Schedule Tax covenant

# INTERPRETATION

The following definitions and rules of interpretation apply in this Tax Covenant.

## :

Liability for Taxation:

1. any liability of the Company or any Subsidiary to make an actual payment of or in respect of Tax whether or not the same is primarily payable by the Company or the relevant Subsidiary and whether or not the Company or the relevant Subsidiary has or may have any right of reimbursement against any other person, in which case the amount of the Liability for Taxation shall be the amount of the actual payment;
2. the loss of or failure to obtain, for any reason, any right to a repayment of tax that has been taken into account in the [Completion Accounts OR Accounts], in which case the amount of the Liability for Taxation will be the amount of the repayment;
3. the use or setting off of any Relief arising to the Company or any Subsidiary after Completion or to any member of the Buyer's Tax Group in circumstances where, but for such set off or use, the Company or the relevant Subsidiary would have had a liability to make a payment of or in respect of Tax for which the Buyer would have been able to make a claim against the Seller under this Tax Covenant, in which case the amount of the Liability for Taxation shall be the amount of Tax for which the Seller would have been liable but for such set off or utilisation.

**Relief**: includes any loss, relief, allowance, credit, exemption or set off in respect of Tax or any deduction in computing income, profits or gains for the purposes of Tax and any right to a repayment of Tax (including any repayment supplement or interest in respect of it) or to a payment in respect of Tax.

**Tax or Taxation**: all forms of taxation and charges, duties, imposts, contributions, levies, withholdings or liabilities wherever chargeable and whether of the UK or any other jurisdiction (including, for the avoidance of doubt, National Insurance contributions) and any penalty, fine, surcharge, interest, charges or costs relating thereto.

**Tax Claim**: any assessment, notice, demand, letter or other document issued or action taken by or on behalf of any Taxation Authority, self-assessment or other occurrence from which it appears that the Company or any Subsidiary or the Buyer is or may be subject to a Liability for Taxation.

**Taxation Authority**: any authority, body or official competent to impose, assess or collect Tax in the UK or elsewhere.

## References to gross receipts, income, profits or gains earned, accrued or received shall include any gross receipts, income, profits or gains deemed, for any Tax purpose, to have been or treated or regarded as earned, accrued or received.

## Any stamp duty which is charged on any document, or in the case of a document which is outside the UK, any stamp duty which would be charged on the document if it were brought into the UK, which is necessary to establish the title of the Company or any Subsidiary to any asset, and any interest, fine or penalty relating to such stamp duty, shall be deemed to be a liability of the Company or the relevant Subsidiary to make an actual payment of Taxation in consequence of an Event arising on the last day on which it would have been necessary to pay such stamp duty in order to avoid any liability to interest or penalties arising on it.

# COVENANT

The Seller covenants with the Buyer that, subject to the provisions of this Tax Covenant, the Seller shall pay to the Buyer an amount equal to any:

1. Liability for Taxation resulting from or by reference to any Event occurring on or before Completion or in respect of any gross receipts, income, profits or gains earned, accrued or received by the Company or any Subsidiary on or before Completion, whether or not such liability has been discharged on or before Completion;
2. Liability for Taxation which arises solely as a result of the relationship for Tax purposes before Completion of the Company or any Subsidiary with any person other than a member of the Buyer's Tax Group, whether arising before or after Completion;
3. Liability for Taxation (being a liability for the Company to account for income tax or National Insurance contributions), whether arising before or after Completion, in respect of any acquisition, holding, variation or disposal of employment-related securities (as defined for the purposes of Part 7 of ITEPA 2003) where the acquisition occurred on or before Completion;
4. costs and expenses (including legal costs on a full indemnity basis), properly incurred by the Buyer, the Company or any Subsidiary or any member of the Buyer's Tax Group in connection with any Liability for Taxation, any Tax Claim or taking or defending any action under this Schedule.

# PAYMENT DATE AND INTEREST

## Payment by the Seller in respect of any liability under this Schedule must be made in cleared and immediately available funds on the following days:

1. in the case of a Liability for Taxation that involves an actual payment of or in respect of Tax, the later of [seven] Business Days before the due date for payment and [seven] Business Days after the date on which the Buyer serves notice on the Seller requesting payment;
2. in a case that falls within paragraph 1.1(c) of the definition of Liability for Taxation, the date on which the Tax saved by the Company or the relevant Subsidiary is or would have been required to be paid to the relevant Taxation Authority; or
3. in any other case, [seven] Business Days following the date on which the Buyer serves notice on the Seller requesting payment.

## If any sums required to be paid by the Seller under this Tax Covenant are not paid on the date specified in paragraph 3.1, then, except to the extent that the Seller's liability under paragraph 2 compensates the Buyer for the late payment by virtue of it extending to interest and penalties, such sums shall bear interest (which shall accrue from day to day after as well as before any judgment for the same) at the rate of [2]% per annum over the base rate from time to time of [FULL NAME OF BANK] or (in the absence thereof) at such similar rate as the Buyer shall select from the day following the due date up to and including the day of actual payment of such sums.

# EXCLUSIONS

The covenant contained in paragraph 2 above shall not cover any Liability for Taxation to the extent that:

1. specific provision or reserve (other than a provision for deferred tax) in respect of the liability is made in the [Completion Accounts OR Accounts];
2. such Liability for Taxation was discharged on or before [Completion OR the Accounts Date] and the discharge of such Liability for Taxation was reflected in the [Completion Accounts OR Accounts];
3. [it arises as a result of a transaction in the ordinary course of business of the Company or any Subsidiary between the Accounts Date and Completion and is not interest or a penalty;]
4. it arises or is increased as a result only of any change in the law of Tax (other than a change targeted specifically at countering a tax avoidance scheme) or published practice of any Tax Authority announced and coming into force after Completion (whether relating to rates of Tax or otherwise) or the withdrawal of any extra-statutory concession previously made by a Taxation Authority (whether or not the change purports to be effective retrospectively in whole or in part);
5. the Buyer is compensated for any such matter under any other provision of this agreement;
6. it would not have arisen but for a voluntary act, transaction or omission of the Company or any Subsidiary or the Buyer or any member of the Buyer's Tax Group outside the ordinary course of business after Completion and which the Buyer was aware or ought reasonably to have been aware would give rise to the Liability for Taxation or other liability in question.

# LIMITATIONS

The liability of the Seller under paragraph 2 will terminate on:

1. the twenty-first anniversary of Completion, in respect of any claim under paragraph 2 for a liability arising from a loss of tax brought about fraudulently or deliberately by the Company or any related person; or
2. the seventh anniversary of Completion, in any other case,

except in respect of any claim under paragraph 2 of which notice in writing is given, or is deemed to have been given, to the Seller before that relevant date containing, to the extent reasonably practicable, a description of the claim and the estimated total amount of the claim.

# RECOVERY FROM THIRD PARTIES

Where the Seller has paid an amount in full discharge of a liability under paragraph 2 in respect of any Liability for Taxation and the Buyer, the Company or any Subsidiary recovers from some other person (other than the Buyer, the Company, any Subsidiary and any other company within the Buyer's Tax Group) any amount in respect of such Liability for Taxation, the Buyer shall or shall procure that the Company or the relevant Subsidiary shall account to the Seller for the lesser of:

1. any amount recovered (including any related interest or related repayment supplement) less any Tax suffered in respect of that amount and any costs and expenses incurred in recovering that amount; and
2. the amount paid by the Seller under paragraph 2 in respect of the Liability for Taxation in question.

# CORPORATION TAX RETURNS

The Buyer shall procure that the Company keeps the Seller [or the Seller's duly authorised agent] fully informed of its Taxation affairs in respect of any accounting period ended on or before Completion for which final agreement with the relevant Taxation Authority of the amount of Taxation due from the Company or any Subsidiary has not been reached. The Buyer will not submit any substantive correspondence or submit or agree any return or computation for any such period to any Taxation Authority without giving the Seller a reasonable opportunity to comment and taking account of the Seller's reasonable representations.

# CONDUCT OF TAX CLAIMS

## Subject to paragraph 8.2, if the Buyer, the Company, or any Subsidiary becomes aware of a Tax Claim, the Buyer shall give or procure that notice in writing is given to the Seller or to the Seller's duly authorised agent as soon as reasonably practicable, provided that the giving of such notice shall not be a condition precedent to the Seller's liability under this Tax Covenant.

## If the Seller becomes aware of a Tax Claim, it shall notify the Buyer in writing as soon as reasonably practicable, and, on receipt of such notice, the Buyer shall be deemed to have given the Seller notice of the Tax Claim in accordance with the provisions of paragraph 8.1.

## The Buyer will take into account any reasonable representations in relation to the Tax Claim that are made in writing by the Seller or the Seller's duly authorised representative within ten Business Days of notice having been given (or deemed to have been given) under paragraph 8.1 or paragraph 8.2 but shall otherwise be free to pay or settle the Tax Claim on such terms as the Buyer, in its absolute discretion, considers fit.

# GROSSING UP

## All amounts due under this Tax Covenant shall be paid by the Seller to the Buyer in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). If any deductions or withholdings are required by law to be made from any of the sums payable under this Tax Covenant, the Seller shall pay to the Buyer such sum as will, after the deduction or withholding has been made, leave the Buyer with the same amount as it would have been entitled to receive in the absence of any such requirement to make a deduction or withholding.

## If the Buyer incurs, or would have incurred, but for the use of a Relief, a taxation liability which results from, or is calculated by reference to, any sum paid under this Tax Covenant, the amount so payable shall be increased by such amount as will ensure that, after payment of the taxation liability, the Buyer is left with a net sum equal to the sum it would have received had no such taxation liability arisen.

# GENERAL

All payments made by the Seller to the Buyer or by the Buyer to the Seller in accordance with this Tax Covenant will be treated, to the extent possible, as an adjustment to the Purchase Price for the Sale Shares.