



DATED 15 AUGUST 2019

**(1) PROJECT SWORD MIDCO 2 LIMITED
as Parent**

**(2) PROJECT SWORD BIDCO LIMITED
as Company**

**(3) THE COMPANIES LISTED IN PART 1 OF SCHEDULE 1
as Original Guarantors**

**(4) THE ENTITIES LISTED IN PART 2 OF SCHEDULE 1
as Original Lenders**

**(5) TOSCA DEBT CAPITAL (LUXEMBOURG) S.À R.L.
and HSBC UK BANK PLC
as Arrangers**

**(6) GLOBAL LOAN AGENCY SERVICES LIMITED
as Agent**

- and -

**(7) GLAS TRUST CORPORATION LIMITED
as Security Agent**

**SENIOR TERM AND
REVOLVING FACILITIES
AGREEMENT**

CONTENTS

1.	DEFINITIONS AND INTERPRETATION	4
2.	THE FACILITIES	72
3.	PURPOSE.....	79
4.	CONDITIONS OF UTILISATION	80
5.	UTILISATIONS	83
6.	OPTIONAL CURRENCIES.....	85
7.	ANCILLARY FACILITIES	86
8.	REPAYMENT	92
9.	ILLEGALITY, VOLUNTARY PREPAYMENT AND CANCELLATION	94
10.	MANDATORY PREPAYMENT AND CANCELLATION.....	96
11.	RESTRICTIONS	101
12.	INTEREST.....	104
13.	INTEREST PERIODS	105
14.	CHANGES TO THE CALCULATION OF INTEREST	106
15.	FEES	108
16.	TAX GROSS-UP AND INDEMNITIES.....	110
17.	INCREASED COSTS.....	119
18.	OTHER INDEMNITIES	121
19.	MITIGATION BY THE FINANCE PARTIES	124
20.	COSTS AND EXPENSES.....	124
21.	GUARANTEE AND INDEMNITY	126
22.	REPRESENTATIONS	132
23.	INFORMATION UNDERTAKINGS	143
24.	FINANCIAL COVENANTS.....	150
25.	GENERAL UNDERTAKINGS.....	160
26.	EVENTS OF DEFAULT	180
27.	CHANGES TO THE LENDERS.....	189
28.	RESTRICTION ON DEBT PURCHASE TRANSACTIONS	195
29.	CHANGES TO THE OBLIGORS.....	196
30.	ROLE OF THE AGENT, THE ARRANGERS AND OTHERS.....	201
31.	CONDUCT OF BUSINESS BY THE FINANCE PARTIES	212
32.	SHARING AMONG THE FINANCE PARTIES	212
33.	PAYMENT MECHANICS.....	215
34.	SET-OFF.....	219
35.	NOTICES.....	219

36.	CALCULATIONS AND CERTIFICATES.....	222
37.	PARTIAL INVALIDITY	222
38.	REMEDIES AND WAIVERS.....	223
39.	AMENDMENTS AND WAIVERS	223
40.	CONFIDENTIAL INFORMATION	232
41.	CONFIDENTIALITY OF FUNDING RATES AND REFERENCE BANK QUOTATIONS.....	236
42.	DISCLOSURE OF LENDER DETAILS BY AGENT	238
43.	PUBLICITY.....	239
44.	COUNTERPARTS	240
45.	GOVERNING LAW.....	240
46.	ENFORCEMENT	240
	SCHEDULE 1: THE ORIGINAL PARTIES	242
	Part 1: The Original Guarantors.....	242
	Part 2: The Original Lenders.....	242
	SCHEDULE 2: CONDITIONS PRECEDENT	243
	Part 1: Conditions precedent to signing of the Agreement	243
	Part 2: Conditions precedent to initial Utilisation.....	247
	Part 3: Conditions precedent required to be delivered by an Additional Obligor.....	248
	Part 4: Sword Target Group Transaction Security Documents.....	251
	SCHEDULE 3: REQUESTS AND NOTICES	254
	Part 1: Utilisation Request	254
	Part 2: Selection Notice	255
	SCHEDULE 4: FORM OF TRANSFER CERTIFICATE	256
	SCHEDULE 5: FORM OF ASSIGNMENT AGREEMENT	259
	SCHEDULE 6: FORM OF ACCESSION DEED	263
	SCHEDULE 7: FORM OF RESIGNATION LETTER.....	266
	SCHEDULE 8: FORM OF COMPLIANCE CERTIFICATE.....	267
	SCHEDULE 9: TIMETABLES.....	270
	SCHEDULE 10: FORM OF INCREASE CONFIRMATION	271
	SCHEDULE 11: FORMS OF NOTIFIABLE DEBT PURCHASE TRANSACTION NOTICE.....	275
	Part 1: Form of Notice on Entering into Notifiable Debt Purchase Transaction	275
	Part 2: Form of Notice on Termination of Notifiable Debt Purchase Transaction/Notifiable Debt Purchase Transaction ceasing to be with Sponsor Affiliate	276
	SCHEDULE 12: AGREED SECURITY PRINCIPLES.....	277
	SCHEDULE 13: ADDITIONAL FACILITY NOTICE	280
	SCHEDULE 14: FORM OF ADDITIONAL FACILITY LENDER CERTIFICATE	285

THIS AGREEMENT is made on

15 August 2019

BETWEEN:

- (1) **PROJECT SWORD MIDCO 2 LIMITED**, a company incorporated in England and Wales with company number 12032495 whose registered office is at Suffolk House, George Street, East Croydon, London, UK, CR0 1PE as the parent (the "**Parent**");
- (2) **PROJECT SWORD BIDCO LIMITED**, a company incorporated in England and Wales with company number 12032770 whose registered office is at Suffolk House, George Street, East Croydon, London, UK, CR0 1PE as the company and an original borrower (the "**Company**");
- (3) **THE COMPANIES** listed in part 1 of schedule 1 (*The Original Parties*) as original guarantors (the "**Original Guarantors**");
- (4) **THE ENTITIES** listed in part 2 of schedule 1 (*The Original Parties*) as lenders (the "**Original Lenders**");
- (5) **TOSCA DEBT CAPITAL (LUXEMBOURG) S.À R.L.**, a private limited liability company (*société à responsabilité limitée*), incorporated under the laws of Grand Duchy of Luxembourg ("**Luxembourg**"), having its registered office at 20, rue de la Poste, L-2346 Luxembourg and registered with the Luxembourg Register of Commerce and Companies (*R.C.S. Luxembourg*) with register number B215388, and **HSBC UK BANK PLC** as mandated lead arrangers (the "**Arrangers**");
- (6) **GLOBAL LOAN AGENCY SERVICES LIMITED** a private limited liability company incorporated in England and Wales with company number 08318601, as agent for the Finance Parties (the "**Agent**"); and
- (7) **GLAS TRUST CORPORATION LIMITED**, a private limited liability company incorporated in England and Wales with company number 07927175, as security trustee for the Secured Parties (the "**Security Agent**").

IT IS AGREED as follows:

SECTION 1

INTERPRETATION

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) a Finance Party (or an Affiliate or Related Fund of a Finance Party); or
- (c) any other bank or financial institution approved by the Agent;

"Acceptable Jurisdiction" means a country or territory that is not a Sanctioned Country (and excludes any country or territory that at any time becomes a Sanctioned Country);

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

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

"Accounting Reference Date" means 31 December;

"Acquisition" means:

- (a) the Sword Acquisition; and
- (b) any other acquisition of an Acquisition Target by an Obligor (other than the Parent or the Company) as permitted under paragraph (f) of the definition of **"Permitted Acquisition"** or otherwise with the consent of the Majority Lenders;

"Acquisition Agreement" means any acquisition agreement entered into by an Obligor (other than the Parent or the Company) in connection with an Acquisition (other than the Sword Acquisition);

"Acquisition Costs" means:

- (a) the Sword Acquisition Costs; and
- (b) all fees, costs and expenses, stamp, registration and other Taxes incurred by the Parent or any other member of the Group in connection with any Acquisition;

"Acquisition Documents" means:

- (a) the Sword Acquisition Documents;
- (b) any acquisition agreement, disclosure letter, tax deed or other document entered into by a member of the Group in connection with an Acquisition; and
- (c) any other document designated as an **"Acquisition Document"** by the Agent and the Parent;

"Acquisition Target" has the meaning given to such term in paragraph (f) of the definition of **"Permitted Acquisition"**;

"Additional Borrower" means a company which becomes an Additional Borrower in accordance with clause 29 (*Changes to the Obligors*);

"Additional Facility" has the meaning given to that term in clause 2.2 (*Uncommitted Additional Facilities*);

"Additional Facility Commitments" has the meaning given to that term in clause 2.2 (*Uncommitted Additional Facilities*);

"Additional Facility Conditions" has the meaning given to that term in clause 2.2 (*Uncommitted Additional Facilities*);

"Additional Facility Lender Certificate" means a document substantially in the form set out in schedule 14 (*Form of Additional Facility Lender Certificate*);

"Additional Facility Lenders" has the meaning given to that term in clause 2.2 (*Uncommitted Additional Facilities*);

"Additional Facility Loan" has the meaning given to that term in clause 2.2 (*Uncommitted Additional Facilities*);

"Additional Facility Notice" has the meaning given to that term in clause 2.2 (*Uncommitted Additional Facilities*);

"Additional PIK Facility" means any Additional Facility in respect of which PIK Interest will accrue as specified in the Additional Facility Notice in respect of that Additional Facility;

"Additional PIK Facility Loan" means the loan made or to be made under any Additional PIK Facility or the principal amount outstanding for the time being of that loan;

"Additional Facility Request" has the meaning given to that term in clause 2.2 (*Uncommitted Additional Facilities*);

"Additional Guarantor" means a company which becomes an Additional Guarantor in accordance with clause 29 (*Changes to the Obligors*);

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

"Adjusted Leverage" has the meaning given to that term in clause 24.1 (*Financial definitions*);

"Affiliate" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company;

"Agent's Spot Rate of Exchange" means:

- (a) the Agent's spot rate of exchange; or
- (b) (if the Agent does not have an available spot rate of exchange) any other publicly available spot rate of exchange selected by the Agent (acting reasonably),

for the purchase of the relevant currency with the Base Currency in the London foreign exchange market at or about 11.00am on a particular day;

"Agreed Security Principles" means the principles set out in schedule 12 (*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 7 (*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 7 (*Ancillary Facilities*);

"Ancillary Lender" means each Lender (or Affiliate of a Lender) which makes available an Ancillary Facility in accordance with clause 7 (*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:

- (a) the principal amount under each overdraft facility and 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 and cancelled or prepaid and cancelled); 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 23 (*Information undertakings*);

"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;

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

"Availability Period" means:

- (a) in relation to Facility B, the period from and including the date of this Agreement to and including the last day of the Certain Funds Period;
- (b) 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; and
- (c) in relation to any Additional Facility, the period specified as such in the Additional Facility Notice relating to that Additional Facility (and, in any event, a period of not more than five Business Days following the relevant Establishment Date);

"Available Commitment" means, in relation to a Facility, a Lender's Commitment under that Facility minus (subject as set out below):

- (a) the Base Currency Amount of its participation in any outstanding Loans 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 Loan, the Base Currency Amount of its participation in any other Loans 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;

the purposes of calculating a Lender's Available Commitment in relation to any proposed Loan 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 Loans 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;

"Bankruptcy Code" means 11 U.S.C. §§ 101 et seq.;

"Base Case Model" means the financial model, in agreed form, including profit and loss, balance sheet and cashflow projections relating to the Group (for these purposes assuming Completion and utilisation of Facility B) for the period beginning 1 January 2018 and ending 31 December 2023 entitled *"Pr Sword - Covenant Model 06.08_6+6 reforecast_for BCM_with monitoring fees + s&u cash.xlsx"* relating to the Group and prepared by or on behalf of the Parent;

"Base Currency" means sterling;

"Base Currency Amount" means:

- (a) in relation to a Loan, the amount specified in the Utilisation Request delivered by a Borrower for that Loan (or, if the amount requested is not denominated in the Base Currency, that amount converted into the Base Currency at the Agent's Spot Rate of Exchange on the date which is three Business Days before the Utilisation Date or, if later, on the date the Agent receives the Utilisation Request in accordance with the terms of this Agreement); and
- (b) in relation to an Ancillary Commitment, the amount specified as such in the notice delivered to the Agent by the Parent pursuant to clause 7.2 (*Availability*) or, if the amount specified is not denominated in the Base Currency, that amount converted into the Base Currency at the Agent's Spot Rate of Exchange on the date which is three Business Days before the Ancillary Commencement Date for that Ancillary Facility or, if later, the date the Agent receives the notice of the Ancillary Commitment in accordance with the terms of this Agreement,

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

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

- (a) in relation to LIBOR:

if:

- (i) the Base Reference Bank is a contributor to the applicable Screen Rate; and
- (ii) it consists of a single figure,

the rate (applied to the relevant Base Reference Bank and the relevant currency and period) which contributors to the applicable Screen Rate are asked to submit to the relevant administrator;

- (b) in relation to EURIBOR:
 - (i) (other than where paragraph (b)(ii) applies) as the rate at which the relevant Base Reference Bank believes one prime bank is quoting to another prime bank for interbank term deposits in euro within the Participating Member States for the relevant period; or
 - (ii) if different, as the rate (if any and applied to the relevant Base Reference Bank and the relevant period) which contributors to the applicable Screen Rate are asked to submit to the relevant administrator;
- (c) in relation to WIBOR, the rate at which the relevant Base Reference Bank could borrow funds in the Warsaw interbank market; or
- (d) in any other case, the rate at which the relevant Base Reference Bank could fund itself in the relevant currency for the relevant period with reference to the unsecured wholesale funding market;

"Base Reference Banks" means:

- (a) in relation to LIBOR, the principal London offices of two or more financial institutions;
- (b) in relation to EURIBOR, the principal Brussels offices of two or more financial institutions; and
- (c) in relation to WIBOR, the principal Warsaw offices of two or more financial institutions,

and, in each case, as appointed by the Agent in consultation with the Parent;

"Benefit Plan" means any of:

- (a) an *"employee benefit plan"* (as defined in ERISA) that is subject to Title I of ERISA;
- (b) a *"plan"* as defined in and subject to Section 4975 of the Code; or
- (c) any person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such *"employee benefit plan"* or *"plan"*;

"Borrower" means the Company or an Additional Borrower unless it has ceased to be a Borrower in accordance with clause 29 (*Changes to the Obligors*);

"Borrowings" has the meaning given to that term in clause 24.1 (*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 for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period;

"Budget" means:

- (a) in relation to the period beginning on the Closing Date and ending on 31 December 2019, the budget set out in the Base Case Model, in agreed form, to be delivered by the Parent to the Agent pursuant to clause 4.1 (*Initial conditions precedent*); and
- (b) in relation to any other period, any budget delivered by the Parent to the Agent in respect of that period pursuant to clause 23.4 (*Budget*);

"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;

"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" 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 denominated in sterling, euro, US dollar or any other currency readily available and freely convertible into sterling, in hand or at bank and (in the latter case) credited to an account in the name of an Obligor with an Acceptable Bank and to which an Obligor is alone (or together with other Obligors) beneficially entitled and for so long as:

- (a) that cash is repayable within 30 days after the relevant date of calculation;
- (b) repayment of that cash is not contingent on the prior discharge of any other indebtedness of any member of the Group or of any other person whatsoever or on the satisfaction of any other condition;
- (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 members of the Group in the ordinary course of their banking arrangements; and
- (d) the cash is freely and (except as mentioned in paragraph (a)) immediately available to be applied in repayment or prepayment of the Facilities;

"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:
 - (i) the government of the United States;
 - (ii) the United Kingdom; or
 - (iii) any member state of the European Economic Area or any Participating Member State (provided that, in the case of this paragraph (iii), such member state or Participating Member State has a credit rating from an internationally recognised credit rating agency that is equivalent to or better than the United States or the United Kingdom),or by an instrumentality or agency of any of them having an equivalent credit rating, maturing within one year after the relevant date of calculation and not convertible or exchangeable to any other security;
- (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:
 - (A) the United States;
 - (B) the United Kingdom; or
 - (C) any member state of the European Economic Area or any Participating Member State (provided that, in the case of this paragraph (C), such member state or Participating Member State has a credit rating from an internationally recognised credit rating agency that is equivalent to or better than the United States or the United Kingdom);
 - (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 Service Limited;

- (ii) invest substantially all their assets in securities of the types described in paragraphs (a) to (d); 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, denominated in sterling, euro, US dollar or any other currency readily available and freely convertible into sterling, and to which any Obligor is alone (or together with other Obligors) beneficially entitled at that time and which is not issued or guaranteed by any member of the Group or subject to any Security (other than Security arising under the Transaction Security Documents);

"Cashflow" has the meaning given to that term in clause 24.1 (*Financial definitions*);

"Cashflow Cover" has the meaning given to that term in clause 24.1 (*Financial definitions*);

"Cash Margin" means:

- (a) in relation to the Facility B Loan, 4.5 per cent. per annum; and
- (b) in relation to any Additional PIK Facility Loan, the cash margin specified in the Additional Facility Notice in respect of that Additional PIK Facility,

excluding any PIK Interest;

"Cash Pay Interest" means interest calculated in accordance with paragraph (a) of clause 12.1 (*Calculation of interest*);

"Certain Funds Loan" means the Facility B Loan made or to be made during the Certain Funds Period where the Facility B Loan is to be made solely for the purposes set out in clause 3.1(a);

"Certain Funds Period" means the period commencing on the date of this Agreement and ending on:

- (a) if the Sword Acquisition proceeds (or is proposed to proceed) by way of a Scheme the earliest to occur of:
 - (i) the date on which the Scheme lapses, terminates or (with the consent of the Panel) is withdrawn other than by way of an Offer Conversion;
 - (ii) the date falling 15 days after the Scheme Effective Date; and
 - (iii) five months after the date of this Agreement; or
- (b) if the Sword Acquisition proceeds (or is proposed to proceed) by way of an Offer, the earliest to occur of:
 - (i) the date on which the Offer, lapses, terminates or with the consent of the Panel is withdrawn;
 - (ii) the date falling 56 days after the Offer Effective Date, or if the Company has sent out Takeover Notices before such date, such longer period as is

necessary to enable the Company to acquire the remaining Sword Target Shares pursuant to the Takeover Procedure;

(iii) the Closing Date; and

(iv) six months after the date of this Agreement,

or such later date agreed by the Agent (acting on the instructions of all Lenders);

"Change of Control" means:

(a) the Initial Institutional Investors or any funds controlled or managed by the Initial Institutional Investors cease directly or indirectly to:

(i) have the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:

(A) cast, or control the casting of, more than thirty per cent. (30%) of the maximum number of votes that might be cast at a general meeting of the Parent;

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

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

(ii)

(A) hold an Investor Majority;

(B) be or have the right to appoint the Lead Investor;

(C) have the right to appoint Investor Director(s); or

(D) otherwise cease to hold the right to give (or not give) Investor Consent,

(in each case) under (and as defined in) the Shareholders' Agreement and under (and as defined in) the Constitutional Documents, (in each case) in the absolute discretion of the Initial Institutional Investors;

(iii) hold beneficially more than thirty per cent. (30%) 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);

(b) the Initial Institutional Investors or any funds controlled or managed by the Initial Institutional Investors and Vespa together cease directly or indirectly 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 fifty per

cent. (50%) of the maximum number of votes that might be cast at a general meeting of the Parent;

- (ii) hold beneficially more than forty per cent. (40%) 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);
- (c) any person or group of persons (not being the Initial Institutional Investors) acting in concert gains direct or indirect control of the Parent;
- (d) the Parent ceases (directly) to hold beneficially all of the shares in, or control all of the voting rights in respect of the shares in, the Company; or
- (e) after the Closing Date, the Company ceases (directly) to hold beneficially all of the shares in, or control all of the voting rights in respect of the shares in, the Sword Target.

For the purposes of this definition:

- (i) **"control"** of the Parent means:
 - (A) the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
 - (1) cast, or control the casting of, more than thirty per cent. (30%) of the maximum number of votes that might be cast at a general meeting of the Parent;
 - (2) appoint or remove all, or the majority, of the directors or other equivalent officers of the Parent; or
 - (3) give directions with respect to the operating and financial policies of the Parent with which the directors or other equivalent officers of the Parent are obliged to comply;
 - (B)
 - (1) holding an Investor Majority,
 - (2) being or having the right to appoint the Lead Investor,
 - (3) having the right to appoint an Investor Director(s); or
 - (4) otherwise having the right to give (or not give) Investor Consent,

(in each case) under (and as defined in) the Shareholders' Agreement or under (and as defined in) the Constitutional Documents;
 - (C) the holding beneficially of more than thirty per cent. (30%) 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);

- (D) the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to cast, or control the casting of, more of the maximum number of votes that might be cast at a general meeting of the Parent than might be cast by the Initial Institutional Investors or any funds controlled or managed by the Initial Institutional Investors; or
 - (E) the holding beneficially of more 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) than beneficially held by the Initial Institutional Investors or any funds controlled or managed by the Initial Institutional Investors; and
- (ii) **"acting in concert"** means a group of persons who, pursuant to an agreement or understanding (whether formal or informal), actively cooperate, through the acquisition directly or indirectly of shares in the Parent by any of them, either directly or indirectly, to obtain or consolidate control of the Parent;

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

"City Code" means The City Code on Takeovers and Mergers;

"Clean-Up Date" means:

- (a) in respect of the Sword Acquisition, the date falling 60 days after the Closing Date; and
- (b) in respect of any Permitted Acquisition under paragraph (f) of the definition of Permitted Acquisition, the date falling 60 days after the date upon which such Permitted Acquisition completes;

"Clean-up Default" means an Event of Default referred to in clauses 26.2 (*Financial covenants and other obligations*) and 26.3 (*Other obligations*) (but, in each case, only to the extent that it relates to a Clean-Up Undertaking), clause 26.4 (*Misrepresentation*) (but only to the extent that it relates to a Clean-Up Representation), clause 26.5 (*Cross default*), clause 26.11 (*Cessation of business*), clause 26.14 (*Expropriation*) and clause 26.16 (*Litigation*);

"Clean-up Representation" means any of the representations and warranties in clause 22 (*Representations*) other than those described in clause 22.8 (*Insolvency*), clause 22.18 (*Anti-corruption*) or clause 22.31 (*Sanctions*);

"Clean-up Undertaking" means any of the undertakings in clause 25 (*General undertakings*) other than those described in clause 25.5 (*Anti-corruption law*), clause 25.11 (*Holding Companies*), clause 25.13 (*Pari passu ranking*), clause 25.23 (*Subordinated Debt*), clause 25.29 (*Access*), clause 25.32 (*Amendments*), clause 25.39 (*Further assurance*), clause 25.40 (*Conditions subsequent*) and clause 25.41 (*Sanctions*);

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

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

"Commitment" means a Facility B Commitment, an Additional Facility Commitment or a Revolving Facility Commitment;

"Completion" means the completion of the Sword Acquisition, including:

- (a) if the Sword Acquisition proceeds by way of a Scheme, the acquisition by Bidco of Sword Target Shares in accordance with the Sword Minority Acquisition Agreement (which for the avoidance of doubt may take place after the Scheme Effective Date); or
- (b) if the Sword Acquisition proceeds by way of an Offer, the completion of the Takeover Procedure after the Offer Effective Date;

"Compliance Certificate" means a certificate substantially in the form set out in schedule 8 (*Form of Compliance Certificate*);

"Confidential Information" means all information relating to the Parent, the Company, any Obligor, the Group, the Finance Documents or a Facility of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Finance Documents or a Facility from either:

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

- (i) information that:
 - (A) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of clause 40 (*Confidential Information*);
 - (B) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
 - (C) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality; and
- (ii) any Funding Rate or Reference Bank Quotation;

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

"Consideration" means, in respect of an Acquisition, the aggregate of:

- (a) the cash consideration payable by a member of the Group for the Acquisition Target (including any vendor debt and deferred consideration (but excluding any earn out arrangement or other contingent deferred consideration) that the Company (acting reasonably) projects at the date of such Acquisition will become payable by the Group) and any associated costs and expenses; and
- (b) any Financial Indebtedness or other actual or contingent liabilities remaining in the Acquisition Target (or assumed by any member of the Group) immediately following the Acquisition;

"Constitutional Documents" means the articles of association, in agreed form, of Topco, the certificate of incorporation of Topco and any certificate of incorporation on change of name or other documents relating thereto;

"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 or Material Event of Default in respect of which the Agent has exercised any of its rights or issued any notice pursuant to clause 26.19 (*Acceleration*) or clause 26.20 (*Super Senior Acceleration*);

"Default" means an Event of Default or Material Event of Default or any event or circumstance specified in clause 26 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default or a Material 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 Agent or the Parent (which has notified the Agent) that it will not make its participation in a Loan available) by the Utilisation Date of that Loan in accordance with clause 5.4 (*Lenders' participation*);
- (b) which has otherwise rescinded or repudiated a Finance Document; or
- (c) with respect to which an Insolvency Event has occurred and is continuing,

unless, in the case of paragraph (a):

- (i) its failure to pay is caused by:
 - (A) administrative or technical error; or
 - (B) a Disruption Event; and

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

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

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

"Designated Gross Amount" means the amount notified by the Parent to the 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 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;

"Disposal" has the meaning given to that term in clause 10.2 (*Acquisition, Disposal and Insurance Proceeds*);

"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 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 Finance Documents; or
 - (ii) from communicating with other Parties in accordance with the terms of the Finance Documents,

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

"Distressed Fund" means a fund or other entity that engages in the trading or acquisition of distressed debt and whose stated investment strategy is the purchasing of debt for the primary purpose of obtaining ownership of equity in the relevant Borrower(s) or gaining control (as defined in the definition of Change of Control) of a business (for the avoidance of doubt, this shall not include an Affiliate or Related Fund of such a fund which falls outside this description);

"Dormant Subsidiary" means a member of the Group which does not trade (for itself or as agent for any person) and does not own, legally or beneficially, assets (including, without limitation, indebtedness owed to it) which in aggregate have a value of £10,000 or more (or its equivalent in any other currency or currencies);

"Dutch CC" means the Dutch Civil Code (*Burgerlijk Wetboek*);

"Dutch Obligor" means an Obligor incorporated under Netherlands law;

"EBITDA" has the meaning given to that term in clause 24.1 (Financial definitions);

"Effective" means:

- (a) if the Sword Acquisition is implemented by way of a Scheme, the Scheme having become fully effective in accordance with its terms, upon the delivery of the Scheme Court Order to the Registrar of Companies; or
- (b) if the Sword Acquisition is implemented by way of Offer, the Offer having been declared or become unconditional in all respects in accordance with the requirements of the City Code;

"Effective Date" means, if the Sword Acquisition is implemented by way of a Scheme, the Scheme Effective Date or, if the Sword Acquisition is implemented by way of Offer, the Offer Effective Date;

"Eligible Institution" means any Lender or other bank, financial institution, 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 in each case which is a Qualifying Lender and which, in each case, is not a Sponsor Affiliate or a member of the Group;

"Employee Benefit Plan" means:

- (a) any employee benefit plan within the meaning of Section 3(3) of ERISA that is maintained for employees of any Obligor or any ERISA Affiliate; and
- (b) any Pension Plan or Multiemployer Plan that has at any time within the preceding seven (7) years been maintained, funded or administered for the employees of any Obligor or any current or former ERISA Affiliate;

"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 member of the Group conducted on or from the properties owned or used by any member of the Group;

"ERISA" means the Employee Retirement Income Security Act of 1974;

"ERISA Affiliate" means any trade or business (whether or not incorporated) under common control with any Obligor within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code);

"ERISA Event" means:

- (a) a Reportable Event with respect to a Pension Plan;
- (b) the withdrawal of any Obligor or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a "substantial employer" (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA;
- (c) a complete or partial withdrawal by any Obligor or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization;
- (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA;
- (e) the institution by the PBGC of proceedings to terminate a Pension Plan;
- (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan;
- (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; or
- (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Obligor or any ERISA Affiliate;

"Establishment Date" means, in relation to an Additional Facility, the later of:

- (a) the proposed establishment date specified in the Additional Facility Notice; or

(b) the date on which the Agent executes the Additional Facility Notice;

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

(a) the applicable Screen Rate as of the Specified Time for euro and for a period equal in length to the Interest Period of that Loan; or

(b) as otherwise determined pursuant to clause 14.1 (*Unavailability of Screen Rate*),

and if, in either case, that rate is less than zero, EURIBOR shall be deemed to be zero;

"Event of Default" means any event or circumstance specified as such in clause 26 (*Events of Default*);

"Existing Ancillary Facility" means:

(a) the facility made available under the facility letter dated 2 October 2017 and made between HSBC Bank plc and Testronic Laboratories Limited;

(b) the facility made available under the facility letter dated 24 April 2018 and made between HSBC Bank plc and Curve Digital Publishing Limited;

(c) means the facility made available under the facility letter dated 29 November 2018 and made between HSBC Bank USA, National Association and Testronic, Inc.; and

(d) the facility made available under the facility letter dated on or after the date of this Agreement (but before the Closing Date) and made between HSBC Bank plc and Curve Digital Publishing Limited in a maximum amount of £2,000,000;

"Facility" means a Term Facility or the Revolving Facility;

"Facility B" means the term loan facility made available under this Agreement as described in clause 2.1(a)(i);

"Facility B Commitment" means:

(a) in relation to an Original Lender, the amount in the Base Currency set opposite its name under the heading "*Facility B Commitment*" in part 2 of schedule 1 (*The Original Parties*) and the amount of any other Facility B Commitment transferred to it under this Agreement or assumed by it in accordance with clause 2.3 (*Increase*); and

(b) in relation to any other Lender, the amount in the Base Currency of any Facility B Commitment transferred to it under this Agreement or assumed by it in accordance with clause 2.3 (*Increase*),

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

"Facility B Lender" means each Lender holding a Facility B Commitment from time to time;

"Facility B Loan" means the loan made or to be made under Facility B 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 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 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 or any associated regulations (or any amended or successor version that is substantively comparable and not materially more onerous to comply with); or
- (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 any law or regulation referred to in paragraph (a); or
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) 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; or
- (b) in relation to a "*passthru payment*" described in section 1471(d)(7) of the Code not falling within paragraph (a), the first date from which such payment may become subject to a deduction or withholding required by FACTA,

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 Finance Document required by FATCA;

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

"FCA" means the Financial Conduct Authority acting in accordance with Part 6 of the Financial Services and Markets Act 2000;

"Fee Letter" means:

- (a) any letter or letters dated on or about the date of this Agreement between the Arranger and the Parent or the Agent and the Parent or the Security Agent and the Parent setting out any of the fees referred to in clause 15 (*Fees*);

- (b) any agreement setting out fees payable to a Finance Party referred to in clause 2.3(f) or clause 15.6 (*Interest, commission and fees on Ancillary Facilities*), or under any other Finance Document; and
- (c) any agreement setting out any fees payable in connection with an Additional Facility;

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

- (a) the definitions of **"Default"** and **"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)(iv);
- (f) clause 21 (*Guarantee and indemnity*); and
- (g) clause 26 (*Events of Default*) (other than clause 26.15(b), clause 26.19 (*Acceleration*) or clause 26.20 (*Super Senior Acceleration*)).

For the avoidance of doubt, where the term **"Finance Document"** is used in, and construed for the purposes of, a Transaction Security Document, a Hedging Agreement shall be a Finance Document;

"Finance Lease" has the meaning given to that term in clause 24.1 (*Financial definitions*);

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

- (a) the definitions of **"Secured Parties"** and **"New Subordinated Loans"**;
- (b) clause 1.2(a)(i);
- (c) paragraph (c) of the definition of **"Material Adverse Effect"**;
- (d) clause 21 (*Guarantee and indemnity*);
- (e) clause 25.39 (*Further assurance*); and
- (f) clause 31 (*Conduct of business by the Finance Parties*).

For the avoidance of doubt, where the term "**Finance Party**" is used in, and construed for the purposes of, a Transaction Security Document, a Hedge Counterparty shall be a Finance Party;

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

- (a) monies borrowed and debit balances at banks or other financial institutions;
- (b) any acceptance under any acceptance credit 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 liabilities in respect of Finance Leases;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis and meet any requirement for de-recognition under the Accounting Principles);
- (f) any Treasury Transaction (and, when calculating the value of that Treasury Transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that Treasury Transaction, that amount) shall be taken into account);
- (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 member of the Group which liability would fall within one of the other paragraphs of this definition; or
 - (ii) any liabilities of any member of the Group relating to any post-retirement benefit scheme;
- (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 B 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 more than 90 days after the date of supply;
- (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 borrowings under the Accounting Principles;

- (k) any amount of non-contingent deferred consideration for an Acquisition but excluding, for the avoidance of doubt, any earn-out or other amount that is contingent on the financial performance of the Acquisition Target; and
- (l) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (j);

"Financial Quarter" has the meaning given to that term in clause 24.1 (*Financial definitions*);

"Financial Year" has the meaning given to that term in clause 24.1 (*Financial definitions*);

"Funding Rate" means any individual rate notified by a Lender to the Agent pursuant to clause 14.4(a)(ii);

"Funds Flow Statement" means the funds flow statement, in agreed form, delivered to the Agent on or prior to the date of this Agreement pursuant to clause 4.1 (*Initial conditions precedent*);

"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, the Company and each of their respective Subsidiaries for the time being;

"Group Structure Chart" means the group structure chart, in agreed form, delivered to the Agent on or prior to the date of this Agreement pursuant to clause 4.1 (*Initial conditions precedent*);

"Guarantor" means an Original Guarantor or an Additional Guarantor, unless it has ceased to be a Guarantor in accordance with clause 29 (*Changes to the Obligors*);

"Hedge Counterparty" means any entity which has become a Party as a Hedge Counterparty in accordance with clause 27.9 (Accession of Hedge Counterparties) and which is, or has become, a party to the Intercreditor Agreement as a Hedge Counterparty in accordance with the provisions of the Intercreditor Agreement;

"Hedging Agreement" means any master agreement, confirmation, schedule or other agreement in agreed form (as confirmed by the Agent acting on the instructions of the Majority Lenders (acting reasonably and in good faith)) entered into or to be entered into by the Company and a Hedge Counterparty for the purpose of hedging liabilities and/or risks in relation to Facility B;

"Holding Account" means an account:

- (a) held in England and Wales by a member of the Group with a Lender;
- (b) identified in a letter between the Parent and the 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,

(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 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 Finance Documents by the due date for payment;
- (b) the Agent otherwise rescinds or repudiates a Finance Document;
- (c) (if the 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 Agent;

unless, in the case of paragraph (a):

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

- (A) administrative or technical error; or

- (B) a Disruption Event; and

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

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

"Increase Confirmation" means a confirmation substantially in the form set out in schedule 10 (*Form of Increase Confirmation*);

"Increase Lender" has the meaning given to that term in clause 2.3 (*Increase*);

"Industrial Competitor" means:

- (a) any competitor, supplier or subcontractor of the Group in respect of any of the material activities of the Group;
- (b) any person that it is an Affiliate of or is acting (in relation to the Facilities) on behalf of a person who falls within paragraph (a); or
- (c) a person who has the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to cast, or control the casting of, more than fifty per cent. (50%) of the maximum number of votes that might be cast at a general meeting (or equivalent) of a person who falls within paragraphs (a) or (b) or who holds beneficially more than fifty per cent. (50%) of the issued share capital of a person

who falls within paragraphs (a) or (b) (any such person, a "**Competitor Shareholder**"), any Affiliate of a Competitor Shareholder, any trust of which a Competitor Shareholder or any of its Affiliates is a trustee, any partnership of which a Competitor Shareholder 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, a Competitor Shareholder or any of its Affiliates,

provided that, notwithstanding the foregoing, a person who falls within paragraphs (b) or (c) shall not be an Industrial Competitor if:

- (i) its ownership of (or other rights in respect of) the issued and/or voting share capital of any person falling within paragraph (a) is administered by persons operating behind appropriate information barriers implemented or maintained as required by law, regulation or internal policy and, in any event, to the extent required to ensure that such administration is independent from such person's interests under the Finance Documents and any information provided under the Finance Documents is not (or is not capable of being) disclosed or otherwise made available to any person(s) operating behind such information barrier and provided further that no Lender or Affiliate or Related Entity of a Lender shall be considered to be an Industrial Competitor at any time for the purpose of this definition; or
- (ii) such person is a private equity fund or other financial sponsor or any Affiliate of such person, any trust of which such person or any of its Affiliates is a trustee, any partnership of which such person 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, such person or any of its Affiliates;

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

"Initial Institutional Investors" means NorthEdge Capital LLP;

"Insolvency Event" in relation to an entity means that the entity:

- (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) 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 a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (g) 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));
- (h) 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;
- (i) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (h); or
- (j) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts;

"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 member of the Group (which may now or in the future subsist);

"Intercreditor Agreement" means the intercreditor agreement in agreed form dated the same date as this Agreement and made between, among others, the Parent, the Company, the Lenders, the Agent, the Security Agent and Topco and Project Sword Midco 1 Limited (as the Original Subordinated Creditors) (as defined in the Intercreditor Agreement);

"Interest Period" means, in relation to a Loan, each period determined in accordance with clause 13 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with clause 12.4 (*Default interest*);

"Interpolated Screen Rate" means, in relation to any Loan, the rate (rounded to the same number of decimal places as the two relevant Screen Rates) which results from interpolating on a linear basis between:

- (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 for the currency of that Loan;

"Investment Company Act" means the Investment Company Act of 1940 (15 U.S.C. § 80(a)(1), et seq.);

"Investors" means the Initial Institutional Investors, Senior Management and their or any subsequent successors or assigns or transferees and any other person holding shares in Topco from time to time;

"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;

"Joint Venture Investment" has the meaning given to that term in the definition of **"Permitted Joint Venture"**;

"Legal Opinion" means any legal opinion delivered to the Agent in connection with any Finance Document including, without limitation, under:

- (a) clause 4.1 (*Initial conditions precedent*);
- (b) clause 25.40(a); and
- (c) clause 29 (*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 insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (b) the time barring of claims under the Limitation Acts, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim;
- (c) similar principles, rights and defences under the laws of any Relevant Jurisdiction; and
- (d) any other matters which are set out as qualifications or reservations as to matters of law of general application in the Legal Opinions;

"Lender" means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party as a Lender in accordance with clause 2.2 (*Uncommitted Additional Facilities*), clause 2.3 (*Increase*) or clause 27 (*Changes to the Lenders*),

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

"LIBOR" means, in relation to any Loan:

- (a) the applicable Screen Rate as of the Specified Time for the currency of that Loan and for a period equal in length to the Interest Period of that Loan; or
- (b) as otherwise determined pursuant to clause 14.1 (*Unavailability of Screen Rate*),

and:

- (i) in relation to any Term Facility, if, in either case, that rate is less than the LIBOR Floor, LIBOR shall be deemed to be the LIBOR Floor; and
- (ii) in relation to the Revolving Facility, if, in either case, that rate is less than zero, LIBOR shall be deemed to be zero;

"LIBOR Floor" means one half of one per cent. (0.5%);

"Limitation Acts" means the Limitation Act 1980 and the Foreign Limitation Periods Act 1984;

"LMA" means the Loan Market Association;

"Loan" means a Term Loan or a Revolving Facility Loan;

"Loan Note Documents" means the Management Loan Note Documents and the Rollover Loan Note Documents;

"Major Default" means with respect to any member of the Group (other than any member of the Target Group), any circumstances constituting a Default under any of:

- (a) clause 26.1 (*Non-payment*) insofar as it relates to a non-payment of principal or interest under a Certain Funds Utilisation only;
- (b) clause 26.3 (*Other obligations*) insofar as it relates to a breach of a Major Undertaking;
- (c) clause 26.4 (*Misrepresentation*) insofar as it relates to a breach of any Major Representation;
- (d) clause 26.6 (*Insolvency*);
- (e) clause 26.7 (*Insolvency proceedings*);

- (f) clause 26.8 (*Creditors' process*);
- (g) clause 26.9 (*Unlawfulness and invalidity*);
- (h) clause 26.14 (*Expropriation*); or
- (i) clause 26.15 (*Repudiation and rescission of agreements*);

"Major Representation" means a representation or warranty with respect to any member of the Group (other than any member of the Target Group) under any of:

- (a) clause 22.2 (*Status*) to clause 22.6 (*Validity and admissibility in evidence*) inclusive;
- (b) paragraphs (a) or (b), or paragraphs (f) or (g) to the extent that any representation or warranty under paragraphs (f) or (g) that is not true in all material respects has or is reasonably likely to have a material adverse effect on the interests of the Lenders, of clause 22.27 (*Sword Acquisition Documents, disclosures and other documents*); or
- (c) clause 22.32 (*Holding Companies*);

"Major Undertaking" means each of:

- (a) clause 4.6 (*Offer Conversion*);
- (b) clause 25.7 (*Merger*);
- (c) clause 25.8 (*Change of business*);
- (d) clause 25.9 (*Acquisitions*);
- (e) clause 25.10 (*Joint Ventures*);
- (f) clause 25.11 (*Holding Companies*);
- (g) paragraphs (a), (d) or (g), or paragraph (f) to the extent that any failure to comply with paragraph (f) has or is reasonably likely to have a material adverse effect on the interests of the Lenders, of clause 25.14 (*Scheme Undertakings*);
- (h) paragraphs (c) or (f), or paragraph (e) to the extent that any failure to comply with paragraph (e) has or is reasonably likely to have a material adverse effect on the interests of the Lenders, of clause 25.15 (*Offer undertakings*);
- (i) clause 25.16 (*Take Private*);
- (j) clause 25.17 (*Negative pledge*);
- (k) clause 25.18 (*Disposals*);
- (l) clause 25.20 (*Loans or credit*);
- (m) clause 25.21 (*No guarantees or indemnities*);
- (n) clause 25.22 (*Dividends and share redemption*);

- (o) clause 25.24 (*Financial Indebtedness*); and
- (p) clause 25.25 (*Share capital*);

"Majority Lenders" means:

- (a) (for the purposes of clause 39.2(a) in the context of a waiver in relation to a proposed Loan under the Revolving Facility of the condition in clause 4.2 (*Further conditions precedent*)) a Lender or Lenders whose Revolving Facility Commitments aggregate more than 66^{2/3} per cent. of the Total Revolving Facility Commitments; and
- (b) (in any other case) a Lender or Lenders whose Commitments aggregate more than 66^{2/3} per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 66^{2/3} per cent. of the Total Commitments immediately prior to that reduction);

"Majority Super Senior Lenders" means, at any time, subject to clause 28 (*Restriction on Debt Purchase Transactions*), clause 39.7 (*Excluded Commitments*) and clause 39.9 (*Disenfranchisement of Defaulting Lenders*), a Lender or Lenders whose Revolving Facility Commitments aggregate more than 66^{2/3} per cent. of the Total Revolving Facility Commitments (or, if the Total Revolving Facility Commitments have been reduced to zero, aggregated more than 66^{2/3} per cent. of the Total Revolving Facility Commitments immediately prior to that reduction);

"Management Loan Note Instrument" means the instrument in the agreed form pursuant to which the Management Loan Notes are (or are to be) constituted;

"Management Loan Note Documents" means:

- (a) the Management Loan Note Instrument;
- (b) the Management Loan Notes; and
- (c) any other documents entered into pursuant to or in connection with the Management Loan Note Instrument or the Management Loan Notes;

"Management Loan Note Redemption Amount" means £1,236,405;

"Management Loan Note Permitted Payment" means redemption of the Management Loan Notes on or before the date falling seven months after the Closing Date in a maximum aggregate amount equal to the Management Loan Note Redemption Amount;

"Management Loan Notes" means the fixed rate unsecured management loan notes 2020 issued by Topco;

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

- (a) held in England and Wales by a Borrower with a Lender;
- (b) identified in a letter between the Parent and the 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 Agent and Security Agent; and

- (d) from which no withdrawals may be made by any members of the Group except as contemplated by this Agreement,

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

"Margin" means:

- (a) in relation to the Facility B Loan, the Cash Margin and the PIK Margin;
- (b) in relation to any Revolving Facility Loan, 3.00 per cent. per annum;
- (c) in relation to any Additional Facility Loan, the percentage rate per annum specified as such in the Additional Facility Notice relating to the Additional Facility under which that Additional Facility Loan is made or is to be made;
- (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;

"Margin Stock" means margin stock or "margin security" within the meaning of Regulation T, U and X of the Board of Governors of the Federal Reserve System or any successor thereto;

"Material Adverse Effect" means any event or matter which has a material adverse effect on:

- (a) the business, assets, property, operations or financial condition of the Group taken as a whole;
- (b) the ability of the Obligor (taken as a whole) to perform their payment obligations under the Finance Documents; or
- (c) subject to the Legal Reservations and (to the extent not overdue) the Perfection Requirements, the validity or enforceability of, or the effectiveness or ranking of any Security granted or purporting to be granted pursuant to any of, the Finance Documents or the rights or remedies of any Finance Party under any of the Finance Documents;

"Material Company" means, at any time:

- (a) an Obligor; or
- (b) a wholly-owned member of the Group that holds shares, units and/or membership or partnership interests 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 EBITDA) representing five per cent. or more of EBITDA, or has net assets or turnover (excluding intra-group items) representing five per cent. or more of the net assets or turnover of the Group, calculated on a consolidated basis.

Compliance with the conditions set out in paragraph (c) 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 Parent's Auditors as representing an accurate reflection of the revised EBITDA, net assets or turnover of the Group).

A report by the Parent's Auditors 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 26.1 (*Non-payment*) in relation to:
 - (i) any amount of principal or interest due under the Revolving Facility or an Ancillary Facility or any fees payable to any Revolving Facility Lender or Ancillary Lender under clause 15.1 (*Commitment fee*), clause 15.2 (*Arrangement fee*) or clause 15.6 (*Interest, commission and fees on Ancillary Facilities*); and
 - (ii) any other amount due to a Revolving Facility Lender in connection with the Revolving Facility or an Ancillary Lender in connection with an Ancillary Facility in an amount in excess of £50,000 (excluding any applicable VAT);
- (b) an Event of Default under clause 26.2 (*Financial covenants and other obligations*) arising as a result of a breach of clause 24.2(b) (*Minimum Adjusted EBITDA*);
- (c) an Event of Default under clause 26.2 (*Financial covenants and other obligations*) arising as a result of a failure to comply with clauses:
 - (i) 23.1(a) and 23.1(b); or
 - (ii) 23.2 (*Provision and contents of Compliance Certificate*),

in each case only insofar as such clauses relate to clause 24.2(b) (*Minimum Adjusted EBITDA*) and which has not been remedied within 15 Business Days (the "**Remedy Period**") of the date on which the Parent was required to provide the relevant information to the Agent in accordance with the terms set out in clause 23.1 (*Financial statements*) or clause 23.2 (*Provision and contents of Compliance Certificate*) (as applicable), in each case as at the date of this Agreement);
- (d) an Event of Default under clause 26.3 (*Other obligations*) arising as a result of a failure to comply with clause 5.7 (*Clean down*) where such failure to comply is not remedied within 30 days of the date on which the Compliance Certificate in respect of the Quarterly Financial Statements for the Relevant Period ending on the Accounting Reference Date evidencing such failure to comply is delivered to the Agent;
- (e) an Event of Default under clause 26.3(a) arising as a result of a failure to comply with clause 25.5 (*Anti-corruption law*) or clause 25.41 (*Sanctions*);
- (f) an Event of Default under clause 26.3(a) insofar as it arises as a result of a failure to comply with clause 25.17 (*Negative pledge*), but only where any failure to comply

with such clause is in relation to Security that ranks *pari passu* or senior to the Revolving Facility;

- (g) an Event of Default under clause 26.3(a) insofar as it arises as a result of a breach of clause 25.18 (*Disposals*), but only in relation to a Significant Disposal and save where such Significant Disposal would result in the Revolving Facility being prepaid and cancelled in full;
- (h) an Event of Default under clause 26.3(a) or clause 26.10 (*Intercreditor Agreement*) but, in each case, only relating to the Intercreditor Agreement and only in relation to the taking of any action in respect of which the consent of the Majority Super Senior Lenders was required, but such consent was not obtained, but, in each case, without prejudice to the terms of clause 39.7 (*Excluded Commitments*) and clause 39.9 (*Disenfranchisement of Defaulting Lenders*);
- (i) an Event of Default under clauses 26.6 (*Insolvency*), 26.7 (*Insolvency proceedings*) or clause 26.8 (*Creditors' process*) in relation to:
 - (i) any Significant Company;
 - (ii) a Borrower which has any outstanding Loans under the Revolving Facility or a Borrower or any Affiliate of a Borrower which has any obligations under an Ancillary Facility; or
 - (iii) a member of the Group which is a party to a Hedging Agreement with a Hedge Counterparty that is also a Revolving Facility Lender;
- (j) an Event of Default under clause 26.9 (*Unlawfulness and invalidity*), but only to the extent the rights of the Revolving Facility Lenders or Ancillary Lenders are directly and adversely affected in their capacity as Revolving Facility Lenders or Ancillary Lenders;
- (k) an Event of Default under clause 26.15 (*Repudiation and rescission of agreements*), but only to the extent the rights of the Revolving Facility Lenders or Ancillary Lenders are directly and adversely affected in their capacity as Revolving Facility Lenders or Ancillary Lenders;
- (l) an Event of Default under clause 26.4 (*Misrepresentation*) arising as a result of a misrepresentation in connection with clause 22.18 (*Anti-corruption*) or clause 22.31 (*Sanctions*); and
- (m) any amendment, waiver or consent in relation to a Super Senior Consent Provision or which requires all Lender consent pursuant to clause 39.3 (*All Lender matters*) or any other provision which expressly requires the consent of the Majority Super Senior Lenders is made without or given without the consent of the Majority Super Senior Lenders or, in the case of clause 39.3 (*All Lender matters*), all Super Senior Lenders;

"Material Provision" means each of:

- (a) clause 25.5 (*Anti-corruption law*);
- (b) clause 25.7 (*Merger*) to clause 25.10 (*Joint Ventures*) (inclusive);
- (c) clause 25.13 (*Pari passu ranking*);

- (d) clause 25.17 (*Negative pledge*);
- (e) clause 25.18 (*Disposals*);
- (f) clause 25.20 (*Loans or credit*) to clause 25.24 (*Financial Indebtedness*) (inclusive);
- (g) clause 25.40 (*Conditions subsequent*);
- (h) clause 25.41 (*Sanctions*); and
- (i) clause 29.4 (*Additional Guarantors*);

"Money Laundering Laws" means the anti-corruption laws of all jurisdictions (including, all United Kingdom anti-money laundering laws), the rule and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental or regulatory agency;

"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)) 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 rules will only apply to the last Month of any period;

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

"Multiemployer Plan" means any Employee Benefit Plan of the type described in Section 4001(a)(3) of ERISA, to which any Obligor or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions;

"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 27.1 (*Participations, assignments and transfers by the Lenders*);

"New Shareholder Injection" means:

- (a) New Subordinated Loans; or
- (b) a Permitted Share Issue under paragraph (a) of that definition;

"New Subordinated Loans" means an unsecured, non-guaranteed loan or other debt instrument of the Parent subscribed for by an Investor or a Sponsor Affiliate provided that:

- (a) such loan, liability or other debt instrument is subordinated to the rights and obligations of the Finance Parties under the terms of the Intercreditor Agreement as Subordinated Liabilities (as such term is defined in the Intercreditor Agreement);
- (b) the repayment date for the loan or other debt instrument falls at least six months after the Termination Date in relation to Facility B;
- (c) each provider of any such loan or beneficiary under any such debt instrument becomes a party to the Intercreditor Agreement as a Subordinated Creditor (as such term is defined in the Intercreditor Agreement); and
- (d) the making of such loan or provision of such debt instrument does not lead to a Change of Control;

"Non-Consenting Lender" has the meaning given to that term in clause 39.8 (*Replacement of Lender*);

"Notifiable Debt Purchase Transaction" has the meaning given to that term in clause 28.2(b);

"Obligor" means a Borrower or a Guarantor;

"Obligors' Agent" means the Parent, appointed to act on behalf of each Obligor in relation to the Finance Documents pursuant to clause 2.5 (*Obligors' Agent*);

"OFAC" means the Office of Foreign Assets Control of the US Department of the Treasury;

"Offer" means, if the Sword Acquisition proceeds (or is proposed to proceed) by way of a takeover offer as defined in chapter 3 of part 28 of the Companies Act, the takeover offer (as defined in chapter 3 of part 28 of the Companies Act), which is recommended by the board of directors of the Sword Target at the time the Offer Press Release is published, to be made by or on behalf of the Company to acquire the entire issued and to be issued ordinary share capital of the Sword Target and, where the context admits, any subsequent revision, variation, extension or renewal of such offer;

"Offer Conversion" has the meaning given to it in clause 4.6 (*Offer Conversion*);

"Offer Conversion Notice" has the meaning given to it in clause 4.6 (*Offer Conversion*);

"Offer Document" means the document in respect of the Offer to be sent to the shareholders of the Sword Target;

"Offer Documents" means the Offer Document and the Offer Press Release;

"Offer Effective Date" means, if the Sword Acquisition is implemented by way of Offer, the date on which the Offer becomes Effective;

"Offer Press Release" means the press announcement to be released by or on behalf of the Company pursuant to rule 2.7 of the City Code to announce the terms of an Offer;

"Opening Adjusted EBITDA" means £9,600,000;

"Opening Leverage" means 1.8:1;

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

"Original Financial Statements" means:

- (a) in relation to the Sword Target:
 - (i) its consolidated audited financial statements for its Financial Year ended 31 December 2018; and
 - (ii) its consolidated monthly management accounts for each Financial Quarter ending during the period from 31 December 2018 until 30 June 2019; and
- (b) in relation to any other Obligor, its audited financial statements delivered to the Agent as required by clause 29 (*Changes to the Obligors*);

"Original Jurisdiction" means, in relation to an Obligor, the jurisdiction under whose laws that Obligor is incorporated or established 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 Company or an Original Guarantor;

"Panel" means the UK Panel on Takeovers and Mergers;

"Parent's Auditors" means any firm appointed by the Parent to act as its statutory auditors;

"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 for so long as it remains a party to this Agreement;

"PBGC" means the Pension Benefit Guaranty Corporation or any successor agency;

"Pension Funding Rules" means the rules of the Code and ERISA regarding minimum required contributions (including any instalment payment thereof) to Pension Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA;

"Pension Plan" means any employee pension benefit plan (including a Multiple Employer Plan or a Multiemployer Plan), that is maintained or is contributed to by any Obligor or any ERISA Affiliate and is covered by Title IV of ERISA and is subject to the minimum funding standards under Section 412 of the Code;

"Perfection Requirements" means the making or the procuring of the appropriate registrations, filings, endorsements, notarisation, stampings and/or notifications of the Transaction Security Documents and/or the Transaction Security created or expressed to be created thereunder or in order to achieve the relevant priority for such Transaction Security;

"Permitted Acquisition" means:

- (a) the Sword Acquisition;
- (b) an acquisition by a member of the Group of an asset sold, leased, transferred or otherwise disposed of by another member of the Group in circumstances constituting a Permitted Disposal;
- (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 is reasonably practicable;
- (e) the incorporation of a company or the acquisition of an *"off-the-shelf"* company (in each case not by the Parent or the Company) which on incorporation or acquisition (as applicable) becomes a member of the Group, but only if:
 - (i) that company is incorporated in an Acceptable Jurisdiction with limited liability;
 - (ii) if the shares in the company are owned by an Obligor, Security over the shares of that company, in form and substance satisfactory to the Agent (in accordance with the Agreed Security Principles), is created in favour of the Security Agent within:
 - (A) 30 days (if incorporated in the United Kingdom); or
 - (B) 45 days (if incorporated elsewhere);
 - (iii) prior to such incorporation or acquisition (as applicable) the relevant company has not:
 - (A) undertaken any commercial activity;
 - (B) carried on any business;
 - (C) owned any assets (other than cash at bank being subscription monies for its paid up share capital); or
 - (D) incurred any liabilities; and
- (f) an acquisition (not being an acquisition by the Parent or the Company), for cash consideration, of (A) more than 50 per cent. of the issued share capital of a limited liability company (excluding any part of that issued share capital or those ownership interests that carries no right to participate beyond a specified amount in a distribution of either profits or capital) or (B) (if the acquisition is made by a limited liability company whose sole purpose is to make the acquisition which excludes, for the avoidance of doubt, the Parent and the Company) a business or undertaking carried on as a going concern (in each case, an **"Acquisition Target"**), but only if:

- (i) where less than 100 per cent. of the issued share capital of the Acquisition Target is acquired, the Parent (or another relevant Obligor) has the right to (directly or indirectly):
 - (A) determine, appoint or remove the majority of the directors or other equivalent officers of the Acquisition Target;
 - (B) make amendments to the constitutional documents of the Acquisition Target;
 - (C) pass alone a shareholders' resolution permitting the distribution of dividends to be paid to the company that has acquired the Acquisition Target;
 - (D) drag any minority shareholders' shareholding in the Acquisition Target in the event of a Disposal of shares in the Acquisition Target; and
 - (E) give directions with respect to the operating and financial policies of the Acquisition Target (including controlling the cash flows of the Acquisition Target);
- (ii) no Event of Default is continuing on the date upon which a legally binding commitment is entered into for the acquisition or, by reference to the facts and circumstances known to the Company on the date upon which a legally binding commitment is entered into for the acquisition, would occur as a result of the acquisition;
- (iii) the Acquisition Target is incorporated or established, and carries on its principal business in an Acceptable Jurisdiction with limited liability and is engaged in a business substantially the same as, or complementary to, that carried on by the Group;
- (iv) the Acquisition Target's earnings before interest, tax, depreciation and amortisation (calculated on the same basis as EBITDA) for the 12 month period ending on the last day of the month ending immediately prior to the relevant member of the Group legally committing to the acquisition was (taking into account Anticipated Cost Savings):
 - (A) positive; or
 - (B) if negative, no more negative than £500,000 (or its equivalent in any other currency or currencies);
- (v) the Acquisition Target is not subject to statutory restrictions on the distributions of dividends or other distributions (or, if the Acquisition Target is subject to such restrictions, the Acquisition Target's contributions to EBITDA and Cashflow shall be excluded from all calculations of such items made in accordance with this Agreement so long as these restrictions prevail);

- (vi) to the best of the knowledge and belief of the Parent (having made due and careful enquiry) no member of the Group shall assume any actual or contingent liability as a result of the acquisition unless:
 - (A) adequate reserves are being maintained in respect of those liabilities;
 - (B) those liabilities are reflected in the consideration for the proposed acquisition;
 - (C) there is adequate insurance from a reputable insurer in respect of those liabilities;
 - (D) there is adequate indemnities from the relevant vendor in respect of those liabilities; or
 - (E) those liabilities are satisfied by a New Shareholder Injection;
- (vii) in respect of the Relevant Period ending immediately following completion of the acquisition, Adjusted Leverage (calculated on a pro forma basis for the acquisition (taking into account Anticipated Cost Savings), taking into account any Permitted Financial Indebtedness remaining in the Acquisition Target (or any other member of the Group) after completion of the acquisition and taking into account the source of funding for the acquisition) does not exceed 3.50:1;
- (viii) if the Consideration paid (or payable) for the Acquisition Target is less than or equal to £5,000,000 (or its equivalent in any other currency or currencies), the Parent delivers to the Agent (no later than five Business Days (or such longer period as may be agreed by the Agent) after legally committing to the relevant acquisition);
- (ix) the Parent delivers to the Agent no later than five Business Days (or such shorter period as may be agreed by the Agent) before legally committing to making such acquisition:
 - (A) an information notice prepared by the board of directors of the Parent describing the proposed acquisition, its price metrics, the key operational and financial parameters, the Acquisition Target's market and its competitive positioning, the acquisition rationale and the main terms and conditions of the acquisition (including purchase price and warranties) and to include a copy of any board report prepared by the directors of the Parent in connection with the Acquisition Target;
 - (B) a copy of the latest consolidated audited accounts of the Acquisition Target for the most recently completed two financial years of the Acquisition Target (or, if not applicable, the latest unaudited annual management accounts of the Acquisition Target for its current financial year);
 - (C) the latest drafts of the relevant Acquisition Documents; and

- (D) a certificate signed by two directors of the Parent (one of whom shall be the chief financial officer) and giving calculations showing in reasonable detail that:
 - (1) the Parent is projected to remain in compliance with its obligations under clause 24.2 (*Financial condition*) in respect of each of the four Relevant Periods following the Relevant Period in which the acquisition completes if the financial covenants under clause 24.2 (*Financial condition*) were recalculated *pro forma* for the acquisition (taking into account Anticipated Cost Savings, any Financial Indebtedness remaining in the Acquisition Target at the date of acquisition and the source of funding for the acquisition) as if the proposed acquisition had completed and the consideration for that acquisition had been paid on the first day of the Relevant Period in which the acquisition completes; and
 - (2) the Parent is in compliance with its obligations at paragraphs (f)(i) to (f)(ix) (inclusive);
- (x) the Parent delivers to the Agent no later than five Business Days (or such shorter period as may be agreed by the Agent) before legally committing to making such acquisition:
 - (A) if the Consideration paid (or payable) for the Acquisition Target is less than £5,000,000 (or its equivalent in any other currency or currencies) copies of any due diligence reports commissioned or obtained by a member of the Group in respect of the proposed acquisition (without reliance) subject, in each case, to the current Finance Parties having agreed and signed any required hold harmless letter required by the report providers;
 - (B) if the Consideration paid (or payable) for the Acquisition Target is equal to or greater than £5,000,000 (or its equivalent in any other currency or currencies) but less than £10,000,000 (or its equivalent in any other currency or currencies):
 - (1) copies of any third party due diligence reports which have been commissioned or obtained by a member of the Group (which must include financial and legal due diligence reports) in respect of the proposed acquisition (without reliance) subject, in each case, to the current Finance Parties having agreed and signed any required hold harmless letter required by the report providers; and
 - (2) a revised business plan; and
 - (C) if the Consideration paid (or payable) for the Acquisition Target is equal to or greater than £10,000,000 (or its equivalent in any other currency or currencies):
 - (1) copies of any third party due diligence reports which have been commissioned or obtained by a member of the Group

(which must include financial and legal due diligence reports) in respect of the proposed acquisition, in each case on a reliance basis, to the extent that reliance is obtainable (the Parent having used reasonable endeavours to procure reliance and subject to the Agent signing any required confidentiality and/or reliance letter and provided that the relevant report provider has not adopted a general policy of not providing such reliance); and

- (2) a revised business plan;
- (xi) if the Acquisition Target constitutes a Material Company when acquired, it becomes an Additional Guarantor and, if the member of the Group acquiring the Acquisition Target constitutes a Material Company, a pledge over the shares of the Acquisition Target is granted (subject to the Agreed Security Principles), in each case within:
 - (A) 30 days of the Acquisition Target being acquired if the Acquisition Target is incorporated in England and Wales; and
 - (B) 45 days of the Acquisition Target being acquired if the Acquisition Target is incorporated or established in a jurisdiction other than England and Wales; and
- (xii) the relevant acquisition is not funded by a Revolving Facility Loan;

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

- (a) of trading stock or cash (other than any cash in a Mandatory Prepayment Account and/or a Holding Account) made by any member of the Group in the ordinary course of trading of the disposing entity;
- (b) of any asset by a member of the Group (the **"Disposing Company"**) to another member of the Group (other than the Parent or the 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;
- (c) of any asset by an Obligor (other than the Parent or the Company) to another member of the Group which is not an Obligor provided that the aggregate consideration receivable in respect of all such disposals shall not exceed £200,000 (or its equivalent in any other currency or currencies) in any Financial Year of the Parent;

- (d) of assets (other than shares, businesses, Real Property, Intellectual Property or receivables) in exchange within 12 Months for other assets comparable or superior as to type, value and quality (other than an exchange of a non-cash asset for cash);
- (e) vehicles, plant and equipment or other assets (other than shares, business, Real Property, Intellectual Property or receivables) which are no longer required for the operation of its business;
- (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 25.31 (*Intellectual Property*);
- (h) to a Joint Venture, to the extent permitted by clause 25.10 (*Joint Ventures*);
- (i) of assets compulsorily acquired by any government authority, which does not cause a breach of clause 26.14 (*Expropriation*);
- (j) arising as a result of any Permitted Security;
- (k) of assets (other than shares, businesses, Real Property and Intellectual Property) 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 £250,000 (or its equivalent in any other currency or currencies) in any Financial Year of the Parent and does not exceed £1,250,000 (or its equivalent in any other currency or currencies) in total during the term of this Agreement; and
- (l) of any asset, with the prior written consent of the Majority Lenders and (in the case of a Significant Disposal) the Majority Super Senior Lenders;

"Permitted Distribution" means:

- (a) the payment of a dividend to the Company or any of its wholly-owned Subsidiaries;
- (b) the payment of a dividend by the Company to the Parent to enable the Parent to make a Permitted Payment and provided that such dividend is made no more than 30 days prior to the date of payment of the relevant Permitted Payment; and
- (c) any distribution which is a Permitted Payment;

"Permitted Financial Indebtedness" means Financial Indebtedness:

- (a) arising under any of the Shareholders' Agreement and the Subordinated Debt Documents in each case as in force on the date of this Agreement and subject 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, 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 25.35 (*Treasury Transactions*);
- (e) of any person acquired by a member of the Group after the Closing Date which is incurred under arrangements in existence at the date of acquisition, but not incurred or increased or having its maturity date extended in contemplation of, or since, that acquisition, and outstanding only for a period of no more than three months following the date of acquisition;
- (f) under Finance Leases of vehicles, plant, equipment or computers, provided that the aggregate capital value of all such items so leased under outstanding leases by members of the Group does not exceed £2,000,000 (or its equivalent in any other currency or currencies) at any time;
- (g) arising under New Subordinated Loans;
- (h) in respect of non-contingent deferred consideration payable in respect of any Acquisition (other than the Sword Acquisition) and which comprises part of the Consideration for that acquisition, provided that such amount does not exceed 50 per cent. of the total consideration payable in respect of that acquisition;
- (i) arising under any BACS, direct debt, payment facilities or any other similar facilities entered into by a member of the Group in the ordinary course of its business, provided that such facilities are provided to a member of the Group on an unsecured basis and are daylight only facilities;
- (j) arising under an Existing Ancillary Facility provided that any such amounts are repaid, and each Existing Ancillary Facility is cancelled, in full on or before the Closing Date;
- (k) not permitted by the preceding paragraphs or as a Permitted Transaction and the outstanding principal amount of which does not exceed £250,000 (or its equivalent in any other currency or currencies) in aggregate for the Group at any time;
- (l) arising as a result of two or more members of the Group being part of a fiscal unity (*fiscale eenheid*) for Dutch Tax purposes to the extent permitted by law; and
- (m) arising under a declaration of joint and several liability used for the purpose of section 2:403 of the Dutch CC (and any residual liability under such declaration arising pursuant to section 2:404(2) of the Dutch CC);

"Permitted Guarantee" means:

- (a) the endorsement of negotiable instruments in the ordinary course of trade;
- (b) any performance or similar bond guaranteeing performance by a member of the Group under any contract entered into in the ordinary course of trade;
- (c) any guarantee of a Joint Venture to the extent permitted by clause 25.10 (*Joint Ventures*);

- (d) any guarantee permitted under clause 25.24 (*Financial Indebtedness*), save that no such guarantee shall be permitted if given by a member of the Group in respect of Financial Indebtedness incurred by the Parent or the Company;
- (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) any guarantee or indemnity given by a person acquired pursuant to an Acquisition and existing at the time of that Acquisition provided:
 - (i) such guarantee or indemnity was not created in contemplation of the Acquisition;
 - (ii) the principal amount guaranteed has not been increased in contemplated of or since the Acquisition; and
 - (iii) such guarantee or indemnity is released or discharged within three Months of the Acquisition completing;
- (g) any guarantee:
 - (i) given by a member of the Group in respect of the obligations of one or more Obligor (other than the Parent or the Company); or
 - (ii) given 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;
- (h) any guarantee given by a member of the Group (other than the Parent or the Company) to a landlord in connection with, and in respect of, the obligations of an Obligor under any lease or licence of Real Property, provided such guarantee is on arm's length's terms and in the ordinary course of business;
- (i) 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 and where the maximum potential liability under such indemnity does not exceed the aggregate consideration received by members of the Group or the value of the assets acquired by members of the Group; or
- (j) any guarantee not permitted by the preceding paragraphs where the aggregate liability (whether actual or contingent) of members of the Group under all such guarantees does not exceed £200,000 (or its equivalent in any other currency or currencies) at any time, save that no such guarantee shall be permitted if given by a member of the Group in respect of the obligations of the Parent or the Company;

"Permitted Joint Venture" means any investment in any Joint Venture by any member of the Group (other than the Parent or the Company) where:

- (a) the Joint Venture is a limited liability corporation and is incorporated, or established, and carries on its principal business, in England and Wales;
- (b) the Joint Venture is engaged in a business substantially the same as, or complementary to, that carried on by the Group;

- (c) no Event of Default is continuing on the date of the investment or would occur as a result of the investment;
- (d) the investment is not funded by a Revolving Facility Loan; and
- (e) 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 member of the Group;
 - (ii) the contingent liabilities of any member of the Group 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 member of the Group to any such Joint Venture,

does not exceed £200,000 (or its equivalent in any other currency or currencies);

"Permitted Loan" means:

- (a) any trade credit extended by any member of the Group to its customers on normal commercial terms and in the ordinary course of its trading activities;
- (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 25.10 (*Joint Ventures*);
- (d) a loan made by an Obligor to another Obligor or made by a member of the Group which is not an Obligor to another member of the Group (other than the Parent or the Company);
- (e) any loan made by an Obligor to a member of the Group that is not an Obligor, so long as the aggregate amount of the Financial Indebtedness under any such loans does not exceed £200,000 (or its equivalent in any other currency or currencies) at any time;
- (f) a loan made by a member of the Group (other than the Parent or the Company) to an employee or director of any member of the Group if the amount of that loan when aggregated with the amount of all loans to employees and directors by members of the Group does not exceed £100,000 (or its equivalent in any other currency or currencies) at any time; and
- (g) any loan (other than a loan made by a member of the Group to another member of the Group) so long as the aggregate amount of the Financial Indebtedness under any such loans does not exceed £200,000 (or its equivalent in any other currency or currencies) at any time;

so long as in the case of paragraphs (d) and (e);

- (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 Agent (acting on the instructions of the Majority Lenders); and

- (ii) to the extent required by the Intercreditor Agreement, the creditor and (if the debtor is a member of the Group) the debtor of such Financial Indebtedness are or become party to the Intercreditor Agreement as an Intra-Group Lender, a Subordinated Creditor and/or a Debtor (as defined, in each case, in the Intercreditor Agreement) respectively;

"Permitted Payment" means a payment (whether by way of payment, repayment, prepayment or redemption of the principal amount of any Subordinated Debt or any loan or any interest accruing thereon or any other advance by way of loan or by way of dividend or any other distribution) which is or is to finance:

- (a) payment of any arrangement fee, costs or expenses to the Investors in respect of any New Subordinated Loans provided that such sums are deducted from the principal amount of such New Subordinated Loans and is not paid in cash and does not exceed three per cent. (3%) of the amount of such New Subordinated Loans;
- (b) any payment to Senior Management pursuant to the Service Contracts and/or any payment to a shareholder of the Parent that is an individual and also an employee or consultant of a member of the Group, in each case pursuant to the terms of an arm's length service contract or arm's length consultancy agreement;
- (c) provided no Event of Default has occurred and is continuing or would result from the making of such payment, payment of an annual fee of £150,000 (or its equivalent in any other currency or currencies) plus VAT (if applicable) by Topco to the Initial Institutional Investors pursuant to clause 5.3 of the Shareholders' Agreement (in its form as at the date of this Agreement);
- (d) of amounts to enable any of the Parent's Holding Companies to pay any of their operating costs and any audit fees, legal fees or other professional fees, directors' insurance and any other proper and necessary incidental expenses and taxes (such costs, fees and expenses being reasonable in each case) required to register and maintain their corporate existence and act as its Holding Company which do not exceed £175,000 (or its equivalent in any other currency or currencies) in any Financial Year;
- (e) any capitalisation of interest and/or issue of payment in kind notes in respect of any loan or debt instrument evidencing New Subordinated Loans in accordance with the terms of the relevant loan or debt instrument evidencing New Subordinated Loans, provided that no such amount is paid in cash and such capitalised interest and payment in kind notes are subject to the terms of this Agreement and the Intercreditor Agreement;
- (f) provided no Event of Default has occurred and is continuing or would result from the making of such payment, the purchase of management equity (together with the purchase or repayment of any related loans) or other compensation payments to, in each case, departing management in an amount not exceeding £500,000 (or its equivalent in any other currency or currencies) (in aggregate) during the period from the Closing Date to the Termination Date for Facility B;
- (g) any payments or other transactions to be made on or around the Closing Date as contemplated by the Funds Flow Statement;

- (h) payments to the Initial Institutional Investors (or their Affiliates) or any advisor to them for bona fide corporate finance, M&A and transaction advice in relation to a Permitted Acquisition provided by them to members of the Group on bona fide arm's length commercial terms provided that in relation to any given transaction any such payments in aggregate to the Initial Institutional Investors (or their Affiliates) shall not exceed three per cent. (3%) of the value of that transaction and provided that no Event of Default has occurred and is continuing or would result from such payment;
- (i) any payment by the Parent including by way of a dividend, repayment of equity or payment of interest on or repayment of principal of New Subordinated Loans or any other subordinated Financial Indebtedness of the Parent where:
 - (i) no Event of Default is continuing or is likely to result from the making of such payment;
 - (ii) such payment is made after the first anniversary of the Closing Date;
 - (iii) Adjusted Leverage (*pro forma* for the payment) is equal to or less than Opening Leverage;
 - (iv) the Parent is projected to remain in compliance with clause 24.2 (*Financial condition*) in respect of each of the four Relevant Periods following the Relevant Period in which the payment is proposed to be made (if, in the case of 24.2(a) (*Adjusted Leverage*), Adjusted Leverage is recalculated *pro forma* for the payment);
 - (v) Cashflow Cover in respect of each of the four Relevant Periods following the Relevant Period in which the payment is proposed to be made is projected to be not less than 1:1;
 - (vi) immediately after the payment the aggregate of Cash and the Available Facility in respect of the Revolving Facility is not less than £3,000,000; and
 - (vii) not less than five Business Days before the date on which the payment is proposed to be made the Parent delivers to the Agent a certificate attaching reasonable supporting calculations confirming compliance with paragraphs (i)(i) to (i)(vi) above;
- (j) the Management Loan Note Permitted Payment;
- (k) any payment in connection with a refinancing of New Shareholder Loans or New Subordinated Loans which is funded by an Additional Facility Loan in each case as permitted pursuant to in clause 2.2 (*Uncommitted Additional Facilities*);
- (l) any payment of deferred consideration paid to a vendor in connection with an Acquisition; and
- (m) any other payment made in respect of Subordinated Debt with the prior written consent of the Majority Lenders and the Majority Super Senior Lenders and subject always to the terms of the Intercreditor 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 member of the Group;
- (b) any Security or Quasi-Security over a bank account used in the ordinary course of business and granted by any member of the Group incorporated under the laws of the Netherlands as part of a bank's standard term and conditions, including the terms and conditions of the Dutch Banks' Association (*Nederlandse vereniging voor banken*) or similar terms and conditions provided that such Security or Quasi-Security will be limited for to obligations arising from (i) daily operation of the accounts, (ii) recovery of fees in connection with the maintenance of the accounts and (iii) cash pooling or any other form of cash management;
- (c) any netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances of members of the Group (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 members of the Group which are not Obligors; and
 - (ii) such arrangement does not give rise to other Security over the assets of Obligors in support of liabilities of members of the Group which are not Obligors,

except, in the case of paragraphs (i) and (ii), to the extent such netting, set-off or Security relates to, or is granted in support of, a loan permitted pursuant to paragraph (d) of the definition of **"Permitted Loan"**;

- (d) any payment or close out netting or set-off arrangement pursuant to any Treasury Transaction or foreign exchange transaction entered into by a member of the Group which constitutes Permitted Financial Indebtedness, excluding any Security or Quasi-Security under a credit support arrangement;
- (e) any Security or Quasi-Security over or affecting any asset acquired by a member of the Group after the Closing Date if:
 - (i) the Security or Quasi-Security was not created in contemplation of the acquisition of that asset by a member of the Group;
 - (ii) the principal amount secured has not been increased in contemplation of or since the acquisition of that asset by a member of the Group; and
 - (iii) the Security or Quasi-Security is removed or discharged within three months of the date of acquisition of such asset;

- (f) any Security or Quasi-Security over or affecting any asset of any company which becomes a member of the Group after the Closing Date, where the Security or Quasi-Security is created prior to the date on which that company becomes a member of the Group if:
 - (i) the Security or Quasi-Security was not created in contemplation of the acquisition of that company;
 - (ii) the principal amount secured has not 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 member of the Group;
- (g) any Security or Quasi-Security (existing as at the date of this Agreement) over assets of any member of the Target Group (including in respect of any Existing Ancillary Facility) so long as the Security or Quasi-Security is irrevocably removed or discharged by no later than the Closing Date;
- (h) any Security or Quasi-Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a member of the Group in the ordinary course of trading and on the supplier's standard or usual terms and not arising as a result of any default or omission by any member of the Group;
- (i) any Security over rental deposits in respect of any Real Property leased or licenced by an Obligor in the ordinary course of business on arm's length terms;
- (j) any Quasi-Security arising as a result of a disposal which is a Permitted Disposal;
- (k) any Security or Quasi-Security arising as a consequence of any Finance Lease permitted pursuant to paragraph (f) of the definition of **"Permitted Financial Indebtedness"**; and
- (l) any Security securing indebtedness the outstanding principal amount of which (when aggregated with the outstanding principal amount of any other indebtedness which has the benefit of Security given by any member of the Group other than any permitted under the preceding paragraphs), does not exceed £200,000 (or its equivalent in any other currency or currencies), save that no such Security shall be permitted if given by a member of the Group in respect of the obligations of the Parent or the Company;

"Permitted Share Issue" means an issue of:

- (a) shares by the Parent, paid for in full in cash upon issue and which by their terms are not redeemable prior to the date falling six Months after the Termination Date for Facility B and where:
 - (i) such shares are of a class and issued on terms which could not reasonably be expected to materially and adversely affect the interests of the Lenders under the Finance Documents; and
 - (ii) such issue does not lead to a Change of Control of the Parent; or

- (b) shares by a member of the Group (other than the Parent) which is a Subsidiary to its immediate Holding Company for non-cash consideration where (if the existing shares of the Subsidiary are the subject of the Transaction Security) the newly-issued shares also become subject to the Transaction Security on the same terms;

"Permitted Transaction" means:

- (a) any disposal required, Financial Indebtedness incurred, guarantee, indemnity or Security or Quasi-Security given, or other transaction arising, under the Finance Documents;
- (b) the solvent liquidation or reorganisation of any member of the Group which is not an Obligor so long as any payments or assets distributed as a result of such liquidation or reorganisation are distributed to other members of the Group;
- (c) transactions (other than (A) any sale, lease, licence, transfer or other disposal and (B) the granting or creation of Security, the incurring or permitting to subsist of Financial Indebtedness, the making of any loan or the giving of any guarantee) conducted in the ordinary course of trading on arm's length terms; or
- (d) any payments or other transactions expressly contemplated by the Sword Structure Memorandum;

"PIK Interest" has the meaning given to that term in clause 12.3 (*PIK Interest*);

"PIK Margin" means:

- (a) in relation to the Facility B Loan, 4.5 per cent. per annum; and
- (b) in relation to any Additional PIK Facility Loan, the PIK margin specified in the Additional Facility Notice in respect of that Additional PIK Facility;

"Polish Obligor" means an Additional Obligor which is incorporated in Poland;

"Pre-Approved New Lender List" means the list of entities agreed in writing on or before the date of this Agreement by or on behalf of the Parent and the Arrangers;

"Prepayment Date" has the meaning given to that term in clause 15.7 (*Prepayment fees*);

"Qualifying Lender" has the meaning given to that term in clause 16 (*Tax gross-up and indemnities*);

"Quarter Date" means the last day of a Financial Quarter;

"Quasi-Security" has the meaning given to that term in clause 25.17 (*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) (if the currency is dollars or Zloty) three Business Days before the first day of that period,

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

"Real Property" means:

- (a) any freehold, leasehold 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;

"Reference Bank Quotation" means any quotation supplied to the Agent by a Base Reference Bank;

"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 Jurisdiction" means, in relation to an Obligor:

- (a) its Original Jurisdiction;
- (b) any jurisdiction where any 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 business; and
- (d) the jurisdiction whose laws govern the perfection of any of the Transaction Security Documents entered into by it;

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

"Relevant Period" has the meaning given to that term in clause 24.1 (*Financial definitions*);

"Reliance Parties" means the Agent, the Arrangers, the Security Agent, the Original Lender and each person which becomes a Lender as part of the primary syndication of the Facilities;

"Repeating Representations" means each of the representations set out in clause 22.2 (*Status*) to clause 22.7 (*Governing law and enforcement*) (inclusive), clause 22.11 (*No default*), clause 22.12(g), clause 22.13 (*Original Financial Statements*), clause 22.18 (*Anti-corruption*), clause 22.20 (*Ranking*) to clause 22.22 (*Legal and beneficial ownership*), clause 22.28 (*Centre of main interests and establishments*) and clause 22.31 (*Sanctions*);

"Report Proceeds Turnover Letter" means the letter dated on or about the date of this Agreement between the Initial Institutional Investor, the Parent, the Company and the Security Agent relating to the Sword Reports;

"Reportable Event" means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived;

"Reports" means:

- (a) the Sword Reports; and
- (b) any due diligence reports or similar reports commissioned in connection with an Acquisition;

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

"Requested Facility Amount" has the meaning given to such term in clause 2.2(b)(ii);

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

"Restricted Party" means a person that is:

- (a) listed on, or owned or controlled by a person listed on any Sanctions List;
- (b) located in, incorporated under the laws of, or owned or controlled by, or acting on behalf of, a person located in or organised under the laws of a country or territory that is the target of country-wide Sanctions; or
- (c) otherwise a target of Sanctions;

"Revolving Facility" means the revolving credit facility to be made available under this Agreement as described in clause 2.1(a)(ii);

"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 2.3 (*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 2.3 (*Increase*),

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

"Revolving Facility Lender" means any Lender which holds a Revolving Facility Commitment;

"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;

"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 amount of the maturing Revolving Facility Loan;
- (c) in the same currency as the maturing Revolving Facility Loan; and
- (d) made or to be made to the same Borrower for the purpose of refinancing that maturing Revolving Facility Loan;

"Rollover Loan Note Documents" means:

- (a) the Rollover Loan Note Instruments;
- (b) the Rollover Loan Notes; and
- (c) any other documents entered into pursuant to or in connection with the Rollover Loan Note Instrument or the Rollover Loan Notes;

"Rollover Loan Note Instruments" means the instruments dated on or around the date of this Agreement pursuant to which the Rollover Loan Notes are constituted and any other documents entered into pursuant to any of them;

"Rollover Loan Notes" means:

- (a) the unsecured subordinated loan notes due 2027 of the Company; and
- (b) the unsecured subordinated loan notes due 2027 of the Parent,

in each case in relation to the Sword Acquisition and as set out in the Sword Structure Memorandum;

"Sanctioned Country" means a country or territory that is, or whose government is, the subject of country-wide Sanctions;

"Sanctions" means any trade, economic or financial sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by a Sanctions Authority;

"Sanctions Authorities" means:

- (a) the US;
- (b) the United Nations;
- (c) the European Union (including under Council Regulation (EC) No. 194/2008);
- (d) the United Kingdom;
- (e) Hong Kong;

- (f) the governments and official institutions or governmental agencies of any of the foregoing, including without limitation, OFAC, the US Department of State and Her Majesty's Treasury; or
- (g) any other institution or agency that implements, administers or enforces any economic, financial, sectoral or trade sanctions regime in a jurisdiction of relevance to the Facility or any Finance Party;

"Sanctions List" means the Consolidated List of Financial Sanctions Targets and Investment Ban List issued by Her Majesty's Treasury, the *"Specially Designated Nationals and Blocked Persons"* list maintained 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;

"Scheme" means the scheme of arrangement proposed to be made under Part 26 of the Companies Act 2006 or any applicable equivalent or substituted provision pursuant to the Companies Act 2006 after the Sword Acquisition between the Target and the holders of the Sword Target Shares with or subject to any modification, addition or variation permitted under this Agreement;

"Scheme Circular" means the circular to be issued by the Sword Target to the shareholders of Sword Target and the particulars required by section 897 of the Companies Act 2006;

"Scheme Court Order" means the order of the Court confirming the sanction of the Scheme as required by section 899 of the Companies Act 2006;

"Scheme Documents" means together the Scheme Press Release, the Scheme Circular and the Scheme Resolutions;

"Scheme Effective Date" means, if the Sword Acquisition is implemented by way of a Scheme, the date on which the Scheme becomes Effective;

"Scheme Press Release" means a press announcement to be released by the Company and/or the Sword Target pursuant to Rule 2.7(6) of the City Code to announce the terms of the Scheme;

"Scheme Resolutions" means the resolutions to be proposed by the Sword Target in connection with the Scheme as referred to and in the form set out in the notice contained in the Scheme Circular, as may be amended;

"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 (before any correction, recalculation or republication by the administrator) on pages LIBOR01 or LIBOR02 of the Bloomberg screen (or any replacement Bloomberg page which displays that rate);
- (b) in relation to EURIBOR, the euro interbank offered rate administered by the European Money Markets Institute (or any other person which takes over the administration of that rate) for the relevant period displayed (before any correction,

recalculation or republication by the administrator) on page EURIBOR01 of the Bloomberg screen (or any replacement Bloomberg page which displays that rate); and

- (c) in relation to WIBOR, the Warsaw interbank offered rate administered by GPW Benchmark S.A. (or any other person which takes over the administration of that rate) for the relevant period displayed (before any correction, recalculation or republication by the administrator) on the appropriate page of the Bloomberg screen (or any replacement Bloomberg 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 Bloomberg. If such page or service ceases to be available, the Agent may specify another page or service displaying the relevant rate after consultation with the Parent;

"Secured Parties" means each Finance Party from time to time party to this Agreement and any Receiver or Delegate;

"Security" means a mortgage, hypothec, 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 13 (*Interest Periods*) in relation to a Term Facility;

"Senior Management" means Dominic Wheatley, Robert Haxton and Andrew Lawton;

"Separate Loan" has the meaning given to that term in clause 8.2 (*Repayment of Revolving Facility Loans*);

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

"Shareholders' Agreement" means the investment agreement dated on or about the date of this Agreement relating to the investment in Topco made between, amongst others, (1) Topco, (2) the Company (3) the persons named in schedule 1 to it as managers and (4) the persons named in schedule 2 to it as investors;

"Significant Assets" means any assets (or group of assets), together with any other such assets subject to a Disposal in that Financial Year, representing 15 per cent. or more of EBITDA, consolidated net assets or consolidated turnover of the Group (in each case as set out in the Annual Financial Statements and related Compliance Certificate for that Financial Year delivered to the Agent pursuant to clause 23.1 (*Financial statements*) or clause 23.2 (*Provision and contents of Compliance Certificate*));

"Significant Company" means:

- (a) a member of the Group which has (or members of the Group that together contribute) EBITDA (calculated on the same basis as EBITDA) representing 15 per cent. or more of EBITDA or has net assets or turnover (in each case as calculated on an unconsolidated basis and excluding intra-Group loans and investments in Subsidiaries or any member of the Group) representing 15 per cent. or more of the consolidated net assets or consolidated turnover (respectively) of the Group (in each case as set out in the Annual Financial Statements and related Compliance Certificate for that

Financial Year delivered to the Agent pursuant to clause 23.1 (*Financial statements*) or clause 23.2 (*Provision and contents of Compliance Certificate*)); and

- (b) without prejudice to paragraph (a) above, Testronic Laboratories S.E. (a company incorporated under the laws of the Netherlands with company number 17241167);

"Significant Disposal" means a Disposal of:

- (a) a Significant Company;
- (b) Significant Assets; or
- (c) when aggregated with all such Disposals made by members of the Group since the date of this Agreement, assets of one or more members of the Group which contribute 30 per cent. or more of the consolidated EBITDA or assets of the Group,

other than, in each case, any Disposal which is a Permitted Disposal (as such term is defined at the date of this Agreement);

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

"Sponsor Affiliate" means the Initial Institutional Investors, each of their Affiliates, any trust of which the Initial Institutional Investors or any of their Affiliates is a trustee, any partnership of which the Initial Institutional Investors or any of their Affiliates is a partner and any trust, fund or other entity which is managed by, or is under the control of, the Initial Institutional Investors or any of their 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 the Initial Institutional Investors or any of their 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, but for the avoidance of doubt excluding at all times the Original Lenders (or any Related Funds or Affiliates of the Original Lenders);

"Subordinated Debt" has the meaning given to the term "*Subordinated Liabilities*" in the Intercreditor Agreement and includes, without limitation, all amounts outstanding from time to time under the Subordinated Debt Documents;

"Subordinated Debt Documents" means:

- (a) the Rollover Loan Note Documents;
- (b) any document or other agreement constituting or evidencing the terms of or otherwise relating to any Subordinated Debt as at the Closing Date; and
- (c) any document or other agreement constituting or evidencing the terms of or otherwise relating to New Subordinated Loans;

"Subsidiary" means a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006 or a subsidiary within the meaning of section 1159 of the Companies Act 2006 but for the purposes of each of section 1159(1) and 1162(2) of the Companies Act 2006 a company shall be treated as a member of another company even if its shares in that

other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security or (b) its nominee;

"Super Senior Consent Provision" means each of:

- (a) this definition or any definition used within this definition;
- (b) a Material Event of Default, the definition of **"Material Event of Default"** or any definition used within that definition or the underlying provisions of clause 26 (*Events of Default*) which relate to that Material Event of Default (provided that, in the case of such definitions or clauses used therein, such amendment, consent or waiver would or would be reasonably likely to change the scope or potential application of a Material Event of Default) and any amendment, consent or waiver where, in the absence of such amendment, consent or waiver, a Material Event of Default would or would be reasonably likely to otherwise occur;
- (c) a Default, in so far as it would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be a Material Event of Default;
- (d) clause 3.1(b);
- (e) any of the conditions in clause 4.2 (*Further conditions precedent*), clause 4.3 (*Conditions relating to Optional Currencies*), clause 4.4 (*Maximum number of Loans*) and clause 5 (*Utilisations*), in each case only in the context of a proposed Revolving Facility Loan, and excluding, for the avoidance of doubt, in each case, any amendment to or waiver of a Default or an Event of Default other than a Material Event of Default or an amendment or waiver of a Repeating Representation in so far as it would otherwise constitute a Material Event of Default;
- (f) clause 5.7 (*Clean down*);
- (g) any provision relating to the rights and obligations of an Ancillary Lender, including but not limited to clause 7 (*Ancillary Facilities*);
- (h) clause 8.2 (*Repayment of Revolving Facility Loans*) or the definition of **"Termination Date"** (i) in respect of the Revolving Facility or (ii) in respect of a Term Facility if such amendment would be to adjust such Termination Date so that it is before the Termination Date in respect of the Revolving Facility;
- (i) clause 9.4 (*Voluntary prepayment of Revolving Facility Loans*) and clause 33.1 (*Payments to the Agent*) in each case only in the context of a proposed Revolving Facility Loan;
- (j) clause 26.1 (*Non-payment*), clause 15.1 (*Commitment fee*) or clause 15.2 (*Arrangement fee*) to the extent that such amendment relates to payments to a Revolving Facility Lender or Ancillary Lender or to clause 15.6 (*Interest, commission and fees on Ancillary Facilities*) and/or any fee for the account of a Revolving Facility Lender in a Fee Letter from time to time;
- (k) clauses 23.1(a) and 23.1(b) (insofar as this relates to the delivery of Monthly Financial Statements, Quarterly Financial Statements and Annual Financial Statements) and 23.2 (*Provision and contents of Compliance Certificate*), in each case which has the effect of delaying the delivery of the relevant Financial Statements

and/or Compliance Certificates by more than 15 Business Days beyond the time limits set out in such clauses in their original form;

- (l) clause 24.2(b) (*Minimum Adjusted EBITDA*) (including, for the avoidance of doubt, any definitions used in that clause) and clause 24.3 (*Financial testing*) and clause 24.5 (*Equity Cure*) but, in each case, only insofar as they relate to the financial covenant set out in clause 24.2(b) (*Minimum Adjusted EBITDA*) (but not further or otherwise);
- (m) clause 26.20 (*Super Senior Acceleration*);
- (n) a disposal that constitutes a Significant Disposal (save to the extent that such Significant Disposal results in the Revolving Facility Commitments being prepaid and cancelled in full) or the definition of "**Significant Asset**", "**Significant Company**", "**Significant Disposal**" or "**Permitted Disposal**" or clause 25.18 (*Disposals*) or any definition used within the definition of "**Significant Asset**", "**Significant Company**", "**Significant Disposal**" or "**Permitted Disposal**", in each case to the extent that the effect of such amendment, waiver or consent would permit a Significant Disposal;
- (o) the definitions of "**Permitted Financial Indebtedness**" or "**Permitted Security**" or clause 25.17 (*Negative pledge*) or clause 25.24 (*Financial Indebtedness*), to the extent that the effect of such amendment, consent or waiver is to permit the incurrence of Financial Indebtedness that ranks pari passu or in priority to the Revolving Facility or creates Security over assets which are already subject to Transaction Security in favour of the Super Senior Lenders, which new Security ranks pari passu or in priority to the Transaction Security granted for the benefit of the Super Senior Lenders in connection with the Revolving Facility;
- (p) clauses 26.6 (*Insolvency*), 26.7 (*Insolvency proceedings*) and clause 26.8 (*Creditors' process*);
- (q) the definition of "**Permitted Transaction**";
- (r) the introduction of any additional loan, tranche or facility ranking *pari passu* to the Revolving Facility; and
- (s) the introduction of any additional loan, tranche or facility with a Termination Date prior to the Termination Date for Facility B;

"Sword Accountants' Reports" means the financial due diligence report entitled "*Project Sword - Due Diligence Report*" (including volumes (A) to (D)) dated 5 August 2019, prepared by Grant Thornton UK LLP relating to the Group and addressed to and/or capable of being relied upon by the Reliance Parties;

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

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

"Sword Acquisition Documents" means:

- (a) if the Sword Acquisition proceeds by way of a Scheme, the Scheme Documents or if the Sword Acquisition proceeds by way of an Offer, the Offer Documents;
- (b) the Shareholders' Agreement;
- (c) Sword Minority Acquisition Agreement; and
- (d) any other document designated as a **"Sword Acquisition Document"** by the Agent and the Company;

"Sword Commercial Due Diligence Report" means the commercial due diligence report entitled *"Project Sword - Commerical Due Diligence"* dated 12 June 2019, prepared by PricewaterhouseCoopers LLP relating to the Group and addressed to and/or capable of being relied upon by the Reliance Parties;

"Sword Legal Due Diligence Reports" means:

- (a) the sell-side legal due diligence report entitled *"Project Sword - Vendor Legal Due Diligence Report"* dated 7 August 2019 prepared by Squire Patton Boggs relating to the Group and addressed to and/or capable of being relied upon by the Reliance Parties; and
- (b) the sell-side legal due diligence report entitled *"Project Sword - Legal Due Diligence Report"* dated 7 August 2019 prepared by Nauta Dutilh relating to the Group and addressed to and/or capable of being relied upon by the Reliance Parties;

"Sword Minority Acquisition Agreement" means the agreement for the sale and purchase of certain of the issued share capital of the Sword Target dated on or about the date of this Agreement and made between (1) Dominic Wheatley, Robert Haxton, Stuart Dinsey, Jason Perkins, David Miller and Jonathan Wingrove and (2) the Company;

"Sword Reports" means:

- (a) the Sword Accountants' Reports;
- (b) the Sword Commercial Due Diligence Report;
- (c) the Sword Legal Due Diligence Reports; and
- (d) the Sword Structure Memorandum;

"Sword Structure Memorandum" means the structure memorandum dated on or about the date of this Agreement entitled *"Project Sword: Steps Paper"* prepared by PricewaterhouseCoopers LLP relating to the Group addressed to and/or capable of being relied upon by the Reliance Parties;

"Sword Target" means Catalis PLC;

"Sword Target Group" means the Sword Target and each of its Subsidiaries;

"Sword Target Shares" means the issued shares in the capital of the Sword Target including, if applicable, shares subject to options in respect of the ordinary share capital of the Sword Target;

"Sword Target Transaction Security Documents" means each of the documents listed in part 4 of schedule 2 (*Conditions precedent*);

"Sword Vendors" means the holders of the Sword Target Shares as at the Effective Date;

"Takeover Notices" means a notice issued to a shareholder of the Sword Target who has not accepted the Offer by the Company in accordance with the Takeover Procedure;

"Takeover Procedure" means the procedure for compulsorily buying out of the Sword Target Shares of a holder of Sword Target Shares who has not accepted the Offer, as set out in sections 974 to 991 of the Companies Act 2006;

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

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

"Term Facility" means Facility B or any Additional Facility;

"Term Facility Commitments" means the Facility B Commitments and the Additional Facility Commitments;

"Term Loan" means the Facility B Loan or any Additional Facility Loan;

"Termination Date" means:

- (a) in relation to Facility B, the sixth anniversary of the Closing Date;
- (b) in relation to an Additional Facility, the sixth anniversary of the Closing Date; and
- (c) in relation to the Revolving Facility, the earlier of:
 - (i) the fifth anniversary of the date of this Agreement; and
 - (ii) the date the Term Facilities are irrevocably repaid, prepaid and/or cancelled in full;

"Total Additional Facility Commitments" means the aggregate of the Additional Facility Commitments relating to such Additional Facility, being zero at the date of this Agreement;

"Total Commitments" means the aggregate of the Total Term Facility Commitments and the Total Revolving Facility Commitments, being £20,000,000 at the date of this Agreement;

"Total Facility B Commitments" means the aggregate of the Facility B Commitments, being £15,000,000 at the date of this Agreement;

"Total Revolving Facility Commitments" means the aggregate of the Revolving Facility Commitments, being £5,000,000 at the date of this Agreement;

"Total Term Facility Commitments" means the Total Additional Facility Commitments and Total Facility B Commitments;

"Topco" means Project Sword Topco Limited, a company incorporated in England and Wales with company number 12032049 whose registered office is at Suffolk House, George Street, East Croydon, London, UK, CR0 1PE;

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

"Transaction Documents" means:

- (a) the Acquisition Documents;
- (b) the Constitutional Documents;
- (c) the Finance Documents; and
- (d) the Loan Note 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:

- (a) each of the documents listed as being a Transaction Security Document in paragraph 3(e) of part 1 of schedule 2 (*Conditions precedent*);
- (b) the Sword Target Transaction Security Documents; and
- (c) any document required to be delivered to the Agent under paragraph 15 of part 3 of schedule 2 (*Conditions precedent*),

together with any other document entered into by any Obligor creating or expressed to create any Security over all or any part of its assets in respect of the obligations of any of the Obligors under any of the Finance Documents;

"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 Agent and the Parent;

"Transfer Date" means, in relation to an assignment or 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 Agent executes the relevant Assignment Agreement or Transfer Certificate;

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

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

"US" or "United States" means the United States of America, its territories and possessions;

"US Debtor Relief Law" means the Bankruptcy Code and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the US;

"US Subsidiary" means any Obligor from time to time that is organised under the laws of any political sub-division of the US;

"US Tax Obligor" means:

- (a) a Borrower which is resident for tax purposes in the US; or
- (b) an Obligor some or all of whose payments under the Finance Documents are from sources within the US for US federal income tax purposes;

"Utilisation Date" means 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 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), or imposed elsewhere;

"Vespa" means Leo Capital 1 LLP; and

"WIBOR" means, in relation to any Loan in Zloty:

- (a) the applicable Screen Rate as of the Specified Time for Zloty and for a period equal in length to the Interest Period of that Loan; or
- (b) as otherwise determined pursuant to clause 14.1 (*Unavailability of Screen Rate*),

and if, in either case, that rate is less than zero, WIBOR shall be deemed to be zero.

1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
 - (i) the **"Agent"**, the **"Arranger"**, any **"Finance Party"**, any **"Hedge Counterparty"**, any **"Lender"**, any **"Obligor"**, any **"Party"**, any **"Secured Party"**, the **"Security Agent"** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the 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 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 Agent;
 - (iii) "**assets**" includes present and future properties, revenues and rights of every description;
 - (iv) a "**Finance Document**" or a "**Transaction Document**" or any other agreement or instrument is a reference to that Finance Document or Transaction Document or other agreement or instrument as amended or novated, supplemented, extended or restated;
 - (v) a "**group of Lenders**" includes all the Lenders;
 - (vi) "**guarantee**" means (other than in clause 21 (*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) "**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;
 - (viii) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
 - (ix) 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, compliance with which is customary for entities of persons such as the relevant entity or person) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
 - (x) a provision of law is a reference to that provision as amended or re-enacted;
 - (xi) a time of day is a reference to London time; and
 - (xii) "**include**" or "**including**" means include or including "*without limitation*".
- (b) The determination of the extent to which a rate is "**for a period equal in length**" to an Interest Period shall disregard any inconsistency arising from the last day of that Interest Period being determined pursuant to the terms of this Agreement.
- (c) Section, clause and schedule headings are for ease of reference only.

- (d) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
- (e) 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 that Borrower and the following conditions being met:
 - (i) the account is with the Ancillary Lender for which that cash cover is to be provided;
 - (ii) until no amount is or may be outstanding under that Ancillary Facility, withdrawals from the account may only be made to pay the relevant Finance Party amounts due and payable to it under this Agreement in respect of that Ancillary Facility; and
 - (iii) the Borrower has executed a security document over that account, in form and substance satisfactory to the Finance Party with which that account is held, creating a first ranking security interest over that account.
- (f) For the purposes of this Agreement:
 - (i) a Default (other than an Event of Default or Material Event of Default) is "**continuing**" if it has not been remedied or waived by the Agent;
 - (ii) subject to clause 1.2(f)(iii) and 1.2(f)(iv), an Event of Default (other than a Material Event of Default) is "**continuing**" if it has not been waived by the Agent;
 - (iii) An Event of Default arising under clauses:
 - (A) 26.1 (*Non-payment*);
 - (B) 26.2 (*Financial covenants and other obligations*) in relation to a breach of clauses:
 - (1) 24.2 (*Financial condition*);
 - (2) 23.1 (*Financial statements*) or 23.2 (*Provision and contents of Compliance Certificate*); or
 - (3) 25.5 (*Anti-corruption law*) or 25.41 (*Sanctions*);
 - (C) 26.6 (*Insolvency*);
 - (D) 26.7 (*Insolvency proceedings*);
 - (E) 26.8 (*Creditors' process*);
 - (F) 26.9 (*Unlawfulness and invalidity*);
 - (G) 26.11 (*Cessation of business*);
 - (H) 26.13 (*Audit qualification*);

- (I) 26.14 (*Expropriation*); and
- (J) 26.15 (*Repudiation and rescission of agreements*),

is "**continuing**" if it has not been waived by the Agent and any other Event of Default is "**continuing**" if it has not been remedied or waived; and

(iv) a Material Event of Default is "**continuing**" if:

- (A) in respect of a Material Event of Default arising pursuant to clause 26.2 (*Financial covenants and other obligations*) arising as a result of a breach of clauses 23.1(a), 23.1(b) and/or 23.2 (*Provision and contents of Compliance Certificate*), it has not been remedied in accordance with paragraph (c) of the definition of "**Material Event of Default**" or waived by the Agent (acting on the instructions of the Majority Lenders and the Majority Super Senior Lenders); or
- (B) in respect of any other Material Event of Default, it has not been remedied or waived by the Agent (acting on the instructions of the Majority Lenders and the Majority Super Senior Lenders) provided that, subject to the terms of the Intercreditor Agreement, if the Majority Super Senior Lenders have taken any action in connection with clause 26.20 (*Super Senior Acceleration*) of this Agreement in accordance with the terms of the Intercreditor Agreement, any such Material Event of Default is continuing if it has not been waived by the Agent (acting on the instructions of the Majority Lenders and the Majority Super Senior Lenders).

(g) A Borrower "**repaying**" or "**prepaying**" Ancillary Outstandings means:

- (i) that Borrower providing cash cover in respect of the Ancillary Outstandings;
- (ii) the maximum amount payable under 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 that Ancillary Facility,

and the amount by which Ancillary Outstandings are, repaid or prepaid under clauses 1.2(g)(i) and 1.2(g)(ii) is the amount of the relevant cash cover, reduction or cancellation.

(h) An amount borrowed includes any amount utilised under an Ancillary Facility.

1.3 Currency symbols and definitions

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

1.4 Dutch terms

In any Finance Document, where it relates to a Dutch Obligor, a reference to:

- (a) a **"necessary action to authorise"**, where applicable, includes without limitation:
 - (i) any action required to comply with the Dutch Works Council Act (*Wet op de ondernemingsraden*); and
 - (ii) obtaining an unconditional positive or neutral advice (*advies*) from the competent works council(s);
- (b) a security interest includes any mortgage (*hypotheek*), pledge (*pandrecht*), retention-of-title arrangement (*eigendomsvoorbehoud*), right of retention (*recht van retentie*), right to reclaim goods (*recht van reclame*), privilege (*voorrecht*) and, in general, any right in rem (*beperkt recht*) created for the purpose of granting security (*goederenrechtelijk zekerheidsrecht*);
- (c) **"constitutional documents"** means the articles of association (*statuten*) and deed of incorporation (*akte van oprichting*) and an up-to-date extract of registration of the Trade Register of the Chamber of Commerce for the Netherlands;
- (d) a director in relation to a Dutch Obligor, means a managing director (*bestuurder*) and board of directors means its managing board (*bestuur*);
- (e) a receiver or trustee in bankruptcy includes a *curator*;
- (f) an attachment includes a *executoriaal beslag* and attaching or taking possession of (any of those terms) includes *beslag leggen*;
- (g) gross negligence means *grove schuld*;
- (h) indemnify means *vrijwaren*;
- (i) negligence means *schuld*;
- (j) wilful misconduct means *opzet*; and
- (k) in relation to any procedure or step taken in the Netherlands, legal proceedings or other procedures shall also mean:
 - (i) a bankruptcy (*faillissement*), suspension of payments (*surseance van betaling*), emergency procedure (*noodregeling*) or any other procedure having the effect that any relevant entity to which it applies loses the free management or ability to dispose of its property (irrespective of whether that procedure is provisional or final; and
 - (ii) a dissolution (*ontbinding*) or any other procedure having the effect that the relevant entity to which it applies ceases to exist;
- (l) a winding-up, administration or dissolution includes a bankruptcy (*faillissement*) or dissolution (*ontbinding*);

- (m) a moratorium includes *surseance van betaling* and a moratorium is declared or occurs includes *surseance verleend*;
- (n) a liquidator or bankruptcy trustee includes a *curator* or a *beoogd curator* and an administrator includes a *bewindvoerder*;
- (o) **"The Netherlands"** means the European part of the Netherlands and Dutch means in or of The Netherlands; and
- (p) **"works council"** means each works council (*ondernemingsraad*) or central or group works council (*centrale of groeps ondernemingsraad*) having jurisdiction over that person.

1.5 Third party rights

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

1.6 Intercreditor Agreement

This Agreement is subject to the Intercreditor Agreement. In the event of any inconsistency between this Agreement and the Intercreditor Agreement, the Intercreditor Agreement shall prevail.

1.7 Specific interpretation provisions applying to the Agent and Security Agent

- (a) Where the Agent or the Security Agent is referred to as acting *"reasonably"* or as coming to an opinion or determination that is *"reasonable"* (or any similar or analogous wording is used), this shall mean that the Agent or the Security Agent shall be acting or coming to an opinion or determination on the instructions of the Lenders, the Majority Lenders or the Majority Super Senior Lenders (as the case may be) acting reasonably or in a reasonable manner and the Agent and the Security Agent shall be under no obligation to determine the reasonableness of such instructions or whether in giving such instructions the Lenders, the Majority Lenders or the Majority Super Senior Lenders (as the case may be) are acting reasonably or in a reasonable manner.
- (b) Where acceptability to, or satisfaction of, the Agent or the Security Agent is referred to in relation to a matter not affecting the personal interests of the Agent or the Security Agent (including, for the avoidance of doubt, any satisfaction or determination in relation to any conditions precedent required to be delivered under the Finance Documents including, without limitation, the documents and other evidence listed in schedule 2 (*Conditions precedent*)), this shall mean the acceptability to, or satisfaction of the Lenders, the Majority Lenders or the Majority Super Senior Lenders (as the case may be) as notified by such group of Lenders to the Agent or Security Agent.
- (c) In respect of clauses 1.7(a) and 1.7(b), the Agent and the Security Agent shall not be responsible for any liability occasioned or by any delay or failure on the part of the

Lenders, the Majority Lenders or the Majority Super Senior Lenders (as the case may be) to give any such instructions or direction or to form any such opinion.

1.8 No personal liability

No director, officer or employee of any member of the Group shall be personally liable for any statement made by him or her in any certificate or other document delivered on behalf of a member of the Group under or in connection with any Finance Document, provided such statement is made in good faith and without fraud, gross negligence or wilful default on his or her part.

1.9 Exchange rate fluctuations

When applying any monetary limits, thresholds and other exceptions to the representations and warranties, undertakings and Events of Default under the Finance Documents, the equivalent to an amount in sterling 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 any other relevant action. No Default, Event of Default or breach of any representation and warranty or undertaking under the Finance Documents shall arise merely as a result of a subsequent change in the sterling equivalent of any relevant amount due to fluctuations in exchange rates.

1.10 Baskets - Adjustments

In relation to any monetary caps specified in the definitions of:

- (a) paragraphs (c) and (k) of Permitted Disposal;
- (b) paragraphs (f) and (j) of Permitted Financial Indebtedness;
- (c) paragraph (j) of Permitted Guarantee;
- (d) paragraphs (e) and (g) of Permitted Loan; and
- (e) paragraph (l) of Permitted Security,

(each a "**Specified Basket Amount**"),

if in a Financial Year Adjusted EBITDA as set out in the Annual Financial Statements and related Compliance Certificate for that Financial Year delivered to the Agent pursuant to clause 23.1 (*Financial statements*) or clause 23.2 (*Provision and contents of Compliance Certificate*), is greater than (or less than, as the case may be) Opening Adjusted EBITDA (or, once the first set of Annual Financial Statements have been delivered to the Agent pursuant to clause 23.1 (*Financial statements*), Adjusted EBITDA for the preceding Financial Year) then the Specified Basket Amounts shall be increased (or decreased, as applicable) by the same percentage increase (or decrease) in Adjusted EBITDA provided that:

- (i) any increase in the Specified Basket Amounts shall not exceed five per cent. (5%) per Financial Year or twenty per cent. (20%) in aggregate during the period from the date of this Agreement to the Termination Date for Facility B;
- (ii) if Adjusted EBITDA decreases at any time, a Specified Basket Amount shall decrease provided that any amount incurred under a Specified Basket

Amount (provided such amounts are, at the time of incurrence, duly and properly incurred in good faith in accordance with the relevant basket) shall be treated as being duly and properly incurred without the incurrence of an Event of Default; and

- (iii) notwithstanding the foregoing, a Specified Basket Amount shall not at any time reduce below the original level as at the date of this Agreement.

SECTION 2

THE FACILITIES

2. THE FACILITIES

2.1 The Facilities

- (a) Subject to the terms of this Agreement, the Lenders make available:
 - (i) a sterling term loan facility in an aggregate amount equal to the Total Facility B Commitments; and
 - (ii) a multicurrency revolving credit facility in an aggregate amount equal to the Total Revolving Facility Commitments.
- (b) Facility B will be available to the Company.
- (c) The Revolving Facility will be available to all the Borrowers.
- (d) 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.

2.2 Uncommitted Additional Facilities

- (a) The Parent may prior to the Termination Date for Facility B, request by written notice to the Agent (such notice being an "**Additional Facility Request**") that one or more Lenders or non-Lenders make available to the Company and/or any other Borrower approved by the Majority Lenders one or more additional committed term facilities (an "**Additional Facility**") which shall:
 - (i) be denominated in the Base Currency;
 - (ii) when aggregated with the commitments under any other Additional Facility, be in an aggregate amount not exceeding £15,000,000;
 - (iii) be a minimum of £1,000,000 or such lower amount as permitted pursuant to clause 5.3(b)(iii) (*Currency and amount*);
 - (iv) be used only for the purposes set out in clause 3.1(c) (*Purpose*);
 - (v) be on the same terms as the existing Facility B (including with regard to amortisation and maturity with the exception of those terms required to be notified to the Agent in the Additional Facility Notice (as defined below)); and
 - (vi) be utilised to fund:
 - (A) the financing of Acquisitions (including the refinancing within three months of any New Shareholder Injections or New Subordinated Loans or cash used to fund such Acquisitions) provided that the Acquisition complies with all relevant terms and conditions for that

Acquisition under paragraph (f) of the definition of "**Permitted Acquisition**";

- (B) the financing of Capital Expenditure (including the refinancing within three months of any New Shareholder Injections or New Subordinated Loans or cash used to fund such Capital Expenditure); and
 - (C) any fees, costs and expenses, stamp, registration and other Taxes associated with clauses 2.2(a)(vi)(A) or 2.2(a)(vi)(B); and
- (vii) not have an all-in yield to maturity which exceeds, at any time, the sum of:
- (A) the all-in yield to maturity of Facility B at that time; and
 - (B) 1 per cent.,
- (the "**Yield Condition**").

(b) The Additional Facility Request will:

- (i) invite each existing Facility B Lender to participate in the Additional Facility in a proportionate amount calculated by reference to the proportion that that Lender's existing Term Facility Commitments bear to the Total Term Facility Commitments on the date of the notice;
- (ii) set out the amount, specified in the Base Currency for any Borrower (the "**Requested Facility Amount**") of the Additional Facility and any proposed sterling amount of that Requested Facility Amount;
- (iii) set out the margin and fees applicable to the Additional Facility (confirming that the Yield Condition would be satisfied as a result);
- (iv) certify that:
 - (A) no Event of Default is continuing or would result from the establishment or incurrence of the Additional Facility;
 - (B) Adjusted Leverage pro forma for the utilisation of the Requested Facility Amount assuming full utilisation of the Requested Facility Amount (but disregarding the cash proceeds of that utilisation), does not exceed 3.50:1 for:
 - (1) the Relevant Period ending on the then most recent Quarter Date; and
 - (2) each Relevant Period ending in the twelve Month period immediately following the utilisation of the Requested Facility Amount; and

- (C) where the relevant Additional Facility Loan is being utilised for the purposes of an Acquisition, the proposed Acquisition is permitted under paragraph (f) of the definition of "**Permitted Acquisition**".

(together, the "**Additional Facility Conditions**").

- (c) Upon its receipt, the Agent shall promptly forward the Additional Facility Request to all Facility B Lenders and each Facility B Lender shall have 10 Business Days from the date of the Additional Facility Request to accept such invitation (the "**Lender Invitation Period**"). Following the expiry of the Lender Invitation Period, any Facility B Lender that has not responded to the Parent in relation to the Additional Facility Request (or has declined the invitation to participate) will lose the right to participate in the Additional Facility.
- (d) No Lender shall be obliged to agree to make any Additional Facility Commitments (as defined below) available.
- (e) If the Parent receives no acceptances from the Facility B Lenders, or receives acceptances from the Facility B Lenders to participate in commitments for the Additional Facility in an aggregate amount that is less than the Requested Facility Amount, the Parent may then invite non-Lenders (who must be Eligible Institutions) to provide commitments for and to become lenders under the Additional Facility in respect of the Requested Facility Amount or such shortfall (as the case may be) (and each such entity that agrees to provide a commitment in relation to the Additional Facility in accordance with this clause 2.2(e) will be an "**Additional Lender**").
- (f) If one or more Facility B Lenders or Additional Lenders are willing to make available commitments in respect of an Additional Facility, the Parent will confirm to the Agent (the "**Additional Facility Notice**"):
- (i) that the Additional Facility Conditions are satisfied;
 - (ii) the aggregate amount of the commitments that have been agreed to be made available by the Facility B Lenders and/or Additional Lenders in respect of the relevant Additional Facility (such commitments being "**Additional Facility Commitments**");
 - (iii) the date on which the relevant Additional Facility is to become committed and entered into;
 - (iv) the identity and notice details of the Facility B Lenders and Additional Lenders that have agreed to provide the Additional Facility Commitments (together the "**Additional Facility Lenders**");
 - (v) the Availability Period for the Additional Facility;
 - (vi) the margin and fees applicable to the Additional Facility (confirming that the Yield Condition is satisfied as a result); and
 - (vii) the currency or currencies in which the Additional Facility may be drawn,
- which the Agent will then notify to all of the Lenders.

- (g) The establishment of the Additional Facility shall only be effective if:
- (i) each Additional Facility Lender delivers an Additional Facility Lender Certificate to the Agent and the Parent; and
 - (ii) the relevant Additional Facility Lender which is not a Lender accedes to this Agreement and to the Intercreditor Agreement as a Lender by duly completing and signing an Additional Lender Accession Deed prior to making available its Additional Facility Commitments and the Agent shall only be obliged to execute the relevant Additional Lender Accession Deed delivered to it by an Additional Lender once it is satisfied it has complied with all necessary "*know-your-customer*" checks or other similar checks under all applicable laws and regulations in relation to such Additional Lender and at any time thereafter such Additional Lender shall be treated as a Lender for the purposes of this Agreement.
- (h) The Parent shall promptly on demand pay the Agent and the Security Agent the amount of all costs and expenses (including legal fees) reasonably incurred by either of them and, in the case of the Security Agent, by any Receiver or Delegate in connection with any increase in under this clause 2.2.
- (i) The relevant Additional Facility Lender shall, on the date upon which the increase takes effect, pay to the Agent (for its own account) a fee in an amount equal to the fee which would be payable under clause 27.4 (*Assignment or transfer fee*) if the increase was a transfer pursuant to clause 27.6 (*Procedure for transfer*) and if the Additional Facility Lender was a New Lender.
- (j) The making available of any Additional Facility will not require the consent of any Lender other than the Lenders and Additional Lenders that are participating in such Additional Facility.
- (k) Each Obligor confirms:
- (i) the authority of the Parent to agree, implement and establish an Additional Facility in accordance with this Agreement; and
 - (ii) that its guarantee and indemnity recorded in clause 21 (*Guarantee and indemnity*) (or any applicable Accession Deed or other Finance Document), and all Transaction Security granted by it will, subject only to any applicable limitation on such guarantee and indemnity referred to in clause 21 (*Guarantee and indemnity*) and any Accession Deed pursuant to which it became an Obligor or the terms of the Transaction Security Documents, extend to include the relevant Additional Facility Loans and any other obligations arising under or in respect of the relevant Additional Facility Commitments.
- (l) Each Finance Party agrees and empowers the Agent and the Security Agent at the cost of the Obligors (provided such costs are reasonably incurred) to (and the relevant Obligor shall promptly upon request by the Agent or the Security Agent in accordance with the Agreed Security Principles) execute any necessary amendments to the Transaction Security Documents and other Finance Documents (including this Agreement and the Intercreditor Agreement) as may be required in order to ensure that any Additional Facility Commitments are made available on the terms

contemplated in this clause 2.2 in *pari passu* with Facility B provided that the Additional Facility Commitments may not be:

- (i) guaranteed by any person which is not an Obligor; or
- (ii) secured by any assets other than the then existing Security granted under the terms of Transaction Security Documents on the Charged Property for the benefit of the Lenders, except where the same Security (to the extent permitted by law) is granted under the Facilities.
- (m) Each Additional Facility Lender by executing the Additional Facility Notice confirms, acknowledges, and agrees, that the Agent has authority to execute on its behalf any amendments 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 establishment of the Additional Facility becomes effective.
- (n) The Agent is authorised by the Group to disclose the terms of any Additional Facility Notice to any of the other Finance Parties and, upon request by the other Finance Parties, will promptly disclose such terms to the other Finance Parties.

2.3 Increase

- (a) The Parent may by giving prior notice to the Agent by no later than the date falling 10 Business Days after the effective date of a cancellation of:
 - (i) the Available Commitments of a Defaulting Lender in accordance with clause 9.6 (*Right of cancellation in relation to a Defaulting Lender*); or
 - (ii) the Commitments of a Lender in accordance with:
 - (A) clause 9.1 (*Illegality*); or
 - (B) clause 9.5(a) (*Right of cancellation and repayment in relation to a single Lender*),
 - (iii) request that the Commitments relating to any relevant 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:
 - (A) the increased Commitments will be assumed by one or more Eligible Institutions (each an "**Increase Lender**") 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;
 - (B) 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;

- (C) each Increase Lender shall become a Party as a "**Lender**" and any Increase Lender and each of the other Finance Parties shall assume obligations towards one another and acquire rights against one another as that Increase Lender and those Finance Parties would have assumed and/or acquired had the Increase Lender been an Original Lender;
 - (D) the Commitments of the other Lenders shall continue in full force and effect; and
 - (E) 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 clause 2.3(b) are satisfied.
- (b) An increase in the Commitments relating to a Facility will only be effective on:
 - (i) the execution by the Agent of an Increase Confirmation from the relevant Increase Lender; and
 - (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 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 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 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 promptly on demand pay the Agent and the Security Agent the amount of all costs and expenses (including legal fees) reasonably incurred by either of them and, in the case of the Security Agent, by any Receiver or Delegate in connection with any increase in Commitments under this clause 2.3.
- (e) The Increase Lender shall, on the date upon which the increase takes effect, pay to the Agent (for its own account) a fee in an amount equal to the fee which would be payable under clause 27.4 (*Assignment or transfer fee*) if the increase was a transfer pursuant to clause 27.6 (*Procedure for transfer*) and if the Increase Lender was a New Lender.
- (f) The Parent may pay to the Increase Lender a fee in the amount and at the times agreed between the Parent and the Increase Lender in a Fee Letter.

- (g) Clause 27.5 (*Limitation of responsibility of Existing Lenders*) shall apply mutatis mutandis in this clause 2.3 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"**.

2.4 Finance Parties' rights and obligations

- (a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor is a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with clause 2.4(c). The rights of each Finance Party include any debt owing to that Finance Party under the Finance Documents and, for the avoidance of doubt, any part of a Loan or any other amount owed by an Obligor which relates to a Finance Party's participation in a Facility or its role under a Finance Document (including any such amount payable to the Agent on its behalf) is a debt owing to that Finance Party by that Obligor.
- (c) A Finance Party may, except as specifically provided in the Finance Documents, separately enforce its rights under or in connection with the Finance Documents.

2.5 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 Finance Documents and irrevocably authorises:
 - (i) the Parent on its behalf to supply all information concerning itself contemplated by this Agreement to the Finance Parties and to give all notices and instructions (including, in the case of a Borrower, Utilisation Requests and Additional Facility Notices), to execute on its behalf any Accession Deed, to make such agreements and to effect the relevant amendments, supplements and variations capable of being given, made or effected by any Obligor notwithstanding that they may affect the Obligor, without further reference to or the consent of that Obligor; and
 - (ii) each Finance Party to give any notice, demand or other communication to that Obligor pursuant to the Finance Documents to the Parent,

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

- (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 Finance Document on behalf of another Obligor or in connection with any Finance Document (whether or not known to any other Obligor and whether occurring before or after such other Obligor became an Obligor under any Finance Document) shall be binding for all purposes on that Obligor as if that Obligor had expressly made, given or concurred with it. In the event of any conflict between any notices or other communications of the Obligors' Agent and any other Obligor, those of the Obligors' Agent shall prevail.
- (c) For the avoidance of doubt, the execution of any Transaction Security Document governed by laws of Poland may require a separate power of attorney executed in the prescribed form.

3. PURPOSE

3.1 Purpose

- (a) The Company shall apply all amounts borrowed by it under Facility B towards:
 - (i) payment to the Sword Vendors of the purchase price for the Sword Target Shares under the Sword Acquisition Documents;
 - (ii) payment of the Sword Acquisition Costs (other than periodic fees); and
 - (iii) refinancing certain Financial Indebtedness of the Target and its Subsidiaries to third parties,

in each case, as described in the Funds Flow Statement.

- (b) Each Borrower shall apply all amounts borrowed by it under the Revolving Facility towards the general corporate and working capital purposes of the Group, including (1) refinancing Financial Indebtedness in respect of any Existing Ancillary Facility and (2) expenditure on research and development (but not towards acquisitions of companies, businesses or undertakings, Joint Venture Investments, Capital Expenditure, payment of dividends or distributions, payment of Permitted Payments, the repayment or prepayment of any Term Loan or the payment of any interest, costs or expenses in connection with any Term Loan or, in the case of any utilisation of any Ancillary Facility, towards prepayment of any Revolving Facility Loan).
- (c) A Borrower shall apply all amounts borrowed by it under an Additional Facility towards the purposes set out in clause 2.2(a)(vi).

3.2 Monitoring

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

4. CONDITIONS OF UTILISATION

4.1 Initial conditions precedent

- (a) The Lenders will only be obliged to comply with clause 5.4 (*Lenders' participation*) in relation to any Loan if on or before the Utilisation Date for that Loan, the Agent has received all of the documents and other evidence listed in part 1 and part 2 of schedule 2 (*Conditions precedent*) in form and substance satisfactory to the Agent. The Agent shall notify the Parent and the Lenders promptly upon being so satisfied.
- (b) Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent gives the notification described in clause 4.1(a), the Lenders authorise (but do not require) the Agent to give that notification. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

4.2 Further conditions precedent

Subject to clause 4.1 (*Initial conditions precedent*), the Lenders will only be obliged to comply with clause 5.4 (*Lenders' participation*) in relation to a Loan other than one to which clause 4.5 (*Loan during the Certain Funds Period*) applies 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 is continuing or would result from the proposed Loan, and in the case of any other Loan, no Default or Material Event of Default is continuing or would result from the proposed Loan;
- (b) in relation to any Loan on the Closing Date, all the representations and warranties in clause 22 (*Representations*) or, in relation to any other Loan, the Repeating Representations to be made by each Obligor are true and accurate (and, in the case of any such representation to which a materiality test or financial threshold is not already applied, are true and accurate in all material respects).

4.3 Conditions relating to Optional Currencies

- (a) A currency will constitute an Optional Currency in relation to a Revolving Facility Loan if:
 - (i) it is readily available in the amount required and freely convertible into the Base Currency in the wholesale market for that currency on the Quotation Day and the Utilisation Date for that Revolving Facility Loan; and
 - (ii) it is sterling, euro, US dollars, Zloty or has been approved by the Agent (acting on the instructions of all the Lenders) on or prior to receipt by the Agent of the relevant Utilisation Request for that Revolving Facility Loan.
- (b) If the Agent has received a written request from the Company for a currency to be approved under clause 4.3(a)(ii), the Agent will confirm to the Company by the Specified Time:
 - (i) whether or not the Lenders have granted their approval; and
 - (ii) if approval has been granted, the minimum amount for any subsequent Revolving Facility Loan in that currency.

4.4 Maximum number of Loans

- (a) A Borrower (or the Parent) may not deliver a Utilisation Request if as a result of the proposed Loan:
 - (i) more than one Facility B Loan would be outstanding;
 - (ii) more than 10 Additional Facility Loans would be outstanding; or
 - (iii) more than 10 Revolving Facility Loans would be outstanding.
- (b) The Parent may not request that the Facility B Loan be divided.
- (c) Any Separate Loan shall not be taken into account in this clause 4.4.

4.5 Loan during the Certain Funds Period

- (a) Subject to clause 4.1 (*Initial conditions precedent*), during the Certain Funds Period, the Lenders will only be obliged to comply with clause 5.4 (*Lenders' participation*) in relation to a Certain Funds Loan, if, on the date of the Utilisation Request and on the proposed Utilisation Date:
 - (i) no Major Default is continuing or would result from the proposed Utilisation; and
 - (ii) all the Major Representations are true in all material respects.
- (b) During the Certain Funds Period (save in circumstances where, pursuant to clause 4.5(a), a Lender is not obliged to comply with clause 5.4 (*Lenders' participation*) and subject as provided in clause 9.1 (*Illegality*) and clause 10.1 (*Exit*)), none of the Finance Parties shall be entitled to:
 - (i) cancel any of its Commitments to the extent to do so would prevent or limit the making of a Certain Funds Loan;
 - (ii) rescind, terminate or cancel this Agreement or Facility B or exercise any similar right or remedy or make or enforce any Transaction Security or claim under the Finance Documents it may have to the extent to do so would prevent or limit the making of a Certain Funds Loan;
 - (iii) refuse to participate in the making of a Certain Funds Loan;
 - (iv) exercise any right of set-off or counterclaim in respect of the Facility B Loan to the extent to do so would prevent or limit the making of a Certain Funds Loan; or
 - (v) cancel, accelerate or cause repayment or prepayment of any amounts owing under this Agreement or under any other Finance Document to the extent to do so would prevent or limit the making of a Certain Funds Loan,

provided that immediately upon the expiry of the Certain Funds Period, but subject to clause 26.21 (*Clean-up period*) all such rights, remedies and entitlements shall be available to the Finance Parties notwithstanding that they may not have been used or been available for use during the Certain Funds Period.

4.6 Offer Conversion

- (a) The Company may, at any time prior to the Scheme Effective Date and if the Scheme has not lapsed or been withdrawn with the consent of the Panel, notify the Agent (an **"Offer Conversion Notice"**) that it intends to procure the withdrawal of the Scheme and to propose an Offer provided that:
 - (i) the total price payable for each Sword Target Share pursuant to the Offer is no greater than the amount stated in the Scheme Document (as updated, amended or supplemented as permitted by the terms of this Agreement), or if no Scheme Document is issued, the Scheme Press Release (in each case as in effect as at the date of the Offer Conversion Notice) or such higher price as agreed to in writing by the Agent;
 - (ii) the terms and conditions of the Offer are substantially the same as those of the Scheme (as amended in a manner permitted by this Agreement) save for changes necessitated by the legal form of the Offer (or as are otherwise required by law or regulation (including the City Code), the Panel or an order of the Court); and
 - (iii) the Offer Press Release contains a recommendation of the Offer by the board of the Sword Target.
- (b) The Company shall procure that within 14 days of the date of service of the Offer Conversion Notice, the Scheme shall be withdrawn and an Offer Press Release (complying with the provisions of clause 4.6(a)) shall be issued (such actions together being an **"Offer Conversion"**) and a copy of the Offer Press Release shall promptly be delivered to the Agent.

SECTION 3

UTILISATION

5. UTILISATIONS

5.1 Delivery of a Utilisation Request

A Borrower (or the Parent on its behalf) may utilise a Facility by delivery to the Agent of a duly completed Utilisation Request not later than the Specified Time (or, in the case of any Loan to be made on the Closing Date, such later time as the Agent may agree).

5.2 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) it identifies the relevant Borrower of the Loan;
 - (iii) the proposed Utilisation Date is a Business Day within the Availability Period applicable to that Facility;
 - (iv) the currency and amount of the Loan comply with clause 5.3 (*Currency and amount*); and
 - (v) the proposed Interest Period complies with clause 13 (*Interest Periods*).
- (b) Only one Loan may be requested in each Utilisation Request.

5.3 Currency and amount

- (a) The currency specified in a Utilisation Request must be:
 - (i) in relation to Facility B, the Base Currency;
 - (ii) in relation to the Revolving Facility, the Base Currency or an Optional Currency; and
 - (iii) in relation to an Additional Facility, the Base Currency.
- (b) The amount of the proposed Loan must be:
 - (i) for Facility B, an amount equal to the Total Facility B Commitments as at the Closing Date;
 - (ii) for the Revolving Facility:
 - (A) if the currency selected is the Base Currency, a minimum of £100,000 (and, if in excess of this amount, in integral amounts of £100,000) or, if less, the Available Facility;

- (B) if the currency selected is Euro, a minimum of EUR100,000 (and, if in excess of this amount, in integral amounts of EUR100,000) or, if less, the Available Facility; and
- (C) if the currency selected is US dollars, a minimum of \$100,000 (and, if in excess of this amount, in integral amounts of \$100,000) or, if less, the Available Facility; and
- (iii) in relation to an Additional Facility, a minimum of £1,000,000 or, if less, the Available Facility.

5.4 Lenders' participation

- (a) If the conditions set out in this Agreement have been met, and subject to clause 8.2 (*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 clause 5.4(c), 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 Loan is made to repay Ancillary Outstandings, each Lender's participation in that Loan will be in an amount (as determined by the Agent) which will result as nearly as possible in the aggregate amount of its participation in the Revolving Facility Loans then outstanding bearing the same proportion to the aggregate amount of the Revolving Facility Loans then outstanding as its Revolving Facility Commitment bears to the Total Revolving Facility Commitments.
- (d) The Agent shall determine the Base Currency Amount of each Additional Facility Loan and notify each Lender of the amount, currency and the Base Currency Amount of each Loan, the amount of its participation in that Loan and, if different, the amount of that participation to be made available in accordance with clause 33.1 (*Payments to the Agent*) by the Specified Time.
- (e) The Agent shall determine the Base Currency Amount of each Revolving Facility Loan which is to be made in an Optional Currency and notify each Lender of the amount, currency and the Base Currency Amount of each Loan, the amount of its participation in that Loan and, if different, the amount of that participation to be made available in accordance with clause 33.1 (*Payments to the Agent*) by the Specified Time.

5.5 Limitations on Loans

- (a) The Facility B Loan may only be utilised on:
 - (i) if the Sword Acquisition proceeds by way of a Scheme, the Closing Date (and for the avoidance of doubt the Facility B Loan may be utilised on the Closing Date immediately before completion takes place under the Sword Minority Acquisition Agreement); or
 - (ii) if the Sword Acquisition proceeds by way of an Offer, on or after the Offer Effective Date.

- (b) No Additional Facility nor the Revolving Facility shall be utilised unless the Facility B Loan has been utilised in full.

5.6 Cancellation of Commitment

- (a) The Facility B Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period for Facility B.
- (b) The Additional Facility Commitments relating to an Additional Facility which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period for that Additional Facility.
- (c) The Revolving Facility Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period for the Revolving Facility.

5.7 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; and
- (c) (to the extent not included within clauses 5.7(a) and 5.7(b)), any cash loans covered by a letter of credit or guarantee issued under an Ancillary Facility as contemplated by the definition of "**Permitted Financial Indebtedness**"; **LESS**
- (d) any amount of Cash (other than cash held in a Holding Account or Mandatory Prepayment Account) or Cash Equivalent Investments held by members of the Group,

(as confirmed in the Compliance Certificate delivered to the Agent with the Quarterly Financial Statements for the Relevant Period ending on the Accounting Reference Date) 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.

5.8 Agent's calculations

Each Lender's participation in a Loan will be determined in accordance with clause 5.4(b).

6. OPTIONAL CURRENCIES

6.1 Selection of currency

The Company shall select the currency of a Revolving Facility Loan in a Utilisation Request.

6.2 Unavailability of a currency

If before the Specified Time on any Quotation Day:

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

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

the Agent will give notice to the relevant Borrower to that effect by the Specified Time on that day. In this event, any Lender that gives notice pursuant to this clause 6.2 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.

6.3 Agent's calculations

Each Lender's participation in a Loan will be determined in accordance with clause 5.4(b).

7. ANCILLARY FACILITIES

7.1 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.

7.2 Availability

- (a) If the Parent and a Revolving Facility Lender agree and except as otherwise provided in this Agreement, that Revolving Facility 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 five Business Days prior to the Ancillary Commencement Date for an Ancillary Facility, the 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, 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 Agent may reasonably request in connection with the Ancillary Facility.
- (c) The Agent shall promptly notify the Ancillary Lender and the other Lenders of the establishment of an Ancillary Facility.
 - (d) Subject to compliance with clause 7.2(b):
 - (i) the Revolving Facility 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.

7.3 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 7.9 (*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 36.3 (*Day count convention*) which shall not prevail for the purposes of calculating fees, interest or commission relating to an Ancillary Facility;
 - (ii) an Ancillary Facility comprising more than one account where the terms of the Ancillary Documents shall prevail to the extent required to permit the netting of balances on those accounts; and
 - (iii) where the relevant term of this Agreement would be contrary to, or inconsistent with, the law governing the relevant Ancillary Document, in which case that term of this Agreement shall not prevail.
- (d) Interest, commission and fees on Ancillary Facilities are dealt with in clause 15.6 (*Interest, commission and fees on Ancillary Facilities*).

7.4 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 Loans 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 a Revolving Facility Loan.
- (d) If a Revolving Facility Loan is made to repay Ancillary Outstandings in full, the relevant Ancillary Commitment shall be reduced to zero.

7.5 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.

7.6 Adjustment for Ancillary Facilities upon acceleration

- (a) In this clause 7.6:
 - (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 Loan then outstanding (together with the aggregate amount of all accrued interest, fees and commission owed to it as a Revolving Facility Lender); 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 the Agent exercises any of its rights under clause 26.19 (*Acceleration*) or clause 26.20 (*Super Senior Acceleration*) (other than, in each case, declaring Loans to be due on demand), each Lender and each Ancillary Lender shall (subject to clause 7.6(g)) promptly adjust (by making or receiving (as the case may be) corresponding transfers of rights and obligations under the 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 Agent exercises the relevant right(s) under clause 26.19 (*Acceleration*) or clause 26.20 (*Super Senior Acceleration*) (as applicable).
- (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 clause 7.6(b), 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 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 7.6 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 27.11 (*Pro rata interest settlement*)).
- (e) Prior to the application of the provisions of clause 7.6(b), 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 7.6 shall be made by the Agent based upon information provided to it by the Lenders and Ancillary Lenders and the Agent's Spot Rate of Exchange.
- (g) This clause 7.6 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 Finance Document) in the Base Currency.

7.7 Information

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

7.8 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 of schedule 1 *The Original Parties*) and/or the amount of any Revolving Facility Commitment transferred to or assumed by that Lender under this Agreement, to the extent (in each case) not cancelled, reduced or transferred by it under this Agreement.
- (b) The Parent shall specify any relevant Affiliate of a Lender in any notice delivered by the Parent to the Agent pursuant to clause 7.2(b)(i).
- (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 20.9 (*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 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.

7.9 Affiliates of Borrowers

- (a) Subject to the terms of this Agreement, an Affiliate incorporated in England and Wales 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 Agent pursuant to clause 7.2(b)(i).
- (c) If a Borrower ceases to be a Borrower under this Agreement in accordance with clause 29.3 (*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 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 to this Agreement or any other Finance Document to a Borrower being under no obligations (whether actual or contingent) as a Borrower under such Finance Document shall be construed to include a reference to any Affiliate of a Borrower being under no obligations under any Finance Document or Ancillary Document.

7.10 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.

7.11 Amendments and Waivers - Ancillary Facilities

No amendment or waiver of a term of any Ancillary Facility shall require the consent of any Finance Party other than the relevant Ancillary Lender unless such amendment or waiver itself relates to or gives rise to a matter which would require an amendment of or under this Agreement (including, for the avoidance of doubt, under this clause 7). In such a case, clause 39 (*Amendments and waivers*) will apply.

SECTION 4

REPAYMENT, PREPAYMENT AND CANCELLATION

8. REPAYMENT

8.1 Repayment of Term Loans

- (a) The Company shall repay the Facility B Loan in full on the Termination Date for Facility B.
- (b) The Borrowers under any Additional Facility shall repay the aggregate Additional Facility Loans under that Additional Facility in accordance with the repayment terms set out in the Additional Facility Notice relating to that Additional Facility.
- (c) The Borrowers may not reborrow any part of a Term Facility which is repaid.

8.2 Repayment of Revolving Facility Loans

- (a) The Borrowers shall procure that all amounts outstanding under the Revolving Facility are repaid and cancelled in full on the Termination Date for the Revolving Facility.
- (b) Subject to clause 8.2(d), each Borrower which has drawn a Revolving Facility Loan shall repay that Loan on the last day of its Interest Period.
- (c) Without prejudice to each Borrower's obligation under clause 8.2(a), 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; 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 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:
 - (1) the relevant Borrower will only be required to make a payment under clause 33.1 (*Payments to the Agent*) in an amount in the relevant currency equal to that excess; and
 - (2) 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 33.1 (*Payments to the 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:
 - (1) the relevant Borrower will not be required to make a payment under clause 33.1 (*Payments to the Agent*); and
 - (2) each Lender will be required to make a payment under clause 33.1 (*Payments to the 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.
- (d) 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 Termination Date 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.
- (e) If the Borrower makes a prepayment of a Revolving Facility Loan pursuant to clause 9.4 (*Voluntary prepayment of Revolving Facility Loans*), a Borrower to whom a Separate Loan is outstanding may prepay that Loan by giving not less than five Business Days' prior notice to the 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 Loan to the Revolving Facility Loans. The Agent will forward a copy of a prepayment notice received in accordance with this clause 8.2(e) to the Defaulting Lender concerned as soon as practicable on receipt.
- (f) Interest in respect of a Separate Loan will accrue for successive Interest Periods selected by the Borrower by the time and date specified by the Agent (acting reasonably) and will be payable by that Borrower to the Agent (for the account of that Defaulting Lender) on the last day of each Interest Period of that Loan.

- (g) 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 clauses 8.2(d) to 8.2(f), in which case those clauses shall prevail in respect of any Separate Loan.

9. ILLEGALITY, VOLUNTARY PREPAYMENT AND CANCELLATION

9.1 Illegality

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

- (a) that Lender shall promptly notify the Agent upon becoming aware of that event;
- (b) upon the Agent notifying the Parent, each Available Commitment of that Lender will be immediately cancelled or, as the case may be, on such date that Lender's Commitment shall be transferred to another entity permitted by clause 39.8 (*Replacement of Lender*); and
- (c) to the extent that the Lender's participation has not been transferred pursuant to clause 39.8 (*Replacement of Lender*), each Borrower shall repay that Lender's participation in the Loans on the last day of the Interest Period for each Loan occurring after the Agent has notified the Parent or, if earlier, the date specified by the relevant Lender in the notice delivered to the 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.

9.2 Voluntary cancellation

- (a) Subject to clause 9.2(c) and clause 11.11 (*Pro rata prepayments*), the Parent may, if it gives the Agent not less than five Business Days' (or such shorter period as the Agent (acting on the instructions of the Majority Lenders) and the Parent may agree) prior notice, cancel the whole or any part (being an amount that reduces the Base Currency Amount of the relevant Available Facility by a minimum amount of £100,000). Any cancellation under this clause 9.2 shall reduce the Commitments of the Lenders rateably under that Facility.
- (b) Any notice of cancellation of the Available Commitments with respect to the Revolving Facility delivered at any time while Loans under any other Facility remain outstanding and/or other Commitments remain uncanceled must be accompanied by evidence, in form and substance satisfactory to the Majority Lenders, that the Group will have sufficient working capital facilities available to it following such cancellation.
- (c) The Parent shall not cancel any part of the Available Commitment with respect to a Term Facility unless at the same time it cancels a *pro rata* amount of the Available Commitments for each other Term Facility.

9.3 Voluntary prepayment of Term Loans

- (a) Subject to clauses 9.3(b) and 9.3(c), clause 11.11 (*Pro rata prepayments*) and clause 15.7 (*Prepayment fees*), a Borrower to which a Term Loan has been made may, if it or the Parent gives the Agent not less than five Business Days' (or such

shorter period as the Majority Lenders may agree and subject to the notice periods in clause 11.10 (*Declining prepayments*)) prior notice, prepay the whole or any part of that Term Loan (but, if in part, being an amount that reduces the Base Currency Amount of that Term Loan by a minimum amount of £500,000 or integral multiples thereof, or such other minimum amount(s) or integral multiple(s) as the Agent (on the instructions of the Majority Lender) and the Parent may agree from time to time.

- (b) A Term 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) Subject to clause 9.3(b), a Term Loan shall only be prepaid if the Term Loans are:
 - (i) prepaid at the same time; and
 - (ii) prepaid in amounts which reduce the Facility B Loan and the Additional Facility Loans by the same proportion.

9.4 Voluntary prepayment of Revolving Facility Loans

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

9.5 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 16.2(c); or
 - (ii) any Lender claims indemnification from the Parent or an Obligor under clause 16.3 (*Tax indemnity*) or clause 17.1 (*Increased costs*),

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

- (b) On receipt of a notice referred to in clause 9.5(a) in relation to a Lender, the Commitments of that Lender shall immediately be reduced to zero in the case of a notice of cancellation and repayment or transferred to another entity pursuant to clause 39.8 (*Replacement of Lender*).
- (c) On the last day of each Interest Period which ends after the Parent has given notice under clause 9.5(a) in relation to a Lender (or, if earlier, the date specified by the Parent in that notice), in the case of a notice of repayment or cancellation, each Borrower to which a Loan is outstanding shall repay that Lender's participation in that Loan together with all interest and other amounts accrued under the Finance Documents or the relevant Lender shall transfer its rights and obligations pursuant to clause 39.8 (*Replacement of Lender*).

9.6 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 Agent five Business Days' notice of cancellation of each Available Commitment of that Lender.
- (b) On the notice referred to in clause 9.6(a) becoming effective, each Available Commitment of the Defaulting Lender shall immediately be reduced to zero.
- (c) The Agent shall as soon as practicable after receipt of a notice referred to in clause 9.6(a), notify all the Lenders.

10. MANDATORY PREPAYMENT AND CANCELLATION

10.1 Exit

- (a) For the purpose of this clause 10.1:

"Flotation" means:

- (i) a successful application being made for the admission of any part of the share capital of any member of the Group (or Holding Company of any member of the Group) to the Official List maintained by the FCA and the admission of any part of the share capital of any member of the Group (or Holding Company of any member of the Group) to trading on the London Stock Exchange plc or on any recognised investment exchange (as that term is used in the Financial Services and Markets Act 2000) or on any exchange or market replacing the same or any other exchange or market in any country; or
 - (ii) the grant of permission to deal in any part of the issued share capital of any member of the Group (or Holding Company of any member of the Group) on the Alternative Investment Market or the 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.
- (b) Upon the occurrence of:
 - (i) any Flotation; or
 - (ii) a Change of Control;
 - (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; or
 - (iv) the lapse or withdrawal with the consent of the Panel of the Scheme (other than by way of an Offer Conversion) or the lapse, termination or withdrawal with the consent of the Panel of the Offer,

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

10.2 Acquisition, Disposal and Insurance Proceeds

- (a) For the purposes of this clause 10.2, clause 10.3 (*Application of mandatory prepayments and cancellations*) and clause 10.4 (*Mandatory Prepayment Accounts and Holding Accounts*):

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

- (i) any reasonable expenses which are incurred by any member of the Group to persons who are not members of the Group; and
- (ii) any Tax incurred (or properly reserved for in accordance with the relevant Accounting Principles) and required to be paid by a member of the Group (as reasonably determined by the relevant member of the Group on the basis of existing rates and taking into account any available credit, deduction or allowance),

in each case in relation to that Recovery Claim;

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

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

- (i) any reasonable costs and expenses which are incurred by any member of the Group with respect to that Disposal to persons who are not members of the Group; and
- (ii) any Tax incurred (or properly reserved for in accordance with the relevant Accounting Principles) and, in each case, required to be paid by member of the Group in connection with that Disposal (as reasonably determined by the relevant member of the Group, 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:

- (i) the Parent notifies the Agent are, or are to be, applied:
 - (A) in payment of amounts payable to a Vendor pursuant to the relevant Acquisition Document by way of adjustment to the purchase price in respect of that Acquisition (except to the extent relating to a working capital adjustment);
 - (B) to satisfy (or reimburse a member of the Group which has discharged) any liability, charge or claim which has arisen or been

made upon a member of the Group by a person which is not a member of the Group; or

- (C) in the replacement, reinstatement and/or repair of assets of members of the Group which have been lost, destroyed or damaged,

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

- (ii) do not fall under the preceding paragraph and:

- (A) do not exceed £100,000 (or its equivalent in any other currencies or currency); or

- (B) when aggregated with the proceeds of any other Recovery Claims not falling under the preceding paragraph, do not exceed £250,000 (or its equivalent in any other currencies or currency) in any Financial Year;

"Excluded Disposal Proceeds" means:

- (i) proceeds from a Disposal referred to in paragraphs (a), (b), (f), (h) and (j) of the definition of Permitted Disposal;
- (ii) proceeds from a Disposal referred to in paragraph (c) of the definition of Permitted Disposal, provided they are reinvested in accordance with that paragraph within 12 months (or committed to be applied within 12 months and actually applied within 18 months) of the date of the relevant Disposal;
- (iii) proceeds arising from any other Permitted Disposal where the proceeds of such Disposal are applied in the replacement, reinstatement or purchase of assets for use in the business and are so applied as soon as possible but in any event within 12 months (or committed to be applied within 12 months and actually applied within 18 months) of the date of the relevant Disposal; or
- (iv) proceeds of any Disposals not falling under the preceding paragraphs which:
 - (A) do not exceed £100,000 (or its equivalent in any other currency or currencies); or
 - (B) when aggregated with the proceeds of other Disposals not falling under the preceding paragraphs, do not exceed an amount of £250,000 (or its equivalent in any other currency or currencies) in any Financial Year;

"Excluded Insurance Proceeds" means any proceeds of an insurance claim which:

- (i) the Parent notifies the Agent are, or are to be, applied:
 - (A) to meet a third party claim;
 - (B) to cover operating losses in respect of which the relevant insurance claim was made; or

- (C) 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,

if those proceeds are in each case applied as soon as possible but in any event within 12 months (or committed to be applied within 12 months and actually applied within 18 months) after receipt; or

- (ii) do not fall under the preceding paragraph and:

- (A) do not exceed £100,000 (or its equivalent in any other currency or currencies); or

- (B) when aggregated with the proceeds of any other insurance claims not falling under the preceding paragraph, do not exceed £250,000 (or its equivalent in any other currencies or currency) in any Financial Year; and

"Insurance Proceeds" means the proceeds of any insurance claim received under any insurance maintained by any member of the Group except for Excluded Insurance Proceeds and after deducting any reasonable costs and expenses in relation to that claim which are incurred by any member of the Group to persons who are not members of the Group.

- (b) Subject to clause 15.4 (*Adjustment of Mandatory Prepayments*) of the Intercreditor Agreement, the Parent shall ensure that the Borrowers prepay Loans, and cancel Available Commitments, in amounts equal to the following amounts at the times and in the order of application contemplated by clause 10.3 (*Application of mandatory prepayments and cancellations*):

- (i) the amount of Acquisition Proceeds;
- (ii) the amount of Disposal Proceeds; and
- (iii) the amount of Insurance Proceeds.

10.3 Application of mandatory prepayments and cancellations

- (a) Subject to clause 11.11 (*Pro rata prepayments*), a prepayment of Loans or cancellation of Available Commitments made under clause 10.2 (*Acquisition, Disposal and Insurance Proceeds*) shall be applied in the following order:
 - (i) firstly, in prepayment of Term Loans as contemplated in clauses 10.3(b) to 10.3(e) inclusive;
 - (ii) secondly, in cancellation of Available Commitments under the Revolving Facility (and the Available Commitments of the Lenders under the Revolving Facility will be cancelled rateably);
 - (iii) thirdly, in prepayment of Revolving Facility Loans such that outstanding Revolving Facility Loans shall be prepaid on a *pro rata* basis; 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) Subject to the notice periods in clause 11.10 (*Declining prepayments*) having elapsed and unless the Parent makes an election under clause 10.3(d), the Borrowers shall prepay Loans in the case of any prepayment relating to the amounts of Acquisition Proceeds, Disposal Proceeds or Insurance Proceeds promptly upon receipt of those proceeds.
- (c) A prepayment under clause 10.2 (*Acquisition, Disposal and Insurance Proceeds*) or clause 24.5 (*Equity Cure*) shall prepay the Term Loans in amounts which reduce the Facility B Loan and the Additional Facility Loans by the same proportion.
- (d) Subject to clause 10.3(e) and to the notice periods in clause 11.10 (*Declining prepayments*) having elapsed, the Parent may elect that any prepayment under clause 10.2 (*Acquisition, Disposal and Insurance Proceeds*) be applied in prepayment of a Loan on the last day of the then current 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.
- (e) If the Parent has made an election under clause 10.3(d) but an Event of 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).

10.4 Mandatory Prepayment Accounts and Holding Accounts

- (a) The Parent shall ensure that:
 - (i) Acquisition Proceeds, Disposal Proceeds and Insurance Proceeds in respect of which the Parent has made an election under clause 10.3(d) are paid into a Mandatory Prepayment Account as soon as reasonably practicable after receipt by a member of the Group; and
 - (ii) Excluded Acquisition Proceeds, Excluded Disposal Proceeds and/or Excluded Insurance Proceeds to be applied in replacement, reinstatement or repair of assets or personnel (as applicable) are paid into a Holding Account as soon as reasonably practicable after receipt by a member of the Group.
- (b) The Parent and each Borrower irrevocably authorise the Agent to apply (or instruct the relevant account bank to transfer to the Agent to apply):
 - (i) amounts credited to the Mandatory Prepayment Account; and
 - (ii) amounts credited to the Holding Account which have not been applied in the manner and within the time periods specified in the definition of "**Excluded**

Acquisition Proceeds", "Excluded Disposal Proceeds" or "Excluded Insurance Proceeds" as applicable, or such longer time period as the Majority Lenders may agree,

to pay amounts due and payable under clause 10.3 (*Application of mandatory prepayments and cancellations*) and otherwise under the Finance Documents. The Parent and each Borrower further irrevocably authorise the Agent to so apply (or instruct the relevant account bank to transfer to the Agent to apply) amounts credited to the Holding Account whether or not the relevant time periods have elapsed since receipt of those proceeds if an Event of Default has occurred and is continuing. The Parent and each Borrower also irrevocably authorise the Agent to transfer (or instruct the relevant account bank to transfer to the Agent to then transfer) any amounts credited to the Holding Account referred to in this clause 10.4(b) to the Mandatory Prepayment Account pending payment of amounts due and payable under the Finance Documents (but if all such amounts have been paid any such amounts remaining credited to the Mandatory Prepayment Account may (unless a Default has occurred) be transferred back to the Holding Account).

- (c) A Finance Party 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 an Event of Default is continuing; and
 - (ii) each such account is subject to the Transaction Security.

10.5 Excluded proceeds

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

11. RESTRICTIONS

11.1 Notices of Cancellation or Prepayment

Any notice of cancellation, prepayment, authorisation or other election given by any Party under clause 9 (*Illegality, voluntary prepayment and cancellation*), clause 10.3 (*Application of mandatory prepayments and cancellations*) or clause 10.4 (*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.

11.2 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 any fees payable pursuant to clause 15.7 (*Prepayment fees*), without premium or penalty.

11.3 No reborrowing of Term Facilities

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

11.4 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.

11.5 Prepayment in accordance with Agreement

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

11.6 No reinstatement of Commitments

Subject to clause 2.3 (*Increase*), no amount of the Commitments cancelled under this Agreement may be subsequently reinstated.

11.7 Agent's receipt of Notices

If the Agent receives a notice under clause 9 (*Illegality, voluntary prepayment and cancellation*) or an election under clause 10.3(d), it shall promptly forward a copy of that notice or election to either the Parent or the affected Lender, as appropriate.

11.8 Effect of repayment and prepayment on Commitments

If all or part of any Lender's participation in a Loan under a Facility is repaid or prepaid and is not available for redrawing (other than by operation of clause 4.2 (*Further conditions precedent*)), an amount of 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.

11.9 Application of prepayments

Any prepayment of a Loan (other than a prepayment pursuant to clause 9.1 (*Illegality*) or clause 9.5 (*Right of cancellation and repayment in relation to a single Lender*)) shall be applied *pro rata* to each Lender's participation in that Loan.

11.10 Declining prepayments

- (a) Where a prepayment of a Term Loan is to be made under the provisions set out in clause 10.2 (*Acquisition, Disposal and Insurance Proceeds*), the Agent shall, once it has received a notice from the Parent that a prepayment pursuant to clause 10.2 (*Acquisition, Disposal and Insurance Proceeds*) is due and payable, promptly notify the Lenders of such prepayment and a Lender under a Term Facility may, if it notifies the Agent within five Business Days from the date that it receives such notice from

the Agent, elect to waive all or a specified part of its share of such prepayment. If a Lender fails to give the Agent such notice that Lender shall be deemed to have elected not to waive any part of its share of the relevant prepayment and the Agent shall be entitled to proceed accordingly.

- (b) Prepayments waived by a Lender in accordance with paragraph (a) above will be offered to those Lenders (if any) that did not waive such prepayments *pro rata* to their share of Commitments under the relevant Term Facility and any remaining balance not so accepted by a Lender within five Business Days of such offer will be retained by the Group.

11.11 Pro rata prepayments

If as a consequence of any prepayment of any Term Loan or cancellation of any Term Facility Commitment, the Lenders which hold Term Facility Commitments would not (after such prepayment or cancellation) hold Commitments that aggregate more than 66^{2/3} per cent. of the Total Commitments, any such prepayment or cancellation shall, notwithstanding any other provision of this Agreement, be applied towards prepayment of Loans or cancellation of Available Commitments as follows:

- (a) in prepayment of Term Loans (in accordance with, in the case of a voluntary prepayment, clause 9.3(b) and clause 9.3(c) or, in the case of a mandatory prepayment, clauses 10.3(b) to 10.3(e) inclusive); and
- (b)
 - (i) in cancellation of Available Commitments under the Revolving Facility (and the Available Commitments of the Lenders under the Revolving Facility will be cancelled rateably);
 - (ii) then, in prepayment of Revolving Facility Loans such that outstanding Revolving Facility Loans shall be prepaid on a *pro rata* basis; and cancellation, in each case, of the corresponding Revolving Facility Commitments; and
 - (iii) 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,

on a *pro rata* basis between clause 11.11(a) and clause 11.11(b).

SECTION 5

COSTS OF UTILISATION

12. INTEREST

12.1 Calculation of interest

- (a) The rate of Cash Pay Interest on the Facility B Loan and any Additional PIK Facility Loan for each Interest Period is the percentage rate per annum which is the aggregate of the applicable:
 - (i) Cash Margin; and
 - (ii) LIBOR.
- (b) The rate of interest on each Loan (other than the Facility B Loan and any Additional PIK Facility Loan) for each Interest Period is the percentage rate per annum which is the aggregate of the applicable:
 - (i) Margin; and
 - (ii) LIBOR or, in relation to any Loan in euro, EURIBOR or, in relation to any Loan in Zloty, WIBOR.

12.2 Payment of interest

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

12.3 PIK Interest

- (a) In addition to Cash Pay Interest, interest ("**PIK Interest**") shall accrue on the Facility B Loan and any Additional PIK Facility Loan at a rate equal to the applicable PIK Margin.
- (b) PIK Interest shall be automatically capitalised and shall be added to the outstanding principal amount of the Loan on the last day of each Interest Period (and, if the Interest Period is longer than six Months, on the dates falling at six Monthly intervals after the first day of the Interest Period).
- (c) After capitalisation PIK Interest shall:
 - (i) be treated as part of the principal amount of the Facility B Loan or, as the case may be, Additional PIK Facility Loan;
 - (ii) accrue Cash Pay Interest and PIK Interest in accordance with this clause 12; and
 - (iii) be subject to the repayment and prepayment provisions of this Agreement.

12.4 Default interest

- (a) If an Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to clause 12.4(b), is one per cent. (1%) per annum higher than the rate of interest (including, in respect of any unpaid amount in respect of Facility B or any Additional PIK Facility, the aggregate of the rates of Cash Pay Interest and PIK Interest) which would have accrued if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Agent (acting reasonably). Any interest accruing under this clause 12.4 shall be immediately payable by the Obligor on demand by the 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 one per cent. (1%) per annum higher than the rate of interest (including, in respect of any unpaid amount in respect of Facility B or any Additional PIK Facility, the aggregate of the rates of Cash Pay Interest and PIK Interest) 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.

12.5 Notification of rates of interest

- (a) The Agent shall promptly notify the relevant Lenders and the relevant Borrower (or the Parent) of the determination of a rate of interest under this Agreement.
- (b) The Agent shall promptly notify the relevant Borrower (or the Parent) of each Funding Rate relating to a Loan.

13. INTEREST PERIODS

13.1 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 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 Agent in accordance with clause 13.1(b), the relevant Interest Period will be three Months.

- (d) Subject to this clause 13, a Borrower (or the Parent) may select an Interest Period of three Months (in relation to Term Loans) or one, three or six Months (in relation to Revolving Facility Loans) or, in either case, of any other period agreed between the Parent, the Agent and 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 relevant 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.

13.2 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).

14. CHANGES TO THE CALCULATION OF INTEREST

14.1 Unavailability of Screen Rate

- (a) *Interpolated Screen Rate*: If no Screen Rate is available for LIBOR or, if applicable, EURIBOR or, if applicable, WIBOR, for the Interest Period of a Loan, the applicable LIBOR or EURIBOR or WIBOR, shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of that Loan.
- (b) *Base Reference Bank Rate*: If no Screen Rate is available for LIBOR or, if applicable, EURIBOR or, if applicable, WIBOR, for:
 - (i) the currency of a Loan; or
 - (ii) the Interest Period of a Loan and it is not possible to calculate the Interpolated Screen Rate,

the applicable LIBOR or EURIBOR or WIBOR shall be the Base Reference Bank Rate as of the Specified Time for the currency of that Loan and for a period equal in length to the Interest Period of that Loan.

- (c) *Cost of funds*: If 14.1(b) applies but no Base Reference Bank Rate is available for the relevant currency or Interest Period there shall be no LIBOR or EURIBOR or WIBOR for that Loan and clause 14.4 (*Cost of funds*) shall apply to that Loan for that Interest Period.

14.2 Calculation of Base Reference Bank Rate

- (a) Subject to clause 14.2(b), if LIBOR or EURIBOR or WIBOR is to be determined on the basis of a Base Reference Bank Rate but a Base Reference Bank does not supply a quotation by the Specified Time, the Base Reference Bank Rate shall be calculated on the basis of the quotations of the remaining Base Reference Banks.

- (b) If at or about noon on the Quotation Day none or only one of the Base Reference Banks supplies a quotation, there shall be no Base Reference Bank Rate for the relevant Interest Period.

14.3 Market disruption

If before close of business in London on the Quotation Day for the relevant Interest Period the Agent receives notifications from a Lender or Lenders (whose participations in a Loan exceed 50 per cent. of that Loan) that the cost to it of funding its participation in that Loan from the wholesale market for the relevant currency would be in excess of LIBOR or, if applicable, EURIBOR, or, if applicable, WIBOR, then clause 14.4 (*Cost of funds*) shall apply to that Loan for the relevant Interest Period.

14.4 Cost of funds

- (a) If this clause 14.4 applies, the rate of interest on each Lender's share of the relevant Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:
 - (i) the Margin; and
 - (ii) the rate notified to the Agent by that Lender as soon as practicable and in any event within five Business Days of the first day of that Interest Period (or, if earlier, on the date falling five Business Days before 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 the relevant Lender of funding its participation in that Loan from whatever source it may reasonably select.
- (b) If this clause 14.4 applies and the Agent or the Parent so requires, the 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.
- (c) Any alternative basis agreed pursuant to clause 14.4(b) shall, with the prior consent of all the Lenders and the Parent, be binding on all Parties.
- (d) If this clause 14.4 applies pursuant to clause 14.3 (*Market disruption*) and:
 - (i) a Lender's Funding Rate is less than LIBOR or, in relation to any Loan in euro, EURIBOR or, in relation to any Loan in Zloty, WIBOR; or
 - (ii) a Lender does not supply a quotation by the time specified in clause 14.4(a)(ii),

the cost to that Lender of funding its participation in that Loan for that Interest Period shall be deemed, for the purposes of clause 14.4(a), to be LIBOR or, in relation to any Loan in euro, EURIBOR or, in relation to any Loan in Zloty, WIBOR.
- (e) If this clause 14.4 applies pursuant to clause 14.3 (*Market disruption*) but any Lender does not supply a quotation by the time specified in clause 14.4(a)(ii) the rate of interest shall be calculated on the basis of the quotations of the remaining Lenders.

14.5 Notification to Parent

If clause 14.4 (*Cost of funds*) applies the Agent shall, as soon as is practicable, notify the Parent.

14.6 Break Costs

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

15. FEES

15.1 Commitment fee

- (a) The Parent shall pay to the Agent (for the account of each Revolving Facility Lender) a fee in the Base Currency computed at the rate of 35 per cent. (35%) per annum of the applicable Margin on that Revolving Facility 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 Availability Period for the Revolving Facility, on the last day of such Availability Period and, if cancelled in full, on the cancelled amount of the relevant Revolving Facility Lender's Available Commitment under the Revolving Facility at the time the cancellation is effective.
- (c) No commitment fee is payable to the Agent (for the account of a Revolving Facility Lender) on any Available Commitment of that Revolving Facility Lender for any day on which that Revolving Facility Lender is a Defaulting Lender.

15.2 Arrangement fee

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

15.3 Monitoring Fee

The Parent shall pay to the original Facility B Lender a monitoring fee in the amount and at the times agreed in a Fee Letter.

15.4 Agency fee

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

15.5 Security Agent fee

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

15.6 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.

15.7 Prepayment fees

- (a) If, during the period from the day after the Closing Date to (and including) the date falling 21 months after the Closing Date, a Borrower prepays all or any part of a Term Loan (a "**Relevant Non-Call Prepayment**") (save for any prepayment pursuant to clause 9.1 (*Illegality*), clause 10.2 (*Acquisition, Disposal and Insurance Proceeds*) or clause 24.5(b)), that Borrower must pay to the Agent (for the account of the Lenders), together with such Relevant Non-Call Prepayment, a prepayment fee in an amount equal to the amount of all payments of interest (calculated in accordance with clause 12 (*Interest*)), fees, commissions and other amounts that, but for the Relevant Non-Call Prepayment, would have accrued or become payable, in respect of the amount of the Relevant Non-Call Prepayment, during the period from and including the date on which the Relevant Non-Call Prepayment is made until (and including) the second anniversary of the Closing Date (the "**Makewhole Period**"), except that, for the purpose of calculating interest that would have become payable:
 - (i) any references to "the Loan" in clause 12 (*Interest*) shall instead be construed as references to the amount of the Relevant Non-Call Prepayment;
 - (ii) the applicable Interest Period is a period equal to the Makewhole Period; and
 - (iii) in determining the rate of LIBOR, Screen Rate shall be deemed to be the Screen Rate for LIBOR for sterling for a three month period as at the date of the prepayment (for the avoidance of doubt, taking into account any applicable floors).
- (b) The Agent shall confirm to the Parent the amount of any fee payable pursuant to clause 15.7(a) not less than two Business Days before the proposed prepayment date.

15.8 No deal, no fee

No fees shall be payable under this clause 15 unless and until the Closing Date occurs.

SECTION 6

ADDITIONAL PAYMENT OBLIGATIONS

16. TAX GROSS-UP AND INDEMNITIES

16.1 Definitions

In this Agreement:

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

- (a) 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
 - (i) where the Borrower is the Company, is filed with HM Revenue & Customs within 30 days of the date of this Agreement; or
 - (ii) 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
- (b) where it relates to a Treaty Lender that is not an Original Lender, contains the scheme reference number and jurisdiction of tax residence stated in respect of that Lender in the documentation which it executes on becoming a Party as a Lender, and
 - (i) where the Borrower is a Borrower as at the date on which that Treaty Lender becomes a Party as a Lender, is filed with HM Revenue & Customs within 30 days of that date; or
 - (ii) where the Borrower is not a Borrower as at the date on which that Treaty Lender becomes a Party as a Lender, is filed with HM Revenue & Customs within 30 days of the date on which that Borrower becomes an Additional Borrower;

"Protected Party" means a Finance Party which is or will be subject to any liability or required to make any payment for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document;

"Qualifying Lender" means:

- (a) a Lender which is beneficially entitled to interest payable to that Lender in respect of an advance under a 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 Finance Document and is within the charge to United Kingdom corporation tax as regards any payments of interest made in respect of that advance or would be within such

charge as regards such payment apart from section 18A of the CTA;
or

- (B) in respect of an advance made under a Finance Document by a person that was a bank (as defined for the purpose of section 879 of the ITA) at the time that that advance was made and is within the charge to United Kingdom corporation tax as regards any payments of interest made in respect of that advance; 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:

- (1) a company so resident in the United Kingdom; or

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

- (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; or

(iii) a Treaty Lender; or

- (b) a Lender which is a building society (as defined for the purposes of section 880 of the ITA) making an advance under a Finance Document;

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

- (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;

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

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

"Tax Payment" means either the increase in a payment made by an Obligor to a Finance Party under clause 16.2 (*Tax gross-up*) or a payment under clause 16.3 (*Tax indemnity*);

"Treaty Lender" means a Lender which:

- (a) is treated as a resident of a Treaty State for the purposes of the Treaty;
- (b) does not carry on a business in the United Kingdom through a permanent establishment with which that Lender's participation in the Loan is effectively connected; and
- (c) meets all other conditions of the Treaty for full exemption from withholding tax on interest which relates to the Lender provided that for these purposes it shall be assumed that the Lender has complied with all procedural formalities and that any condition which relates to there not being a special relationship between the Lender and the relevant Obligor has been satisfied;

"Treaty State" means a jurisdiction having a double taxation agreement (a **"Treaty"**) with the United Kingdom which makes provision for full exemption from tax imposed by the United Kingdom on interest; and

"UK Non-Bank Lender" means 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 documentation which it executes on becoming a Party.

Unless a contrary indication appears, in this clause 16 a reference to **"determines"** or **"determined"** means a determination made in the absolute discretion of the person making the determination acting reasonably.

16.2 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 Agent accordingly. Similarly, a Lender shall promptly notify the Agent on becoming so aware in respect of a payment payable to that Lender. If the Agent receives such notification from a Lender it shall promptly 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, including each Tax Deduction applicable to additional amounts

payable under this clause 16.2(c)) 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 clause 16.2(c) 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 (a)(ii) of the definition of "**Qualifying Lender**" and:
 - (A) an officer of H.M. Revenue & Customs has given (and not revoked) a direction (a "**Direction**") under section 931 of the ITA which relates to the payment and that Lender has received from the Obligor making the payment or from the 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 (a)(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 clause 16.2(g) or 16.2(h) (as applicable).
- (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 Agent for the Finance Party entitled to the payment a statement under section 975 of the ITA or other evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

(g)

(i) Subject to clause 16.2(g)(ii), a Treaty Lender and each Obligor which makes a payment to which that Treaty Lender is entitled shall promptly co-operate in completing any procedural formalities necessary for that Obligor to: (A) obtain authorisation to make that payment without a Tax Deduction and (B) where that an authorisation has expired or otherwise ceased to have effect, maintain or renew that authorisation.

(ii) A Treaty Lender which becomes a Party:

(A) 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) after 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 in the documentation which it executes on becoming a Party as a Lender,

and, having done so, that Lender shall be under no obligation pursuant to clause 16.2(g)(i).

(h) If a Lender has confirmed its scheme reference number and its jurisdiction of tax residence in accordance with clause 16.2(g)(ii) 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 that Borrower authority to make payments to that Lender without a Tax Deduction within 60 days of the date of the Borrower DTTP Filing; or

(C) HM Revenue & Customs has given authority for the Borrower to make payment to that Lender without a Tax Deduction and that authority expires or is withdrawn by HM Revenue & Customs; or

(iii) that Lender's HMRC DT Treaty Passport scheme passport has expired,

and in each case, that Borrower has notified that Lender in writing, that Lender and that Borrower shall promptly co-operate in completing any additional procedural formalities necessary for that Borrower to: (A) obtain authorisation to make that payment without a Tax Deduction and (B) where that an authorisation has expired or otherwise ceased to have effect, maintain or renew that authorisation.

- (i) If a Lender has not confirmed its scheme reference number and jurisdiction of tax residence in accordance with clause 16.2(g)(ii), no Obligor shall make that Borrower DTTP Filing or file any other form relating to the HMRC DT Treaty Passport scheme in respect of that Lender's Commitment(s) or its participation in any Loan unless the Lender otherwise agrees.
- (j) A Borrower shall, promptly on making a Borrower DTTP Filing, deliver a copy of that Borrower DTTP Filing to the Agent for delivery to the relevant Lender.
- (k) A UK Non-Bank Lender which becomes a Party on the day on which this Agreement is entered into gives a Tax Confirmation to the Parent by entering into this Agreement.
- (l) A UK Non-Bank Lender shall promptly notify the Parent and the Agent if there is any change in the position from that set out in the Tax Confirmation.

16.3 Tax indemnity

- (a) The Parent shall (within three Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.
- (b) Clause 16.3(a) shall not apply:
 - (i) with respect to any Tax assessed on a Finance Party:
 - (A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or
 - (B) under the law of the jurisdiction in which that Finance Party's Facility Office or permanent establishment is located in respect of amounts received or receivable in that jurisdiction,

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or
 - (ii) to the extent a loss, liability or cost:
 - (A) is compensated for by an increased payment under clause 16.2 (*Tax gross-up*);
 - (B) would have been compensated for by an increased payment under clause 16.2 (*Tax gross-up*) but was not so compensated solely because one of the exclusions in clause 16.2(d) applied; or
 - (C) relates to a FATCA Deduction required to be made by a Party; or
 - (D) compensated for by clause 16.6 (*Stamp taxes*) or clause 16.7 (*VAT*) (or would have been compensated for under clause 16.6 (*Stamp taxes*) or clause 16.7 (*VAT*)) but was not so compensated for solely because one of the exclusions in those clauses applied.

- (c) A Protected Party making, or intending to make, a claim under clause 16.3(a) shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Parent.
- (d) A Protected Party shall, on receiving a payment from an Obligor under this clause 16.3, notify the Agent.

16.4 Tax Credit

If an Obligor makes a Tax Payment and the relevant 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 Finance Party has obtained and utilised that Tax Credit,

the Finance Party shall pay an amount to the Obligor which that Finance Party determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Obligor.

16.5 Lender Status Confirmation

Each Lender which becomes a Party after the date of this Agreement shall indicate, in the documentation which it executes on becoming a Party, and for the benefit of the Agent and without liability to any Obligor, which of the following categories it falls in:

- (a) not a Qualifying Lender;
- (b) a Qualifying Lender (other than a Treaty Lender); or
- (c) a Treaty Lender.

If such a Lender fails to indicate its status in accordance with this clause 16.5 then that Lender shall be treated for the purposes of this Agreement (including by each Obligor) as if it is not a Qualifying Lender until such time as it notifies the Agent which category applies (and the Agent, upon receipt of such notification, shall inform the Parent). For the avoidance of doubt, the documentation which a Lender executes on becoming a Party shall not be invalidated by any failure of a Lender to comply with this clause 16.5.

16.6 Stamp taxes

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

16.7 VAT

- (a) All amounts expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to clause 16.7(b), if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority

for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).

- (b) If VAT is or becomes chargeable on any supply made by any Finance Party (the "**Supplier**") to any other Finance Party (the "**Recipient**") under a Finance Document, and any Party other than the Recipient (the "**Relevant Party**") is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):
 - (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 clause 16.7(b)(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 written 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 Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (d) Any reference in this clause 16.7 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).
- (e) In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Finance Party's VAT reporting requirements in relation to such supply.

16.8 FATCA Information

- (a) Subject to clause 16.8(c), each Party shall, within 10 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;
 - (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; and
 - (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 clause 16.8(a)(i) 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) Clause 16.8(a) shall not oblige any Finance Party to do anything and clause 16.8(a)(iii) 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 clause 16.8(a)(i) or 16.8(a)(ii) (including, for the avoidance of doubt, where clause 16.8(c) applies), then such Party shall be treated for the purposes of the 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.
- (e) If a Borrower is a US Tax Obligor or the Agent reasonably believes that its obligations under FATCA or any other applicable law or regulation require it, each Lender shall, within 10 Business Days of:
 - (i) where a Borrower is a US Tax Obligor on a date on which any other Lender becomes a Party as a Lender, that date;
 - (ii) the date a new US Tax Obligor accedes as a Borrower; or
 - (iii) where the Borrower is not a US Tax Obligor, the date of a request from the Agent,

supply to the Agent:

- (A) a withholding certificate on Form W-8, Form W-9 or any other relevant form; or
 - (B) any withholding statement or other document, authorisation or waiver as the Agent may require to certify or establish the status of such Lender under FATCA or that other law or regulation.
- (f) The Agent shall provide any withholding certificate, withholding statement, documentation, authorisations and waivers it receives from a Lender pursuant to clause 16.8(e) to the relevant Borrower.
- (g) If any withholding certificate, withholding statement, document, authorisation or waiver provided to the Agent by a Lender pursuant to clause 16.8(e) is or becomes materially inaccurate or incomplete, that Lender shall promptly update it and provide such updated withholding certificate, withholding statement, document, authorisation or waiver to the Agent unless it is unlawful for the Lender to do so (in which case the Lender shall promptly notify the Agent). The Agent shall provide any such updated withholding certificate, withholding statement, document, authorisation or waiver to the relevant Borrower.
- (h) The Agent may rely on any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to clause 16.8(e) or 16.8(g) without further verification. The Agent shall not be liable for any action taken by it under or in connection with clause 16.8(e), 16.8(f) or 16.8(g).

16.9 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 Agent and the Agent shall notify the other Finance Parties.

17. INCREASED COSTS

17.1 Increased costs

- (a) Subject to clause 17.3 (*Exceptions*), the Parent shall, within three Business Days of a written demand by the Agent, pay to the Agent for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of:
 - (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation;
 - (ii) compliance with any law or regulation made after the date of this Agreement;
or

- (iii) the implementation, administration or application of, or compliance with, Basel III or any other law or regulation which implements Basel III including, for the avoidance of doubt and without prejudice to the generality of the foregoing, CRD IV (whether such implementation, application or compliance is by a government regulator, Lender or any of its Affiliates).

(b) In this clause 17:

"Basel III" means:

- (i) 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;
- (ii) 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
- (iii) any further guidance or standards published by the Basel Committee on Banking Supervision relating to "*Basel III*";

"CRD IV" means, together, the Capital Requirements Regulation (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) and the Capital Requirements Directive (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) of the European Parliament and the Council, as either of the same may be amended, supplemented or restated from time to time; and

"Increased Costs" means:

- (i) a reduction in the rate of return from a Facility or on a Finance Party's (or its Affiliate's) overall capital;
- (ii) an additional or increased cost; or
- (iii) a reduction of any amount due and payable under any Finance Document,

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

17.2 Increased cost claims

- (a) A Finance Party intending to make a claim pursuant to clause 17.1 (*Increased costs*) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Parent.
- (b) Each Finance Party shall, as soon as practicable after a written demand by the Agent, provide a certificate confirming the amount of its Increased Costs.

17.3 Exceptions

- (a) Clause 17.1 (*Increased costs*) does not apply to the extent 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 16.3 (*Tax indemnity*) (or would have been compensated for under clause 16.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in clause 16.3(b) applied);
 - (iv) attributable to the wilful breach by the relevant 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 ("**Basel II**") or any other law or regulation which implements Basel II (whether such implementation, application or compliance is by a government, regulator, any Finance Party or any of their Affiliates (which for the avoidance of doubt shall not include any amendments arising out of or incorporating any measure from Basel III and/or CRD IV).
- (b) In this clause 17.3 reference to a "**Tax Deduction**" has the same meaning given to the term in clause 16.1 (*Definitions*).

18. OTHER INDEMNITIES

18.1 Currency indemnity

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

18.2 Other indemnities

- (a) The Parent shall (or shall procure that an Obligor will), within three Business Days of written demand, indemnify the Arranger and each other Secured 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 Finance Document on its due date or, if applicable, the expiry of any applicable grace period, including, without limitation, any cost, loss or liability arising as a result of clause 32 (*Sharing among the Finance Parties*);
 - (iii) funding, or making arrangements to fund, its participation in a Loan requested by a Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone); or
 - (iv) a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by a Borrower or the Parent.
- (b) The Parent shall promptly indemnify each Finance Party, each Affiliate of a Finance Party and each officer or employee of a Finance Party or its Affiliate against any cost, loss or liability incurred by that Finance Party or its Affiliate (or officer or employee of that Finance Party or Affiliate) in connection with or arising out of an Acquisition or the funding of an Acquisition (including, but not limited to, those incurred in connection with any litigation, arbitration or administrative proceedings or regulatory enquiry concerning an Acquisition) unless such loss or liability is caused by the gross negligence or wilful misconduct of that Finance Party or its Affiliate (or employee or officer of that Finance Party or Affiliate). Any Affiliate or any officer or employee of a Finance Party or its Affiliate may rely on this clause 18.2, subject to clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.

18.3 Indemnity to the Agent

The Parent shall promptly indemnify the Agent against:

- (a) any cost, loss or liability incurred by the Agent (acting reasonably) as a result of:
 - (i) investigating any event which it reasonably believes is a Default;

- (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 Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to clause 33.11 (*Disruption to Payment Systems etc.*) notwithstanding the Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) in acting as Agent under the Finance Documents.

18.4 Indemnity to the Security Agent

- (a) Each Obligor jointly and severally shall within three Business Days of written demand indemnify the Security Agent and every Receiver and Delete against any cost, loss or liability incurred by any of them as a result of:
 - (i) investigating any event which it reasonably believes is a Default;
 - (ii) any failure by the Parent to comply with its obligations under clause 20 (*Costs and expenses*);
 - (iii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
 - (iv) the taking, holding, protection or enforcement of the Transaction Security;
 - (v) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent and each Receiver and Delegate by the Finance Documents or by law;
 - (vi) any default by any Obligor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents;
 - (vii) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement; or
 - (viii) acting as Security Agent, Receiver or Delegate under the Finance Documents in connection with or which relates to any of the Charged Property (otherwise, in each case, than by reason of the 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 18.4 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 18.4

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.

19. MITIGATION BY THE FINANCE PARTIES

19.1 Mitigation

- (a) Each Finance Party shall, in consultation with the Parent, take all reasonable steps to mitigate any circumstances which arise and which would result in any Facility ceasing to be available or any amount becoming payable under or pursuant to, or cancelled pursuant to, any of clause 9.1 (*Illegality*), clause 16 (*Tax gross-up and indemnities*) or clause 17 (*Increased Costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) Clause 19.1(a) does not in any way limit the obligations of any Obligor under the Finance Documents.

19.2 Limitation of liability

- (a) The Parent shall promptly indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under clause 19.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under clause 19.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

20. COSTS AND EXPENSES

20.1 Transaction expenses

The Parent shall promptly on written demand pay the Agent, the Arranger and the Security Agent the amount of all costs and expenses (including legal fees subject to any pre-agreed caps) reasonably and properly 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 and perfection of:

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

20.2 Amendment costs

If:

- (a) an Obligor requests an amendment, waiver or consent; or
- (b) an amendment is required pursuant to clause 33.10 (*Change of currency*),

the Parent shall, within three Business Days of written demand, reimburse each of the Agent and the Security Agent for the amount of all costs and expenses (including legal fees) reasonably incurred by the Agent and the Security Agent (and, in the case of the Security

Agent, by any Receiver or Delegate) in responding to, evaluating, negotiating or complying with that request or requirement.

20.3 Security Agent's management time and additional remuneration

- (a) Any amount payable to the Security Agent under clause 18.4 (*Indemnity to the Security Agent*) and this clause 20 shall include the cost of utilising the Security Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Security Agent may notify to the Parent and the Lenders, and is in addition to any other fee paid or payable to the Security Agent provided always that such fees are agreed in advance with the Parent (such agreement not to be unreasonably withheld).
- (b) Without prejudice to clause 20.3(a), in the event of:
 - (i) a Default;
 - (ii) the Security Agent being requested by an Obligor or the Majority Lenders to undertake duties which the Security Agent and the Parent agree to be of an exceptional nature and outside the scope of the normal duties of the Security Agent under the Finance Documents; or
 - (iii) the Security Agent and the Parent agreeing that it is otherwise appropriate in the circumstances,

the Parent shall pay to the Security Agent any additional remuneration that may be agreed between them or determined pursuant to clause 20.3(c).

- (c) If the Security Agent and the Parent fail to agree upon the nature of the duties, or upon the additional remuneration referred to in clause 20.3(b) or whether additional remuneration is appropriate in the circumstances, any dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Security Agent and approved by the Parent or, failing approval, nominated (on the application of the Security Agent) by the President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Parent) and the determination of any investment bank shall be final and binding upon the Parties.

20.4 Enforcement and preservation costs

The Parent shall, within three Business Days of written demand, pay to each 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 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.

20.5 Out of pocket expenses

The Parent shall, within three Business Days of written demand, pay to the Agent (or to such account as the Agent may specify) the amount of all out of pocket costs and expenses (including without limitation, travel and accommodation expenses), reasonably and properly incurred by the Facility B Lenders in connection with the Facility B Lenders (or any employee or representative of the Facility B Lenders) attending any meetings with the Parent

or other member of the Group or professional advisor to the Group or any site visit carried out in connection with the Finance Documents.

SECTION 7

GUARANTEE

21. GUARANTEE AND INDEMNITY

21.1 Guarantee and indemnity

Each Guarantor irrevocably and unconditionally jointly and severally:

- (a) guarantees to each Finance Party punctual performance by each other Obligor of all that Obligor's obligations under the Finance Documents;
- (b) undertakes with each Finance Party that whenever another Obligor does not pay any amount when due under or in connection with any Finance Document, that Guarantor shall immediately on written demand pay that amount as if it was the principal obligor; and
- (c) agrees with each Finance Party that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Finance Party immediately on written demand against any cost, loss or liability it incurs as a result of an Obligor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by a Guarantor under this indemnity will not exceed the amount it would have had to pay under this clause 21 if the amount claimed had been recoverable on the basis of a guarantee.

21.2 Continuing guarantee

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

21.3 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is made by a Finance Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Guarantor under this clause 21 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

21.4 Waiver of defences

The obligations of each Guarantor under this clause 21 will not be affected by an act, omission, matter or thing which, but for this clause 21, would reduce, release or prejudice any of its obligations under this clause 21 (without limitation and whether or not known to it or any 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 member of the Group;
- (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 Finance Document or any other document or security including, without limitation, any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

21.5 Guarantor intent

Without prejudice to the generality of clause 21.4 (*Waiver of defences*), each Guarantor expressly confirms that it intends that this guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents or any other agreement or document for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

21.6 Immediate recourse

Each Guarantor waives any right it may have of first requiring any Finance Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under this clause 21. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

21.7 Appropriations

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

- (a) refrain from applying or enforcing any other monies, security or rights held or received by that Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Guarantor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any monies received from any Guarantor or on account of any Guarantor's liability under this clause 21.

21.8 Deferral of Guarantors' rights

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Agent otherwise directs, no Guarantor will exercise any rights which it may have by reason of performance by it of its obligations under any agreement or document or security (including but not limited to the Finance Documents or by reason of any amount being payable, or liability arising, under this clause 21:

- (a) to be indemnified by an Obligor;
- (b) to claim any contribution from any other guarantor of any Obligor's obligations under the 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 Finance Parties under the Finance Documents or any other agreement or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any 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 21.1 (*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 Finance Party.

If a Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Finance Parties by the Obligors under or in connection with the Finance Documents to be repaid in full on trust or on behalf of (as applicable) for the Finance Parties and shall promptly pay or transfer the same to the Agent or as the Agent may direct for application in accordance with clause 33 (*Payment mechanics*).

21.9 Release of Guarantors' right of contribution

If any Guarantor (a "**Retiring Guarantor**") ceases to be a Guarantor in accordance with the terms of the 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 Finance Documents; and
- (b) each other Guarantor waives any rights it may have by reason of the performance of its obligations under the Finance Documents to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under any Finance Document or of any other security taken pursuant to, or in connection with, any Finance Document where such rights or security are granted by or in relation to the assets of the Retiring Guarantor.

21.10 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 Finance Party.

21.11 Guarantee limitations - Dutch Obligors

In respect of any Dutch Obligor, this guarantee does not apply to any liability to the extent that it would result in this guarantee constituting unlawful financial assistance within the meaning of Article 2:98c of the Dutch CC or any other relevant financial assistance legislation.

21.12 Guarantee limitations - England and Wales

This guarantee does not apply to any liability to the extent that it would result in this guarantee constituting unlawful financial assistance within the meaning of sections 678 or 679 of the Companies Act 2006 or any equivalent and applicable provisions under the laws of the Original Jurisdiction of the relevant Guarantor and, with respect to any Additional Guarantor, is subject to any limitations set out in the Accession Deed applicable to such Additional Guarantor.

21.13 Guarantee limitation - Poland

The obligations and liabilities under this clause 21 of any Guarantor incorporated in Poland shall be limited to the extent required so that such obligations and liabilities do not and cannot result in the assets of the relevant Obligor being reduced to an amount that is not sufficient to cover in full its share capital pursuant to Article 189 §2 of the Polish Commercial Companies Code (Polish: *kodeks spółek handlowych*) of 15 September 2000, as amended.

21.14 Guarantee limitations - United States

- (a) Notwithstanding anything to the contrary contained herein, the obligations guaranteed by this clause 21 shall specifically exclude any and all Excluded Swap Obligations. The foregoing limitation of "obligations" shall be deemed applicable only to the obligations of any Guarantor under the particular Swap (or Swaps), or, if arising

under a master agreement governing more than one Swap, the portion thereof that constitute Excluded Swap Obligations.

- (b) For the purpose of this clause 21:

"Excluded Swap Obligations" means, with respect to each Guarantor, any Swap Obligation if, and to the extent that, all or a portion of any guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any guarantee thereof) is or becomes illegal under the U.S. Commodity Exchange Act or any rule, regulation or order of the U.S. Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act, as amended, and the rules and regulations thereunder at the time the guarantee of such Guarantor or the grant of a security interest becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Swap Obligation or collateral pledge is or becomes illegal;

"Qualified ECP Guarantor" means, in respect of any Swap Obligation, each Obligor that has total assets exceeding \$10,000,000 at the time the relevant guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other person as constitutes an "eligible contract participant" under the CEA or any regulations promulgated thereunder and can cause another person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the CEA;

"Swap" means any "swap" as defined in Section 1a(47) of the CEA and regulations thereunder between any Borrower and a Finance Party; and

"Swap Obligation" means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a Swap.

- (c) In any action or proceeding involving any state law of the United States applicable to any Guarantor because of the form of such Guarantor's organization, such as corporate law, limited liability company law, partnership law or trust law, or any US Debtor Relief Law generally, if the obligations of such Guarantor under this clause 21 would otherwise be held or determined to be void, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of such Guarantor's liability under this clause 21, then, notwithstanding any other provision hereof to the contrary, the amount of such liability shall, without any further action by such Guarantor, the Obligors, the Finance Parties or any other person, be automatically limited and reduced to the highest amount that is valid and enforceable and not subordinated to the claims of other creditors in such action or proceeding.

21.15 Keepwell

Each Qualified ECP Guarantor (as defined above) hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds and other support as may be needed from time to time by each other Obligor to honour all of its obligations under this Agreement and the other Finance Documents in respect of Swap Obligations (provided, however, that each Qualified ECP Guarantor shall only be liable under this clause 21.15 for the maximum amount of such liability that can be hereby incurred without rendering its

obligations under this clause 21.15, or otherwise under this Agreement or any other Finance Document, voidable under any US Debtor Relief Laws and not for any greater amount). Each Qualified ECP Guarantor intends that this clause 21.15 constitute, and this clause 21.15 shall be deemed to constitute, a "keepwell, support or other agreement" for the benefit of each other Obligor for all purposes of Section 1a(18)(A)(v)(II) of the CEA. Subject to clause 21.3, the obligations of each Qualified ECP Guarantor under this clause 21.15 shall remain in full force and effect until all of the Secured Obligations shall have been paid in full in cash and the Commitments terminated.

SECTION 8

REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

22. REPRESENTATIONS

22.1 General

- (a) Each Obligor in respect of itself makes the representations and warranties set out in this clause 22 to each 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.

22.2 Status

- (a) It is a limited liability corporation or limited company, duly incorporated and validly existing under the law of its Original Jurisdiction.
- (b) Each of its Subsidiaries is a limited liability corporation or limited company, 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.

22.3 Binding obligations

Subject to the Legal Reservations and, in the case of the Transaction Security Documents, the 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 clause 22.3(a)), 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.

22.4 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 pursuant to the Agreed Security Principles do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) the constitutional documents of any member of the Group; or
- (c) any agreement or instrument binding upon it or any member of the Group or any of its or any member of the Group's assets or constitute a default or termination event (however described) under any such agreement or instrument, which, in any case, has or is reasonably likely to have a Material Adverse Effect.

22.5 Power and authority

- (a) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Transaction Documents to which it is or will be a party and the transactions contemplated by those Transaction Documents.
- (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.

22.6 Validity and admissibility in evidence

- (a) All Authorisations required subject to the Legal Reservations and, in relation to the Transaction Security Documents, the Perfection Requirements:
 - (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 any Authorisation referred to in clause 22.9 (*No filing or stamp taxes*), which Authorisations will be promptly obtained or effected after the date of this Agreement and in any event within any applicable time limits.
- (b) All Authorisations necessary for the conduct of the business, trade and ordinary activities of members of the Group have been obtained or effected and are in full force and effect if failure to obtain or effect those Authorisations has or is reasonably likely to have a Material Adverse Effect.

22.7 Governing law and enforcement

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

22.8 Insolvency

No:

- (a) corporate action, legal proceeding or other procedure or step described in clause 26.7(a); or
- (b) creditors' process described in clause 26.8 (*Creditors' process*),

has been taken or, to the knowledge of the Parent, threatened in relation to a member of the Group and none of the circumstances described in clause 26.6 (*Insolvency*) applies to a member of the Group.

22.9 No filing or stamp taxes

Under the laws of its Relevant Jurisdiction it is not necessary that the Finance Documents to which it is a party be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents except:

- (a) registration of particulars of the Transaction Security at Companies House in the UK under section 860 of the Companies Act 2006 registration of the particulars of the Transaction Security at the trademarks registry in England and Wales, registration of any security over land at the Land Registry or Land Charges Registry in England and Wales and payment of associated fees, which registrations and filings will be made promptly after the date of the relevant Finance Documents; and
- (b) any filing or recording or any tax or fee payable in relation to the execution and delivery of any Transaction Security Document which is referred to in any Legal Opinion.

22.10 Deduction of Tax

It is not required to make any deduction for or on account of Tax from any payment it may make under any Finance Document to a Lender which is:

- (a) a Qualifying Lender:
 - (i) falling within paragraph (a)(i) 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 (a)(ii) of the definition of "**Qualifying Lender**"; or
 - (iii) falling within paragraph (b) of the definition of "**Qualifying Lender**"; or
- (b) a Treaty Lender and the payment is one specified in a direction given by the Commissioners of Revenue & Customs under Regulation 2 of the Double Taxation Relief (Taxes on Income) (General) Regulations 1970 (SI 1970/488).

22.11 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 Loan 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.

22.12 No misleading information

- (a) Any factual information provided by any member of the Group for the purpose of 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, 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 the most recent historical information (as at the date of the relevant report or document) 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 and (as at the date of the relevant report or document containing the expression of opinion or intention) were fair and based on reasonable grounds.
- (e) 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 information provided to a Finance Party by or on behalf of the Investors, the Parent or the Company in connection with the Sword Acquisition and/or the Sword Target Group on or before the date of this Agreement and not superseded before that date (whether or not contained in the Information Package) is accurate and not misleading in any material respect and all projections provided to any Finance Party on or before the date of this Agreement have been prepared in good faith on the basis of assumptions which were reasonable at the time at which they were prepared and supplied.
- (g) All other written information provided by any member of the Group (including its advisers) to a Finance Party or the provider of any Report was true, complete and accurate in all material respects as at the date it was provided and was not at such date misleading in any respect.

The representations and warranties made with respect to the Sword Reports are made by each Obligor in this clause 22.12 only so far as it is aware after making due and careful enquiries.

22.13 Original Financial Statements

- (a) Its Original Financial Statements were prepared in accordance with the Accounting Principles consistently applied.
- (b) Its unaudited Original Financial Statements fairly present its financial condition and results of operations (consolidated in the case of the Target and the Parent) for the relevant month or financial quarter.

- (c) Its audited Original Financial Statements fairly present its financial condition and results of operations (consolidated in the case of the Parent) during the relevant financial year.
- (d) There has been no change in its assets, business or financial condition (or the assets, business or consolidated financial condition of the Group, in the case of the Parent) since the date of the Sword Accountant's Report.
- (e) The Original Financial Statements of the Target do not consolidate the results, assets or liabilities of any person or business which is not a wholly owned Subsidiary of the Target.
- (f) Its most recent financial statements delivered pursuant to clause 23.1 (*Financial statements*):
 - (i) have been prepared in accordance with the Accounting Principles as applied to the Original Financial Statements and the Base Case Model; and
 - (ii) fairly present its consolidated financial condition as at the end of, and consolidated results of operations for, the period to which they relate.
- (g) The budgets and forecasts supplied under this Agreement were arrived at after careful consideration and have been prepared in good faith on the basis of recent historical information and on the basis of assumptions which were reasonable as at the date they were prepared and supplied.
- (h) Since the date of the most recent financial statements delivered pursuant to clause 23.1 (*Financial statements*) there has been no material adverse change in the assets, business or financial condition of the Group.

22.14 No proceedings

- (a) No litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which, if adversely determined, are reasonably likely to have a Material Adverse Effect have (to the best of its knowledge and belief (having made due and careful enquiry)) been started or threatened against it or any of its Subsidiaries.
- (b) No judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body which is reasonably likely to have a Material Adverse Effect has (to the best of its knowledge and belief (having made due and careful enquiry)) been made against it or any of its Subsidiaries.

22.15 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 member of the Group which have or are reasonably likely to have a Material Adverse Effect.

22.16 Environmental laws

- (a) Each member of the Group is in compliance with clause 25.3 (*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 member of the Group where in either case that claim has or is reasonably likely, if determined against that member of the Group, 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.

22.17 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 currencies) 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 member of the Group of £250,000 (or its equivalent in any other currency or currencies) or more is reasonably likely to arise.
- (c) It is resident for Tax purposes only in its Original Jurisdiction.

22.18 Anti-corruption

Each member of the Group 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.

22.19 Security and Financial Indebtedness

- (a) No Security or Quasi-Security exists over all or any of the present or future assets of any member of the Group other than as permitted by this Agreement.
- (b) No member of the Group has any Financial Indebtedness outstanding other than as permitted by this Agreement.

22.20 Ranking

Subject to the Legal Reservations and the Perfection Requirements (to the extent not overdue) the Transaction Security has or will have first ranking priority which it is expressed to have in the Intercreditor Agreement and is not, save as expressed in the Intercreditor Agreement, subject to any prior ranking or *pari passu* ranking Security.

22.21 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 required Authorisations to use, the assets necessary to carry on its business as presently conducted.

22.22 Legal and beneficial ownership

- (a) Subject to clause 22.22(b), it and each of its Subsidiaries is the sole legal and beneficial owner of the assets over which it purports to grant Security.
- (b) Subject to clause 22.22(b) all the Sword Target Shares are or will be on the Closing Date legally and beneficially owned by the Company free from any claims, third party rights or competing interests other than Permitted Security permitted under clause 25.17 (*Negative pledge*).
- (c) The Sword Target Shares are beneficially but not legally owned by the purchaser until those shares are registered in the register of shareholders of Target, which registration will be made as soon as possible after the Closing Date.

22.23 Shares

- (a) The shares, member interests or other equity interests of any member of the Group which are subject to the Transaction Security are fully paid and not subject to any option to purchase or similar rights. The constitutional documents of companies whose shares, member interests or other equity interests are subject to the Transaction Security do not and could not restrict or inhibit any transfer of those shares, member interests or other equity interests on creation or enforcement of the Transaction Security.
- (b) 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 member of the Group (including any option or right of pre-emption or conversion).
- (c) Each Obligor incorporated in England and Wales maintains a Register of Persons with Significant Control and complies with all applicable requirements of Part 21A of the Companies Act 2006 and The Register of Persons with Significant Controls Regulations SI 339 of 2016.

22.24 Intellectual Property

It and each of its Subsidiaries:

- (a) is the sole legal and beneficial owner of or has licensed to it on normal commercial terms all the Intellectual Property which is material in the context of its business and which is required by it in order to carry on its business as it is being conducted and as contemplated in the Base Case Model;
- (b) does not in carrying on its businesses, infringe any Intellectual Property of any third party in any respect which has or is reasonably likely to have a Material Adverse Effect; and

- (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 has, or is reasonably likely to have, a Material Adverse Effect.

22.25 Group Structure Chart

Assuming Completion has occurred, and that all of the Sword Target Shares have been transferred to the Company, the Group Structure Chart is true, complete and accurate in all material respects and shows the following information:

- (a) each member of the Group, including current name and company registration number, its Original Jurisdiction and indicating whether a company is a Dormant Subsidiary or is not a company with limited liability; and
- (b) all minority interests in any member of the Group and any person in which any member of the Group holds shares in its issued share capital or equivalent ownership interest of such person.

22.26 Accounting Reference Date

The Financial Year-end of each member of the Group is the Accounting Reference Date.

22.27 Sword Acquisition Documents, disclosures and other documents

- (a) The Scheme Documents (as amended from time to time to the extent such amendments are not prohibited by this Agreement) contain all the material terms of the Scheme.
- (b) The Offer Documents (following an Offer Conversion and as amended from time to time to the extent such amendments are not prohibited by this Agreement) contain all the material terms of the Offer.
- (c) There is no disclosure made to the Sword Acquisition Documents or the Shareholders' Agreement which has or may have a material and adverse effect on any of the information, opinions, intentions, forecasts and projections contained or referred to in the Information Package.
- (d) To the best of its knowledge and belief, no representation or warranty given by any party to the Sword Acquisition Documents is untrue or misleading in any material respect.
- (e) The Sword Acquisition Documents, the Loan Note Documents, the Shareholders' Agreement, the Service Contracts and the Constitutional Documents (as amended to the extent permitted under this Agreement and the Intercreditor Agreement) contain all the material terms of all the agreements and arrangements between Senior Management and the Investors and between Senior Management, the Parent, the Company and any other member of the Group.
- (f) As at the date the Scheme Press Release or, if applicable, the Offer Press Release, is published, it is not (and in the case of any information relating to or supplied by the Sword Target Group (or any of its professional advisers), to the best of the Parent's knowledge and belief) untrue, inaccurate or misleading in any material respect and contains all of the information required by and otherwise complies with the

requirements of applicable law and the City Code (subject to any derogation or waiver agreed by the Panel or the Court).

- (g) As at the date the Scheme Circular or, if applicable, the Offer Document is sent to the holders of the Sword Target Shares (and such other persons as are entitled to receive it in accordance with the requirements of the City Code), it is not (in the case of any information relating to or supplied by the Sword Target Group (or any of its professional advisers), to the best of the Parent's knowledge and belief) untrue, inaccurate or misleading in any material respect and contains all of the information required by and otherwise complies with the requirements of applicable law and the City Code (subject to any derogation or waiver agreed by the Panel or the Court).

22.28 Centre of main interests and establishments

For the purposes of The Council of the European Union Regulation (EU 2015/848 of 20 May 2015 on insolvency proceedings (recast) (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(10) of the Regulation) in any other jurisdiction.

22.29 Pensions

Neither it nor any of its Subsidiaries is or has at any time been:

- (a) an employer (for the purposes of sections 38 to 51 of the Pensions Act 2004) of an occupational pension scheme which is not a money purchase scheme (both terms as defined in the Pensions Schemes Act 1993); and/or
- (b) "connected" with or an "associate" of (as those terms are used in sections 38 and 43 of the Pensions Act 2004) such an employer.

22.30 No adverse consequences

- (a) Subject to the Legal Reservations, it is not necessary under the laws of its Relevant Jurisdictions:
 - (i) in order to enable any Finance Party to enforce its rights under any Finance Document; or
 - (ii) by reason of the execution of any Finance Document or the performance by it of its obligations under any Finance Document,that any Finance Party should be licensed, qualified or otherwise entitled to carry on business in any of its Relevant Jurisdictions.
- (b) No Finance Party is or will be deemed to be resident, domiciled or carrying on business in its Relevant Jurisdictions by reason only of the execution, performance and/or enforcement of any Finance Document.

22.31 Sanctions

- (a) Neither it nor any of its Subsidiaries or Affiliates nor, to the best of its knowledge and belief (having made due and careful enquiry), any directors, officers or employees of it or any of its Subsidiaries:
 - (i) is a Restricted Party or is engaging in or has engaged in any transaction or conduct that could result in it becoming a Restricted Party;
 - (ii) is or ever has been subject to any claim, proceeding, formal notice or investigation with respect to Sanctions;
 - (iii) is engaging or has engaged in any transaction that evades or avoids, or has the purpose of evading or avoiding, or breaches or attempts to breach, directly or indirectly, any Sanctions applicable to it;
 - (iv) has engaged or is engaging directly or, so far as it is aware, indirectly, in any trade, business or other activities with or for the benefit of any Restricted Party;
 - (v) is a person that is, or is owned or controlled by, or acts directly or indirectly on behalf of, a Restricted Party or persons that are, the target or the subject of any Sanctions;
 - (vi) will cause any Finance Party to breach any Sanctions; or
 - (vii) the assets are not currently subject to any Sanctions nor will the ownership, operation, possession, use, leasing or any other dealing in respect of the assets by the Borrower or any member of the Group contravene any Sanctions or provide a basis for the assets or the Borrower or any member of the Group to be designated as subject to any Sanctions.
- (b) Any provision of this clause 22.31 (*Sanctions*) shall not apply to any person if and to the extent that it is or would be unenforceable by or in respect of that person by reason of breach of any provision of Council Regulation (EC) No 2271/1996 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom (the "**Blocking Regulation**") (or any law or regulation implementing such Regulation in any member state of the European Union or the United Kingdom). For the avoidance of any doubt, nothing in this clause 22.31 (*Sanctions*) is intended or should be interpreted or construed, as inducing any party to act in a manner that would be in breach of any provision of the Blocking Regulation

22.32 Holding Companies

Except as may arise under the Transaction Documents and for Acquisition Costs and other *de minimis* liabilities before the Closing Date neither the Parent nor the Company has traded or incurred any liabilities or commitments (actual or contingent, present or future) other than in the case of the Parent acting as a Holding Company of the Company or in connection with the Sword Acquisition.

22.33 Investment Company Act; Other Regulations

- (a) No Obligor is an "investment company" or a company "controlled" by an "investment company," as defined in, or subject to regulation under, the Investment Company Act.
- (b) No Obligor is engaged or will engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock or extending credit for the purpose of purchasing or carrying Margin Stock. None of the proceeds of the Loans or other extensions of credit under this Agreement or any other Finance Document will be used, directly or, to the knowledge of any member of the Group, indirectly, for any purpose which violates the regulations of the Board of Governors of the Federal Reserve System of the United States of America, including, without limitation, the provisions of Regulations T, U or X.

22.34 ERISA

- (a) No ERISA Event has occurred, and no Obligor or ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan.
- (b) Each Obligor and ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained.
- (c) As of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is 60% or higher and no Obligor or ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 60% as of the most recent valuation date.
- (d) No Obligor or ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid.
- (e) No Obligor or ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA.
- (f) No Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

22.35 Times when representations made

- (a) All the representations and warranties in this clause 22 are made by each Obligor on the date of this Agreement, except for (i) the representations and warranties in clause 22.27(f) which are deemed to be made by each Obligor when the Scheme Press Release or, if applicable, the Offer Press Release is published and (ii) the representations and warranties in clause 22.27(g) which are deemed to be made by each Obligor when the Scheme Circular or, if applicable, the Offer Document is sent to the holders of the Sword Target Shares (and such other persons as are entitled to receive it in accordance with the requirements of the City Code).

- (b) All the representations and warranties in this clause 22 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 date of each Additional Facility Notice, on each Establishment Date and on the first day of each Interest Period (except that those contained in clauses 22.13(a) to 22.13(d) will cease to be so made once subsequent financial statements have been delivered under this Agreement).
- (d) All the representations and warranties in this clause 22 except clause 22.12 (*No misleading information*), clause 22.25 (*Group Structure Chart*) and clause 22.27 (*Sword Acquisition Documents, disclosures and other documents*) and 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.

23. INFORMATION UNDERTAKINGS

The undertakings in this clause 23 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

In this clause 23:

"Annual Financial Statements" means the financial statements for a Financial Year delivered pursuant to clause 23.1(a);

"Monthly Financial Statements" means the financial statements delivered pursuant to clause 23.1(c); and

"Quarterly Financial Statements" means the financial statements delivered pursuant to clause 23.1(b).

23.1 Financial statements

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

- (a) as soon as the same become available, but in any event within 120 days after the end of each of its subsequent Financial Years:
 - (i) its audited consolidated financial statements for that Financial Year;
 - (ii) the audited financial statements (consolidated if appropriate) of each Obligor for that Financial Year; and
 - (iii) the audited financial statements of any other Subsidiary for that Financial Year if requested by the Agent (if that Subsidiary is required by law to produce them);

- (b) as soon as they are available, but in any event within 30 days after the end of each Financial Quarter of each of its Financial Years its consolidated financial statements for that Financial Quarter; and
- (c) as soon as they are available, but in any event within 30 days after the end of each month, its financial statements on a consolidated basis for that month (to include cumulative management accounts for the Financial Year to date).

23.2 Provision and contents of Compliance Certificate

- (a) The Parent shall supply a Compliance Certificate to the Agent with each set of its Annual Financial Statements and each set of its Quarterly Financial Statements for each Relevant Period from (and including) 31 December 2019.
- (b) Each Compliance Certificate shall, amongst other things, set out (in reasonable detail):
 - (i) computations as to compliance with clauses 24 (*Financial covenants*) and 25.36 (*Cash management*);
 - (ii) details of the Material Companies;
 - (iii) the amounts of Capital Expenditure of the Group in the period since the end of the Relevant Period to which that Compliance Certificate relates;
 - (iv) if delivered with Annual Financial Statements:
 - (A) computations (in reasonable detail) as to any Anticipated Cost Savings of the Group;
 - (B) any increases or decreases of each numeric basket in a Specified Basket Amount together with supporting calculations in reasonable detail;
 - (C) set out the amounts of any Retained Excess Cash stated in the last Compliance Certificate delivered with the Annual Financial Statements and the amount of such Retained Excess Cash that has been used (or allocated for use) by the Group in the period since the end of the Relevant Period to which that Compliance Certificate relates; and
 - (D) set out the amounts of any Cash Overfunding stated in the last Compliance Certificate delivered with the Annual Financial Statements and the amount of such Cash Overfunding that has been used (or allocated for use) by the Group in the period since the end of the Relevant Period to which that Compliance Certificate relates.
- (c) Each Compliance Certificate shall be signed by two directors of the Parent (one of whom shall be the chief financial officer) and, if required to be delivered with the 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.

23.3 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 and cashflow statement. In addition, the Parent shall procure that:
 - (i) each set of its Annual Financial Statements shall be audited by the Parent's Auditors;
 - (ii) each set of financial statements is accompanied by a statement by the directors of the Parent:
 - (A) commenting on the performance of the Group for the month to which the financial statements relate and the Financial Year to date;
 - (B) commenting on any material developments or proposals affecting the Group or its business; and
 - (C) setting out (in reasonable detail) performance of the Group in respect of key performance indicators including (but not limited to):
 - (1) Testing
 - (a) staff utilisation and split of permanent/temporary employees;
 - (b) pipeline risk rating; and
 - (c) customer concentration; and
 - (2) Publication
 - (a) sales by title to show revenue, volume and margin;
 - (b) pipeline of titles to be developed in next twelve months;
 - (c) development titles: spend compared to budget, anticipated further spend and anticipated launch date;
 - (d) published titles: percentage of development costs recovered, title; and
 - (e) minimum guarantee commitments and performance relative to MG;
 - (3) Commentary: any relevant commentary in respect of any item included in paragraph (1) or (2) above; and
 - (4) Financial:
 - (a) analysis of monthly cashflow trend;

- (b) detailed breakdown of working capital movements and narrative;
- (c) debtor days and creditor days compared to Budget;
- (d) capitalised R&D costs breakdown and narrative;
- (e) foreign exchange exposure;
- (f) acquisitions: background, base case and structure; and
- (g) cash headroom / liquidity,

in form and substance satisfactory to the Agent (acting reasonably) and including reporting in respect of any additional key performance indicators as may be required by the Agent (acting reasonably) from time to time.

- (b) Each set of financial statements delivered pursuant to clause 23.1 (*Financial statements*):
 - (i) shall be certified by a director of the relevant company as fairly presenting 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 of those Annual Financial Statements 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 Agent that there has been a change in the Accounting Principles or the accounting practices and the Parent's Auditors (or, if appropriate, the auditors of the Obligor) deliver to the Agent:

- (C) 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

- (D) sufficient information, in form and substance as may be reasonably required by the Agent, to enable the Lenders:
 - (1) to determine whether clause 24 (*Financial covenants*) and clause 25.36 (*Cash management*) have been complied with;
 - (2) to determine the Margin as set out in the definition of "**Margin**"; and
 - (3) to calculate compliance with incurrence covenant tests set out in this Agreement including, without limitation, in the "**Permitted Acquisition**" and "**Permitted Payment**" definitions and to make an accurate comparison between the financial position indicated in those financial statements and the Base Case Model (in the case of the Parent) or that Obligor's Original Financial Statements (in the case of an Obligor).

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

- (c) Following the occurrence of an Event of Default that is continuing or if the Agent reasonably suspects that an Event of Default is continuing, the Agent wishes to discuss the financial position of any member of the Group with the auditors of that member of the Group, the Agent may notify the Parent, stating the questions or issues which the Agent wishes to discuss with those auditors. In this event, the Parent must ensure that those auditors are authorised (at the expense of the Parent):
 - (i) to discuss the financial position of the relevant member of the Group with the Agent on request from the Agent; and
 - (ii) to disclose to the Agent for the Finance Parties any information which the Agent may reasonably request.

23.4 Budget

- (a) The Parent shall supply to the Agent, in sufficient copies for all the Lenders, as soon as the same become available but in any event within one Business Day before the start of each of its Financial Years, an annual Budget for that financial year.
- (b) The Parent shall ensure that each Budget for a Financial Year:
 - (i) is in a form reasonably acceptable to the Agent and includes:
 - (A) a projected consolidated profit and loss, balance sheet and cashflow statement for the Group;

- (B) projected financial covenant calculations in connection with the financial covenants set out in clause 24 (*Financial covenants*) and Capital Expenditure,

for that Financial Year and for each Financial Quarter of that Financial Year;

- (ii) is prepared in accordance with the Accounting Principles and the accounting practices and financial reference periods applied to financial statements under clause 23.1 (*Financial statements*); and
 - (iii) has been approved by the board of directors of the Parent.
- (c) If the Parent updates or changes the Budget in any material respect, it shall promptly and, in any event, within not more than five Business Days of the update or change being made deliver to the Agent, in sufficient copies for each of the Lenders, such updated or changed Budget together with a written explanation of the main changes in that Budget.

23.5 Group companies

Following the occurrence of an Event of Default that is continuing or if the Agent reasonably suspects an Event of Default is continuing, the Parent shall, at the request of the Agent, supply to the Agent a report issued by the Parent's Auditors stating which of its Subsidiaries are Material Companies and confirming that the aggregate of earnings before interest, tax, depreciation and amortisation (calculated on the same basis as EBITDA), the aggregate net assets and the aggregate turnover of the Guarantors (calculated on an unconsolidated basis and excluding all intra-Group items and investments in Subsidiaries of any member of the Group) exceeds 85 per cent. of EBITDA, the consolidated net assets and the consolidated turnover of the Group respectively.

23.6 Presentations

Once in every Financial Year, or more frequently if requested to do so by the Agent if the 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 chief financial officer) must give a presentation to the Finance Parties about the on-going business and financial performance of the Group.

23.7 Year-end

The Parent shall procure that the last day of each financial year of each member of the Group falls on 31 December.

23.8 Information: miscellaneous

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

- (a) at the same time as they are dispatched, copies of all documents dispatched by the Parent to its shareholders generally (or any class of them) or dispatched by the Parent or any Obligor to its creditors generally (or any class of them);
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any

member of the Group, and which, if adversely determined, are reasonably likely to have a Material Adverse Effect or which would involve a liability, or a potential or alleged liability, exceeding £100,000 (or its equivalent in any other currency or currencies);

- (c) promptly upon becoming aware of them, the details of any judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body which is made against any member of the Group and which is reasonably likely to have a Material Adverse Effect or which would involve a liability, or a potential or alleged liability, exceeding £100,000 (or its equivalent in other currencies);
- (d) promptly upon becoming aware of the relevant claim, the details of any claim which is current, threatened or pending against a Vendor or any other person in respect of an Acquisition Document and details of any disposal or insurance claim which will require a prepayment under clause 10.2 (*Acquisition, Disposal and Insurance Proceeds*);
- (e) promptly, such information as the Security Agent may reasonably require about the Charged Property and compliance of the Obligor with the terms of any Transaction Security Documents; and
- (f) promptly on request, such further information regarding the financial condition, assets and operations of the Group and/or any member of the Group (including any requested amplification or explanation of any item in the financial statements, budgets or other material provided by any Obligor under this Agreement, any changes to Senior Management and an up to date copy of its shareholders' register (or equivalent in its Original Jurisdiction)) as any Finance Party through the Agent may reasonably request.

23.9 Notification of default

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

23.10 "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 of a Holding Company of an Obligor) or the composition of the shareholders of an Obligor (or of a Holding Company 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 Agent or any Lender (or, in the case of clause 23.10(a)(iii), any prospective new Lender) to comply with "*know your customer*" or similar identification procedures in circumstances where the necessary information is not already available to it, each Obligor shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or, in the case of the event described in clause 23.10(a)(iii), on behalf of any prospective new Lender) in order for the Agent, such Lender or, in the case of the event described in clause 23.10(a)(iii), any prospective new Lender to carry out and be satisfied it has complied with all necessary "*know your customer*" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

- (b) Each Lender shall promptly upon the request of the Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself) in order for the Agent to carry out and be satisfied it has complied with all necessary "*know your customer*" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.
- (c) The Parent shall, by not less than 10 Business Days' prior written notice to the Agent, notify the Agent (which shall promptly notify the Lenders) of its intention to request that one of its Subsidiaries becomes an Additional Obligor pursuant to clause 29 (*Changes to the Obligors*).
- (d) Following the giving of any notice pursuant to clause 23.10(c), if the accession of such Additional Obligor obliges the Agent or any Lender to comply with "*know your customer*" or similar identification procedures in circumstances where the necessary information is not already available to it, the Parent shall promptly upon the request of the Agent, the Security Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender), the Security Agent or any Lender (for itself or on behalf of any prospective new Lender) in order for the Agent, the Security 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.

24. FINANCIAL COVENANTS

24.1 Financial definitions

In this Agreement:

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

- (a) including the operating profit before interest, tax, depreciation, amortisation and impairment charges (calculated on the same basis as EBITDA of a member of the Group (or attributable to a business or assets) acquired during the Relevant Period for

that part of the Relevant Period prior to its becoming a member of the Group or (as the case may be) prior to the acquisition of the business or assets;

- (b) excluding the operating profit before interest, tax, depreciation, amortisation and impairment charges (calculated on the same basis as EBITDA) attributable to any member of the Group (or to any business or assets) disposed of during the Relevant Period for that part of the Relevant Period; and
- (c) taking into account any Anticipated Cost Savings.

"Adjusted Leverage" means, in respect of any Relevant Period, the ratio of Total Net Debt on the last day of that Relevant Period to Adjusted EBITDA in respect of that Relevant Period;

"Anticipated Cost Savings" means in respect of the 12 month period immediately following a Business Acquisition, any tangible and identifiable bona fide annual cost savings (net of the costs of achieving such savings) anticipated to arise in relation to that Business Acquisition provided that:

- (a) if such Anticipated Cost Savings are less than five per cent. (5%) of Adjusted EBITDA of the Group in any Relevant Period (excluding the impact of the relevant Anticipated Cost Savings), the Parent has delivered a certificate to the Agent (signed by the chief financial officer or acting chief financial officer and one other director) confirming the amount of the Anticipated Cost Savings in respect of that relevant Permitted Acquisition (including calculations and assumptions in reasonable detail) and that they believe that the Anticipated Cost Savings are a reasonable estimate of the actual cost savings;
- (b) if such Anticipated Cost Savings are equal to or greater than five per cent. (5%) of Adjusted EBITDA of the Group in any Relevant Period (excluding the impact of the relevant Anticipated Cost Savings), the Parent's Auditors (or a reputable third party accounting or financial due diligence provider commissioned by a member of the Group and approved by the Agent acting reasonably) give their opinion in a report delivered to the Agent that they believe that the Anticipated Cost Savings are a reasonable estimate of the actual cost savings (including calculations and assumptions in reasonable detail);
- (c) such Anticipated Cost Savings do not exceed ten per cent. (10%) of Adjusted EBITDA of the Group in any Relevant Period (excluding the impact of the relevant Anticipated Cost Savings); and
- (d) in each case, such Anticipated Cost Savings are recurring and reasonably achievable and have been, or are reasonably capable of, being realised during the 12 month period immediately following completion of the relevant Business Acquisition and do not double count any actual cost savings realised in such Relevant Period and taken into account in the calculation of Adjusted EBITDA;

"Borrowings" means, at any time, the aggregate outstanding principal, capital or nominal amount (and any fixed or minimum premium payable on prepayment or redemption) of any indebtedness of members of the Group for or in respect of:

- (a) monies 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 member of the Group which liability would fall within one of the other paragraphs of this definition; or
 - (ii) any liabilities of any member of the Group relating to any post-retirement benefit scheme;
- (g) 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 B or are otherwise classified as borrowings under the Accounting Principles;
- (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 90 days 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;
- (j) any amount of non-contingent deferred consideration for an Acquisition but excluding, for the avoidance of doubt, any earn-out or other amount that is contingent on the financial performance of the Acquisition Target; and
- (k) (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 (j);

"Cash Overfunding" means the aggregate amount of cash overfunding on the Closing Date as set out in the Funds Flow Statement and as certified by the Parent to the Agent in the certificate delivered pursuant to paragraph 6(h) of part 1 of schedule 2 (*Conditions precedent*), to the extent not already utilised, spent or committed to be spent or allocated for any purpose;

"Cashflow" means, in respect of any Relevant Period, 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 (and deducting the amount of any cash payments) during that Relevant Period in respect of any Exceptional Items not already taken account of in calculating EBITDA for any Relevant Period (other than, in the case of cash receipts, Relevant Proceeds);
- (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 member of the Group;
- (d) adding (to the extent not already taken into account in determining EBITDA) the amount of any dividends or other profit distributions received in cash by any member of the Group during that Relevant Period from any entity which is itself not a member of the Group and deducting (to the extent not already deducted in determining EBITDA) the amount of any dividends paid in cash during the Relevant Period to minority shareholders in members of the Group;
- (e) adding the amount of any cash paid to a member of the Group in the Relevant Period that represents repayment of any loan made to a Joint Venture;
- (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 EBITDA;
- (g) deducting the amount of any Capital Expenditure actually made (or due to be made) in cash during that Relevant Period by any member of the Group and the aggregate of any cash consideration paid for, or the cash cost of, any Business Acquisitions and any earn-out or other amount payable in respect of an Acquisition that is contingent on the financial performance of an Acquisition Target and the amount of any Joint Venture Investments except (in each case) to the extent funded from:
 - (i) the proceeds of any Disposal or insurance claims permitted to be retained for this purpose;
 - (ii) New Shareholder Injections; or
 - (iii) the proceeds of any Additional Facility Loan; and
- (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 so that no amount shall be added (or deducted) more than once;

"Cashflow Cover" means the ratio of Cashflow to Debt Service in respect of any Relevant Period;

"Current Assets" means the aggregate (on a consolidated basis) of all inventory, work in progress, trade and other receivables of each member of the Group including prepayments in

relation to operating items and sundry debtors (but excluding Cash and Cash Equivalent Investments) maturing or expected to be realised within 12 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;
- (d) any interest owing to any member of the Group; and
- (e) amounts owed by a Vendor in connection with an Acquisition;

"Current Liabilities" means the aggregate (on a consolidated basis) of all liabilities (including trade creditors, accruals and provisions) of each member of the Group falling due or 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 member of the Group in favour of a person which is not a member of the Group; and
- (f) amounts owed to a Vendor in connection with an Acquisition;

"Debt Service" means, in respect of any Relevant Period, the aggregate of:

- (a) Finance Charges for that Relevant Period;
- (b) all scheduled and mandatory repayments of Borrowings falling due but excluding:
 - (i) any amounts falling due under any overdraft and which were available for simultaneous redrawing according to the terms of that facility;
 - (ii) for the avoidance of doubt, any mandatory prepayment made pursuant to clause 10.2 (*Acquisition, Disposal and Insurance Proceeds*);
 - (iii) any such obligations owed to any member of the Group; 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 dividends or distributions paid or made by the Parent and the amount of any Permitted Payments made to finance payments of interest and/or repayments or prepayments of principal paid or payable in respect of Subordinated Debt in respect of that Relevant Period, other than to the extent funded from:

- (i) Cash Overfunding;
 - (ii) Excluded Disposal Proceeds (and other proceeds of Permitted Disposals to the extent not required to be applied in prepayment of the Facilities), Excluded Acquisition Proceeds and Excluded Insurance Proceeds; and
 - (iii) Retained Excess Cash; 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 member of the Group;

"EBITDA" means, in respect of any Relevant Period, the consolidated operating profit of the Group before taxation (excluding 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 member of the Group (calculated on a consolidated basis) in respect of that Relevant Period;
- (b) **not including** any accrued interest owing to any member of the Group;
- (c) **after adding back** any amount attributable to the amortisation, depreciation or impairment of assets of members of the Group (and taking no account of the reversal of any previous impairment charge made in that Relevant Period);
- (d) **before taking into account** any Exceptional Items;
- (e) **before deducting** any Acquisition Costs;
- (f) **after deducting** the amount of any profit (or adding back the amount of any loss) of any member of the Group which is attributable to minority interests;
- (g) **after deducting** the amount of any profit of any Non-Group Entity to the extent that the amount of the profit included in the financial statements of the Group exceeds the amount actually received in cash by members of the Group through distributions by the Non-Group Entity;
- (h) **before taking into account** any unrealised gains or losses on any financial instrument (other than any derivative instrument which is accounted for on a hedge accounting basis);
- (i) **before taking into account** any gain or loss arising from an upward or downward revaluation of any other asset at any time after the date of the Original Financial Statements;
- (j) **before taking into account** any Pension Items; and
- (k) **excluding** the charge to profit represented by the expensing of stock options,

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;

"Exceptional Items" means any exceptional, one-off, non-recurring or extraordinary items including any material items of an unusual or non-recurring nature 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;
- (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; and
- (d) any other examples of exceptional or extraordinary items which are categorised as such by the Accounting Principles;

"Excess Cashflow" means, (in all cases without double-counting) for any period for which it is being calculated, Cashflow for that period less:

- (a) Debt Service for that period; and
- (b) the aggregate amount of all prepayments of any Term Facility during that period;

"Finance Charges" means, for any Relevant Period, the aggregate amount of the accrued interest, commission, fees, discounts, prepayment fees, premiums or charges and other finance payments in respect of Borrowings paid or payable by any member of the Group (calculated on a consolidated basis) in cash in respect of that Relevant Period:

- (a) **excluding** any upfront fees or costs;
- (b) **including** the interest (but not the capital) element of payments in respect of Finance Leases;
- (c) **including** any commission, fees, discounts and other finance payments payable by (and deducting any such amounts payable to) any member of the Group under any interest rate hedging arrangement;
- (d) **excluding** any Acquisition Costs;
- (e) **excluding** any interest cost or expected return on plan assets in relation to any post-employment benefit schemes;
- (f) 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;
- (g) taking no account of any unrealised gains or losses on any derivative instruments or financial instruments other than any derivative instruments which are accounted for on a hedge accounting basis; and
- (h) **including** all amounts of interest paid or payable during that Relevant Period in respect of the Facility;

"Finance Lease" means any lease or hire purchase contract, a liability under which would, in accordance with the Accounting Principles, be treated as a balance sheet liability (other than a

lease or hire purchase contract which would, in accordance with the Accounting Principles in force prior to 1 January 2019, have been treated as an operating 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 December in each year;

"Non-Group Entity" means any investment or entity (which is not itself a member of the Group (including associates and Joint Ventures)) in which any member of the Group has an ownership interest;

"Pension Items" means any income or charge attributable to a post-employment benefit scheme other than the current service costs and any past service costs and curtailments and settlements attributable to the scheme;

"Quarter Date" means each of 31 December, 31 March, 30 June and 30 September;

"Relevant Period" means each period of 12 months ending on or about the last day of the Financial Year and each period of 12 months ending on or about the last day of each Financial Quarter;

"Retained Excess Cash" means, in respect of any Financial Year, the aggregate amount of Excess Cashflow for that and each prior Financial Year as set out in the Annual Financial Statements and related Compliance Certificate for that Financial Year delivered to the Agent pursuant to clause 23.1 (*Financial statements*) and/or clause 23.2 (*Provision and contents of Compliance Certificate*) to the extent not already utilised, spent or committed to be spent or allocated for any purpose; and

"Total Net Debt" means, at any time, the aggregate amount of all obligations of members of the Group for or in respect of Borrowings at that time but:

- (a) **excluding** any such obligations to any other member of the Group;
- (b) **excluding** any such obligations in respect of Subordinated Debt and, to the extent they constitute Borrowings, any New Shareholder Injections; and
- (c) **including**, in the case of Finance Leases only, their capitalised value; and
- (d) **deducting** the aggregate amount of Cash and Cash Equivalent Investments (excluding an amount equal to the Management Loan Note Redemption Amount which shall not be deducted) held by any member of the Group at that time,

and so that no amount shall be included or excluded more than once.

24.2 Financial condition

The Parent shall ensure that:

- (a) **Adjusted Leverage:** Adjusted Leverage in respect of any Relevant Period ending on or after 31 December 2019 shall not exceed the ratio of 4:1.
- (b) **Minimum Adjusted EBITDA:** in respect of any Relevant Period ending on or after 31 December 2019 Adjusted EBITDA must not be less than £3,340,000.

24.3 Financial testing

- (a) The financial covenants set out in clause 24.2 (*Financial condition*) shall be calculated in accordance with the Accounting Principles and tested by reference to each of the financial statements delivered pursuant to clauses 23.1(a) and 23.1(b) (insofar as this relates to the delivery of Quarterly Financial Statements) and/or each Compliance Certificate delivered pursuant to clause 23.2 (*Provision and contents of Compliance Certificate*).
- (b) For the purpose of the financial covenants in clause 24.2(a) (*Adjusted Leverage*) and clause 24.2(b) (*Minimum Adjusted EBITDA*), for each Relevant Period ending on a date which is less than 12 months after the Closing Date, Adjusted EBITDA shall be calculated by reference to the amount of Adjusted EBITDA as disclosed in the financial statements and/or Compliance Certificates on an actual last-twelve-months basis.

24.4 Deemed Cure

- (a) Subject to clause 24.4(b), if the Parent fails to comply with its obligations under clause 24.2 (*Financial condition*) (such failure to comply a "**Remediable Default**"), but the Parent does comply with its obligations under clause 24.2 (*Financial condition*) when next tested (the "**Second Test Date**") then, provided that the Agent has not exercised any of its rights under clause 26.19 (*Acceleration*) in respect of that Remediable Default prior to delivery of the Compliance Certificate in respect of the Second Test Date, that Remediable Default shall be automatically remedied from the date of such Compliance Certificate and any Event of Default arising in respect of or in connection with the Remediable Default shall no longer be outstanding and/or continuing for the purposes of the Finance Documents.
- (b) For the avoidance of doubt, the occurrence of a Remediable Default shall constitute the occurrence of an Event of Default which is continuing unless and until an automatic remedy occurs pursuant to clause 24.4(a) above or otherwise the Remediable Default is waived by the Agent.

24.5 Equity Cure

- (a) Subject to clauses 24.5(b) to 24.5(j), if an Event of Default occurs or would otherwise have occurred under clause 26.2 (*Financial covenants and other obligations*) in respect of a breach of clause 24.2(a) (*Adjusted Leverage*) (a "**Curable Event of Default**") for any Relevant Period (the "**First Relevant Period**"), no Event of Default will occur if:
 - (i) no more than 10 Business Days after the earlier of: (A) the date on which financial statements and/or a Compliance Certificate are delivered under

clause 23.1 (*Financial statements*) and/or clause 23.2 (*Provision and contents of Compliance Certificate*) which demonstrates the Curable Event of Default and (B) the date on which relevant financial statements and/or a Compliance Certificate are due to be delivered under clause 23.1 (*Financial statements*) and/or clause 23.2 (*Provision and contents of Compliance Certificate*) (the "**Delivery Date**"), the Parent has received from the Investors an irrevocable undertaking to provide to the Parent the net cash proceeds by way of New Shareholder Injections necessary to remedy the Curable Event of Default (the net amount of that New Shareholder Injection necessary to remedy the Curable Event of Default being the "**Cure Amount**"); and

- (ii) within 20 Business Days after the Delivery Date, the Parent has received from the Investors the Cure Amount and the Cure Amount has been applied in accordance with clause 24.5(b).
- (b) 50 per cent. of the Cure Amount shall promptly on receipt by the Parent be applied in prepayment of the Loans in accordance with clause 10.3 (*Application of mandatory prepayments and cancellations*).
- (c) Once the Cure Amount has been applied in accordance with clause 24.5(b), the financial covenant in clause 24.2(a) (*Adjusted Leverage*) shall be retested. Such retesting shall be made on the basis that the Cure Amount has been received and used to prepay the Loans (in the order set out in clause 10.3 (*Application of mandatory prepayments and cancellations*)) on the last day of the First Relevant Period, but in each case without double-counting any actual and deemed prepayments of the Loan and without the Cure Amount being applied more than once or in a manner resulting in any double-counting.
- (d) If after re-testing the financial covenants in accordance with clause 24.5(b), the financial covenant in clause 24.2(a) (*Adjusted Leverage*) is complied with, the Parent shall be deemed to have satisfied the requirements of that financial covenant as for the relevant testing dates with the same effect as if there had been no breach of any of those financial covenants and, if applicable, that Curable Event of Default shall be deemed remedied for all purposes under the Finance Documents.
- (e) The Parent may only remedy a Curable Event of Default:
 - (i) with New Shareholder Injections;
 - (ii) up to four times during the period from the date of this Agreement to the Termination Date for Facility B;
 - (iii) not in respect of consecutive Financial Quarters; and
 - (iv) not more than twice in any Financial Year.
- (f) There is no limit on the amount of any one Cure Amount.
- (g) If:
 - (i) the Investors notify the Agent or the Parent (whereupon the Parent shall promptly notify the Agent) that they are not going to provide any New Shareholder Injections to remedy the Curable Event of Default; or

- (ii) no Cure Amount is received by the end of the period stipulated in clause 24.5(a),

the Agent will be permitted to take any action available to it under clause 26.19 (*Acceleration*) immediately (or at any time thereafter).

- (h) For the avoidance of doubt, this clause 24.5 shall not fetter the ability of the Agent to take action under clause 26.19 (*Acceleration*) or under clause 26.20 (*Super Senior Acceleration*) in respect of any other Event of Default or Material Event of Default (as applicable) which in each case is not a Curable Event of Default being remedied in accordance with this clause 24.5.
- (i) Any recalculation made under this clause 24.5 will be solely for the purpose of curing a breach of clause 24.2 (*Financial condition*) and not for any other purpose including, without limitation, the calculation of applicable Margin, determining compliance with Adjusted Leverage ratios in relation to Permitted Acquisitions or determining compliance with Adjusted Leverage ratios in relation to Permitted Payments.
- (j) For the avoidance of doubt, any Cure Amount not applied in prepayment of the Loans shall not be used at any time by the Parent to fund any Permitted Payment or any other distribution or payment to its direct or indirect shareholders or their Affiliates or the Investors.

25. GENERAL UNDERTAKINGS

The undertakings in this clause 25 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

Authorisations and compliance with laws

25.1 Authorisations

Each Obligor shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply (if requested by the Agent) certified copies to the 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, subject to the Legal Reservations and the Perfection Requirements, 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.

25.2 Compliance with laws

- (a) Subject to clause 25.2(b), each Obligor shall (and the Parent shall ensure that each member of the Group will) comply in all respects with all laws to which it may be

subject, if failure so to comply has or is reasonably likely to have a Material Adverse Effect.

- (b) Each Obligor shall, and shall procure that each member of the Group shall, comply in all respects with all Sanctions to which it may be subject.

25.3 Environmental compliance

Each Obligor shall (and the Parent shall ensure that each member of the Group 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.

25.4 Environmental claims

Each Obligor shall (through the Parent), promptly upon becoming aware of the same, inform the Agent in writing of:

- (a) any Environmental Claim against any member of the Group 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 member of the Group,

where the claim, if determined against that member of the Group, has or is reasonably likely to have a Material Adverse Effect.

25.5 Anti-corruption law

- (a) No Obligor shall (and the Parent shall ensure that no other member of the Group will) directly or indirectly use the proceeds of the Facilities for any purpose which would breach the Bribery Act 2010, the United States Foreign Corrupt Practices Act of 1977 or other similar legislation in other jurisdictions.
- (b) Each Obligor shall (and the Parent shall ensure that each other member of the Group will):
 - (i) conduct its businesses in compliance with applicable Money Laundering Laws and anti-corruption laws; and
 - (ii) maintain policies and procedures designed to promote and achieve compliance with such laws.

25.6 Taxation

- (a) Each Obligor shall (and the Parent shall ensure that each member of the Group will) pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:
 - (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 financial statements delivered to the Agent under clause 23.1 (*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 member of the Group may change its residence for Tax purposes.

Restrictions on business focus

25.7 Merger

No Obligor shall (and the Parent shall ensure that no other member of the Group will) enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction other than a Permitted Acquisition, a Permitted Transaction or any sale, lease, transfer or other disposal permitted pursuant to clause 25.18 (*Disposals*).

25.8 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 Group at the date of this Agreement.

25.9 Acquisitions

- (a) Except as permitted under clause 25.9(b), no Obligor shall (and the Parent shall ensure that no other member of the Group will):
 - (i) acquire 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) Clause 25.9(a) does not apply to an acquisition of a company, of shares, securities or a business or undertaking (or, in each case, any interest in any of them) or the incorporation of a company which is:
 - (i) a Permitted Acquisition;
 - (ii) a Permitted Joint Venture; or
 - (iii) a Permitted Transaction.

25.10 Joint Ventures

- (a) Except as permitted under clause 25.10(b), no Obligor shall (and the Parent shall ensure that no other member of the Group 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) Clause 25.10(a) does not apply to any acquisition of (or agreement to acquire) any interest in a Joint Venture or transfer of assets (or agreement to transfer assets) to a Joint Venture or loan made to or guarantee given in respect of the obligations of a Joint Venture if such transaction is a Permitted Acquisition, a Permitted Disposal, a Permitted Loan or a Permitted Joint Venture.

25.11 Holding Companies

Neither of the Parent, nor the Company shall trade, carry on any business, own any assets or incur any liabilities except for:

- (a) the provision of administrative services (excluding treasury services) to other members of the Group of a type customarily provided by a holding company to its Subsidiaries;
- (b) 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;
- (c) any liabilities under the Transaction Documents to which it is a party and professional fees and administration costs in the ordinary course of business as a holding company; or
- (d) making, incurring, receiving or lending the proceeds of a New Shareholder Injection permitted to be made under the terms of this Agreement, a Permitted Distribution or, subject to the terms of the Intercreditor Agreement, a Permitted Payment (as applicable).

Restrictions on dealing with assets and Security

25.12 Preservation of assets

Each Obligor shall (and the Parent shall ensure that each other member of the Group will) maintain in good working order and condition (ordinary wear and tear excepted) all of its assets necessary in the conduct of its business.

25.13 Pari passu ranking

Each Obligor shall ensure that at all times any unsecured and unsubordinated claims of a Finance Party or Hedge Counterparty against it under the Finance Documents rank at least

pari passu with the claims of all its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies.

25.14 Scheme Undertakings

(a) Scheme Press Release

(i) The Company shall procure that the Scheme Press Release is issued substantially in the form agreed with the Lender for the purposes of part 1 of schedule 2 to this Agreement (and with no increase as to price unless agreed by the Agent in writing) but with such amendments:

(A) as are required by any law or regulation (including the City Code) or, by the Panel or an order of the Court;

(B) as are reasonably determined by the Company as being necessary or desirable to comply with any law or regulation (including the City Code) or by the Panel or an order of the Court; or

(C) which could not reasonably be expected to be materially prejudicial to the interests of the Finance Parties in the context of the Scheme.

(ii) The Company will procure that the Scheme Press Release is issued within 10 Business Days of the date of this Agreement.

(b) Scheme Circular

The Company will procure that the Scheme Circular is dispatched as soon as commercially practicable and in any event within 28 days of the date of issue of the Scheme Press Release (unless any extension has been agreed with the Panel).

(c) Progress of Scheme

To the extent permitted by law and the requirements of any applicable regulation or any obligation or duty of confidentiality, the Company will keep the Agent informed as to any material developments in relation to the Scheme and, promptly on reasonable request by the Agent (and subject to any duty of confidentiality or any regulatory, legal or other restriction), provide the Agent with any material information or advice received in relation to the Scheme and will notify the Agent promptly following it becoming aware that the Scheme Court Order has been issued.

(d) Notification

The Company must, to the extent not prohibited by law or regulation, promptly notify the Agent if:

(i) the Scheme lapses or is withdrawn; or

(ii) the Company becomes aware of a circumstance or event which, in the opinion of the Company (acting reasonably) would, if not waived, entitle the Sword Target to lapse or withdraw the Scheme and shall not waive such circumstance or event without the consent of the Agent where such waiver would be materially prejudicial to the interests of the Finance Parties.

(e) Announcements

The Company will:

- (i) promptly deliver to the Agent copies of all press and other public announcements made by itself or, to the extent that it receives copies thereof, by the Target in connection with or in relation to the Scheme and any material documents or statements issued by the Panel or any other regulatory authority (including the courts) received by it in relation to the Scheme (to the extent permitted by the Panel or any such regulatory authority); and
- (ii) where any announcement, press release or publicity material issued by it refers to the Agent, any Finance Party, the Finance Documents or the Facilities, not release or permit such announcement, press release or publicity material to be released by any member of the Group until the Agent has given its consent to such release (such consent not to be unreasonably withheld or delayed) provided that no such consent or approval will be required to make an announcement, press release or publicity material which is required to be made in order to comply with a requirement of the Panel, the City Code or any other relevant laws, regulation or court order or which is consistent with and contain substantially no greater information than is contained in the Scheme Press Release or any previously issued announcement, press release or publicity material (but the Company shall use all reasonable endeavours to consult with the Agent prior to making any such announcement).

(f) Conduct of Scheme

The Company shall ensure that all documents issued by it or on its behalf in connection with the Scheme and its conduct of the Scheme comply in all material respects with all applicable laws and regulations relevant in the context of the Scheme (including the City Code but subject to any derogation, waiver or period of remedy granted by the Panel or any court).

(g) Scheme Terms

The Company shall:

- (i) not take any action (and shall not knowingly permit any person acting in concert with it, to take any action (to the extent the Company is able to do so)) which will result in it or any member of the Group or any person acting in concert with it becoming obliged to make an offer to holders of Sword Target Shares under Rule 9 of the City Code;
- (ii) not take or knowingly permit to be taken any steps or actions as a result of which the price for the Sword Target Shares under the Scheme is, or is reasonably likely to be, increased beyond the amount stated in the Scheme Press Release except with the prior written consent of the Agent;
- (iii) not waive or amend or declare or treat as satisfied (to the extent it has not been satisfied) any condition of the Scheme where such waiver, amendment or declaration would be materially prejudicial to the interests of the Finance Parties unless either:-
 - (A) the Agent has given its consent; or

- (B) it is required by law or regulation (including the City Code), the Panel or an order of the Court; and
- (iv) ensure that, subject to any derogation, waiver or period of remedy granted by the Panel or any Court and approved by the Agent (such approval not to be unreasonably withheld or delayed), the terms and conditions detailed in the Scheme Circular sent to the holders of the Sword Target Shares correspond in all material respects to the terms and conditions detailed in the Scheme Press Release (including without limitation that the Scheme is recommended by the Sword Target) except to the extent required by law or regulation (including the City Code), the Panel or an order of the Court.
- (h) Certificates of Registration of the Scheme

The Company shall, as soon as reasonably practicable following receipt, deliver a copy of the Scheme Court Order to the Registrar of Companies.

25.15 Offer undertakings

If the Company issues an Offer Conversion Notice:

(a) Offer Document

The Company will procure the despatch of the Offer Document as soon as commercially practicable and in any event within 28 days of the date of issuing the Offer Press Release (unless an extension has been agreed by the Panel).

(b) Progress of Offer

To the extent permitted by law or the requirements of any applicable regulation, the Company will keep the Agent informed as to any material developments in relation to the Offer and, promptly on reasonable request by the Agent (and subject to any duty of confidentiality or any regulatory, legal or other restriction), provide the Agent with information as to the progress of the Offer and with any material information or advice received in relation to the Offer.

(c) Notification

The Company must, to the extent not prohibited by law or regulation, promptly notify the Agent if:

- (i) the Offer lapses or is withdrawn; or
- (ii) the Company becomes aware of a circumstance or event which, in the opinion of the Company (acting reasonably) would, if not waived, entitle the Sword Target or the Company to lapse or withdraw the Offer and shall not waive such circumstance or event without the consent of the Agent where such waiver would be materially prejudicial to the interests of the Finance Parties.

(d) Announcements

The Company will:

- (i) promptly deliver to the Agent copies of all press and other public announcements made by itself in connection with or in relation to the Offer and any material documents or statements issued by the Panel, or any other regulatory authority (including the courts) received by it in relation to the Offer; and
- (ii) where any announcement, press release or publicity material issued by it refers to the Agent, any Finance Party, the Finance Documents or the Facility, not release or permit such announcement, press release or publicity material to be released by any member of the Group until the Agent has given its consent to such release (such consent not to be unreasonably withheld or delayed) provided that no such consent or approval will be required to make an announcement, press release or publicity material which is required to be made in order to comply with a requirement of the Panel, the City Code or any other relevant laws, regulation or court order or which is consistent with and contain substantially no greater information than is contained in the Scheme Press Release or any previously issued announcement, press release or publicity material (but the Company shall use all reasonable endeavours to consult with the Lender prior to making any such announcement).

(e) Conduct of Offer

The Company shall ensure that the documents issued by it or on its behalf in connection with the Offer and the conduct of the Offer comply in all material respects with all applicable laws and regulations relevant in the context of the Offer (including the City Code but subject to any derogation, waiver or period of remedy granted by the Panel or any court).

(f) Offer Terms

The Company shall:

- (i) not take any action (and shall not knowingly permit any person acting in concert with it to take any action (to the extent the Company is able to do so)) which will result in it or any member of the Group or any person acting in concert with it becoming obliged to make an offer to holders of Sword Target Shares under Rule 9 of the City Code;
- (ii) not take or knowingly permit to be taken any steps or actions as a result of which the offer price for the Sword Target Shares under the Offer is, or is reasonably likely to be, increased beyond the amount stated in the Offer Press Release except with the prior written consent of the Agent (acting on the instructions of all Lenders);
- (iii) not waive or amend or declare or treat as satisfied (to the extent it has not been satisfied) any condition of the Offer where such waiver, amendment or declaration would be materially prejudicial to the interests of the Finance Parties unless either:
 - (A) the Agent has given its consent; or

- (B) it is required by law or regulation (including the City Code), the Panel, the London Stock Exchange or an order of the Court;
 - (iv) not without the prior written consent of the Agent (such consent not to be unreasonably withheld or delayed) agree to any arrangement with any governmental, regulatory or similar authority in order to satisfy any term or condition of the Offer (unless required to do so in order to comply with the City Code);
 - (v) not declare the Offer unconditional as to acceptances until valid acceptances have been received (and not withdrawn) from holders of Sword Target Shares in respect of an aggregate amount of not less than 90 per cent. of the Sword Target Shares to which the Offer relates;
 - (vi) ensure that the Offer Document contains all the terms and conditions of the Offer; and
 - (vii) ensure that the terms and conditions detailed in the Offer Document sent to the holders of the Sword Target Shares correspond in all material respects to the terms and conditions detailed in the Offer Press Release (including without limitation that the Offer is recommended by the board of Target except to the extent required by law or regulation (including the City Code) or the Panel.
- (g) Compulsory acquisition

If the Offer Effective Date occurs and the Company receives valid acceptances of at least 90 per cent. in value of the Sword Target Shares to which the Offer relates (within the meaning of the Takeover Procedure) and at least 90 per cent. of the voting rights constituted by those shares, the Company must:

- (i) issue Takeover Notices to the relevant shareholders in the Target promptly upon becoming entitled to implement the Takeover Procedure; and
- (ii) use all reasonable endeavours to ensure that the Takeover Procedure is successfully completed within the Certain Funds Period.

25.16 Take Private

The Company must ensure that:

- (a) as soon as practicable after the Closing Date and in any event not later than three Business Days after the Closing Date, the Sword Target serves notice to convene a general meeting of the shareholders of the Sword Target to be held on short notice in respect of a special resolution to re-register as a private limited company and that such general meeting is duly held and that the Company attends in person or by proxy and votes in favour of such resolution; and
- (b) as soon as reasonably practicable after the Closing Date and in any event within five Business Days of the Closing Date, the Sword Target is re-registered as a private limited company, including by taking all reasonable action to promptly deal with any challenges against re-registration brought by any remaining holders of Sword Target Shares.

25.17 Negative pledge

In this clause 25.17, "**Quasi-Security**" means an arrangement or transaction described in clause 25.17(b).

Except as permitted under clause 25.17(c):

- (a) no Obligor shall (and the Parent shall ensure that no other member of the Group will) create or permit to subsist any Security over any of its assets;
- (b) no Obligor shall (and the Parent shall ensure that no other member of the Group 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 member of the Group;
 - (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) clauses 25.17(a) and 25.17(b) do not apply to any Security or (as the case may be) Quasi-Security, which is:
 - (i) Permitted Security; or
 - (ii) a Permitted Transaction.

25.18 Disposals

- (a) Except as permitted under clause 25.18(b), no Obligor shall (and the Parent shall ensure that no other member of the Group will) enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset.
- (b) Clause 25.18(a) 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.

25.19 Arm's length basis

- (a) Except as permitted by clause 25.19(b), no Obligor shall (and the Parent shall ensure that no other member of the Group 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 25.19:
 - (i) intra-Group loans permitted under clause 25.20 (*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 Agent under clause 4.1 (*Initial conditions precedent*) or agreed by the Agent;
 - (iii) any Permitted Transaction, Permitted Payment or Permitted Distribution;
 - (iv) any disposal under paragraph (b) of the definition of "**Permitted Disposal**"; or
 - (v) any Liabilities Acquisition which is permitted by, and as defined in, the Intercreditor Agreement.

Restrictions on movement of cash - cash out

25.20 Loans or credit

- (a) Except as permitted under clause 25.20(b), no Obligor shall (and the Parent shall ensure that no other member of the Group will) be a creditor in respect of any Financial Indebtedness.
- (b) Clause 25.20(a) does not apply to:
 - (i) a Permitted Loan; or
 - (ii) a Permitted Transaction.

25.21 No guarantees or indemnities

- (a) Except as permitted under clause 25.21(b), no Obligor shall (and the Parent shall ensure that no other member of the Group will) incur or allow to remain outstanding any guarantee in respect of any obligation of any person.
- (b) Clause 25.21(a) does not apply to a guarantee which is:
 - (i) a Permitted Guarantee; or
 - (ii) a Permitted Transaction.

25.22 Dividends and share redemption

- (a) Except as permitted under clause 25.22(b), the Parent shall not (and will ensure that no other member of the Group 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 member of the Group to pay any management, advisory or other fee or amount to or to the order of any of the direct or indirect shareholders of the Parent;
 - (iv) make any payment to the order of the direct or indirect shareholders of the Parent; or
 - (v) redeem, repurchase, defease, retire or repay any of its share capital or resolve to do so.
- (b) Clause 25.22(a) does not apply to:
 - (i) a Permitted Distribution;
 - (ii) a Permitted Payment; or
 - (iii) a Permitted Transaction (other than one referred to in paragraph (c) of the definition of that term).

25.23 Subordinated Debt

- (a) Except as permitted under clause 25.23(b), no Obligor shall (and the Parent shall ensure that no other member of the Group will):
 - (i) repay or prepay any principal amount (or capitalised interest) outstanding under or with respect to any Subordinated Debt;
 - (ii) pay any interest or any other amounts payable in connection with any Subordinated Debt; or

- (iii) purchase, redeem, defease or discharge any amount outstanding with respect to any Subordinated Debt.
- (b) Clause 25.23(a) does not apply to a payment, repayment, prepayment, purchase, redemption, defeasance or discharge which is a Permitted Payment.

Restrictions on movement of cash - cash in

25.24 Financial Indebtedness

- (a) Except as permitted under clause 25.24(b), no Obligor shall (and the Parent shall ensure that no other member of the Group will) incur or allow to remain outstanding any Financial Indebtedness.
- (b) Clause 25.24(a) does not apply to Financial Indebtedness which is:
 - (i) Permitted Financial Indebtedness; or
 - (ii) a Permitted Transaction.

25.25 Share capital

No Obligor shall (and the Parent shall ensure that no other member of the Group will) issue any shares except pursuant to:

- (a) a Permitted Share Issue; or
- (b) a Permitted Transaction.

Miscellaneous

25.26 Insurance

- (a) Each Obligor shall (and the Parent shall ensure that each other member of the Group will) maintain insurances on and in relation to its business and assets against those risks and to the extent as is usual for companies carrying on the same or substantially similar business.
- (b) All insurances must be with reputable independent insurance companies or underwriters.

25.27 Pensions

The Parent shall ensure that no member of the Group is or has been at any time an employer (for the purposes of Sections 38 to 51 of the Pensions Act 2004) of an occupational pension scheme which is not a money purchase scheme (both terms as defined in the Pension Schemes Act 1993) or "connected" with or an "associate" of (as those terms are used in Sections 38 or 43 of the Pensions Act 2004) such an employer.

25.28 People with Significant Control regime

- (a) Each Obligor shall (and the Parent shall ensure that each other member of the Group will):
 - (i) within the relevant timeframe, comply with any notice it receives pursuant to Part 21A of the Companies Act 2006 from any company incorporated in the United Kingdom whose shares are the subject of the Transaction Security; and
 - (ii) promptly provide the Security Agent with a copy of that notice.
- (b) The Parent shall maintain (and shall procure that each member of the Group maintains) a Register of Persons with Significant Control and comply in all respects with all applicable provisions of Part 21A of the Companies Act 2006 and The Register of People with Significant Control Regulations SI 339 of 2016.

25.29 Access

If an Event of Default or a Material Event of Default is continuing or the Agent reasonably suspects an Event of Default or Material Event of Default is continuing or may occur, each Obligor shall, and the Parent shall ensure that each member of the Group will, permit the Agent and/or the Security Agent and/or accountants or other professional advisers and contractors of the Agent or Security Agent free access at all reasonable times and on reasonable notice at the risk and cost of the Obligor or Parent to (a) the premises, assets, books, accounts and records of each member of the Group and (b) meet and discuss matters with Senior Management.

25.30 Service contracts

- (a) The Parent must ensure that there is in place in respect of each Obligor and each Material Company qualified management with appropriate skills.
- (b) If any of the Senior Management ceases (whether by reason of death, retirement at normal retiring age or through ill health or otherwise) to perform his or her duties (as required under the Service Contracts), the Parent must as soon as reasonably practicable thereafter:
 - (i) notify the Agent; and
 - (ii) after consultation with the Agent as to the identity of such replacement person, find and appoint an adequately qualified replacement for him or her as promptly as practicable.
- (c) The Parent shall ensure that no member of the Group amends, varies, waives, novates, supplements or replaces any term of a Service Contract in a way which is or is reasonably likely to be materially prejudicial to the interests of the Finance Parties.

25.31 Intellectual Property

- (a) Each Obligor shall (and the Parent shall procure that each other member of the Group will):
 - (i) preserve and maintain the subsistence and validity of the Intellectual Property necessary for the business of the relevant Group member;
 - (ii) use reasonable endeavours to prevent any infringement in any material respect of the Intellectual Property;
 - (iii) 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;
 - (iv) not use or permit the Intellectual Property to be used in a way or take any step or omit to take any step in respect of that Intellectual Property which may materially and adversely affect the existence or value of the Intellectual Property or imperil the right of any member of the Group to use such property; and
 - (v) not discontinue the use of the Intellectual Property,where failure to do so, in the case of clauses 25.31(a)(i), 25.31(a)(ii) and 25.31(a)(iii) or, in the case of clauses 25.31(a)(iv) and 25.31(a)(v), such use, permission to use, omission or discontinuation is reasonably likely to have a Material Adverse Effect.
- (b) Failure to comply with any part of clause 25.31(a) shall not be a breach of this clause 25.31 to the extent that any dealing with Intellectual Property which would otherwise be a breach of clause 25.31(a) is contemplated by the definition of **"Permitted Transaction"**.

25.32 Amendments

- (a) No Obligor shall (and the Parent shall ensure that no other member of the Group will) amend, vary, novate, supplement, supersede, waive or terminate any term of a Transaction Document or any other document delivered to the Agent pursuant to clause 4.1 (*Initial conditions precedent*) or clause 29 (*Changes to the Obligors*) or enter into any agreement with any shareholders of the Parent (other than as set out in the Sword Acquisition Documents, the Loan Note Documents, the Service Contracts and the Shareholders' Agreement) or any of their Affiliates which is not a member of the Group except in writing:
 - (i) in accordance with clause 39 (*Amendments and waivers*);
 - (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; and

- (iv) at any time following the Closing Date, in a way which could not be reasonably expected materially and adversely to affect the interests of the Lenders.
- (b) The Parent shall promptly supply to the Agent a copy of any document relating to any of the matters referred to in clause 25.32(a).

25.33 Financial assistance

Each Obligor shall (and the Parent shall procure each other member of the Group will) comply in all respects with sections 678 and 679 of the Companies Act 2006 and any equivalent legislation in other jurisdictions including in relation to the execution of the Transaction Security Documents and payment of amounts due under this Agreement.

25.34 Group bank accounts

The Parent shall ensure that all bank accounts of the Group shall be opened and maintained with an Acceptable Bank and are subject to valid Security under the Transaction Security Documents.

25.35 Treasury Transactions

No Obligor shall (and the Parent will procure that no other member of the Group will) enter into any Treasury Transaction, other than:

- (a) the hedging transactions documented by the Hedging Agreements;
- (b) spot and forward delivery foreign exchange contracts entered into in the ordinary course of business and not for speculative purposes; and
- (c) any Treasury Transaction entered into for the hedging of actual or projected real exposures arising in the ordinary course of trading activities of a member of the Group for a period of not more than 12 Months and not for speculative purposes.

25.36 Cash management

- (a) Subject to clause 25.36(b), the Parent and each other Obligor shall procure that the aggregate cash or Cash Equivalent Investments held by members of the Group that are not Obligors (the "**Non-Obligors**") shall not exceed £100,000 (or its equivalent in other currencies) (the amount of such excess being the "**Cash Balance**") and any such Cash Balance shall be lent by such Non-Obligor to its Holding Company (if an Obligor) or the Parent pursuant to an intra-group loan.
- (b) No Obligor shall be obliged at any time to procure that a Subsidiary lend any Cash Balance under clause 25.36(a):
 - (i) at a time when to do so would cause the receiving Obligor or that Subsidiary (despite that person using all reasonable efforts to avoid the relevant Tax liability) to incur a materially greater Tax liability in respect of the Cash Balance than it would otherwise incur if the loan were made at a later date;
 - (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 the

receiving Obligor or that Subsidiary or any of such person's directors or management; or

- (iii) if it involves an amount which is less than £10,000 (or its equivalent in other currencies).

25.37 Management Loan Note Redemption Amount

The Parent shall procure that at all times on or after the Closing Date until the date falling six months after the Closing Date members of the Group hold Cash in aggregate an amount of not less than the Management Loan Note Redemption Amount.

25.38 Guarantors

- (a) The Parent shall:
 - (i) as soon as reasonably practicable and in any event on or before the date falling 10 Business Days after the Closing Date, procure that the Sword Target and any Subsidiaries of the Sword Target that are Material Companies shall become Guarantors in accordance with clause 29.4 (*Additional Guarantors*) and shall deliver the Sword Target Transaction Security Documents; and
 - (ii) at all times following the date falling 10 Business Days after the Closing Date, ensure that the aggregate of earnings before interest, tax, depreciation and amortisation (calculated on the same basis as EBITDA) of the Guarantors, the aggregate net assets and the aggregate turnover of the Guarantors (in each case calculated on an unconsolidated basis and excluding all intra-group items and investments in Subsidiaries of any member of the Group) represents more than 85 per cent. of EBITDA, the consolidated net assets and the consolidated turnover of the Group respectively.
- (b) Without prejudice to the continuing obligations to meet the requirements of clause 25.38(a) in relation to itself and all other Subsidiaries, the Parent need only perform its obligations under clause 25.38(a) in relation to any particular Subsidiary if it is not unlawful for the relevant person to become a Guarantor and that person becoming a Guarantor would not result in personal liability for that person's directors or other management. Each Obligor must use, and must procure that the relevant person uses, all reasonable endeavours lawfully available to avoid any such unlawfulness or personal liability. This includes agreeing to a limit on the amount guaranteed. The Agent may (but shall not be obliged to) agree to such a limit if, in its opinion, to do so would avoid the relevant unlawfulness or personal liability. Further, this clause 25.38(b) shall not restrict the obligations of the Parent under clause 25.38(a) if there are other members of the Group which are not restricted in the manner described in clause 25.38(b).

25.39 Further assurance

- (a) Subject to the Agreed Security Principles, each Obligor shall (and the Parent shall procure that each other member of the Group will) promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as a Finance Party may reasonably specify (and in such form as a Finance Party 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 Finance Parties provided by or pursuant to the Finance Documents or by law;
 - (ii) to confer on the Security Agent or confer on the Finance Parties Security over any property and assets of that Obligor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to the Transaction Security Documents; and/or
 - (iii) to facilitate (in circumstances where the relevant Transaction Security has become enforceable) the realisation of the assets which are, or are intended to be, the subject of the Transaction Security.
- (b) Each Obligor shall (and the Parent shall procure that each other member of the Group 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 Finance Parties by or pursuant to the Finance Documents.

25.40 Conditions subsequent

- (a) The Parent shall procure that each member of the Group identified in part 4 of schedule 2 (*Conditions precedent*):
 - (i) accedes to this Agreement as an Additional Guarantor in accordance with clause 29.4 (*Additional Guarantors*);
 - (ii) delivers to the Agent all of the documents and other evidence listed in part 3 and part 4 of schedule 2 (*Conditions precedent*) in relation to that Additional Guarantor, each case in form and substance satisfactory to the Agent; and
 - (iii) grants Transaction Security (and carry out any action to protect, perfect or give priority to the Transaction Security),in each case in accordance with clause 25.38 (*Guarantors*).
- (b) The Parent shall deliver to the Agent, as soon as practicable and in any event not less than 20 Business Days prior to the date on which the Parent's Auditors are required to report on the Compliance Certificate, a letter of engagement between the Parent and the Auditors and confirmation from the Parent's Auditors that they will provide an annexure to the Compliance Certificate, or give a letter to accompany the Compliance

Certificate, accompanying the Annual Financial Statements, which satisfies the requirements relating to such contained in this Agreement (including, without limitation, clause 23.2(c)) together with confirmation from the Parent's Auditors that it can be relied upon by the Finance Parties.

- (c) Prior to any payment requiring to be made into a Holding Account or a Mandatory Prepayment Account pursuant to the terms of this Agreement, the Parent shall establish and deliver to the Agent a letter from the Parent to the Agent specifying the Holding Account and the Mandatory Prepayment Account, including details of each account name, account number and the name and address of the bank where each account is held.
- (d) Each Obligor must use, and must procure that any other member of the Group that is a potential provider of Transaction Security uses, all reasonable endeavours lawfully available to avoid or mitigate the constraints on the provision of Security provided for in the Agreed Security Principles.
- (e) The Parent shall deliver to the Agent, as soon as practicable after receipt by the Initial Institutional Investor and in any event not less than 45 days after the Closing Date, the 100 Day Plan (as defined in the Shareholders' Agreement).
- (f) If the Sword Acquisition proceeds by way of a Scheme, the Company shall:
 - (i) as soon as reasonably practicable and in any event within three Business Days of the Scheme Effective Date, deliver the Scheme Court Order to Companies House and shall simultaneously deliver a certified copy to the Agent;
 - (ii) as soon as reasonably practicable and in any event within five Business Days of the Scheme Effective Date, deliver to HMRC a signed stock transfer form evidencing the transfer of the entire issued share capital of the Sword Target to the Company along with the appropriate amount of stamp duty for stamping;
 - (iii) as soon as reasonably practicable and in any event within three Business Days of receipt of the stamped stock transfer form (described in paragraph (f)(ii) above) from HMRC, deliver to the Security Agent:
 - (A) a certified copy of the register of members for the Sword Target showing the Company as the legal owner of the Sword Target Shares; and
 - (B) the original share certificates evidencing the shareholding of the Company in the Sword Target, together with blank signed and undated stock transfer forms in respect of such shareholding;
 - (iv) as soon as reasonably practicable and, in any event, no later than the Business Day after receipt by a member of the Group, deliver to the Agent a certified copy of confirmation of receipt from Companies House of the Scheme Court Order; and
 - (v) (and the Parent shall procure that each other member of the Group will) promptly do all such further acts or execute all such documents reasonably

required to procure the registration of the Scheme at Companies House, including as reasonably required by the Agent.

- (g) If the Sword Acquisition proceeds by way of an Offer, the Company shall:
 - (i) as soon as reasonably practicable and in any event within five Business Days of the Closing Date, deliver to HMRC a signed stock transfer form evidencing the transfer of the entire issued share capital of the Sword Target to the Company along with the appropriate amount of stamp duty for stamping, and shall simultaneously deliver a certified copy to the Security Agent; and
 - (ii) as soon as reasonably practicable and in any event within three Business Days of receipt of the stamped stock transfer form from HMRC, deliver to the Security Agent:
 - (A) a certified copy of the register of members for the Sword Target showing the Company as the legal owner of the entire issued share capital in the Sword Target; and
 - (B) the original share certificates evidencing the shareholding of the Company in the Sword Target, together with blank signed and undated stock transfer forms in respect of such shareholding.
- (h) As soon as practicable following the Closing Date, the Company shall (and the Company shall ensure that each member of the Group will) take all reasonable actions and steps to irretrievably remove from any website or other source on which any member of the Group (including any member of the Target Group) has in either case published or otherwise made available any Finance Documents to any person who is not a Finance Party, a member of the Group or an Investor.
- (i) On the Closing Date the Parent shall (and the Parent shall procure that each member of the Group will) enter into all documents and take all reasonable actions to effect each of the steps described in "Step 7 - Management exchange their Bidco loan notes for Midco 2 and then Midco 1 loan notes and finally Topco preferred, A and B ordinary shares" of the Sword Structure Memorandum.
- (j) The Parent shall procure that within 90 days of the Closing Date, Testronic Sp z.o.o. and its sole shareholder, Testronic Laboratories S.E., deliver to the Agent copies of the court decisions on the registration of the registered pledges established under the Transaction Security Documents governed by the laws of Poland.

25.41 Sanctions

- (a) No Obligor shall (and the Parent shall ensure that no member of the Group will):
 - (i) use, lend, contribute or otherwise make available any part of the proceeds of any Loan or any transaction contemplated by this Agreement directly or indirectly:
 - (A) for the purpose of financing any trade, business or other activities involving, or for the benefit of, any Restricted Party or located in any country that is a Sanctioned Country; or

- (B) in any other manner that would reasonably be expected to result in any person (including without limitation, the other partners to this Agreement and the other Finance Documents) being in breach of any Sanctions or becoming a Restricted Party;
 - (ii) engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or breaches or attempts to breach, directly or indirectly, any Sanctions applicable to it;
 - (iii) fund all or part of any payment in connection with a Finance Document out of proceeds derived from business or transactions with a Restricted Party or any person located in or operating from a Sanctioned Country, or from any action which is in breach of any Sanctions;
 - (iv) own, operate, possess, use, lease, dispose of or otherwise deal with, or procure or allow the ownership, operation, possession, use, leasing or disposal of, or any other dealing with, the assets or part thereof for any purpose which would violate, or cause any Finance Party or the Borrower or other member of the Group to violate, any Sanctions; or
 - (v) permit a Restricted Party to have any property interest in the assets nor will any person, country or territory that is a subject of any Sanctions supply any inputs to, receive any output from or derive any other financial or economic benefit from the assets.
- (b) Each Obligor shall (and the Parent shall ensure that each other member of the Group will) ensure that appropriate controls and safeguards are in place designed to prevent any action being taken that would be contrary to clause 25.41(a).
 - (c) Any provision of this clause 25.41 (*Sanctions*) shall not apply to any person if and to the extent that it is or would be unenforceable by or in respect of that person by reason of breach of any provision of the Blocking Regulation (or any law or regulation implementing such Regulation in any member state of the European Union or the United Kingdom). For the avoidance of any doubt, nothing in this clause 25.41 (*Sanctions*) is intended or should be interpreted or construed, as inducing any party to act in a manner that would be in breach of any provision of the Blocking Regulation.

26. EVENTS OF DEFAULT

Each of the events or circumstances set out in this clause 26 is an Event of Default (save for clause 26.19 (*Acceleration*), clause 26.20 (*Super Senior Acceleration*) and clause 26.21 (*Clean-up period*)).

26.1 Non-payment

An Obligor does not pay on the due date any amount payable pursuant to a Finance Document at the place 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.

26.2 Financial covenants and other obligations

- (a) Subject to clause 24.5 (*Equity Cure*), any requirement of clause 24 (*Financial covenants*) is not satisfied or an Obligor does not comply with the provisions of clauses 23.1 (*Financial statements*), 23.2 (*Provision and contents of Compliance Certificate*), 23.3 (*Requirements as to financial statements*), 23.4 (*Budget*) and/or with a Material Provision.
- (b) An Obligor does not comply with any material provision of any Transaction Security Document.

26.3 Other obligations

- (a) An Obligor does not comply with any provision of the Finance Documents (other than those referred to in clause 26.1 (*Non-payment*) and clause 26.2 (*Financial covenants and other obligations*)).
- (b) No Event of Default under clause 26.3(a) will occur if the failure to comply is capable of remedy and is remedied within 10 Business Days of the earlier of:
 - (i) the Agent giving notice to the Parent or the relevant Obligor; and
 - (ii) the Parent or an Obligor becoming aware of the failure to comply.

26.4 Misrepresentation

- (a) Any representation or statement made or deemed to be made by an Obligor in the Finance Documents or any other document delivered by or on behalf of any Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading when made or deemed to be made
- (b) No Event of Default under clause 26.4(a) will occur if the event or circumstance which resulted in a representation or statement being incorrect or misleading is capable of remedy and is remedied within 10 Business Days of the earlier of:
 - (i) the Agent giving notice to the Parent or the relevant Obligor; and
 - (ii) the Parent or an Obligor becoming aware of the occurrence of such event or circumstance.

26.5 Cross default

- (a) Any Financial Indebtedness of any member of the Group is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of any member of the Group is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any commitment for any Financial Indebtedness of any member of the Group is cancelled or suspended by a creditor of any member of the Group as a result of an event of default (however described).

- (d) Any creditor of any member of the Group becomes entitled to declare any Financial Indebtedness of any member of the Group due and payable prior to its specified maturity as a result of an event of default (however described).
- (e) No Event of Default will occur under this clause 26.5 if:
 - (i) the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within clauses 26.5(a) to 26.5(d) is less than £200,000 (or its equivalent in any other currency or currencies);
 - (ii) the non-payment is in respect of Financial Indebtedness owed by an Obligor to another member of the Group; or
 - (iii) such Financial Indebtedness is prevented from being paid pursuant to the terms of the Intercreditor Agreement.

26.6 Insolvency

- (a) An Obligor or a Material Company:
 - (i) is unable or admits inability to pay its debts as they fall due;
 - (ii) is deemed to, or is declared to, be unable to pay its debts under applicable law (on the basis that all statutory references to £750 in this context are deemed to be references to £10,000);
 - (iii) 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 Finance Party in its capacity as such) with a view to rescheduling any of its indebtedness.
- (b) The value of the assets of Group (taken as a whole) is less than its liabilities (taking into account contingent and prospective liabilities).
- (c) A moratorium is declared in respect of any indebtedness of any Obligor or Material Company. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.
- (d) A member of the Group with its centre of main interests or a branch in Poland becomes insolvent (Polish: *niewypłacalny*) within the meaning of article 11 of the Polish Bankruptcy Law (Polish: *ustawa prawo upadłościowe*) dated 28 February 2003, as amended, or is threatened with insolvency (Polish: *zagrożony niewypłacalnością*) within the meaning of article 6 of the Polish Restructuring Law (Polish: *ustawa prawo restrukturyzacyjne*) dated 15 May 2015, as amended.
- (e) A member of the Group gives notice under section 36(2) of the 1990 Tax Collection Act (*Invorderingswet 1990*) (irrespective of whether this notice is pursuant to section 60 of the Act on the Financing of Social Insurances (*Wet financiering sociale verzekeringen*)).

26.7 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 Obligor or Material Company (other than in respect of a solvent liquidation or reorganisation previously approved in writing by the Agent);
 - (ii) a composition, compromise, assignment or arrangement with any creditor of any Obligor or Material Company;
 - (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of any Obligor or Material Company or any of its assets (other than in respect of a solvent liquidation or reorganisation previously approved in writing by the Agent); or
 - (iv) enforcement of any Security over any assets of any Obligor or Material Company exceeding an aggregate value of £200,000 (or its equivalent in any other currency or currencies),
- or any analogous procedure or step is taken in any jurisdiction.
- (b) Clause 26.7(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 commencement; or
 - (ii) any step or procedure contemplated by paragraph (b) of the definition of **"Permitted Transaction"**;
 - (iii) any application for the declaration of bankruptcy or the declaration of bankruptcy of a member of the Group pursuant to the provisions of the Polish Bankruptcy Law (Polish: *ustawa prawo upadłościowe*) dated 28 February 2003, as amended; or
 - (iv) an application for the opening of restructuring proceedings or the opening of restructuring proceedings pursuant to the provisions of the Polish Restructuring Law (Polish: *ustawa prawo restrukturyzacyjne*) dated 15 May 2015, as amended.
- (c) With respect to each US Subsidiary and any Obligor or Material Company which is not a US Subsidiary but has material assets located in the US (a **"Relevant Material Subsidiary"**):
- (i) any US Subsidiary or Relevant Material Subsidiary shall commence a voluntary case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or similar law (including any US Debtor Relief Law) now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian, or similar official of it or any part of its property having

an aggregate value in excess of £200,000 (or its equivalent in any other currency or currencies), or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any action to authorize any of the foregoing;

- (ii) an involuntary case or other proceeding shall be commenced against any US Subsidiary or Relevant Material Subsidiary seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or similar law (including any US Debtor Relief Law) now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any part of its property having an aggregate value in excess of £200,000 (or its equivalent in any other currency or currencies), and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of sixty (60) calendar days, or any order or decree for relief shall be entered against any US Subsidiary under any bankruptcy laws (including any US Debtor Relief Law) as now or hereafter in effect;
- (iii) a court of the United States of America or any state thereof (a "**US Federal or State Court**") having jurisdiction in the premises shall enter a decree or order for relief in respect of any US Subsidiary or Relevant Material Subsidiary or for any part of its property having an aggregate value in excess of £200,000 (or its equivalent in any other currency or currencies) in an involuntary case under the United States Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law of the US or any state thereof now or hereafter in effect, which decree or order is not stayed or dismissed within fourteen days of it being entered, or any other similar relief shall be granted under any applicable US federal or state law.

26.8 Creditors' process

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of an Obligor or Material Company having an aggregate value of £200,000 or more (or its equivalent in any other currency or currencies) and is not discharged within 14 days after commencement.

26.9 Unlawfulness and invalidity

- (a) It is or becomes unlawful for an Obligor or any other member of the Group that is a party to the Intercreditor Agreement to perform any of its obligations under the Finance Documents or any Transaction Security created or expressed to be created or evidenced by the Transaction Security Documents ceases to be effective or any subordination created under the Intercreditor Agreement is or becomes unlawful.
- (b) Any obligation or obligations of any Obligor under any Finance Documents or any other member of the Group under the Intercreditor Agreement are not or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lenders under the Finance Documents.

- (c) Any Finance Document ceases to be in full force and effect or any Transaction Security or any subordination created under the Intercreditor Agreement ceases to be legal, valid, binding, enforceable or effective or is alleged by a party to it (other than a Finance Party) to be ineffective.

26.10 Intercreditor Agreement

Any party to the Intercreditor Agreement (other than a Finance Party or an Obligor):

- (a) 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 10 Business Days of the earlier of the Agent giving notice to that party or that party becoming aware of the non-compliance or misrepresentation.

26.11 Cessation of business

Any Obligor or 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 Permitted Disposal or a Permitted Transaction.

26.12 Change of ownership

At any time following the Closing Date:

- (a) 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 or, if later, on the date on which that Material Company became a member of the Group,

except, in either case, as a result of a disposal which is a Permitted Disposal or a Permitted Transaction.

26.13 Audit qualification

The Parent's Auditors qualify the audited annual consolidated financial statements of the Parent (other than a qualification of a minor and technical nature).

26.14 Expropriation

The authority or ability of any Obligor or Material Company to conduct its business is wholly or substantially limited or 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 Obligor or Material Company or any of its assets.

26.15 Repudiation and rescission of agreements

- (a) An Obligor (or any other relevant party other than a Finance Party) rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document or any of the Transaction Security or evidences in writing an intention to rescind or repudiate a Finance Document or any Transaction Security.
- (b) Any party (other than a Finance Party) to the Acquisition Documents, the Shareholders' Agreement, the Intercreditor Agreement, the Loan Note Documents rescinds or purports to rescind or repudiates or purports to repudiate any of those agreements or instruments in whole or in part where to do so has or is, in the reasonable opinion of the Majority Lenders, likely to have a material adverse effect on the interests of the Lenders under the Finance Documents.

26.16 Litigation

Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened, or any judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body is made, in relation to the Transaction Documents or the transactions contemplated in the Transaction Documents or against any member of the Group or its assets which have, or has, or are, or is, reasonably likely to have a Material Adverse Effect.

26.17 ERISA

An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or would reasonably be expected to result in liability of any Obligor or any Subsidiary thereof under Title IV of ERISA to such Pension Plan, such Multiemployer Plan or the PBGC in an aggregate amount in excess of £200,000, or any Obligor or ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any instalment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of £200,000.

26.18 Material adverse change

Any event or circumstance occurs which has or is reasonably likely to have a Material Adverse Effect.

26.19 Acceleration

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

- (a) by notice to the Parent:
 - (i) cancel all or part of the Total Commitments and/or Ancillary Commitments at which time they shall immediately be cancelled;
 - (ii) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, at which time they shall become immediately due and payable;

- (iii) declare that all or part of the Loans be payable on demand, at which time they shall immediately become payable on written demand by the Agent on the instructions of the Majority Lenders;
 - (iv) 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; and/or
 - (v) 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 written demand by the Agent on the instructions of the Majority Lenders; and/or
- (b) exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

26.20 Super Senior 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 Agent may, and shall if so directed by the Majority Super Senior Lenders:

- (a) by notice to the Parent:
 - (i) cancel all or part of the Revolving Facility Commitments and/or Ancillary Commitments at which time they shall immediately be cancelled;
 - (ii) declare that all or part of the Loans under the Revolving Facility, together with accrued interest, and all other amounts accrued or outstanding in respect of the Revolving Facility to be immediately due and payable, at which time they shall become immediately due and payable;
 - (iii) declare that all or part of the Loans under the Revolving Facility be payable on demand, at which time they shall immediately become payable on written demand by the Agent on the instructions of the Majority Super Senior Lenders;
 - (iv) 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; and/or
 - (v) 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 written demand by the Agent on the instructions of the Majority Super Senior Lenders; and/or
- (b) exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

26.21 Clean-up period

(a) Notwithstanding any other provision of any Finance Document, any:

- (i) breach of a Clean-Up Undertaking or Clean-Up Representation; or
- (ii) Event of Default constituting a Clean-up Default,

which (in each case) occurs prior to the Clean-Up Date 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:

- (1) in the case of such a breach or Event of Default which occurs during the Clean-Up Period in respect of the Sword Acquisition, any member of the Sword Target Group (or any obligation to procure or ensure in relation to a member of the Sword Target Group); or
- (2) in the case of such a breach or Event of Default which occurs during the Clean-Up Period in respect of a Permitted Acquisition under paragraph (f) of the definition of Permitted Acquisition, the Acquisition Target or any Subsidiary of the Acquisition Target which is the direct or indirect subject of the relevant acquisition (or any obligation to procure or ensure in relation to an Acquisition Target or any such Subsidiary);

(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, any Investor or any member of the Group; and

(D) it is not reasonably likely to have a Material Adverse Effect.

(b) If the relevant circumstances are continuing on or after the Clean-up Date, there shall be a breach of representation or warranty, breach of covenant or Event of Default, as the case may be, notwithstanding the above (and without prejudice to the rights and remedies of the Finance Parties).

SECTION 9

CHANGES TO PARTIES

27. CHANGES TO THE LENDERS

27.1 Participations, assignments and transfers by the Lenders

Subject to this clause 27 and to clause 28 (*Restriction on Debt Purchase Transactions*), a Lender (the "**Existing Lender**") may:

- (a) enter into sub-participation, sub-contract or similar arrangements pursuant to the terms of which voting rights of a Lender are (or are capable of being) transferred (each a "**Participation with Voting Rights**");
- (b) assign any of its rights; or
- (c) transfer by novation any of its rights and obligations,

under any Finance Document to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (the "**New Lender**").

27.2 Parent consent

- (a) The consent of the Parent is required before any Existing Lender enters into a Participation with Voting Rights or an assignment or transfer in accordance with clause 27.1 (*Participations, assignments and transfers by the Lenders*), unless the Participation with Voting Rights, the assignment or transfer is:
 - (i) to an entity identified on the Pre-Approved New Lender List (or to the extent any name on the Pre-Approved New Lender List does not refer to a specific legal entity but to a generic general description of any group entity, any entity that is a member of that group) or to an Affiliate or Related Fund (as applicable) of any such entity;
 - (ii) to another Lender or an Affiliate of a Lender;
 - (iii) if the Existing Lender is a fund, to a fund which is a Related Fund of the Existing Lender; or
 - (iv) made at a time when an Event of Default or a Material Event of Default is continuing.
- (b) For the avoidance of doubt, no consent is required for any sub-participation, sub-contract or similar arrangements in respect of a Lender's obligations under this Agreement provided that the Lender's voting rights are not (and are not capable of being) transferred pursuant to the terms thereof.
- (c) Notwithstanding clause 27.2(a), an Existing Lender must:
 - (i) obtain the prior written consent of the Parent (which may be given or refused in its absolute discretion) before entering into any Participation with Voting Rights, assignment or transfer to, with, involving or in favour of a person that

is a Distressed Fund, save that such consent shall not be required where an Event of Default is continuing;

- (ii) obtain the prior written consent of the Parent (which may be given or refused in its absolute discretion) before entering into any Participation with Voting Rights, assignment or transfer to, with, involving or in favour of a person that is (or would, upon becoming a Lender, be) an Industrial Competitor at the time of such Participation with Voting Rights, assignment or transfer, save that such consent shall not be required where an Event of Default is continuing; and
- (iii) during the Certain Funds Period, obtain the prior written consent of the Parent (which may be given or refused in its absolute discretion) before entering into any Participation with Voting Rights, assignment or transfer to, with, involving or in favour of any person in respect of Facility B.
- (d) The consent of the Parent to a Participation with Voting Rights, an assignment or transfer must not be unreasonably withheld or delayed. The Parent will be deemed to have given its consent 10 Business Days after the Existing Lender has requested it unless consent is expressly refused by the Parent within that time.
- (e) The Agent shall, within 10 Business Days of a reasonable request by any Party, provide a copy of the Pre-Approved New Lender List to that Party.

27.3 Other conditions of assignment or transfer

- (a) An assignment will only be effective on:
 - (i) receipt by the Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that the New Lender will assume the same obligations to the other Finance Parties and the other Secured Parties as it would have been under if it was an Original Lender;
 - (ii) the New Lender entering into the documentation required for it to accede as a party to the Intercreditor Agreement; and
 - (iii) the performance by the Agent of all necessary "*know your customer*" or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Agent shall promptly notify to the Existing Lender and the New Lender.
- (b) A transfer will only be effective if the New Lender enters into the documentation required for it to accede as a party to the Intercreditor Agreement and if the procedure set out in clause 27.6 (*Procedure for transfer*) is complied with.
- (c) If:
 - (i) a Lender assigns or transfers any of its rights or obligations under the 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 16 (*Tax gross-up and indemnities*) and clause 17 (*Increased Costs*),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under that clause to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred. This clause 27.3(c) shall not apply in respect of an assignment or transfer made in the ordinary course of the primary syndication of any Facility.

- (d) Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

27.4 Assignment or transfer fee

Unless the Agent otherwise agrees and excluding an assignment or transfer the New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Agent (for its own account) a fee of £3,500.

27.5 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 member of the Group 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 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 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 Finance Documents or any Commitment is in force.
- (c) Nothing in any 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 27; 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.

27.6 Procedure for transfer

- (a) Subject to the conditions set out in clause 27.2 (*Parent consent*) and clause 27.3 (*Other conditions of assignment or transfer*) a transfer is effected in accordance with clause 27.6(c) when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to clause 27.6(b), 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 Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "*know your customer*" or similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.
- (c) Subject to clause 27.11 (*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 Finance Documents and in respect of the Transaction Security each of the Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and in respect of the Transaction Security and their respective rights against one another under the Finance Documents and in respect of the Transaction Security shall be cancelled (being the "**Discharged Rights and Obligations**");
 - (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 member of the Group and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;
 - (iii) the Agent, the Arrangers, 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 Agent, the Arrangers, the Security Agent and any relevant Ancillary Lender and the

Existing Lender shall each be released from further obligations to each other under the Finance Documents; and

- (iv) the New Lender shall become a Party as a **"Lender"**.

27.7 Procedure for assignment

- (a) Subject to the conditions set out in clause 27.2 (*Parent consent*) and clause 27.3 (*Other conditions of assignment or transfer*) an assignment may be effected in accordance with clause 27.7(b) when the Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to clause 27.7(b), 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.
- (b) The Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "*know your customer*" or similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.
- (c) Subject to clause 27.11 (*Pro rata interest settlement*), on the Transfer Date:
 - (i) the Existing Lender will assign absolutely to the New Lender its rights under the Finance Documents and in respect of the Transaction Security expressed to be the subject of the assignment in the Assignment Agreement;
 - (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 27.7 to assign their rights under the Finance Documents (but not, without the consent of the relevant Obligor or unless in accordance with clause 27.6 (*Procedure for transfer*), to obtain a release by that Obligor from the obligations owed to that Obligor by the Lenders nor the assumption of equivalent obligations by a New Lender) **provided that** they comply with the conditions set out in clause 27.2 (*Parent consent*) and clause 27.3 (*Other conditions of assignment or transfer*).

27.8 Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Parent

The Agent shall, as soon as reasonably practicable after it has executed a Transfer Certificate, an Assignment Agreement or an Increase Confirmation, send to the Parent a copy of that Transfer Certificate, Assignment Agreement or Increase Confirmation.

27.9 Accession of Hedge Counterparties

Any person which becomes a party to the Intercreditor Agreement as a Hedge Counterparty shall, at the same time, become a party to this Agreement as a Hedge Counterparty in

accordance with clause 20.9 (*Creditor Accession Undertaking*) of the Intercreditor Agreement.

27.10 Security over Lenders' rights

In addition to the other rights provided to Lenders under this clause 27, each Lender may, without consulting with or obtaining consent from any Obligor, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

- (a) any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and
- (b) 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 Finance Documents or substitute the beneficiary of the relevant charge, assignment or other Security for the Lender as a party to any of the Finance Documents; or
- (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 Finance Documents.

27.11 Pro rata interest settlement

- (a) If the Agent has notified the Lenders that it is able to distribute interest payments on a "*pro rata* basis" to Existing Lenders and New Lenders then (in respect of any transfer pursuant to clause 27.6 (*Procedure for transfer*) or any assignment pursuant to clause 27.7 (*Procedure for assignment*) the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period):
 - (i) 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
 - (ii) 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:
 - (A) when the Accrued Amounts become payable, those Accrued Amounts will be payable for the account of the Existing Lender; and
 - (B) the amount payable to the New Lender on that date will be the amount which would, but for the application of this clause 27.11,

have been payable to it on that date, but after deduction of the Accrued Amounts.

- (b) In this clause 27.11 references to "*Interest Period*" shall be construed to include a reference to any other period for accrual of fees.
- (c) An Existing Lender which retains the right to the Accrued Amounts pursuant to this clause 27.11 but which does not have a Commitment shall be deemed not to be a Lender for the purposes of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve any request for a consent, waiver, amendment or other vote of Lenders under the Finance Documents.

28. RESTRICTION ON DEBT PURCHASE TRANSACTIONS

28.1 Prohibition on Debt Purchase Transactions by the Group

The Parent shall not, and shall procure that each other member of the Group shall not, enter into any Debt Purchase Transaction or beneficially own all or any part of the share capital of a company that is or be a Lender or a party to a Debt Purchase Transaction of the type referred to in paragraphs (b) or (c) of the definition of "**Debt Purchase Transaction**".

28.2 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 Super Senior Lenders; or
- (B) whether:
 - (1) any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments; or
 - (2) the agreement of any specified group of Lenders,has been obtained to approve any request for a consent, waiver, amendment or other vote under the 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 clauses 28.2(a)(ii)(A) and 28.2(a)(ii)(B) (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 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 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 Agent or, unless the Agent otherwise agrees, be entitled to receive the agenda or any minutes of the same; and
 - (ii) in its capacity as Lender, unless the Agent otherwise agrees, it shall not be entitled to receive any report or other document prepared at the behest of, or on the instructions of, the Agent or one or more of the Lenders.

28.3 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 5.00pm on the Business Day following the day on which it entered into that Debt Purchase Transaction, notify the Agent of the extent of the Commitment(s) or amount outstanding to which that Debt Purchase Transaction relates. The Agent shall promptly disclose such information to the Lenders.

29. CHANGES TO THE OBLIGORS

29.1 Assignments and transfers by Obligors

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

29.2 Additional Borrowers

- (a) Subject to compliance with the provisions of clauses 23.10(c) and 23.10(d), the Parent may request that any of its wholly-owned Subsidiaries which is not a Dormant Subsidiary becomes a Borrower. That Subsidiary shall become a Borrower if:
 - (i) it is incorporated in the United Kingdom and the Majority Lenders (and, in the case of a Borrower under the Revolving Facility, the Majority Lenders and the Majority Super Senior Lenders) approve the addition of that Subsidiary or otherwise if all the Lenders approve the addition of that Subsidiary;
 - (ii) the Parent and that Subsidiary deliver to the 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 Agent has received all of the documents and other evidence listed in part 3 of schedule 2 (*Conditions precedent*) in relation to that Additional Borrower, each in form and substance satisfactory to the Agent.
- (b) The Agent shall notify the Parent and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in part 3 of schedule 2 (*Conditions precedent*).
 - (c) Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent gives the notification described in clause 29.2(b), the Lenders authorise (but do not require) the Agent to give that notification. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

29.3 Resignation of a Borrower

In this clause 29.3, clause 29.5 (*Resignation of a Guarantor*) and clause 29.7 (*Resignation and release of security on disposal*), "**Third Party Disposal**" means the disposal of an Obligor to a person which is not a member of the Group where that disposal is permitted under clause 25.18 (*Disposals*) or made with the approval of the Majority Lenders and the Majority Super Senior Lenders (and the Parent has confirmed this is the case).

- (a) If a Borrower is the subject of a Third Party Disposal, the Parent may request that a Borrower (other than the Parent or the Company) ceases to be a Borrower by delivering to the Agent a Resignation Letter.
- (b) The Agent shall accept a Resignation Letter and notify the Parent and the other 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 Finance Documents;
 - (iii) where the Borrower is also a Guarantor (unless its resignation has been accepted in accordance with clause 29.5 (*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 any relevant Disposal Proceeds will be applied in accordance with clause 10.2 (*Acquisition, Disposal and Insurance Proceeds*).
- (c) Upon notification by the Agent to the Parent of its acceptance of the resignation of a Borrower, that company shall cease to be a Borrower and shall have no further rights or obligations under the Finance Documents as a Borrower except that the resignation

shall not take effect (and the Borrower will continue to have rights and obligations under the Finance Documents) until the date on which the Third Party Disposal takes effect.

- (d) The Agent may, at the cost and expense of the Parent, require a legal opinion from counsel to the Agent confirming the matters set out in clause 29.3(b)(iii) and the Agent shall be under no obligation to accept a Resignation Letter until it has obtained such opinion in form and substance satisfactory to it.

29.4 Additional Guarantors

- (a) Subject to compliance with the provisions of clause 23.10(c) and 23.10(d), the Parent may request that any of its wholly-owned Subsidiaries become a Guarantor.
- (b) The Parent shall ensure that each member of the Group identified in part 4 of schedule 2 (*Conditions precedent*) as an Additional Obligor shall become an Additional Guarantor and, subject to the Agreed Security Principles, shall grant the Transaction Security identified opposite the name of that member of the Group in part 4 of schedule 2 (*Conditions precedent*) on or prior to the date specified in part 4 of that schedule.
- (c) The Parent shall procure that any other member of the Group which is a Material Company shall, as soon as possible and in any event within 30 days (if incorporated in the United Kingdom) or 45 days (if incorporated elsewhere) after becoming a Material Company, become an Additional Guarantor and, subject to the Agreed Security Principles, grant Security as the Agent may require and shall accede to the Intercreditor Agreement.
- (d) A member of the Group shall become an Additional Guarantor if:
 - (i) the Parent and the proposed Additional Guarantor deliver to the Agent a duly completed and executed Accession Deed and shall accede to the Intercreditor Agreement; and
 - (ii) the Agent has received all of the documents and other evidence listed in part 3 of schedule 2 (*Conditions precedent*) in relation to that Additional Guarantor, each in form and substance satisfactory to the Agent.
- (e) The Agent shall notify the Parent and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in part 3 of schedule 2 (*Conditions precedent*).
- (f) Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent gives the notification described in clause 29.4(e), the Lenders authorise (but do not require) the Agent to give that notification. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

29.5 Resignation of a Guarantor

- (a) The Parent may request that a Guarantor (other than the Parent or the Company) ceases to be a Guarantor by delivering to the Agent a Resignation Letter if:
 - (i) that Guarantor is being disposed of by way of a Third Party Disposal (as defined in clause 29.3 (*Resignation of a Borrower*)) and the Parent has confirmed this is the case; or
 - (ii) subject to clause 3.3 (*Restriction on amendments and waivers: SFA guarantee*) of the Intercreditor Agreement, all the Lenders have consented to the resignation of that Guarantor.
- (b) Subject to clause 20.12 (*Resignation of a Debtor*) of the Intercreditor Agreement, the Agent shall accept a Resignation Letter and notify the Parent and the Lenders of its acceptance if:
 - (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 21.1 (*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 29.3 (*Resignation of a Borrower*); and
 - (iv) the Parent has confirmed that the Disposal Proceeds will be applied in accordance with clause 10.2 (*Acquisition, Disposal and Insurance Proceeds*).
- (c) If the resignation is in connection with a Third Party Disposal, the resignation of that Guarantor shall not be effective until the date of the relevant Third Party Disposal at which time that company shall cease to be a Guarantor and shall have no further rights or obligations under the Finance Documents as a Guarantor.

29.6 Repetition of Representations

Delivery of an Accession Deed constitutes confirmation by the relevant Subsidiary that the representations and warranties referred to in clause 22.35(d) are true and accurate in relation to it as at the date of delivery as if made by reference to the facts and circumstances then existing.

29.7 Resignation and release of security on disposal

If a Borrower or Guarantor is or is proposed to be the subject of a Third Party Disposal then:

- (a) where that Borrower or Guarantor created Transaction Security over any of its assets or business in favour of the Security Agent, or Transaction Security in favour of the Security Agent was created over the shares (or equivalent) of that Borrower or Guarantor, the Security Agent may, at the request and cost of the Parent, release those assets, business or shares (or equivalent) and issue certificates of non-crystallisation; and

- (b) any resignation of that Borrower or Guarantor and related release of Transaction Security referred to in clause 29.7(a) shall become effective only on the making of that disposal.

SECTION 10

THE FINANCE PARTIES

30. ROLE OF THE AGENT, THE ARRANGERS AND OTHERS

30.1 Appointment of the Agent

- (a) Each of the Arrangers and the Lenders appoints the Agent to act as its agent under and in connection with the Finance Documents.
- (b) Each of the Arrangers and the Lenders authorises the Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

30.2 Instructions

- (a) The Agent shall:
 - (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by:
 - (A) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision;
 - (B) the Majority Super Senior Lenders if the relevant Finance Document stipulates that the matter is a Super Senior Consent Provision; and
 - (C) 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 clause 30.2(a)(i).
- (b) The Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Finance Party or group of Finance Parties, from that Finance Party or group of Finance Parties) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
- (c) Save in the case of decisions stipulated to be a matter for any other Lender or group of Lenders under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties save for the Security Agent.
- (d) Clause 30.2(a) shall not apply:
 - (i) where a contrary indication appears in a Finance Document;

- (ii) where a Finance Document requires the Agent to act in a specified manner or to take a specified action; and
 - (iii) in respect of any provision which protects the Agent's own position in its personal capacity as opposed to its role of Agent for the relevant Finance Parties.
- (e) The Agent may refrain from acting in accordance with any instructions of any Finance Party or group of Finance Parties 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 Finance Documents and which may include payment in advance) for any cost, loss or liability which it may incur in complying with those instructions.
 - (f) In the absence of instructions, the Agent may act (or refrain from acting) as it considers to be in the best interest of the Finance Parties.
 - (g) The Agent is not authorised to act on behalf of a Finance Party (without first obtaining that Finance Party's consent) in any legal or arbitration proceedings relating to any Finance Document. This clause 30.2(g) 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.

30.3 Duties of the Agent

- (a) The Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) Subject to clause 30.3(c), the Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party.
- (c) Without prejudice to clause 27.8 (*Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Parent*), clause 30.3(b) shall not apply to any Transfer Certificate, any Assignment Agreement or any Increase Confirmation.
- (d) Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (e) If the Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (f) If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Agent, the Arranger or the Security Agent) under this Agreement it shall promptly notify the other Finance Parties.
- (g) The Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

30.4 Role of the Arrangers

Except as specifically provided in the Finance Documents, the Arrangers have no obligations of any kind to any other Party under or in connection with any Finance Document.

30.5 No fiduciary duties

- (a) Nothing in any Finance Document constitutes the Agent and/or the Arranger as a trustee or fiduciary of any other person.
- (b) None of the Agent, the Arranger or any Ancillary Lender shall be bound to account to any other Finance Party for any sum or the profit element of any sum received by it for its own account.

30.6 Business with the Group

- (a) The Agent, HSBC UK Bank plc (in its capacity as an 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 member of the Group.
- (b) The Facility B Lenders (as at the date of this Agreement) may lend money to any member of the Group.

30.7 Rights and discretions

- (a) The Agent may:
 - (i) rely on any representation, communication, notice or document (including, without limitation, any notice given by a Lender pursuant to clause 28.2(b) or 28.2(c)) believed by it to be genuine, correct and appropriately authorised;
 - (ii) assume that:
 - (A) any instructions received by it from the Majority Lenders or the Lenders (as the case may be), any Finance Party or any group of Finance Parties are duly given in accordance with the terms of the 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 clause 30.7(a)(iii)(A), may assume the truth and accuracy of that certificate.

- (b) The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Finance Parties) that:
 - (i) no Default has occurred (unless it has actual knowledge of a Default arising under clause 26.1 (*Non-payment*));
 - (ii) any right, power, authority or discretion vested in any Party or any group of Finance Parties 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 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 clause 30.7(c) or clause 30.7(e), the Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Agent (and so separate from any lawyers instructed by the Lenders) if the Agent in its reasonable opinion deems this to be necessary.
- (e) The Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the 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 Agent may act in relation to the Finance Documents through its officers, employees and agents and the 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 such loss was directly caused by the Agent's gross negligence or wilful misconduct.
- (g) Unless a Finance Document expressly provides otherwise the 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 clause 30.7(g), the 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 Finance Parties.

- (i) Notwithstanding any other provision of any Finance Document to the contrary, neither of the Agent or the Arrangers 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) Notwithstanding any provision of any Finance Document to the contrary, the 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.
- (k) The 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.

30.8 Responsibility for documentation

None of the Agent, the Arranger 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 Agent, the Arrangers, an Ancillary Lender, an Obligor or any other person in or in connection with any Finance Document, the Information Package or the Reports or the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security; or
- (c) any determination as to whether any information provided or to be provided to any Finance Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

30.9 No duty to monitor

The 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 Finance Document; or
- (c) whether any other event specified in any Finance Document has occurred.

30.10 Exclusion of liability

- (a) Without limiting clause 30.10(b) (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Agent or any Ancillary Lender), neither the 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 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 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 Finance Document or the Transaction Security; or
 - (iii) without prejudice to the generality of clauses 30.10(a)(i) and 30.10(a)(ii), 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 Agent or an Ancillary Lender (as applicable)) may take any proceedings against any officer, employee or agent of the Agent or any Ancillary Lender, in respect of any claim it might have against the 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 Finance Document or any Transaction Document and any officer, employee or agent of the Agent or any Ancillary Lender may rely on this clause subject to clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.
- (c) The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Agent if the Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Agent for that purpose.

- (d) Nothing in this Agreement shall oblige the 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 or for any Affiliate of any Lender,

on behalf of any Lender and each Lender confirms to the 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 Agent or the Arrangers.

- (e) Without prejudice to any provision of any Finance Document excluding or limiting the Agent's liability, any liability of the Agent arising under or in connection with any 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 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 Agent at any time which increase the amount of that loss. In no event shall the 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 Agent has been advised of the possibility of such loss or damages.

30.11 Lenders' indemnity to the 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 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 Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to clause 33.11 (*Disruption to Payment Systems etc.*) notwithstanding the Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) in acting as Agent under the Finance Documents (unless the Agent has been reimbursed by an Obligor pursuant to a Finance Document).
- (b) Subject to clause 30.11(c), the Parent shall immediately on demand reimburse any Lender for any payment that Lender makes to the Agent pursuant to clause 30.11(a).
- (c) Clause 30.11(b) shall not apply to the extent that the indemnity payment in respect of which the relevant Lender claims reimbursement relates to a liability of the Agent to an Obligor.

30.12 Resignation of the Agent

- (a) The Agent may resign and appoint one of its Affiliates acting through an office in the United Kingdom as successor by giving notice to the Lenders and the Parent.
- (b) Alternatively the Agent may resign by giving 30 days' notice to the Lenders and the Parent, in which case the Majority Lenders (after consultation with the Parent) may appoint a successor Agent.

- (c) If the Majority Lenders have not appointed a successor Agent in accordance with clause 30.12(b) within 20 days after notice of resignation was given, the retiring Agent (after consultation with the Parent) may appoint a successor Agent (acting through an office in the United Kingdom).
- (d) If the Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Agent is entitled to appoint a successor Agent under clause 30.12(c), the Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Agent to become a party to this Agreement as Agent) agree with the proposed successor Agent amendments to this clause 30 and any other term of this Agreement dealing with the rights or obligations of the Agent consistent with then current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to the agency fee payable under this Agreement which are consistent with the successor Agent's normal fee rates and those amendments will bind the Parties.
- (e) The retiring Agent shall, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents. The Parent shall, within three Business Days of written demand, reimburse the retiring Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
- (f) The Agent's resignation notice shall only take effect upon the appointment of a successor.
- (g) Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under clause 30.12(e)) but shall remain entitled to the benefit of clause 18.3 (*Indemnity to the Agent*) and this clause 30 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date). Any successor 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.
- (h) The Agent shall resign in accordance with clause 30.12(b) (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Agent pursuant to clause 30.12(c)) if on or after the date which is three months before the earliest FATCA Application Date relating to any payment to the Agent under the Finance Documents, either:
 - (i) the Agent fails to respond to a request under clause 16.8 (*FATCA Information*) and a Lender reasonably believes that the 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 Agent pursuant to clause 16.8 (*FATCA Information*) indicates that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or

- (iii) the Agent notifies the Parent and the Lenders that the 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) a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Agent were a FATCA Exempt Party, and that Lender, by notice to the Agent, requires it to resign.

30.13 Replacement of the Agent

- (a) After consultation with the Parent, the Majority Lenders may, by giving 30 days' notice to the Agent (or, at any time the Agent is an Impaired Agent, by giving any shorter notice determined by the Majority Lenders) replace the Agent by appointing a successor Agent (acting through an office in the United Kingdom).
- (b) The retiring Agent shall (at its own cost if it is an Impaired Agent and otherwise at the expense of the Lenders) make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- (c) The appointment of the successor Agent shall take effect on the date specified in the notice from the Majority Lenders to the retiring Agent. As from this date, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under clause 30.13(b)) but shall remain entitled to the benefit of clause 18.3 (*Indemnity to the Agent*) and this clause 30 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date).
- (d) Any successor Agent and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

30.14 Confidentiality

- (a) In acting as agent for the Finance Parties, the Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by another division or department of the Agent, it may be treated as confidential to that division or department and the Agent shall not be deemed to have notice of it.

30.15 Relationship with the Lenders

- (a) Subject to clause 27.11 (*Pro rata interest settlement*), the Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office:
 - (i) entitled to or liable for any payment due under any 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 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 Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender under the Finance Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under clause 35.6 (*Electronic communication*)) electronic mail address and/or any other information required to enable the transmission 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 (or such other information), department and officer by that Lender for the purposes of clause 35.2 (*Addresses*) and 35.6(a)(ii) and the Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.

30.16 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 Finance Document, each Lender and Ancillary Lender confirms to the 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 Finance Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any 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 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 Finance Document, the Transaction Security, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;
- (d) the adequacy, accuracy or completeness of the Information Package, the Reports and any other information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any 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.

30.17 Agent's management time

- (a) Any amount payable to the Agent under clause 18.3 (*Indemnity to the Agent*), clause 20 (*Costs and expenses*) and clause 30.11 (*Lenders' indemnity to the Agent*) shall include the cost of utilising the Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Agent may notify to the Parent and the Lenders, and is in addition to any fee paid or payable to the Agent under clause 15 (*Fees*) provided always that such fees are agreed in advance with the Parent (such agreement not to be unreasonably withheld).
- (b) Any cost of utilising the Agent's management time or other resources shall include, without limitation, any such costs in connection with clause 28.2 (*Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates*).

30.18 Deduction from amounts payable by the Agent

If any Party owes an amount to the Agent under the Finance Documents the Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

30.19 Reliance and engagement letters

Each Finance Party and Secured Party confirms that each of the Arrangers and the Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by the Arrangers or Agent) the terms of any reliance letter or engagement letters relating to the Reports or any reports or letters provided by accountants in connection with the Finance Documents or the transactions contemplated in the Finance Documents and to bind it in respect of those Reports, reports or letters and to sign such letters on its behalf and further confirms that it accepts the terms and qualifications set out in such letters.

30.20 Role of Base Reference Banks

- (a) No Base Reference Bank is under any obligation to provide a quotation or any other information to the Agent.
- (b) No Base Reference Bank will be liable for any action taken by it under or in connection with any Finance Document, or for any Reference Bank Quotation, unless directly caused by its gross negligence or wilful misconduct.
- (c) No Party (other than the relevant Base Reference Bank) may take any proceedings against any officer, employee or agent of any Base Reference Bank in respect of any claim it might have against that Base Reference Bank or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document, or to any Reference Bank Quotation, and any officer, employee or agent of each Base Reference Bank may rely on this clause 30.20 subject to clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.

30.21 Third party Base Reference Banks

A Base Reference Bank which is not a Party may rely on clause 30.20 (*Role of Base Reference Banks*), clause 39.5 (*Other exceptions*) and clause 41 (*Confidentiality of Funding Rates and Reference Bank Quotations*) subject to clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.

30.22 Abatement of fees

The fees, commissions and expenses payable to the 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 Agent (or by any of its associates) in connection with any transaction effected by the Agent with or for the Lenders or the Parent.

31. CONDUCT OF BUSINESS BY THE FINANCE PARTIES

No provision of this Agreement will:

- (a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (c) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

32. SHARING AMONG THE FINANCE PARTIES

32.1 Payments to Finance Parties

- (a) Subject to clause 32.1(b), if a Finance Party (a "**Recovering Finance Party**") receives or recovers any amount from an Obligor other than in accordance with clause 33 (*Payment mechanics*) (a "**Recovered Amount**") and applies that amount to a payment due under the Finance Documents then:
 - (i) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery, to the Agent;
 - (ii) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with clause 33 (*Payment mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
 - (iii) the Recovering Finance Party shall, within three Business Days of demand by the Agent, pay to the Agent an amount (the "**Sharing Payment**") equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with clause 33.6 (*Partial payments*).
- (b) Clause 32.1(a) 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.

32.2 Redistribution of payments

The Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Finance Parties (other than the Recovering Finance Party) (the "**Sharing Finance Parties**") in accordance with clause 33.6 (*Partial payments*) towards the obligations of that Obligor to the Sharing Finance Parties.

32.3 Recovering Finance Party's rights

On a distribution by the Agent under clause 32.2 (*Redistribution of payments*) of a payment received by a Recovering Finance Party from an Obligor, as between the relevant Obligor and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by that Obligor.

32.4 Reversal of redistribution

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Sharing Finance Party shall, upon request of the Agent, pay to the Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay) (the "**Redistributed Amount**"); and
- (b) as between the relevant Obligor and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Obligor.

32.5 Exceptions

- (a) This clause 32 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this clause, have a valid and enforceable claim against the relevant Obligor.
- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
 - (i) it notified the other Finance Party of the legal or arbitration proceedings; and
 - (ii) the other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

32.6 Ancillary Lenders

- (a) This clause 32 shall not apply to any receipt or recovery by a Lender in its capacity as an Ancillary Lender at any time prior to the Agent exercising any of its rights under clause 26.19 (*Acceleration*) or clause 26.20 (*Super Senior Acceleration*).

- (b) Following the exercise by the Agent of any of its rights under clause 26.19 (*Acceleration*) or 26.20 (*Super Senior Acceleration*), this clause 32 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.

SECTION 11

ADMINISTRATION

33. PAYMENT MECHANICS

33.1 Payments to the Agent

- (a) On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, excluding a payment under the terms of an Ancillary Document, that Obligor or Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (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 Agent) and with such bank as the Agent, in each case, specifies.

33.2 Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to clause 33.3 (*Distributions to an Obligor*) and clause 33.4 (*Clawback and pre-funding*) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five Business Days' notice with a bank 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).

33.3 Distributions to an Obligor

The Agent may (with the consent of the Obligor or in accordance with clause 34 (*Set-off*)) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

33.4 Clawback and pre-funding

- (a) Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) Unless clause 33.4(c) applies, if the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.
- (c) If the 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 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 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 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 Agent the amount (as certified by the Agent) which will indemnify the Agent against any funding cost incurred by it as a result of paying out that sum before receiving those funds from that Lender.

33.5 Impaired Agent

- (a) If, at any time, the Agent becomes an Impaired Agent, an Obligor or a Lender which is required to make a payment under the Finance Documents to the Agent in accordance with clause 33.1 (*Payments to the 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 Finance Documents (the "**Recipient Party**" or "**Recipient Parties**").

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

- (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 33.5 shall be discharged of the relevant payment obligation under the Finance Documents and shall not take any credit risk with respect to the amounts standing to the credit of the trust account.
- (d) Promptly upon the appointment of a successor Agent in accordance with clause 30.13 (*Replacement of the Agent*), each Paying Party shall (other than to the extent that that Party has given an instruction pursuant to clause 33.5(e)) give all requisite instructions to the bank with whom the trust account is held to transfer the amount (together with any accrued interest) to the successor Agent for distribution to the relevant Recipient Party or Recipient Parties in accordance with clause 33.2 (*Distributions by the 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 clause 33.5(d); 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.

33.6 Partial payments

- (a) If the Agent receives a payment for application against amounts due in respect of any Finance Documents that is insufficient to discharge all amounts then due and payable by an Obligor under those Finance Documents, the Agent shall apply that payment towards the obligations of that Obligor under those Finance Documents in the following order:
 - (i) **first**, in or towards payment *pro rata* of any unpaid amount owing to the Agent or the Security Agent under the Finance Documents;
 - (ii) **secondly**, in or towards payment *pro rata* of any accrued interest, fee or commission due but unpaid under the Finance Documents;
 - (iii) **thirdly**, in or towards payment *pro rata* of any principal due but unpaid under the Finance Documents; and
 - (iv) **fourthly**, in or towards payment *pro rata* of any other sum due but unpaid under the Finance Documents.
- (b) The Agent shall, if so directed by the Majority Lenders and the Majority Super Senior Lenders, vary the order set out in clauses 33.6(a)(ii) to 33.6(a)(iii).
- (c) Clauses 33.6(a) and 33.6(a)(iv) will override any appropriation made by an Obligor.

33.7 Set-off by Obligors

All payments to be made by an Obligor under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

33.8 Business Days

- (a) Any payment under the 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.

33.9 Currency of account

- (a) Subject to clauses 33.9(b) to 33.9(e), the Base Currency is the currency of account and payment for any sum due from an Obligor under any Finance Document shall be due in the Base Currency.

- (b) A repayment of a Loan or Unpaid Sum or a part of a Loan or Unpaid Sum shall be made in the currency in which that Loan or Unpaid Sum is denominated, 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.

33.10 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 Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Agent (after consultation with the Parent); and
 - (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 Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Parent) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Market and otherwise to reflect the change in currency.

33.11 Disruption to Payment Systems etc.

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

- (a) the Agent may, and shall if requested to do so by the Parent, consult with the Parent with a view to agreeing with the Parent such changes to the operation or administration of the Facilities as the Agent may deem necessary in the circumstances;
- (b) the Agent shall not be obliged to consult with the Parent in relation to any changes mentioned in clause 33.11(a) if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) the Agent may consult with the Finance Parties in relation to any changes mentioned in clause 33.11(a) 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 Agent and the Parent shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of clause 39 (*Amendments and waivers*);
- (e) the 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 Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this clause 33.11; and
- (f) the Agent shall notify the Finance Parties of all changes agreed pursuant to clause 33.11(d).

34. SET-OFF

- (a) A Finance Party may set off any matured obligation due from an Obligor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to that Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.
- (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 Finance Documents be applied first in reduction of the overdraft provided under that Ancillary Facility in accordance with its terms.

35. NOTICES

35.1 Communications in writing

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

35.2 Addresses

The address and fax number and electronic mail address (if applicable) (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

- (a) in the case of each original Party, that identified with its name below; and
- (b) in the case of any other Obligor or Finance Party, that notified in writing to the Agent on or prior to the date on which it becomes a Party,

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

35.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with the 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 35.2 (*Addresses*), if addressed to that department or officer.
- (b) Any communication or document to be made or delivered to the Agent or the Security Agent will be effective only when actually received by the Agent or Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Agent's or Security Agent's signature below (or any substitute department or officer as the Agent or Security Agent shall specify for this purpose).
- (c) All notices from or to an Obligor shall be sent through the Agent.
- (d) Any communication or document made or delivered to the Parent in accordance with this clause 35.3 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 clauses 35.3(a) to 35.3(d), after 5.00pm in the place of receipt shall be deemed only to become effective on the following day.

35.4 Notification of address and fax number

Promptly upon changing its address or fax number, the Agent shall notify the other Parties.

35.5 Communication when Agent is Impaired Agent

If the Agent is an Impaired Agent the Parties may, instead of communicating with each other through the Agent, communicate with each other directly and (while the Agent is an Impaired Agent) all the provisions of the Finance Documents which require communications to be made or notices to be given to or by the Agent shall be varied so that communications may be made and notices given to or by the relevant Parties directly. This provision shall not operate after a replacement Agent has been appointed.

35.6 Electronic communication

- (a) Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission 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 such electronic communication as specified in clause 35.6(a) to be made between an Obligor and a Finance Party may only be made in that way 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.
- (c) Any such electronic communication as specified in clause 35.6(a) made between any two Parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by a Party to the Agent or the Security Agent only if it is addressed in such a manner as the Agent or Security Agent shall specify for this purpose.
- (d) Any electronic communication which becomes effective, in accordance with clause 35.6(c), after 5.00pm in the place in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- (e) Any reference in a Finance Document to a communication being sent or received shall be construed to include that communication being made available in accordance with this clause 35.6.

35.7 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 Agent (the "**Designated Website**") if:
 - (i) the 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 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 Agent.
- (b) The Agent shall supply each Website Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by the Parent and the Agent.
- (c) The Parent shall promptly upon becoming aware of its occurrence notify the 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 Agent under clause 35.7(c)(i) or 35.7(c)(v), all information to be provided by the Parent under this Agreement after the date of that notice shall be supplied in paper form unless and until the Agent and each Website Lender is satisfied that the circumstances giving rise to the notification are no longer continuing.

- (d) Any Website Lender may request, through the Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Parent shall at its own cost comply with any such request within 10 Business Days.

35.8 English language

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

36. CALCULATIONS AND CERTIFICATES

36.1 Accounts

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

36.2 Certificates and determinations

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

36.3 Day count convention

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 days or, in any case where the practice in the Relevant Market differs, in accordance with that market practice.

37. PARTIAL INVALIDITY

If, at any time, any provision of a 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.

38. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of any Finance Party or Secured Party, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any Finance Document. No election to affirm any Finance Document on the part of any 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 Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

39. AMENDMENTS AND WAIVERS

39.1 Intercreditor Agreement

This clause 39 is subject to the terms of the Intercreditor Agreement.

39.2 Required consents

- (a) Subject to clause 39.3 (*All Lender matters*), clause 39.4 (*Majority Super Senior Lender Matters*) and clause 39.5 (*Other exceptions*) any term of the 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 Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this clause 39.
- (c) Without prejudice to the generality of clauses 30.7(c), 30.7(d) and 30.7(e), the 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 39 which is agreed to by the Parent. This includes any amendment or waiver which would, but for this clause 39.2(d), require the consent of all of the Guarantors.
- (e) Clause 27.11(c) shall apply to this clause 39.
- (f) The Agent shall promptly notify all Lenders of any amendment or waiver made in accordance with this clause 39.

39.3 All Lender matters

Subject to clause 39.6 (*Replacement of Screen Rate*), an amendment, waiver or (in the case of a Transaction Security Document) a consent of, or in relation to, any term of any Finance Document that has the effect of changing or which relates to:

- (a) the definitions of "**Additional Facility Lenders**", "**Majority Lenders**", "**Majority Super Senior Lenders**", "**Change of Control**", "**Restricted Party**", "**Sanctions**", "**Sanctions Authorities**" and "**Sanctions List**" in clause 1.1 (*Definitions*);

- (b) an extension to the date of payment of any amount under the Finance Documents;
- (c) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;
- (d) the definition of "**Change of Control**";
- (e) a change in currency of payment of any amount under the Finance Documents;
- (f) an increase in any Commitment or the Total Commitments, an extension of any Availability Period or any requirement that a cancellation of Commitments reduces the Commitments of the Lenders rateably under the relevant Facility;
- (g) a change to the Borrowers or Guarantors other than in accordance with clause 29 (*Changes to the Obligors*);
- (h) any provision which expressly requires the consent of all the Lenders;
- (i) clause 2.4 (*Finance Parties' rights and obligations*), clause 4.1 (*Initial conditions precedent*), clause 9.1 (*Illegality*), clause 10 (*Mandatory prepayment and cancellation*), clause 11.9 (*Application of prepayments*), clause 22.18 (*Anti-corruption*), clause 22.31 (*Sanctions*), clause 25.5 (*Anti-corruption law*), 25.41 (*Sanctions*), clause 27 (*Changes to the Lenders*), clause 29 (*Changes to the Obligors*), clause 32 (*Sharing among the Finance Parties*) clause 33.6 (*Partial payments*), this clause 39, clause 45 (*Governing law*) or clause 46.1 (*Jurisdiction of English courts*);
- (j) (other than as expressly permitted by the provisions of any Finance Document) the nature or scope of:
 - (i) the guarantee and indemnity granted under clause 21 (*Guarantee and indemnity*);
 - (ii) the Charged Property;
 - (iii) the manner in which the proceeds of enforcement of the Transaction Security are distributed; or
 - (iv) the Agreed Security Principles,

(except in the case of clause 39.3(j)(ii) and 39.3(j)(iii), 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 permitted under this Agreement or any other Finance Document);
- (k) the release of any guarantee and indemnity granted under clause 21 (*Guarantee and indemnity*) or of any Transaction Security unless permitted under this Agreement or any other Finance Document or relating to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document; or
- (l) any amendment to the order of priority, ranking or subordination under the Intercreditor Agreement or the manner in which the proceeds of enforcement of the Transaction Security are distributed,

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

39.4 Majority Super Senior Lender Matters

Any amendment or waiver or (in the case of a Transaction Security Document) a consent of, or in relation to, any term of any Finance Document that has the effect of waiving or changing a Super Senior Consent Provision shall not be given without the prior consent of the Majority Super Senior Lenders and the Majority Lenders.

39.5 Other exceptions

- (a) An amendment or waiver which relates to the rights or obligations of the Agent, the Arranger, the Security Agent, any Ancillary Lender, a Hedge Counterparty or a Base Reference Bank (each in their capacity as such) may not be effected without the consent of the Agent, the Arranger, the Security Agent, that Ancillary Lender, that Hedge Counterparty that Base Reference Bank, as the case may be.
- (b) Any amendment which relates to the rights of the Facility B Lenders to waive prepayment of Facility B under clause 11.10 (*Declining prepayments*) shall not be effected without the consent of the Facility B Lenders.
- (c) Any amendment or waiver which:
 - (i) relates only to the rights or obligations applicable to a particular Loan, Facility or class of Lender; and
 - (ii) does not adversely affect the rights or interests of Lenders in respect of any other Utilisation or Facility or another class of Lender,

may be made in accordance with this clause 39 but as if references in this clause 39 to the specified proportion of Lenders (including, for the avoidance of doubt, all the Lenders) whose consent would, but for this clause 39.5(c), be required for that amendment or waiver were to that proportion of the Lenders participating in that particular Utilisation or Facility or forming part of that particular class.

39.6 Replacement of Screen Rate

Subject to clause 39.5 (*Other exceptions*), if a Screen Rate Replacement Event has occurred in relation to any Screen Rate for a currency which can be selected for a Loan, any amendment or waiver which relates to:

- (a) providing for the use of a Replacement Benchmark in relation to that currency in place of that Screen Rate; and
- (b)
 - (i) aligning any provision of any Finance Document to the use of that Replacement Benchmark;
 - (ii) enabling that Replacement Benchmark to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Benchmark to be used for the purposes of this Agreement);
 - (iii) implementing market conventions applicable to that Replacement Benchmark;

- (iv) providing for appropriate fallback (and market disruption) provisions for that Replacement Benchmark; or
- (v) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Benchmark (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

may be made with the consent of the Agent (acting on the instructions of the Majority Lenders) and the Parent.

In this clause 39.6:

"Relevant Nominating Body" means any applicable central bank, regulator or other supervisory authority or a group of them, or any working group or committee sponsored or chaired by, or constituted at the request of, any of them or the Financial Stability Board;

"Replacement Benchmark" means a benchmark rate which is:

- (a) formally designated, nominated or recommended as the replacement for a Screen Rate by:
 - (i) the administrator of that Screen Rate (provided that the market or economic reality that such benchmark rate measures is the same as that measured by that Screen Rate); or
 - (ii) any Relevant Nominating Body,

and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the "Replacement Benchmark" will be the replacement under paragraph (ii) above;
- (b) in the opinion of the Majority Lenders and the Parent, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to a Screen Rate; or
- (c) in the opinion of the Majority Lenders and the Parent, an appropriate successor to a Screen Rate; and

"Screen Rate Replacement Event" means, in relation to a Screen Rate:

- (a) the methodology, formula or other means of determining that Screen Rate has, in the opinion of the Majority Lenders, and the Parent materially changed;
- (b)
 - (i)
 - (A) the administrator of that Screen Rate or its supervisor publicly announces that such administrator is insolvent; or

- (B) information is published in any order, decree, notice, petition or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of that Screen Rate is insolvent,

provided that, in each case, at that time, there is no successor administrator to continue to provide that Screen Rate;

- (ii) the administrator of that Screen Rate publicly announces that it has ceased or will cease, to provide that Screen Rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide that Screen Rate;
 - (iii) the supervisor of the administrator of that Screen Rate publicly announces that such Screen Rate has been or will be permanently or indefinitely discontinued; or
 - (iv) the administrator of that Screen Rate or its supervisor announces that that Screen Rate may no longer be used;
- (c) the administrator of that Screen Rate determines that that Screen Rate should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:
- (i) the circumstance(s) or event(s) leading to such determination are not (in the opinion of the Majority Lenders and the Parent) temporary; or
 - (ii) that Screen Rate is calculated in accordance with any such policy or arrangement for a period no less than one Month; or
- (d) in the opinion of the Majority Lenders and the Parent, that Screen Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.

39.7 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 Finance Document or any other vote of Lenders under the terms of this Agreement within 15 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 clauses 39.3(b), 39.3(c) and 39.3(f) or such a vote within 15 Business Days of that request being made,

(unless, in either case, the Parent and the 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 Facilities 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.

39.8 Replacement of Lender

- (a) If:
 - (i) any Lender becomes a Non-Consenting Lender (as defined in clause 39.8(f)); or
 - (ii) an Obligor becomes obliged to repay any amount in accordance with clause 9.1 (*Illegality*) or to pay additional amounts pursuant to clause 17.1 (*Increased costs*), clause 16.2 (*Tax gross-up*) or clause 16.3 (*Tax indemnity*) to any Lender,

then the Parent may, on five Business Days' prior written notice to the Agent and such Lender, replace such Lender by requiring such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to clause 27 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement to an Eligible Institution (a "**Replacement Lender**") which confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with clause 27 (*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 Loans and all accrued interest and/or Break Costs and other amounts payable in relation thereto under the Finance Documents.

- (b) The replacement of a Lender pursuant to this clause 39.8 shall be subject to the following conditions:
 - (i) the Parent shall have no right to replace the Agent or Security Agent;
 - (ii) neither the 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 39.8 be required to pay or surrender to such Replacement Lender any of the fees received by such Lender pursuant to the Finance Documents;
 - (v) if the Non-Consenting Lender is also a Hedge Counterparty, the Parent must at the same time replace that Hedge Counterparty by procuring the transfer of all of its rights and obligations under the Hedging Agreements to another Hedge Counterparty or Replacement Lender provided that:
 - (A) such transfer is lawful and otherwise permitted by the terms of the Hedging Agreements;
 - (B) the person who is to take on all of that Hedge Counterparty's rights and obligations under the Hedging Agreements accedes to this Agreement and to the Intercreditor Agreement as a Hedge Counterparty

pursuant to clause 20.9 (*Creditor Accession Undertaking*) of the Intercreditor Agreement; and

- (C) all of the conditions contained in clause 39.8(b)(vi) are met.
- (vi) The conditions referred to in clause 39.8(b)(iv) are as follows:
 - (A) any conditions relating to that transfer contained in the Hedging Agreements are complied with;
 - (B) that Hedge Counterparty is paid (in the case of a positive number) or pays (in the case of a negative number) an amount equal to the aggregate of:
 - (1) the Hedging Purchase Amount (as defined below) in respect of the hedging transactions under the relevant Hedging Agreement at that time; and
 - (2) all costs and expenses (including legal fees) incurred as a consequence of giving effect to that transfer;
 - (C) as a result of that transfer, that Hedge Counterparty shall have no further actual or contingent liability under the Hedging Agreements; and
 - (D) that transfer is made without recourse to, or representation or warranty from, the relevant Hedge Counterparty, except that the relevant Hedge Counterparty shall be deemed to have represented and warranted on the date of that transfer that it has the corporate power to effect that transfer and it has taken all necessary action to authorise the making by it of that transfer.

For the purpose of this clause, "**Hedging Purchase Amount**" means, in respect of a hedging transaction under a Hedging Agreement, the amount that would be payable to (expressed as a positive number) or by (expressed as a negative number) the relevant Hedge Counterparty on the relevant date if:

- (1) in the case of a Hedging Agreement which is based on an ISDA Master Agreement;
 - (a) that date was an Early Termination Date (as defined in the relevant ISDA Master Agreement); and
 - (b) the relevant Debtor was the Defaulting Party (under and as defined in the relevant ISDA Master Agreement); or
- (2) in the case of a Hedging Agreement which is not based on an ISDA Master Agreement:
 - (a) that date was the date on which an event similar in meaning and effect (under that Hedging Agreement) to an Early Termination Date (as defined in any ISDA Master Agreement) occurred under that Hedging Agreement; and

- (b) the relevant Debtor was in a position which is similar in meaning and effect to that of a Defaulting Party (under and as defined in the same ISDA Master Agreement),

in each case as certified by the relevant Hedge Counterparty and as calculated in accordance with the relevant Hedging Agreement. For the purpose of this clause, "**ISDA Master Agreement**" has the meaning given to that term in the Intercreditor Agreement;

- (vii) in no event shall the Lender replaced under this clause 39.8 be required to pay or surrender to such Replacement Lender any of the fees received by such Lender pursuant to the Finance Documents; and
 - (viii) the Lender shall only be obliged to transfer its rights and obligations pursuant to clause 39.8(a) 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 clause 39.8(b)(viii) as soon as reasonably practicable following delivery of a notice referred to in clause 39.8(a) and shall notify the Agent and the Parent when it is satisfied that it has complied with those checks.
 - (d) Subject to paragraph (e), 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 Agent and that Lender, prepay that Lender's participation in all (and not part) of the Loans and cancel all (and not part) of that Lender's Commitments.
 - (e) Prepayments made under this clause will:
 - (i) be at par and will include all accrued interest, fees, Break Costs and other amounts payable in relation thereto under the Finance Documents; and
 - (ii) be made only out of the proceeds of a New Shareholder Injection made expressly for that purpose.
 - (f) In the event that:
 - (i) the Parent or the Agent (at the request of the Parent) has requested the Lenders to give a consent in relation to, or to agree to a waiver or amendment of, any provisions of the Finance Documents;
 - (ii) the consent, waiver or amendment in question requires the approval of all the Lenders; and
 - (iii) Lenders whose Commitments aggregate more than 80 per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 80 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**".

39.9 Disenfranchisement of Defaulting Lenders

- (a) For so long as a Defaulting Lender has any Available Commitment, in ascertaining:
 - (i) the Majority Lenders or the Majority Super Senior Lenders; or
 - (ii) whether:
 - (A) any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments under the relevant Facilities; 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 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 clauses 39.9(a)(i) and 39.9(a)(ii).

- (b) For the purposes of this clause 39.9, the Agent may assume that the following Lenders are Defaulting Lenders:
 - (i) any Lender which has notified the 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) or (c) of the definition of "**Defaulting Lender**" has occurred,

unless it has received notice to the contrary from the Lender concerned (together with any supporting evidence reasonably requested by the Agent) or the Agent is otherwise aware that the Lender has ceased to be a Defaulting Lender.

39.10 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 15 Business Days' prior written notice to the 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 27 (*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 27 (*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 27 (*Changes to the Lenders*) all (and not part only) of its rights and obligations in respect of the Revolving Facility,

to an Eligible Institution (a "**Replacement Lender**"), 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 27 (*Changes to the Lenders*) for a purchase price in cash payable at the time of transfer which is either:

- (A) in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Loans and all accrued interest and/or Break Costs and other amounts payable in relation thereto under the Finance Documents; or
 - (B) in an amount agreed between that Defaulting Lender, the Replacement Lender and the Parent and which does not exceed the amount described in clause 39.10(a)(iii)(A).
- (b) Any transfer of rights and obligations of a Defaulting Lender pursuant to this clause 39.10 shall be subject to the following conditions:
- (i) the Parent shall have no right to replace the Agent or Security Agent;
 - (ii) neither the 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 10 Business Days after the notice referred to in clause 39.10(a);
 - (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 Finance Documents; and
 - (v) the Defaulting Lender shall only be obliged to transfer its rights and obligations pursuant to clause 39.10(a) 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 clause 39.10(b)(v) as soon as reasonably practicable following delivery of a notice referred to in clause 39.10(a) and shall notify the Agent and the Parent when it is satisfied that it has complied with those checks.

40. CONFIDENTIAL INFORMATION

40.1 Confidentiality

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by clause 40.2 (*Disclosure of Confidential Information*) and clause 40.3 (*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.

40.2 Disclosure of Confidential Information

Any Finance Party may disclose:

- (a) to any of its Affiliates and Related Funds, investors, potential investors and any of its or their officers, directors, employees, professional advisers, investors, 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 clause 40.2(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 Finance Documents or which succeeds (or which may potentially succeed) it as 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 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 Finance Party or by a person to whom clause 40.2(b)(i) or 40.2(b)(ii) applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under clause 30.15(b);
 - (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in clauses 40.2(b)(i) or 40.2(b)(ii);
 - (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
 - (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 Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to clause 27.10 (*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 Finance Party shall consider appropriate if:

- (A) in relation to clauses 40.2(b)(i), 40.2(b)(ii) and 40.2(b)(iii), 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 clause 40.2(b)(iv), 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 clauses 40.2(b)(v), 40.2(b)(vi) and 40.2(b)(vii), 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 Finance Party or by a person to whom clauses 40.2(b)(i) or 40.2(b)(ii) applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this clause 40.2(c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Parent and the relevant Finance Party;
- (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Obligors if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information;
- (e) to any insurers and any transaction parties to a cash or synthetic securitisation; and
- (f) the size and term of the Facility and the name of each Obligors to any investor or a potential investor in a securitisation (or similar transaction of broadly equivalent economic effect), of a Finance Party's rights or obligations under the Finance Documents.

40.3 Disclosure to numbering service providers

- (a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facilities and/or one or more Obligor the following information:
- (i) names of Obligors;
 - (ii) country of domicile of Obligors;
 - (iii) place of incorporation of Obligors;
 - (iv) the date of this Agreement;
 - (v) clause 45 (*Governing law*);
 - (vi) the names of the Agent and the Arrangers;
 - (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 the Facilities;
 - (xiv) changes to any of the information previously supplied pursuant to clauses 40.3(a)(i) to 40.3(a)(xiii); and
 - (xv) such other information agreed between such Finance Party and the Parent,
- to enable such numbering service provider to provide its usual syndicated loan numbering identification services.
- (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facilities and/or one or more Obligor 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) Each Obligor represents that none of the information set out in clauses 40.3(a)(i) to 40.3(a)(xv) is, nor will at any time be, unpublished price-sensitive information.
- (d) The Agent shall notify the Parent and the other Finance Parties of:
- (i) the name of any numbering service provider appointed by the Agent in respect of this Agreement, the Facilities and/or one or more Obligors; and

- (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.

40.4 Entire agreement

This clause 40 constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

40.5 Inside information

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

40.6 Notification of disclosure

Each of the 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 40.2(b)(v) 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 40.

40.7 Continuing obligations

The obligations in this clause 40 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of 12 months from the earlier of:

- (a) the date on which all amounts payable by the Obligors under or in connection with the Finance Documents have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) the date on which such Finance Party otherwise ceases to be a Finance Party.

41. CONFIDENTIALITY OF FUNDING RATES AND REFERENCE BANK QUOTATIONS

41.1 Confidentiality and disclosure

- (a) The Agent and each Obligor agree to keep each Funding Rate (and, in the case of the Agent, each Reference Bank Quotation) confidential and not to disclose it to anyone, save to the extent permitted by clauses 41.1(b), 41.1(c) and 41.1(d).

- (b) The Agent may disclose:
- (i) any Funding Rate (but not, for the avoidance of doubt, any Reference Bank Quotation) to the relevant Borrower pursuant to clause 12.5 (*Notification of rates of interest*); and
 - (ii) any Funding Rate or any Reference Bank Quotation to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that 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 Agent and the relevant Lender or Base Reference Bank, as the case may be.
- (c) The Agent may disclose any Funding Rate or any Reference Bank Quotation, and each Obligor may disclose any Funding Rate, to:
- (i) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives if any person to whom that Funding Rate or Reference Bank Quotation is to be given pursuant to this clause 41.1(c)(i) is informed in writing of its confidential nature and that it 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 that Funding Rate or Reference Bank Quotation or is otherwise bound by requirements of confidentiality in relation to it;
 - (ii) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances;
 - (iii) any person 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 if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances; and
 - (iv) any person with the consent of the relevant Lender or Base Reference Bank , as the case may be.
- (d) The Agent's obligations in this clause 41 relating to Reference Bank Quotations are without prejudice to its obligations to make notifications under clause 12.5 (*Notification of rates of interest*) provided that (other than pursuant to

clause 41.1(b)(i)) the Agent shall not include the details of any individual Reference Bank Quotation as part of any such notification.

41.2 Related obligations

- (a) The Agent and each Obligor acknowledge that each Funding Rate (and, in the case of the Agent, each Reference Bank Quotation) is or may be price-sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Agent and each Obligor undertake not to use any Funding Rate or, in the case of the Agent, any Reference Bank Quotation for any unlawful purpose.
- (b) The Agent and each Obligor agree (to the extent permitted by law and regulation) to inform the relevant Lender or Base Reference Bank, as the case may be:
 - (i) of the circumstances of any disclosure made pursuant to clause 41.1(c)(ii) except where such disclosure is made to any of the persons referred to in that clause during the ordinary course of its supervisory or regulatory function; and
 - (ii) upon becoming aware that any information has been disclosed in breach of this clause 41.

41.3 No Event of Default or Material Event of Default

No Event of Default or Material Event of Default will occur under clause 26.3 (*Other obligations*) by reason only of an Obligor's failure to comply with this clause 41.

42. DISCLOSURE OF LENDER DETAILS BY AGENT

42.1 Supply of Lender details to Parent

The 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 Finance Documents, the electronic mail address and/or any other information required to enable the transmission of information by electronic mail or other electronic means to and by each Lender to whom any communication under or in connection with the Finance Documents may be made by that means and the account details of each Lender for any payment to be distributed by the Agent to that Lender under the Finance Documents.

42.2 Supply of Lender details at Parent's direction

- (a) The 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 Finance Documents or a material waiver or amendment of any term of any Finance Document; and

- (ii) member of the Group.
- (b) Subject to clause 42.2(c), the Parent shall procure that the recipient of information disclosed pursuant to clause 42.2(a) 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 Agent that the Agent may do so, the Agent shall disclose that Lender's name and Commitment to any other Lender that is, or becomes, a Disclosing Lender.
- (b) The 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 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:

"Investment Grade Rating" means, in relation to an entity, a rating for its long-term unsecured and non-credit-enhanced debt obligations of BBB- or higher by Standard & Poor's Rating Services or Fitch Ratings Ltd or Baa3 or higher by Moody's Investors Service Limited or a comparable rating from an internationally recognised credit rating agency; and

"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. PUBLICITY

- (a) Subject to paragraph (b) below, no Finance Party shall be permitted to publicise its role in the Sword Acquisition.

- (b) The Parent and the Agent (both acting reasonably) shall agree all forms of publicity regarding the role of the Lenders in the funding of the Sword Acquisition and the transactions contemplated by the Transaction Documents, in particular the Parent shall not unreasonably withhold consent to a reasonable request by a Finance Party to publicise its role in the Sword Acquisition.

44. COUNTERPARTS

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

SECTION 12

GOVERNING LAW AND ENFORCEMENT

45. GOVERNING LAW

- (a) This Agreement (including clause 46 (*Enforcement*)) and any non-contractual obligations arising out of or in connection with it are governed by English law.
- (b) If a party is represented by an attorney in connection with the signing and/or execution of this Agreement or any other Finance Document, and the relevant power of attorney is expressed to be governed by Dutch or any other law, that choice of law is hereby accepted by each other Party, in accordance with Article 14 of the Hague Convention on the Law Applicable to Agency of 14 March 1978.

46. ENFORCEMENT

46.1 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.
- (c) This clause 46.1 is for the benefit of the Finance Parties and Secured Parties only. As a result, no Finance Party or Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties and Secured Parties may take concurrent proceedings in any number of jurisdictions.

46.2 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 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 Agent. Failing this, the Agent may appoint another agent for this purpose.
- (c) The Parent expressly agrees and consents to the provisions of this clause 46 and clause 45 (*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 Guarantors

Name of Original Guarantor	Original Jurisdiction	Registration number (or equivalent, if any) Original Jurisdiction
Project Sword Midco 2 Limited	England and Wales	12032495
Project Sword Bidco Limited	England and Wales	12032770

Part 2: The Original Lenders

Name of Original Lender	Facility B Commitment	Revolving Facility Commitment	Treaty Passport scheme reference number and jurisdiction of tax residence (if applicable)
Tosca Debt Capital (Luxembourg) S.à r.l.	£15,000,000	Nil.	48/T/373430/DTP
HSBC UK Bank plc	Nil.	£5,000,000	N/A

SCHEDULE 2: CONDITIONS PRECEDENT

Part 1: Conditions precedent to signing 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 or, if applicable, a committee of the board of directors of each Original Obligor:
 - (i) approving the terms of, and the transactions contemplated by, the Transaction Documents to which it is a party and resolving that it execute, deliver and perform the Transaction Documents to which it is a party;
 - (ii) authorising a specified person or persons to execute the 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 Finance Documents to which it is a party; and
 - (iv) in the case of each Original Obligor other than the Parent, authorising the Parent to act as its agent in connection with the Finance Documents.
- (c) If applicable, a copy of a resolution of the board of directors of the relevant company, establishing the committee referred to in paragraph 1(b).
- (d) A copy of a resolution signed by all the holders of the issued shares in each Original Obligor (other than the Parent), approving the terms of, and the transactions contemplated by, the Finance Documents to which the Original Obligor is a party.
- (e) A copy of a resolution of the board of directors of each corporate shareholder of each Original Obligor approving the terms of the resolution referred to in paragraph (d) above.
- (f) A specimen of the signature of each person authorised by the resolution referred to in paragraph 1(b) in relation to the Finance Documents and related documents.
- (g) 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.
- (h) A certificate of the Parent (signed by a director) and each other Original Obligor certifying that each copy document relating to it specified in this part 1 of schedule is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of this Agreement.
- (i) Satisfaction of all "*know your customer*" requirements of each Finance Party.

2. Transaction Documents

- (a) A copy of the Scheme Press Release.
- (b) Signed and dated irrevocable undertakings from Vespa in respect of all of the issued ordinary share capital in the Sword Target owned by Vespa as at the date of this Agreement and any other signed and dated irrevocable undertakings in respect of Sword Target Shares received by the Company or the Target (or any of their Affiliates) on or before the date of the Agreement.
- (c) A copy of the Shareholders' Agreement duly executed by each party to it.
- (d) A copy of the Sword Minority Acquisition Agreement duly executed by each party to it.
- (e) Each of the Service Contracts in agreed form.
- (f) Each of the Rollover Loan Note Documents in agreed form.
- (g) Each of the Management Loan Note Documents in agreed form.

3. Finance Documents

- (a) This Agreement executed by each Original Obligor.
- (b) The Intercreditor Agreement executed by each party to it other than the Finance Parties.
- (c) The Fee Letters executed by the Parent.
- (d) The Report Proceeds Turnover Letter executed by the Initial Institutional Investor.
- (e) At least two originals of the following Transaction Security Documents executed by the Original Obligors specified below opposite the relevant Transaction Security Document:

Name of Original Obligor	Transaction Security Document
Parent	English law all assets debenture
Company	English law all assets debenture

- (f) A copy of all notices required to be sent under the Transaction Security Documents executed by the relevant Obligors.
- (g) All original share certificates (or indemnities for lost share certificates (as applicable)), transfers and stock transfer forms or equivalent duly executed by the relevant Obligor in blank in relation to the assets subject to or expressed to be subject to the Transaction Security and other documents of title to be provided under the Transaction Security Documents.

4. **Insurance**

A letter from the insurance broker for the Group dated on or around the date of this Agreement addressed to the Agent, the Arrangers, the Security Agent and the Lenders listing the insurance policies of the Group and confirming that they are on risk and that the insurance for the Group at the date of this Agreement is at a level acceptable to the Majority Lenders and covering appropriate risks for the business carried out by the Group.

5. **Legal opinions**

A legal opinion of DLA Piper UK LLP, legal advisers to the Arranger and the Original Lenders as to English law, substantially in the form distributed to the Original Lenders prior to signing this Agreement and co-addressed to the Agent and the Security Agent.

6. **Other documents and evidence**

- (a) Evidence that any process agent referred to in clause 46.2 (*Service of process*), if not an Original Obligor, has accepted its appointment.
- (b) The Group Structure Chart which shows the Group assuming the Closing Date has occurred and all steps of the Sword Structure Memorandum have completed.
- (c) The Base Case Model.
- (d) The Sword Reports, together with a reliance letter in respect of each Sword Report.
- (e) A copy, certified by an authorised signatory of the Parent to be a true copy, of the Original Financial Statements of each Obligor.
- (f) The Pre-Approved New Lender List.
- (g) The Funds Flow Statement detailing the proposed movement of funds on or before the Closing Date.
- (h) A certificate of the Parent (signed by a director):
 - (i) detailing the estimated Sword Acquisition Costs; and
 - (ii) confirming the Cash Overfunding.
- (i) The intra-Group loan agreement in agreed form to be entered into between the Parent and the Company and a the intra-group loan agreement in agreed form to be entered into between the Parent and Project Sword Midco 1 Limited.
- (j) In respect of each company incorporated in the United Kingdom whose shares are the subject of the Transaction Security (a "**Charged Company**"), either:
 - (i) a certificate of an authorised signatory of the Parent certifying that:
 - (A) each member of the Group has complied within the relevant timeframe with any notice it has received pursuant to Part 21A of the Companies Act 2006 from that Charged Company; and

- (B) no "warning notice" or "restrictions notice" (in each case as defined in Schedule 1B of the Companies Act 2006) has been issued in respect of those shares,

together with a copy of the "PSC register" (within the meaning of section 790C(10) of the Companies Act 2006) of that Charged Company, which, in the case of a Charged Company that is a member of the Group, is certified by an authorised signatory of the Parent to be correct, complete and not amended or superseded as at a date no earlier than the date of this Agreement; or

- (ii) a certificate of an authorised signatory of the Parent certifying that such Charged Company is not required to comply with Part 21A of the Companies Act 2006.
- (k) A deed of release in the agreed form that (once executed by the relevant secured party) will discharge all Security other than Permitted Security on the Closing Date.
- (l) A search, carried out by the Agent's solicitors, at the Companies Court at the Royal Courts of Justice in London and at Companies House as at the date of this Agreement revealing no adverse entries against any Original Obligor.
- (m) A copy of any other Authorisation or other document, opinion or assurance which the Agent considers to be necessary in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.

Part 2: Conditions precedent to initial Utilisation.

- (a) A certificate of the Parent (signed by a director):
 - (i) if an Offer Conversion Notice has not been served:
 - (A) attaching a copy of each Scheme Document duly executed and/or issued;
 - (B) attaching a copy of the Scheme Court Order;
 - (ii) if an Offer Conversion Notice has been served, attaching a copy of each Offer Document duly executed and/or issued;
 - (iii) confirming that the Effective Date has occurred; and
 - (iv) confirming that no less than 80 per cent. of the aggregate of the purchase price of the Sword Target Shares and Sword Acquisition Costs has been made available (by way of subscription of shares by the Initial Institutional Investors, Vespa and Senior Management and others in accordance with the Sword Structure Memorandum) to the Company and has been applied or will, simultaneously with first utilisation under this Agreement, be applied for the same purpose as the proceeds of Facility B.
- (b) Evidence that the fees, costs and expenses then due from the Parent pursuant to clause 15 (*Fees*), clause 15.6 (*Interest, commission and fees on Ancillary Facilities*), clause 16.6 (*Stamp taxes*) and clause 20 (*Costs and expenses*) have been paid or will be paid by the first Utilisation Date.
- (c) A Utilisation Request relating to the Facility B Loan.

Part 3: 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 (being, in the case of the Polish Obligor, a copy of its articles of association (Polish: *umowa spółki*) along with a copy of an up-to-date list of shareholders (Polish: *lista wspólników*) and an excerpt from the National Court Register (Polish: *Krajowy Rejestr Sądowy*) for the Polish Obligor as at the date of this Agreement).
3. A copy of a resolution of the board or members or designated members or, if applicable, a committee of the board of directors of the Additional Obligor:
 - (a) approving the terms of, and the transactions contemplated by, the Accession Deed and the Finance Documents and resolving that it execute, deliver and perform the Accession Deed and any other Finance Document to which it is party;
 - (b) authorising a specified person or persons to execute the Accession Deed and other 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 Finance Documents to which it is a party; and
 - (d) authorising the Parent to act as its agent in connection with the Finance Documents.
4. If applicable, a copy of a resolution of the board of directors or members or designated members of the Additional Obligor, establishing the committee referred to in paragraph 3.
5. If applicable, a copy of a power of attorney granted by the Additional Obligor in the prescribed form to specified person or persons to represent the Additional Obligor in connection with the execution of the Finance Documents to which it is a party.
6. A specimen of the signature of each person authorised by the resolution referred to in paragraph 3 or, if applicable, in the power of attorney specified in paragraph 5 above.
7. If required by applicable law or otherwise, a copy of a resolution signed by all the holders of the issued shares of the Additional Obligor (and, if applicable, a copy of a resolution of the supervisory board (Polish: *rada nadzorcza*) of an Additional Obligor incorporated in Poland and/or any Additional Obligor incorporated under Netherlands law), approving the terms of, and the transactions contemplated by, the Finance Documents to which the Additional Obligor is a party.
8. If required by applicable law or otherwise, a copy of a resolution of the board of directors of each corporate shareholder of each Additional Obligor approving the terms of the resolution referred to in paragraph 7.
9. A certificate of the Additional Obligor (signed by a director) or an officer, as applicable) 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.

10. A certificate of an authorised signatory of the Additional Obligor certifying that each copy document listed in this part 3 of schedule 2 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of the Accession Deed.
11. A copy of any other Authorisation or other document, opinion or assurance which the Agent considers to be necessary in connection with the entry into and performance of the transactions contemplated by the Accession Deed or for the validity and enforceability of any Finance Document.
12. If available, the latest audited financial statements of the Additional Obligor.
13. The following legal opinions, each addressed to the Agent, the Security Agent and the Lenders:
 - (a) a legal opinion of the legal advisers to the Agent in England, as to English law in the form distributed to the Lenders prior to signing the Accession Deed; and
 - (b) if the Additional Obligor is incorporated in or has its "*centre of main interest*" or "*establishment*" (as referred to in clause 22.28 (*Centre of main interests and establishments*)) in a jurisdiction other than England and Wales or is executing a Finance Document which is governed by a law other than English law, a legal opinion of the legal advisers to the Agent (or the legal advisers to the Obligors if that would be customary in the relevant jurisdiction) in the jurisdiction of its incorporation, "*centre of main interest*" or "*establishment*" (as applicable) or, as the case may be, the jurisdiction of the governing law of that Finance Document (the "**Applicable Jurisdiction**") as to the law of the Applicable Jurisdiction and in the form distributed to the Lenders prior to signing the Accession Deed.
14. If the proposed Additional Obligor is incorporated in a jurisdiction other than England and Wales, evidence that the process agent specified in clause 46.2 (*Service of process*), if not an Obligor, has accepted its appointment in relation to the proposed Additional Obligor.
15. Any security documents which, subject to the Agreed Security Principles, are required by the Agent to be executed by the proposed Additional Obligor, together with a certified, dated translation into English of any such security document not already in English which is being entered into as a chargor by any Additional Obligor which is a limited company or LLP incorporated in any part of the United Kingdom.
16. Any notices or documents required to be given or executed under the terms of those security documents.
17.
 - (a) If the Additional Obligor is incorporated in England and Wales, Scotland or Northern Ireland, evidence that the Additional Obligor has done all that is necessary (including, without limitation, by re-registering as a private company) to comply with sections 677 to 683 of the Companies Act 2006 in order to enable that Additional Obligor to enter into the Finance Documents and perform its obligations under the Finance Documents.
 - (b) If the Additional Obligor is not incorporated in England and Wales, Scotland or Northern Ireland, such documentary evidence as legal counsel to the Agent may

require, that such Additional Obligor has complied with any law in its jurisdiction relating to financial assistance or analogous process.

18. In respect of each company incorporated in the United Kingdom whose shares are the subject of the Transaction Security (a "**Charged Company**"), either:

- (a) a certificate of an authorised signatory of the Parent certifying that:
 - (i) each member of the Group has complied within the relevant timeframe with any notice it has received pursuant to Part 21A of the Companies Act 2006 from that Charged Company; and
 - (ii) no "warning notice" or "restrictions notice" (in each case as defined in Schedule 1B of the Companies Act 2006) has been issued in respect of those shares,

together with a copy of the "PSC register" (within the meaning of section 790C(10) of the Companies Act 2006) of that Charged Company, which, in the case of a Charged Company that is a member of the Group, is certified by an authorised signatory of the Parent to be correct, complete and not amended or superseded as at a date no earlier than the date of the Accession Deed; or

- (b) a certificate of an authorised signatory of the Parent certifying that such Charged Company is not required to comply with Part 21A of the Companies Act 2006.

19. In respect of any Polish Obligor:

- (a) a certificate from the Polish tax office (Polish: *Urząd Skarbowy*) not older than 30 days before the date of the Accession Deed confirming that there are no outstanding taxes due from the Polish Obligor and there are no proceedings pending against the Polish Obligor;
- (b) a certificate from the Polish social security office (Polish: *Zakład Ubezpieczeń Społecznych*) not older than 30 days before the date of the Accession Deed confirming that there are no outstanding payments due from the Polish Obligor to the Polish social security office (or that the Polish Obligor is not registered at the Polish social security office as a payee); and
- (c) an excerpt from the Polish register of pledges (Polish: *rejestr zastawów*) and an excerpt from the Polish register of treasury pledges (Polish: *rejestr zastawów skarbowych*) each not older than 30 days before the date of the Accession Deed confirming that no registered pledges (Polish: *zastawy rejestrowe*) and no treasury pledges (Polish: *zastawy skarbowe*) other than Permitted Security are established over the assets of, and the shares in, the Polish Obligor.

Part 4: Sword Target Group Transaction Security Documents

- (a) At least two originals of the following Transaction Security Documents executed by the Additional Obligors specified below opposite the relevant Transaction Security Document:

Name of Additional Obligor	Capacity (Borrower and/or Guarantor)	Description of Transaction Security Document
Sword Target	Guarantor	English law all assets debenture
		Transaction Security Document (Dutch law) creating Security over the shares in the capital of Doublesix Digital Publishing B.V.
		Transaction Security Document (Dutch law) creating Security over the shares in the capital of Kuju Group S.E.
		Transaction Security Document (Dutch law) creating Security over the shares in the capital of Testronic Laboratories S.E.
Attack Games Ltd	Guarantor	English law all assets debenture
Catalis Development Services Ltd	Guarantor	English law all assets debenture
Catalis Group Limited	Guarantor	English law all assets debenture
Curve Digital Entertainment Ltd	Guarantor	English law all assets debenture
Curve Digital Publishing Ltd	Guarantor	English law all assets debenture
Curve Games Development One Ltd	Guarantor	English law all assets debenture
Curve Games Development Two Ltd	Guarantor	English law all assets debenture

Name of Additional Obligor	Capacity (Borrower and/or Guarantor)	Description of Transaction Security Document
Doublesix Digital Publishing B.V.	Guarantor	Transaction Security Document (Dutch law) creating Security over bank accounts, intellectual property, moveable assets and receivables (including hedging receivables, intercompany receivables, insurance receivables and rights under any Acquisition Document).
Doublesix Digital Publishing Limited	Guarantor	English law all assets debenture
Kuju Ltd	Guarantor	English law all assets debenture
Kuju Games Development One Ltd	Guarantor	English law all assets debenture
Kuju Group S.E.	Guarantor	Transaction Security Document (Dutch law) creating Security over bank accounts, intellectual property, moveable assets and receivables (including hedging receivables, intercompany receivables, insurance receivables and rights under any Acquisition Document).
Testronic Laboratories Ltd	Guarantor	English law all assets debenture
Testronic Laboratories S.E.	Guarantor	Transaction Security Document (Dutch law) creating Security over bank accounts, intellectual property, moveable assets and receivables (including hedging receivables, intercompany receivables, insurance receivables and rights under any Acquisition Document).
		Security agreement (English law) in respect of shares in Testronic Laboratories Limited
		Pledge Agreement (New York law) in respect of shares in Testronic, Inc

Name of Additional Obligor	Capacity (Borrower and/or Guarantor)	Description of Transaction Security Document
		Financial and Registered Pledge Agreement (Polish law) in respect of shares in Testronic Sp z.o.o. jointly with the statement on submission to execution from the pledges shares
Testronic Sp z.o.o.	Guarantor	Statement on submission to execution (Polish law)
		Financial and Registered Pledge Agreement (Polish law) in respect of the bank accounts of Testronic Sp z.o.o.
		Power of Attorney (Polish law) in respect of the bank accounts of Testronic Sp z.o.o.
		Registered Pledge Agreement (Polish law) over the assets of Testronic Sp z.o.o.
Testronic, Inc.	Guarantor	Pledge and Security Agreement (New York law) in respect of all of its assets

- (b) All share, stock, limited liability company membership, limited partnership ownership and limited liability partnership ownership certificates, transfers and stock transfer forms or equivalent duly executed by the relevant Additional Obligor in blank in relation to the assets subject to or expressed to be subject to the Transaction Security and other documents of title to be provided under the Transaction Security Documents.
- (c) In relation to Testronic Sp z.o.o.:
- (i) copies of duly paid applications to the Polish register of pledges to register the registered pledges established under the Transaction Security Documents governed by the laws of Poland;
 - (ii) a copy of the share book (Polish: *księga udziałów*) of the Polish Obligor disclosing the pledges established over the shares in the Polish Obligor under the Transaction Security Documents; and
 - (iii) a copy of the duly paid application filed at the National Court Register for the Polish Obligor to register the updated list of shareholders with the information on the pledges established over the shares in the Polish Obligor under the Transaction Security Documents.

SCHEDULE 3: REQUESTS AND NOTICES

Part 1: Utilisation Request

From: [Borrower]/[Parent]

To: [Agent]

Dated:

Dear Sirs

[PARENT] – [◆] SENIOR FACILITIES AGREEMENT DATED [◆]
(THE "FACILITIES AGREEMENT")

1. We refer to the Facilities Agreement. This is a Utilisation Request. Terms defined in the Facilities Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to borrow a Loan on the following terms:
 - (a) Borrower: [◆]
 - (b) Proposed Utilisation Date: [◆] 20[◆] (or, if that is not a Business Day, the next Business Day)
 - (c) Facility to be utilised: [Facility B]/[Additional Facility with an Establishment Date of [◆]][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 4.2 (*Further conditions precedent*) or, to the extent applicable, clause 4.5 (*Loan during the Certain Funds Period*) 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*]

Part 2: Selection Notice
Applicable to a Term Loan

From: [Borrower]/[Parent]

To: [Agent]

Dated:

Dear Sirs

**[PARENT] – [◆] SENIOR FACILITIES AGREEMENT DATED [◆]
(THE "FACILITIES AGREEMENT")**

1. We refer to the Facilities Agreement. This is a Selection Notice. Terms defined in the Facilities Agreement have the same meaning in this Selection Notice unless given a different meaning in this Selection Notice.
2. We refer to the following [Facility B]/[Additional Facility] Loan[s] with an Interest Period ending on [◆] 20[◆].
3. We request that the next Interest Period for the above [Facility B]/[Additional Facility] Loan[s] is [◆].
4. [We confirm that no Default is continuing on the date of this Selection Notice]*.
5. This Selection Notice is irrevocable.

Yours faithfully

authorised signatory for
[the Parent on behalf of *[insert name of relevant Borrower]*]

SCHEDULE 4: FORM OF TRANSFER CERTIFICATE

To: [◆] as Agent and [◆] as Security Agent

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

Dated:

[PARENT] – [◆] SENIOR FACILITIES AGREEMENT DATED [◆]]
(THE "**FACILITIES AGREEMENT**")

1. We refer to the Facilities Agreement and to the Intercreditor Agreement (as defined in the Facilities Agreement). This agreement (the "**Agreement**") shall take effect as a Transfer Certificate for the purpose of the Facilities Agreement and as a Creditor 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 27.6 (*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 27.6 (*Procedure for transfer*) all of the Existing Lender's rights and obligations under the Facilities Agreement and the other Finance Documents and in respect of the Transaction Security which relate to that portion of the Existing Lender's Commitment(s) and participations in Loans under the Facilities Agreement as specified in the schedule;
 - (b) the proposed Transfer Date is [◆] 20[◆]; and
 - (c) the Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of clause 35.2 (*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 27.5(c) of the Facilities Agreement.
4. The New Lender confirms, for the benefit of the 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 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.]
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 that scheme to apply to the Facilities Agreement.]
7. The New Lender confirms that it [is]/[is not] a Sponsor Affiliate.
8. We refer to clause 20.3 (*Change of 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.
9. 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.
10. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

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

NOTE: The execution of this Transfer Certificate may not transfer a proportionate share of the Existing Lender's interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

THE SCHEDULE

Commitment/rights and obligations to be transferred

[insert relevant details]

[Facility Office address, fax number and attention details for notices and account details for payments]

[Existing Lender]

[New Lender]

By: _____

By: _____

This Agreement is accepted as a Transfer Certificate for the purposes of the Facilities Agreement by the Agent, and as a Creditor Accession Undertaking for the purposes of the Intercreditor Agreement by the Security Agent, and the Transfer Date is confirmed as [◆] 20[◆].

[Agent]

By: _____

[Security Agent]

By: _____

SCHEDULE 5: FORM OF ASSIGNMENT AGREEMENT

To: [◆] as Agent, [◆] as Security 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 27.7 (*Procedure for assignment*) 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 Finance Documents and in respect of the Transaction Security which correspond to that portion of the Existing Lender's Commitment(s) and participations in Loans 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 Loans under the Facilities Agreement specified in the schedule; and
 - (c) the New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph 2(b).
3. The proposed Transfer Date is [◆] 20[◆].
4. On the Transfer Date the New Lender becomes:
 - (a) party to the relevant 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 Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of clause 35.2 (*Addresses*) of the Facilities Agreement are set out in the schedule.
6. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in clause 27.5(c) of the Facilities Agreement.

7. The New Lender confirms, for the benefit of the 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].
8. [The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:
 - (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.]
9. [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 that scheme to apply to the Facilities Agreement.]
10. The New Lender confirms that it [is]/[is not] a Sponsor Affiliate.
11. We refer to clause 20.3 (*Change of 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.

12. This Agreement acts as notice to the Agent (on behalf of each Finance Party) and, upon delivery in accordance with clause 27.8 (*Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Parent*), to the Parent (on behalf of each Obligor) of the assignment referred to in this Agreement.
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.
14. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
15. This Agreement has been entered into on the date stated at the beginning of this Agreement.

Note: The execution of this Assignment Agreement may not transfer a proportionate share of the Existing Lender's interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

THE SCHEDULE

Commitment/rights and obligations to be transferred by assignment, release and accession

[insert relevant details]

[Facility office address, fax number and attention details for notices and account details for payments]

[Existing Lender]

[New Lender]

By:

By:

This Agreement is accepted as an Assignment Agreement for the purposes of the Facilities Agreement by the Agent, and as a Creditor Accession Undertaking for the purposes of the Intercreditor Agreement by the Security Agent, and the Transfer Date is confirmed as [◆] 20[◆].

Signature of this Agreement by the Agent constitutes confirmation by the Agent of receipt of notice of the assignment referred to in this Agreement, which notice the Agent receives on behalf of each Finance Party.

[Agent]

By:

[Security Agent]

By:

SCHEDULE 6: FORM OF ACCESSION DEED

To: [◆] as Agent and [◆] as Security Agent for itself and each of the other parties to the Intercreditor Agreement referred to below

From: [Subsidiary] and [Parent]

Dated: [◆] 20[◆]

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 - [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 Finance Documents (other than the Intercreditor Agreement) as an Additional [Borrower]/[Guarantor] pursuant to [clause 29.2 (*Additional Borrowers*)]/[clause 29.4 (*Additional Guarantors*)] of the Facilities Agreement. [Subsidiary] is a company duly incorporated under the laws of [*name of relevant jurisdiction*] and is a limited liability company and company 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 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]:

[*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 this paragraph 5.

- (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 for/as agent and/or on behalf of] 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.
- (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].

6. This Accession Deed 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 Accession Deed.

7. 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 5 only), signed on behalf of the Parent and executed as a deed by [*Subsidiary*] and is delivered on the date stated above.

[*Subsidiary*]

[EXECUTED AS A DEED]

By: [*Subsidiary*]

)

)

Director

Director/Secretary

OR

[EXECUTED AS A DEED]

By: [*Subsidiary*]

)

)

Signature of Director

Name of Director

in the presence of

Signature of witness

Name of witness

Address of witness

Occupation of witness]

The Parent

By:

The Security Agent

[*Full Name of Current Security Agent*]

By:

Date:

SCHEDULE 7: FORM OF RESIGNATION LETTER

To: [Agent] as Agent

From: [resigning Obligor] and [Parent]

Dated: [◆] 20[◆]

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 29.3 (*Resignation of a Borrower*)]/[clause 29.5 (*Resignation of a Guarantor*)] of the Facilities Agreement, we request that [resigning Obligor] be released from its obligations as a [Borrower]/[Guarantor] under the Facilities Agreement and the Finance Documents (other than the Intercreditor Agreement).
3. We confirm that:
 - (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 10.2 (*Acquisition, Disposal and Insurance Proceeds*) of the Facilities Agreement].
4. This Resignation Letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

[Parent]

[resigning Obligor]

By:_____

By:_____

SCHEDULE 8: FORM OF COMPLIANCE CERTIFICATE

To: [Agent] as Agent

From: [Parent]

Dated: [◆]] 20[◆]

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 for the Relevant Period ending [◆], Adjusted EBITDA was £[◆] and Total Net Debt was £[◆] and therefore Adjusted Leverage was [◆]:1; and
3. [Adjusted EBITDA has [increased]/[decreased] from Opening Adjusted EBITDA, by [◆] per cent.] (being the "**Adjustment Percentage**").
4. [We confirm that for the Relevant Period ending [◆]:
 - (a) at the start of such Relevant Period, the amount of Retained Excess Cash not at that time applied towards any permitted purpose under the Facilities Agreement was £[◆];
 - (b) during such Relevant Period, the amount of Retained Excess Cash spent was £[◆]; and
 - (c) therefore, the amount of Retained Excess Cash remaining at the end of such Relevant Period available to be applied towards any permitted purpose under the Facilities Agreement is £[◆]].
5. [We confirm that for the Relevant Period ending [◆]:
 - (a) at the start of such Relevant Period, the amount of Cash Overfunding not at that time applied towards any permitted purpose under the Facilities Agreement was £[◆];
 - (b) during such Relevant Period, the amount of Cash Overfunding spent was £[◆]; and
 - (c) therefore, the amount of Cash Overfunding remaining at the end of such Relevant Period available to be applied towards any permitted purpose under the Facilities Agreement is £[◆]].
6. [We confirm that no Default is continuing.]
7. [We confirm that the following companies constitute Material Companies for the purposes of the Facilities Agreement: [◆].]

8. [We confirm that the aggregate of the earnings before interest, tax, depreciation and amortisation (calculated on the same basis as EBITDA), the aggregate net assets and the aggregate turnover of the Guarantors (calculated on an unconsolidated basis and excluding all intra-group items and investments in Subsidiaries of any member of the Group) exceeds 85 per cent. of the EBITDA, the consolidated net assets and the consolidated turnover of the Group respectively.]

Signed:

Director of
[*Parent*]

Director of
[*Parent*]

[insert applicable certification language]

for and on behalf of
[*name of [Parent's Auditors]*]

CALCULATION SCHEDULE

[insert reasonable detail for computation of Adjusted Leverage, EBITDA, Exceptional Items, the Adjustment Percentage and, if required, Anticipated Cost Savings]

SCHEDULE 9: TIMETABLES

	Revolving Facility Loans	Term Loans in sterling	Loans in other currencies
Agent notifies the Company if a currency is approved as an Optional Currency in accordance with clause 4.3 (<i>Conditions relating to Optional Currencies</i>)	-	-	U-4
Delivery of a duly completed Utilisation Request (clause 5.1 (<i>Delivery of a Utilisation Request</i>)) in respect of the first Utilisation of Facility B	-	U-5	-
Delivery of a duly completed Utilisation Request (clause 5.1 (<i>Delivery of a Utilisation Request</i>)) or a Selection Notice (clause 13.1 (<i>Selection of Interest Periods and Terms</i>))	U-1 9.30am	U-10 9.30am	U-3 9.30am
Agent determines (in relation to a Loan) the Base Currency Amount of the Loan, if required under clause 5.4 (<i>Lenders' participation</i>) and notifies the Lenders of the Loan in accordance with clause 5.4 (<i>Lenders' participation</i>)	U-1 Noon	U-10 Noon	U-3 Noon
LIBOR or EURIBOR is fixed	Quotation Day 11.00am in respect of LIBOR, 11.00am (Brussels time) in respect of EURIBOR and 11.00 (Warsaw time) in respect of Zloty	Quotation Day 11.00am	11.00am (Brussels time) in respect of EURIBOR
Base Reference Bank Rate calculated by reference to available quotations in accordance with clause 14.2 (<i>Calculation of Base Reference Bank Rate</i>)	Noon on the Quotation Day	Noon on the Quotation Day	Noon on the Quotation Day

"U" = date of utilisation or, if applicable, in the case of a Term Loan that has already been borrowed, the first day of the relevant Interest Period for that Term Loan.

"U-X" = X Business Days prior to date of utilisation.

SCHEDULE 10: FORM OF INCREASE CONFIRMATION

To: [◆] as Agent, [◆] as Security Agent and [◆] as Parent,
for and on behalf of each Obligor

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

Dated: [◆] 20[◆]

Dear Sirs

[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 2.3 (*Increase*) of the Facilities Agreement.
3. The Increase Lender agrees to assume and will assume all of the obligations corresponding to the Commitment specified in the schedule (the "**Relevant Commitment**") as if it was an Original Lender under the Facilities Agreement.
4. The proposed date on which the increase in relation to the Increase Lender and the Relevant Commitment is to take effect (the "**Increase Date**") is [◆] 20[◆].
5. On the Increase Date, the Increase Lender becomes:
 - (a) party to the relevant 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).
6. The Facility Office and address, fax number and attention details for notices to the Increase Lender for the purposes of clause 35.2 (*Addresses*) of the Facilities Agreement are set out in the schedule.
7. The Increase Lender expressly acknowledges the limitations on the Lenders' obligations referred to in clause 2.3(g) of the Facilities Agreement.
8. The Increase Lender confirms, for the benefit of the 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 Increase Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:
- (a) 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.]
10. [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:
- (a) each Borrower which is a Party as a Borrower as at the Increase Date; and
 - (b) each Additional Borrower which becomes an Additional Borrower after the Increase Date,
- that it wishes the scheme to apply to the Facilities Agreement.]
11. The Increase Lender confirms that it is not a Sponsor Affiliate.
12. We refer to clause 20.9 (*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.
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.
14. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
15. This Agreement has been entered into on the date stated at the beginning of this Agreement.

NOTE: The execution of this Increase Confirmation may not be sufficient for the Increase Lender to obtain the benefit of the Transaction Security in all jurisdictions. It is the responsibility of the Increase Lender to ascertain whether any other documents or other formalities are required to obtain the benefit of the Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

THE SCHEDULE

Relevant Commitment/rights and obligations to be assumed by the Increase Lender

[insert relevant details]

[Facility office address, fax number and attention details for notices and account details for payments]

[Increase Lender]

By: _____

This Agreement is accepted as an Increase Confirmation for the purposes of the Facilities Agreement by the Agent and as a Creditor Accession Undertaking for the purposes of the Intercreditor Agreement by the Security Agent and the Increase Date is confirmed as [◆] 20[◆].

Agent

Security Agent

By: _____

SCHEDULE 11: FORMS OF NOTIFIABLE DEBT PURCHASE TRANSACTION NOTICE

Part 1: Form of Notice on Entering into Notifiable Debt Purchase Transaction

To: [◆] as Agent

From: [The Lender]

Dated: [◆] 20[◆]

Dear Sirs

[PARENT] – [◆] SENIOR FACILITIES AGREEMENT DATED [◆]
(THE "FACILITIES AGREEMENT")

1. We refer to clause 28.2(b) 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 relates to the amount of our Commitment(s) as set out below.

Commitment	Amount of our Commitment to which Notifiable Debt Purchase Transaction relates (Base Currency)
Facility B Commitment	[insert amount (of that Commitment) to which the relevant Debt Purchase Transaction applies]
Revolving Facility Commitment]	[insert amount (of that Commitment) to which the relevant Debt Purchase Transaction applies]

[Lender]

By: _____

Part 2: Form of Notice on Termination of Notifiable Debt Purchase Transaction/Notifiable Debt Purchase Transaction ceasing to be with Sponsor Affiliate

To: [◆] as Agent

From: [The Lender]

Dated: [◆] 20[◆]

Dear Sirs

**[PARENT] – [◆] SENIOR FACILITIES AGREEMENT DATED [◆]
(THE "FACILITIES AGREEMENT")**

1. We refer to clause 28.2(c) 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 [◆] 20[◆] has [terminated]/[ceased to be with a Sponsor Affiliate].
3. The Notifiable Debt Purchase Transaction referred to in paragraph 2 relates to the amount of our Commitment(s) as set out below.

Commitment	Amount of our Commitment to which Notifiable Debt Purchase Transaction relates (Base Currency)
Facility B Commitment	<i>[insert amount (of that Commitment) to which the relevant Debt Purchase Transaction applies]</i>
Additional Facility Commitment under the Additional Facility with an Establishment Date of [◆]	<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: _____

SCHEDULE 12: AGREED SECURITY PRINCIPLES

1. Considerations

In determining what Security will be provided in support of the Facilities (and any related hedging arrangements documented by way of Hedging Agreements) the following matters will be taken into account. Security shall not be created or perfected to the extent that it would:

- (a) result in any breach of corporate benefit, financial assistance, fraudulent preference or thin capitalisation laws or regulations (or analogous restrictions) of any applicable jurisdiction;
- (b) result in a significant risk to the officers of the relevant grantor of Security of contravention of their fiduciary duties and/or of civil or criminal liability; or
- (c) result in costs that, in the opinion of the Agent, are disproportionate to the benefit obtained by the beneficiaries of that Security.

For the avoidance of doubt, in these Agreed Security Principles, "cost" includes, but is not limited to, income tax cost, registration taxes payable on the creation or enforcement or for the continuance of any Security, stamp duties, out-of-pocket expenses, and other fees and expenses directly incurred by the relevant grantor of Security or any of its direct or indirect owners, subsidiaries or Affiliates.

2. Obligations to be Secured

Subject to paragraph 1 (*Considerations*), the obligations to be secured are the Secured Obligations (as defined below). The Security is to be granted in favour of the Security Agent on behalf of each Lender from time to time and the Agent, the Arranger, and any Hedge Counterparty.

For ease of reference, the following definitions should, to the extent legally possible, be incorporated into each Transaction Security Document (with the capitalised terms used in them having the meaning given to them in the Intercreditor Agreement):

"Secured Obligations" means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or alone or in any other capacity whatsoever) of each member of the Group to the Security Agent and/or the other Secured Parties (or any of them) under or pursuant to any Finance Document (including all monies covenanted to be paid under this Deed).

"Secured Parties" means the Security Agent, any Receiver or Delegate and each of the Primary Creditors from time to time but, in the case of each Primary Creditor, only if it is a party to the Intercreditor Agreement or has acceded to the Intercreditor Agreement, in the appropriate capacity, pursuant to clause 20.9 (*Creditor Accession Undertaking*) of the Intercreditor Agreement.

The secured obligations will be limited:

- (a) to avoid any breach of corporate benefit, financial assistance, fraudulent preference, thin capitalisation rules or the laws or regulations (or analogous restrictions) of any applicable jurisdiction; and

- (b) to avoid any risk to officers of the relevant member of the Group that is granting Transaction Security of contravention of their fiduciary duties and/or civil or criminal or personal liability.

3. **General**

Where appropriate, defined terms in the Transaction Security Documents should mirror those in this Agreement.

The parties to this Agreement agree to negotiate the form of each Transaction Security Document in good faith and will ensure that all documentation required to be entered into as a condition precedent to first drawdown under this Agreement (or immediately thereafter) is in a finally agreed form as soon as reasonably practicable after the date of this Agreement. The form of guarantee is set out in clause 21 (*Guarantee and indemnity*) of this Agreement and, with respect to any Additional Guarantor, is subject to any limitations set out in the Accession Deed applicable to such Additional Guarantor.

The Security shall, to the extent possible under local law, be enforceable on the occurrence of a Declared Default.

4. **Undertakings/Representations and Warranties**

Any representations, warranties or undertakings which are required to be included in any Transaction Security Document shall reflect (to the extent to which the subject matter of such representation, warranty or undertaking is the same as the corresponding representation, warranty or undertaking in this Agreement) the commercial deal set out in this Agreement (save to the extent that Secured Parties' local counsel deem it necessary to include any further provisions (or deviate from those contained in this Agreement) in order to protect or preserve the Security granted to the Secured Parties).

5. **Other**

- (a) Prior to the occurrence of a Declared Default which is continuing:
 - (i) the grantor of any Security over shares will be permitted to retain legal title to such shares, to retain and exercise voting rights in respect of the relevant shares and to receive all distributions from such shares (unless local law or market standard practice in the relevant jurisdiction requires legal title to pass to the Security Agent, a Finance Party or its or their nominees in order to achieve valid or perfected Security);
 - (ii) proceeds of any insurances shall be dealt with by the relevant Obligor as permitted under the Agreement;
 - (iii) receivables and all bank accounts (other than any Mandatory Prepayment Accounts or Holding Accounts) may be dealt with by an Obligor in the ordinary course of its business;
 - (iv) no notices shall be served on the counterparty of any charged contract who is not a member of the Group save for an Acquisition Agreement; and
 - (v) no notice by attaching a notice to fixed assets or inventory shall be prepared or given.

- (b) The provisions of any Transaction Security Document granted by a company incorporated in England and Wales after the Closing Date will be substantially the same as the provisions of the corresponding Transaction Security Document granted by the Original Obligors.
 - (c) No mortgages will be taken over any Real Property unless such Real Property is freehold property or leasehold property which is not leased on a rack rent basis (in each case "**Material Property**") and there shall be no obligation to investigate title, provide valuations, surveys or other due diligence unless in relation to Material Property with a value in excess of £100,000.
 - (d) To the extent possible and provided not required by local law or market standard practice in any relevant jurisdiction, there should be no action required to be taken in relation to any guarantee or Security when any Lender transfers any of its participation in the Facilities to a new Lender.
6. **Transaction Security Documents governed by Dutch law (granted after the Closing Date)**
- (a) Shares: the (enforcement of) Transaction Security Document created over the shares in the capital of any Dutch Obligor will not be limited by any transfer restrictions (*blokkeringsregeling*) contained in the articles of association of any Dutch Obligor.
 - (b) Receivables (including intercompany receivables, trade receivables and insurance receivables and in relation to the Company, Acquisition Documents):
 - (i) The perfection of receivables security granted will not be required until the occurrence of an Enforcement Event has occurred, other than in respect of intra-Group receivables or where such notification is required by applicable law to create Transaction Security.
 - (ii) Until an Enforcement Event the Obligor providing the Security is permitted to receive any payment under its receivables to the extent permitted under the Finance Documents.
 - (iii) If required by or customary under local law to perfect the security, notice of the security will be served on the relevant counterparty within five Business Days of the security being granted and the Obligor shall use its reasonable endeavours (not involving the payment of money or incurrence of any external expenses) to obtain an acknowledgement of that within 20 Business Days of service.
 - (iv) In respect of Transaction Security (to be) created over bank account (receivables) maintained with Dutch financial institutions, each relevant Obligor will use best efforts to obtain the consent of such bank prior to the on the date of execution of the deed of pledge creating the Transaction Security.

SCHEDULE 13: ADDITIONAL FACILITY NOTICE

To: [◆] as Agent and [◆] as Security Agent

From: [◆] as the Parent and the entities listed in the Schedule as Additional Facility Lenders (the "**Additional Facility Lenders**")

Dated:

Dear Sirs

**[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 Additional Facility Notice. This Additional Facility Notice shall take effect as an Additional Facility Notice 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 Additional Facility Notice unless given a different meaning in this Additional Facility Notice.
2. We refer to clause 2.2 (*Uncommitted Additional Facilities*) of the Facilities Agreement.
3. We request the establishment of an Additional Facility with the following Additional Facility Terms:
 - (a) Currency:
[◆].
 - (b) Total Additional Facility Commitments:
[◆].
 - (c) [Cash] Margin:
[◆].
 - (d) [PIK Margin:
[◆]]
 - (e) Borrower(s) to which the Additional Facility is to be made available:
[◆].
 - (f) Purpose(s) for which all amounts borrowed under the Additional Facility shall be applied pursuant to clause 3.1 (*Purpose*) of the Facilities Agreement:
[◆].

- (g) Availability Period:
[◆].
- (h) Termination Date:
[◆].
4. The proposed Establishment Date is [◆].
5. The Parent confirms that:
- (a) each of:
- (i) the Additional Facility Terms set out above; and
- (ii) the all-in yield applicable to the Additional Facility,
comply with clause 2.2 (*Uncommitted Additional Facilities*); and
- (b) each condition specified in clause 2.2 (*Uncommitted Additional Facilities*) of the Facilities Agreement is satisfied on the date of this Additional Facility Notice.
6. Each Additional Facility Lender agrees to assume and will assume all of the obligations corresponding to the Additional Facility Commitment set opposite its name in the schedule as if it was an Original Lender in respect of that Additional Facility Commitment under the Facilities Agreement.
7. On the establishment date of the Additional Facility Loan each Additional Facility Lender becomes:
- (a) party to the relevant 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).
8. Each Additional Facility Lender expressly acknowledges the limitations on the Lenders' obligations referred to in clause 27.5 (*Limitation of responsibility of Existing Lenders*) of the Facilities Agreement.
9. Each Additional Facility Lender confirms that it is not a Sponsor Affiliate.
10. We refer to clause 20.9 (*Creditor Accession Undertaking*) of the Intercreditor Agreement. In consideration of each Additional Facility Lender being accepted as a Senior Lender for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement), each Additional Facility Lender confirms that, as from the Establishment Date, it intends to be party to the Intercreditor Agreement as a Senior Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a Senior Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.
11. This Additional Facility Notice is irrevocable.

12. This Additional Facility Notice 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 Additional Facility Notice.
13. This Additional Facility Notice and any non-contractual obligations arising out of or in connection with it are governed by English law.
14. This Additional Facility Notice has been entered into on the date stated at the beginning of this Additional Facility Notice.

Note: The execution of this Additional Facility Notice may not be sufficient for each Additional Facility Lender to obtain the benefit of the Transaction Security in all jurisdictions. It is the responsibility of each Additional Facility Lender to ascertain whether any other documents or other formalities are required to obtain the benefit of the Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

THE SCHEDULE

Name of Additional Facility Lender

Additional Facility Commitment

The Parent

By:

The Additional Facility Lenders

[◆]

This document is accepted as an Additional Facility Notice for the purposes of the Facilities Agreement by the Agent and as a Creditor Accession Undertaking for the purposes of the Intercreditor Agreement by the Security Agent and the Establishment Date is confirmed as [◆].

The Agent

By:

The Security Agent

By:

SCHEDULE 14: FORM OF ADDITIONAL FACILITY LENDER CERTIFICATE

To: [◆] as Agent and [◆] as Parent

From: [The Additional Facility Lender]

Dated:

Dear Sirs

**[PARENT] – [◆] SENIOR FACILITIES AGREEMENT DATED [◆]
(THE "FACILITIES AGREEMENT")**

1. We refer to the Facilities Agreement and to the Additional Facility Notice dated [◆]. This is an Additional Facility Lender Certificate. Terms defined in the Facilities Agreement have the same meaning in this Additional Facility Lender Certificate unless given a different meaning in this Additional Facility Lender Certificate.
2. We confirm, for the benefit of the Agent and without liability to any Obligor, that we are:
 - (a) [a Qualifying Lender (other than a Treaty Lender);]
 - (b) [a Treaty Lender;]
 - (c) [not a Qualifying Lender.]
3. [We confirm that the person beneficially entitled to interest payable to us in respect of an advance under a 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.]
4. [We confirm that we hold a passport under the HMRC DT Treaty Passport scheme (reference number [◆]) and are tax resident in [◆], so that interest payable to us by borrowers is generally subject to full exemption from UK withholding tax and request that the Parent notify:

- (a) each Borrower which is a Party as a Borrower as at the Establishment Date of the Additional Facility requested in the Additional Facility Notice referenced above; and
- (b) each Additional Borrower which becomes an Additional Borrower after that Establishment Date,

that we wish that scheme to apply to the Facilities Agreement.]

5. The Facility Office and address, fax number and attention details for notices of the Additional Facility Lender for the purposes of clause 35.2 (*Addresses*) of the Facilities Agreement are:

[◆].

Additional Facility Lender

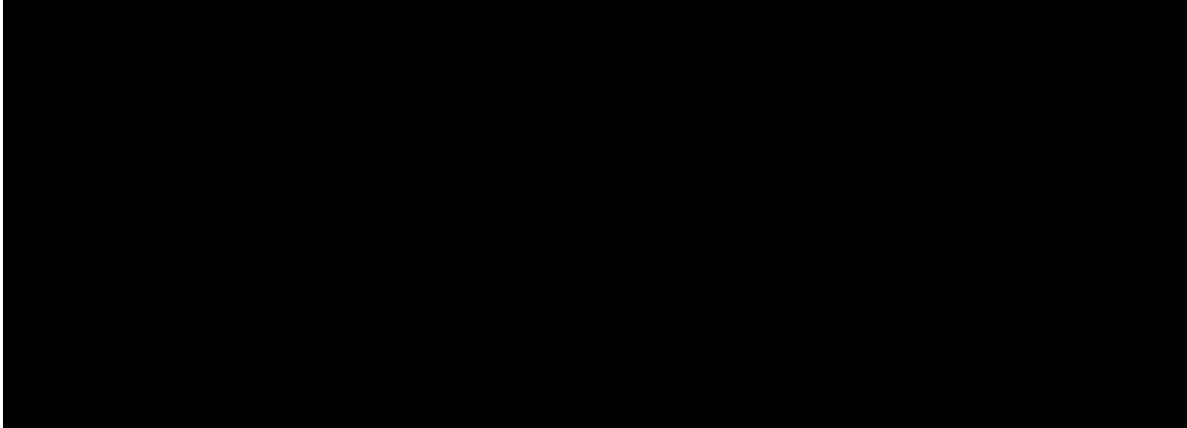
[*Additional Facility Lender*]

By:

EXECUTION PAGES

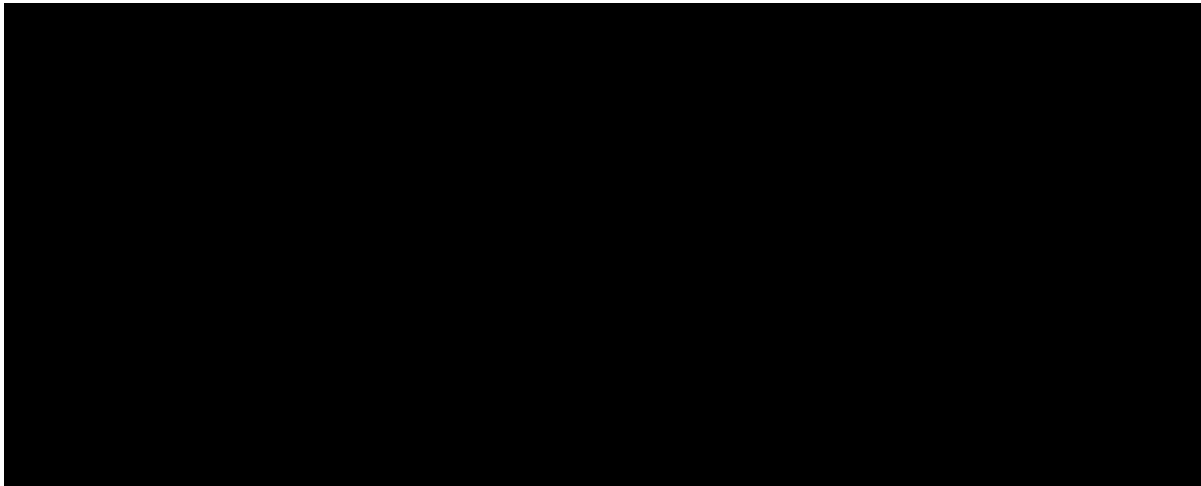
THE PARENT

PROJECT SWORD MIDCO 2 LIMITED



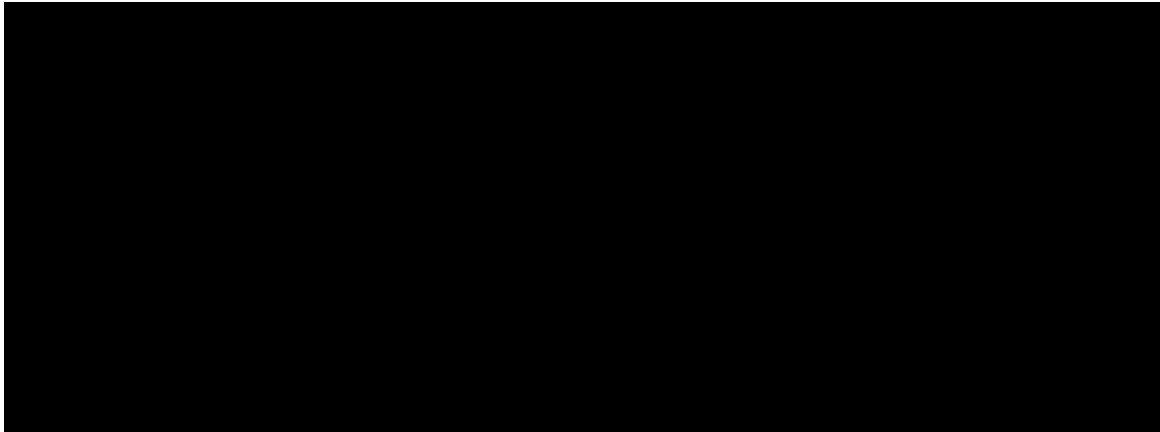
THE COMPANY

PROJECT SWORD BIDCO LIMITED

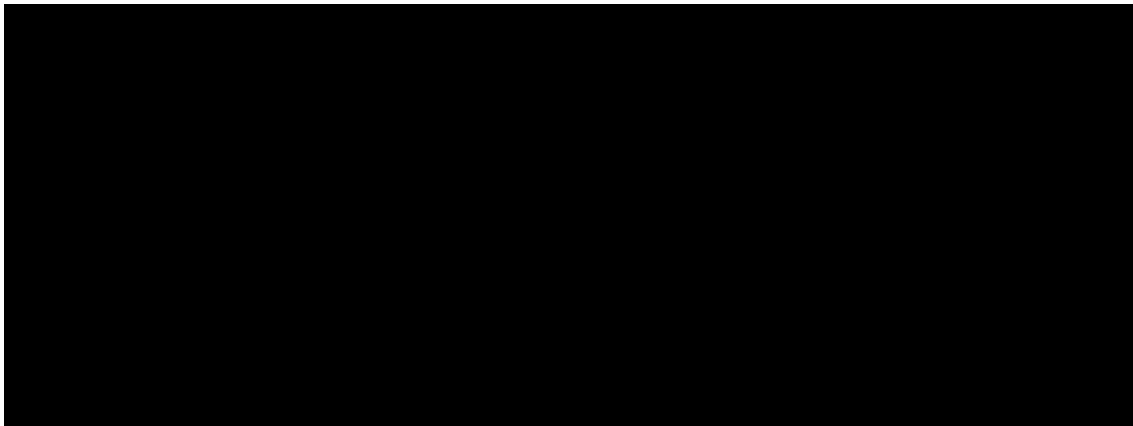


THE ORIGINAL GUARANTORS

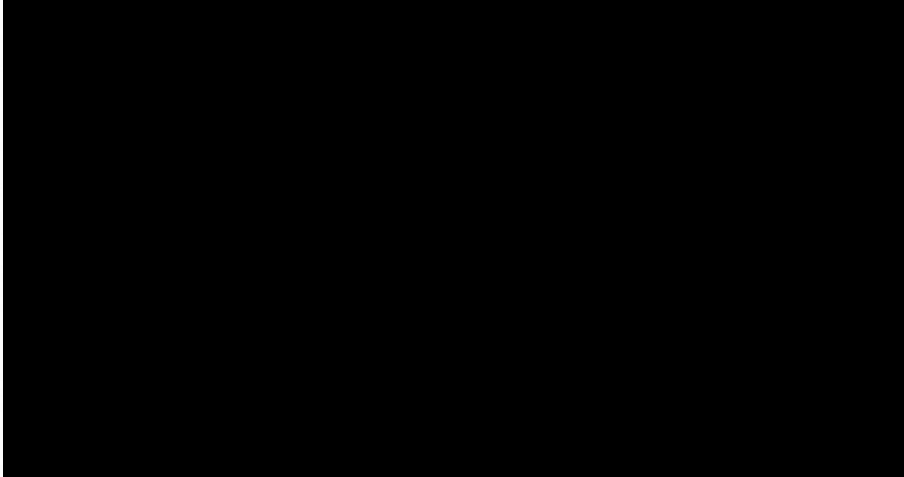
PROJECT SWORD MIDCO 2 LIMITED



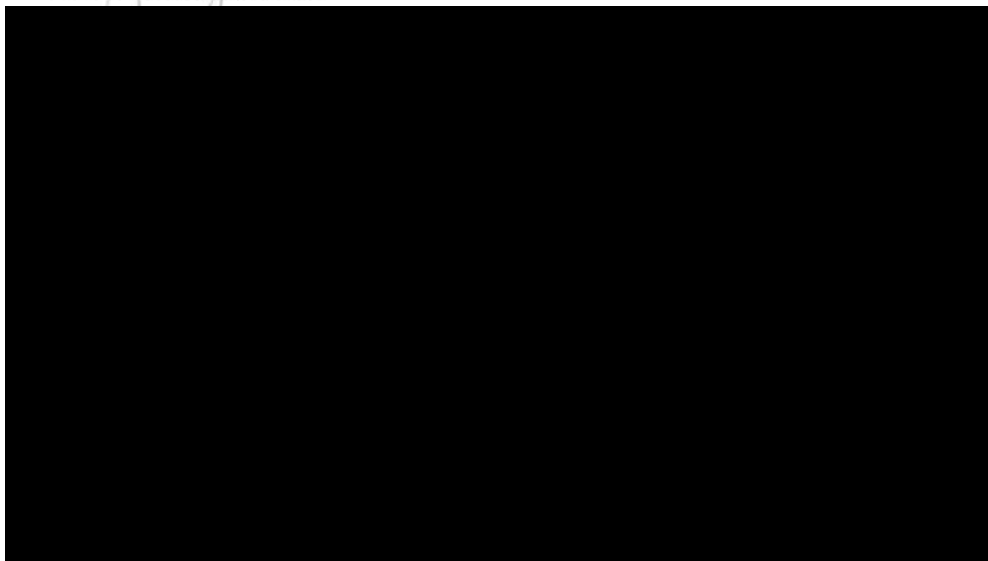
PROJECT SWORD BIDCO LIMITED



THE ORIGINAL LENDERS

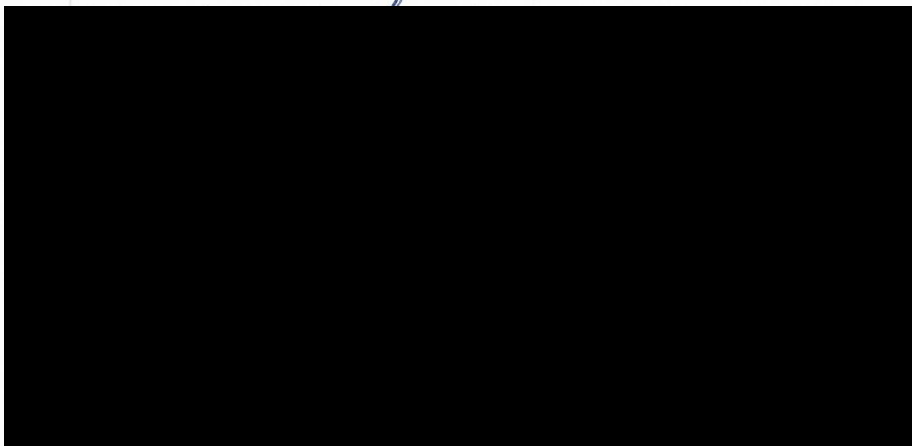


HSBC UK BANK PLC

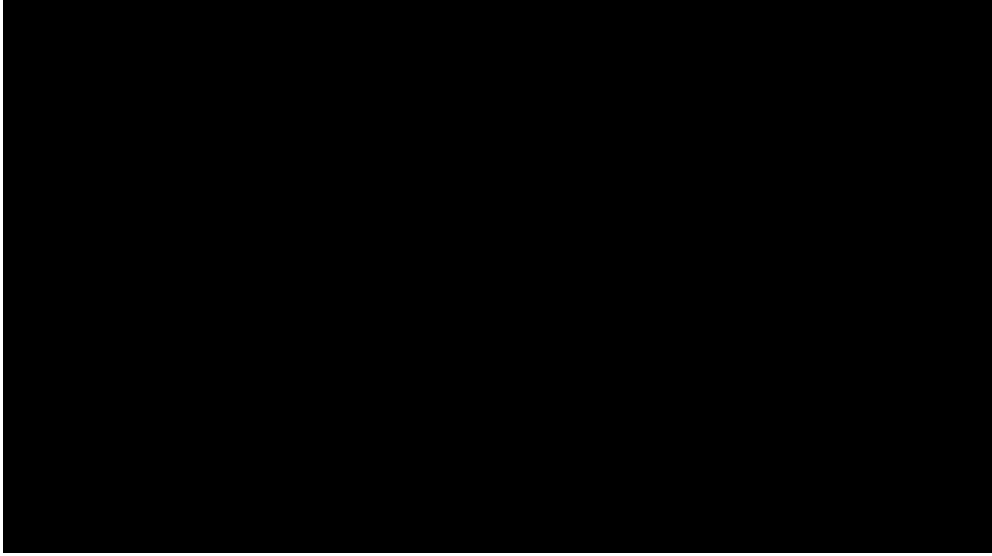


THE ARRANGERS

TOSCA DEBT CAPITAL (LUXEMBOURG) S.À R.L.

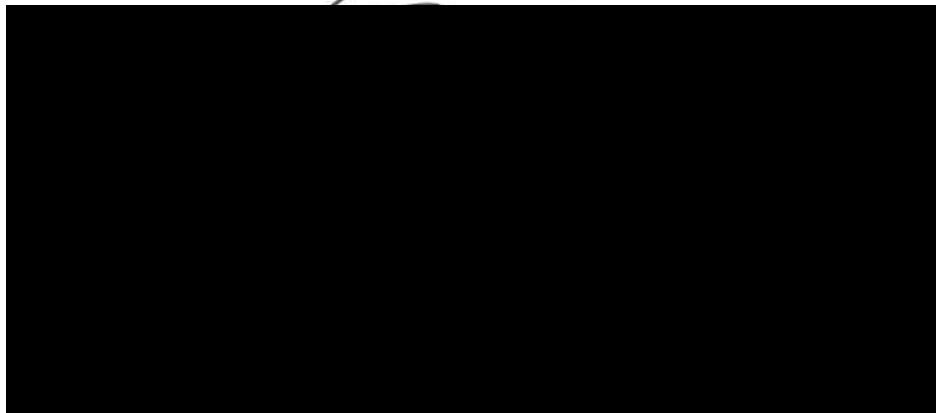


HSBC UK BANK PLC



THE AGENT

GLOBAL LOAN AGENCY SERVICES LIMITED



THE SECURITY AGENT

GLAS TRUST CORPORATION LIMITED

