)</b>	<b>Fees payable</b>	<b>Commitment Fee</b>
--------------------------------	-------------------------------------	--	---------------------	---------------------------

#### **TOTAL:**

3. The date on which the CAR Commitments referred to above are to become effective (the "**CAR Facility Date**") is [•].
4. The Availability Period means the period from and including the CAR Facility Date to and including [•].
5. The maximum number of CAR Facility Loans is [•].
6. The Borrower and amounts are: **[insert name of Borrower]** [•].
7. The applicable Margin shall be as follows (at the date of this Notice): [•] per cent. p.a. **[insert ratchet provisions if applicable]**. We confirm that the Margin does not and shall not exceed the CAR Facility Maximum Margin.
8. We confirm that the fees in respect of the CAR Commitments specified in this CAR Facility Establishment Notice do not and shall not exceed the amount set out in clause 3.5.
9. Repayment terms: [•].
10. The Company confirms that the CAR Facility Loans comply with Clause 5.4 (Maximum Number of Utilisations) and Clause 6.3 (Currency and Amount).

11. ***[insert any other relevant matters referred to in Clause 3 (CAR Facility)].***
12. The Lenders will only be obliged to comply with Clause 6.4 (Lenders' Participation) of the Facilities Agreement in relation to any Loan which is to utilise the CAR Facility Commitments referred to above if the Agent has received all of the documents and other evidence listed in the schedule to this CAR Facility Establishment Notice in form and substance satisfactory to it.
13. The aggregate of the CAR Facility Commitments (including pursuant to this notice) is: [•].

THIS UNDERTAKING IS EXECUTED AS A DEED AND IS DELIVERED ON THE DATE STATED ABOVE.

**EXECUTED** as a **DEED** by

### **Lender Confirmations**

We agree to become a party to the Facilities Agreement as a Lender with an CAR Commitment as recorded above.

We refer to clause 20.9 (New CAR Facility Lender) of the Intercreditor Agreement:

In consideration of being accepted as a CAR Facility Lender and therefore a Senior Lender for the purposes of the Intercreditor Agreement (and as defined therein), we hereby confirm that, as from the date of this notice, we intend to be party to the Intercreditor Agreement as a Senior Lender, and undertake to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a Senior Lender and agree that we shall be bound by all the provisions of the Intercreditor Agreement, as if we had been an original party to the Intercreditor Agreement as a Senior Lender.

The CAR Facility Lender confirms, for the benefit of the Facility Agent and without liability to any Obligor, that it is:

- (a) [a Qualifying Lender (other than a Treaty Lender);]
- (b) [a Treaty Lender;]
- (c) [not a Qualifying Lender].<sup>3</sup>

[The CAR Facility Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Senior Finance Document is either:

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

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<sup>3</sup> Delete as applicable - each CAR Facility Lender is required to confirm which of these three categories it falls within.

interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.]]<sup>4</sup>

[The CAR Facility Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number [•]) and is tax resident in [•],<sup>5</sup> so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax, and requests that the Company notify:

- (a) each Borrower which is a Party as a Borrower as at the CAR Facility Establishment Date; and
- (b) each Additional Borrower which becomes an Additional Borrower after the CAR Facility Establishment Date,

that it wishes that scheme to apply to the Facilities Agreement.]]<sup>6</sup>

Executed as a deed by **[insert name]**

We acknowledge the accession of each of the parties (other than the Company) to this letter to each of the Facilities Agreement as a Lender and the Intercreditor Agreement as a Senior Lender.

**[Authorised signatory]**

the Facility Agent

**[Authorised signatory]**

the Security Agent

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<sup>4</sup> Include if CAR Facility Lender comes within paragraph (i)(B) of the definition of Qualifying Lender in Clause 17.1 (Definitions).

<sup>5</sup> Insert jurisdiction of tax residence.

<sup>6</sup> Include if CAR Facility Lender holds a passport under the HMRC DT Treaty Passport scheme and wishes that scheme to apply to the Facilities Agreement.

## **SIGNATURES**

### **THE PARENT**

#### **CALEDONIA TOPCO LIMITED**

By:

Address:

Fax:

Attention:

### **THE ORIGINAL BORROWER**

#### **CALEDONIA BIDCO LIMITED**

By:

Address:

Fax:

Attention:

### **THE ORIGINAL GUARANTORS**

#### **CALEDONIA TOPCO LIMITED**

By:

Address:

Fax:

Attention:

#### **CALEDONIA BIDCO LIMITED**

By:

Address:

Fax:

Attention:

**THE ARRANGERS****CRESCENT CAPITAL GROUP LP**

By: \_\_\_\_\_ and \_\_\_\_\_

Address: 11100 Santa Monica Boulevard, Suite 2000, Los Angeles, CA 90025, United States

Fax: +1 (310) 235 5993

Attention: Irina Rudnitsky

**THE ROYAL BANK OF SCOTLAND PLC**

By: \_\_\_\_\_

Address: 2 St Phillips Place, 5th Floor, Birmingham, B3 2RB

Fax: \_\_\_\_\_

Attention: Danielle Hook

**THE FACILITY AGENT****AGENSYND S.L.**

By: Joe Knight

Address: 68 Lombard Street, London EC3V 9LJ

Fax: 0034 91 7697230

Attention: Joe Knight

**THE SECURITY AGENT****AGENSYND S.L.**

By: Joe Knight

Address: 68 Lombard Street, London EC3V 9LJ

Fax: 0034 91 7697230

Attention: Joe Knight



## THE ORIGINAL LENDERS

### CRESCENT EUROPEAN SPECIALTY LENDING (LEVERED) B S.À.R.L.

\_\_\_\_\_  
Name:  
Title: Manager B

Address: E Building, Parc d'Activités Syrdall, 6 rue Gabriel Lippmann, L-5365  
Munsbach, Grand Duchy of Luxembourg  
Fax: +352 26 39 21 45  
Attention: Malcolm Wilson

### CRESCENT EUROPEAN SPECIALTY LENDING (LEVERED UNHEDGED) B S.À.R.L.

\_\_\_\_\_  
Name:  
Title: Manager B

By:  
Address: E Building, Parc d'Activités Syrdall, 6 rue Gabriel Lippmann, L-5365  
Munsbach, Grand Duchy of Luxembourg  
Fax: +352 26 39 21 45  
Attention: Malcolm Wilson

### CRESCENT EUROPEAN SPECIALTY LENDING (UNLEVERED) B S.À.R.L.

\_\_\_\_\_  
Name:  
Title: Manager B

Address: E Building, Parc d'Activités Syrdall, 6 rue Gabriel Lippmann, L-5365  
Munsbach, Grand Duchy of Luxembourg  
Fax: +352 26 39 21 45  
Attention: Malcolm Wilson

### CRESCENT/KAMEHAMEHA SCHOOLS PARTNERSHIP, L.P.

By: **Crescent/K Schools SMA Partners, LLC**, its General Partner

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

Address: 11100 Santa Monica Boulevard, Suite 2000, Los Angeles, CA 90025,  
United States  
Fax: +1 (310) 235 5993  
Attention: Irina Rudnitsky

**THE ROYAL BANK OF SCOTLAND PLC, AS AGENT FOR NATIONAL WESTMINSTER BANK  
PLC**

By:

Address: 2 St Phillips Place, 5<sup>th</sup> Floor, Birmingham, B3 2RB

Fax:

Attention: Danielle Hook