

DATED

2021

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**ABERDEEN GLOBAL INFRASTRUCTURE PARTNERS LP**  
(as Borrower)

**NONGHYUP BANK ACTING AS TRUSTEE OF SHINHAN AIM  
INFRASTRUCTURE FUND 10**  
and  
**NONGHYUP BANK ACTING AS TRUSTEE OF HANWHA US AUS PPP  
PRIVATE FUND 2**  
(as Lenders)

**CSC CAPITAL MARKETS (IRELAND) LIMITED**  
(as Agent)

**CSC TRUSTEES LIMITED**  
(as Security Agent)

**FACILITY AGREEMENT**



Matter ref: 151355.000052  
F3B/OH/EJC/6780778

Hogan Lovells International LLP  
Atlantic House, Holborn Viaduct, London EC1A 2FG

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THIS AGREEMENT is dated

2021 and made between:

- (1) **Aberdeen Global Infrastructure Partners LP (acting through its general partner, Aberdeen Global Infrastructure GP Limited)** registered as a limited partnership in Guernsey (registration number 1864) under the Limited Partnerships (Guernsey) Law 1995, as borrower (the "**Borrower**");
- (2) **Aberdeen Global Infrastructure GP Limited**, a company incorporated in Guernsey (registered number 56568) whose registered office is at Western Suite, Ground Floor, Mill Court, La Charroterie, St Peter Port, Guernsey, GY1 1EJ acting in its capacity as general partner of Aberdeen Global Infrastructure Partners LP (the "**General Partner**");
- (3) **The Financial Institutions** listed in Schedule 1 as lenders (the "**Original Lenders**");
- (4) **CSC Capital Markets (Ireland) Limited**, a company incorporated under the laws of Ireland, with registered number 603818 and having its registered office at 3rd Floor Fleming Court, Fleming's Place, Dublin 4, Ireland (the "**Agent**"); and
- (5) **CSC Trustees Limited**, a limited liability company incorporated under the laws of England and Wales, with registered number 10830936 and having its registered office at 10th Floor, 5 Churchill Place, London, E14 5HU, United Kingdom acting as security trustee for and on behalf of the Secured Parties (the "**Security Agent**").

IT IS AGREED as follows:

## SECTION 1 INTERPRETATION

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Agreement:

"**Account Charge**" means the Guernsey law security interest agreement dated on or about the date of this Agreement between the General Partner (in its capacity as General Partner of the Borrower) and the Security Agent in relation to the Revenue Accounts;

"**Accounting Reference Date**" means 31 December.

"**Adelaide Dispute**" has the meaning given to it in the Purchase Agreement.

"**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.

"**Acquisition**" means the acquisition of limited partner interests in the Borrower by NongHyup Bank acting as trustee of Shinhan AIM Infrastructure Fund 9, NongHyup Bank acting as trustee of Hanwha US AUS PPP Private Fund 1 and KEB Hana Bank acting as trustee of Hanwha Global Infrastructure Strategy Private Fund 3 (each a "**Buyer**" and, together, the "**Buyers**") pursuant to the Purchase Agreement.

**"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.

**"Assignment and Assumption Agreements"** means the assignment and assumption agreements for each Limited Partner delivered pursuant to Schedule 3 (*Completion obligations*) of the Purchase Agreement.

**"AUD Facility"** has the meaning given to it in Clause 2.1.

**"AUD Facility Commitments"** means:

- (a) in relation to an Original Lender:
  - (i) the amount in Australian dollars set opposite its name under the heading "AUD Facility Commitment" in Schedule 1 (*The Original Lenders*); and
  - (ii) the amount of any other AUD Facility Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*); and
- (b) in relation to any other Lender, the amount in Australian dollars of any AUD Facility Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*),

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

**"AUD Revenue Account"** means the account held in the name of the Borrower with Lloyds Bank Corporate Markets Plc, Guernsey Branch with account number 29649004, sort code 30-16-63 and the SWIFT code LOYDGB2L

**"Australian Projects"** means Mundaring Water Treatment Plant, New Royal Adelaide Hospital and Queensland New Generation Rolling Stock.

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

**"Availability Period"** means 15 Business Days from the date of this Agreement.

**"Available Commitment"** means, in respect of a Facility, a Lender's Commitment in respect of that Facility, minus:

- (a) the amount of its participation in any outstanding Loans under that Facility; and
- (b) in relation to any proposed Utilisation under that Facility, the amount of its participation in any Loans under that Facility that are due to be made on or before the proposed Utilisation Date.

**"Available Facility"** means the aggregate for the time being of each Lender's Available Commitment.

**"Business Day"** means a day (other than a Saturday or Sunday) on which banks are open for general business in Seoul, London, Dublin, Guernsey, New York and Sydney.

**"Cash Sweep Prepayment Schedule"** means the prepayment schedule set out in Schedule 7 (*Cash Sweep Prepayment Schedule*) or such other prepayment schedule as the Borrower and the Agent may agree pursuant to Clause 7.1(a)(iii) (*Cash sweep*).

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

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

**"Commitment"** means an AUD Facility Commitment or a USD Facility Commitment.

**"Competitor"** means:

- (a) any fund or other person whose business is the management or ownership of equity investment in infrastructure and/or real estate assets substantially similar to the Australian Projects or the US Project ("**Competing Assets**");
- (b) any Affiliate of any person referred to in paragraph (a) above, but (subject to paragraph (c) below) excluding any commercial or investment bank or insurance company which invests in Competing Assets; and
- (c) any fund or other person whose business is the management or ownership of equity investment in, Competing Assets and which is an Affiliate of a commercial or investment bank or insurance company.

**"Confidential Information"** means all information relating to the Borrower, the Finance Documents or the Facilities 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 the Facilities from either:

- (a) the Borrower or any of its advisers; or
- (b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from the Borrower 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 34 (*Confidential Information*); or
  - (B) is identified in writing at the time of delivery as non-confidential by the Borrower 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) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Borrower and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

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

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

**"Default"** means an Event of Default or any event or circumstance specified in Clause 20 (*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.

**"Delaware Share Charge"** means the security agreement governed by the laws of the State of Delaware, dated on or about the date of this Agreement, between the Borrower (acting through the General Partner) and the Security Agent pursuant to which the Borrower grants a first priority security interest in and pledge of all of the Borrower's limited liability company interests in Aberdeen Infrastructure Investments (No 4) USA LLC to the Security Agent.

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

**"Denver Fastracks"** means the Borrower's 100% membership interests in Aberdeen Infrastructure Investments (No 4) USA LLC which in turn holds 45% of the membership interests in Denver Transit Holdings LLC which holds 100% of the interests in the project company, Denver Transit Partners LLC.

**"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.

**"Eligible Institution"** means (i) any Lender or (ii) in the case where the Lender rejects its increase of the Commitment pursuant to Clause 2.2 below, other bank, financial institution, trust, fund or other entity (x) selected by the Borrower subject to Lenders' consent and (y) which, in each case, is not an Affiliate (unless otherwise agreed by all Lenders).

**"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 the Borrower conducted on or from the properties owned or used by the Borrower.

**"Escrow Agreement"** has the meaning given to it in the Purchase Agreement.

**"Event of Default"** means any event or circumstance specified as such in Clause 20 (*Events of Default*).

**"Facility"** means each of the AUD Facility and the USD Facility.

**"Facility Office"** means the office or offices notified by a 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.



**"FATCA"** means:

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

**"FATCA Application Date"** means:

- (a) in relation to a "withholdable payment" described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014; or
- (b) in relation to a "passthru payment" described in section 1471(d)(7) of the Code not falling within paragraph (a) above, the first date from which such payment may become subject to a deduction or withholding required by FATCA.

**"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 any FATCA Deduction.

**"Fee Letter"** means any letter or letters dated on or about the date of this Agreement between (1) the Agent and/or the Security Agent and (2) the Borrower setting out any of the fees referred to in Clause 10 (*Fees*).

**"Finance Document"** means this Agreement, any Transaction Security Documents, any Fee Letter, and any other document designated as such by the Agent and the Borrower.

**"Finance Party"** means the Agent, the Security Agent, or a Lender.

**"Financial Closing Date"** means the date on which the Facilities are advanced, being the date upon which:

- (a) the Agent has received (or waived) all of the documents and other evidence listed in Schedule 2 (*Conditions precedent*) in form and substance satisfactory to the Agent; and
- (b) the Completion Date (as defined in the Purchase Agreement) occurs.

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

- (a) moneys borrowed;

- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with IFRS, be treated as a finance or capital lease ;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative 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 derivative transaction, that amount) shall be taken into account);
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (i) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above.

**"Fund Document"** means:

- (a) Limited Partnership Agreement;
- (b) Assignment and Assumption Agreements; and
- (c) Investment Advisory Agreement.

**"Guernsey Share Charge"** means the Guernsey law security interest agreement dated on or about the date of this Agreement between the General Partner (in its capacity as General Partner of the Borrower) and the Security Agent pursuant to which the Borrower grants a first priority security interest in all of the Borrower's shares in Aberdeen Infrastructure Investments (Mundaring) Ltd, Aberdeen Infrastructure Investments (NRAH) Ltd and Aberdeen Infrastructure Investments (NGR) Ltd to the Security Agent.

**"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 the IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.

**"Increase Confirmation"** means a confirmation substantially in the form set out in Schedule 6 (*Form of Increase Confirmation*).

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

**"Interest Payment Date"** means 31<sup>st</sup> December and 30<sup>th</sup> June.

**"Interest Period"** means, in relation to a Loan, each period determined in accordance with Clause 9 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 8.3 (*Default interest*).

**"Investment"** has the meaning given to it in the Limited Partnership Agreement.

**"Investment Advisory Agreement"** means the investment advisory agreement relating to the Borrower dated 11 June 2013 and originally between the General Partner and Uberior Fund Manager Limited.

**"Investment Vehicle"** means any of Aberdeen Infrastructure Investments (Mundaring) Ltd, Aberdeen Infrastructure Investments (No 4) USA LLC, Aberdeen Infrastructure Investments (NRAH) Ltd and Aberdeen Infrastructure Investments (NGR) Ltd.

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

**"Legal Opinion"** means any legal opinion delivered to the Agent under Clause 4.1 (*Initial conditions precedent*) and Schedule 2 (*Conditions precedent*).

**"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;
- (d) security over assets situate in Guernsey will not be recognised by the Guernsey courts unless the manner in which it is given or created complies with the requirements of the law of Guernsey. To the extent that a Finance Document (except for any Guernsey law security agreement) purports to create security over any of the Company's assets situate in Guernsey, they will not be effective to give security over such assets;
- (e) Guernsey is not a member of the EU and EU legislation is only extended to Guernsey in limited circumstances;
- (f) the circumstances in which enforcement may be limited include *désastre*; and

- (g) 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 (*Increase*) or Clause 21 (*Changes to the Lenders*),

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

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

**"Limited Partner"** has the meaning given to it in the Limited Partnership Agreement.

**"Limited Partnership Agreement"** or the "LPA" means the limited partnership agreement in respect of the Borrower, originally dated 6 September 2013 and as amended or restated from time to time (including in connection with the Acquisition).

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

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

**"Majority Lenders"** means a Lender or Lenders whose Commitments aggregate more than  $66\frac{2}{3}$  per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than  $66\frac{2}{3}$  per cent. of the Total Commitments immediately prior to the reduction).

**"Make-Whole Amount"** has the meaning given to such term in Clause 7.7 (*Make-While*).

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

- (a) the business, operations, property or financial condition of the Borrower;
- (b) the ability of the Borrower to perform its material obligations under the Finance Documents; or
- (c) the validity, legality or enforceability of, or the effectiveness or ranking of any Security granted or purported to be granted pursuant to any of, the Finance Documents; or
- (d) the rights or remedies of the Finance Parties (or any of them) under any of the Finance Documents.

**"Maturity Date"** means the date falling 28 years after the Financial Closing Date.

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

- (a) (subject to paragraph (c) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- (c) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end;

and the above rules will only apply to the last Month of any period.

**"Mundaring Water Treatment Plant"** means the Borrower's 100% membership interests in Aberdeen Infrastructure Investments (Mundaring) Ltd which in turn holds 49.9% of the membership interests in Helena Water Holdings Pty Ltd which holds 100% of the interests in the project company, Helena Water Pty Ltd.

**"New Lender"** has the meaning given to that term in Clause 21 (*Changes to the Lenders*).

**"New PIK Amount"** means an amount of interest or PIK Interest (as appropriate) which is referred to in a PIK Amount Notice delivered under paragraph (b) or (d) of Clause 8.2 (*Payment of Interest*).

**"New Royal Adelaide Hospital"** means the Borrower's 100% membership interests in Aberdeen Infrastructure Investments (NRAH) Ltd which in turn holds 17.26% of the membership interests in SA Health Partnership Securitisation Holding Pty Ltd which holds 100% of the interests in the project company, Celsus Pty Ltd.

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

**"Party"** means a party to this Agreement.

**"Perfection Requirements"** means the making or procuring of appropriate registrations, filings, endorsements, notarisations, stampings and/or notifications of the Transaction Security Documents and/or the Transaction Security customary or necessary for the enforceability, fixing of priority, or production in evidence of the relevant Transaction Security Document and/or Transaction Security.

**"Permitted Disposal"** means:

- (a) any sale, lease, licence, assignment, transfer or other disposal of an Investment in accordance with Clause 7.1(b) (*Dispositions*) and the terms of the relevant

Fund Documents, and, for the avoidance of doubt, any disposal made in accordance with Limited Partnership Agreement shall constitute a "Permitted Disposal";

- (b) arising as a result of any Security permitted under paragraph (c) of Clause 19.7 (*Negative Pledge*); and
- (c) any distributions, dividends or other payments which are permitted pursuant to and in accordance with Clause 18.2 (*Waterfall*).

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

- (a) arising under the Finance Documents or under the Fund Documents, including any unpaid fees, costs and expenses arising under the Finance Documents or Fund Documents;
- (b) arising under any Treasury Transaction entered into in the ordinary course of business for the purpose of hedging foreign exchange exposure, but not for speculative purposes;
- (c) owed by the Borrower to a Subsidiary or Related Entity of the Borrower;
- (d) arising under a guarantee or indemnity permitted by Clause 19.15 (*No guarantees or indemnities*);
- (e) constituting deferred payment for any Investment (including without limitation any such Financial Indebtedness incurred by way of guarantee or indemnity of any Affiliate of the Borrower which has itself entered into any such deferred payment obligation)
- (f) incurred with the prior written consent of the Agent;
- (g) not permitted by the preceding paragraphs and the outstanding amount of which does not exceed USD 300,000 (indexed) in aggregate at any time.

**"Permitted Loan"** means incurred in accordance with the Fund Documents and constituting deferred payment for any Investment (including without limitation incurred by way of guarantee or indemnity of any Affiliate of the Borrower which has itself entered into any such deferred payment obligation).

**"Permitted Share Issue"** means the issue of shares by a Subsidiary of the Borrower 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 or the Fund Documents;

- (b) the solvent liquidation or reorganisation of any Subsidiary of the Borrower so long as any payments or assets distributed as a result of such liquidation or reorganisation are distributed to the Borrower or a Subsidiary of the Borrower; or
- (c) transactions (other than (i) any sale, lease, license, transfer or other disposal and (ii) the granting or creation of Security or the incurring or permitting to subsist of Financial Indebtedness) conducted in the ordinary course of trading on arm's length terms.

**"PIK Amount"** means the total aggregate amount of interest subject to one or more PIK Amount Notices.

**"PIK Amount Notice"** means a notice substantially in the form set out in Schedule Schedule 8 (*PIK Amount Notice*).

**"PIK Interest"** has the meaning given to it in Clause 8.2 (*Payment of interest*).

**"Purchase Agreement"** means the agreement for the acquisition of limited partner interests in the Borrower, dated 17 December 2020 and entered into between, amongst others, the Buyers, the Sellers, and Aberdeen Global Infrastructure Partners LP.

**"Qualifying Lender"** has the meaning given to it in Clause 11 (*Tax gross-up and indemnities*).

**"Quasi-Security"** has the meaning given to that term in Clause 19.7 (*Negative pledge*).

**"Queensland New Generation Rolling Stock"** means the Borrower's 100% membership interests in Aberdeen Infrastructure Investments (NGR) Ltd which in turn holds 25% of the membership interests in NGR Holding Company Pty Ltd which holds 100% of the interests in the project company, NGR Project Company Pty Ltd.

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

**"Related Entity"** means in respect of the Borrower, any joint venture, subsidiary undertaking, associate company, partnership or general partner in which the Borrower has an interest (whether direct or indirect).

**"Relevant Jurisdiction"** means in relation to the Borrower or the General Partner:

- (a) its jurisdiction of incorporation, establishment, constitution or formation (as the case may be) and/or registration;
- (b) the jurisdiction where any asset subject to or intended to be subject to the Transaction Security to be created by it is situated (which, in the case of a bank account, will be the jurisdiction in which the relevant account bank is opened, and, in the case of a Fund Document, will be the jurisdiction of the governing law of such Fund Document); and
- (c) any jurisdiction where it conducts its business.

**"Relevant Market"** means, in relation to Australian dollars, the Australian interbank market for bank accepted bills and negotiable certificates of deposit and, in relation to US dollars, the London interbank market.

**"Repeating Representations"** Clauses 16.1 (*Status*), 16.2 (*Binding obligations*), 16.3 (*Non-conflict with other obligations*), 16.4 (*Power and authority*), 16.5 (*Validity and admissibility in evidence*), 16.6 (*Governing law and enforcement*), 16.10 (*No default*), 16.12 (*Financial statements*), 16.16 (*Legal and beneficial ownership*) and 16.18 (*Sanctions*).

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

**"Restricted Person"** means a person that is (i) listed on, or owned by a person listed on any Sanction List; (ii) located in, incorporated under the laws of, or owned by a person located in or organised under the laws of a country or territory that is on a Sanctions List or (iii) otherwise subject to Sanctions.

**"Revenue Accounts"** means the USD Revenue Account and the AUD Revenue Account or, in each case, any other replacement account of the Borrower opened in accordance with Clause 18.1(f) (*Bank accounts*).

**"Sanctions"** means any economic sanctions laws or legally binding political trade restrictions administered, enacted or enforced by: the Foreign & Commonwealth Office of the United Kingdom, the Department for Business, Innovation and Skills in the United Kingdom, the institutions of the European Union, the Office of Foreign Assets Control of the US Department of Treasury ("**OFAC**"), the United States Department of State, Her Majesty's Treasury and the Australian Department of Foreign Affairs and Trade (together "**Sanctions Authorities**").

**"Sanctions List"** means the "Specially Designated Nationals and Blocked Persons" list issued by OFAC, the Consolidated List of Financial Sanctions Targets and Investment Ban List issued by Her Majesty's Treasury, or any equivalent list issued or maintained or made public by any of the Sanctions Authorities.

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

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

**"Security Property"** means:

- (a) the Transaction Security expressed to be granted in favour of the Security Agent as trustee for the Secured Parties and all proceeds of that Transaction Security;
- (b) all obligations expressed to be undertaken by the Borrower to pay amounts in respect of the liabilities to the Security Agent as trustee for the Secured Parties and secured by the Transaction Security together with all representations and



warranties expressed to be given by the Borrower in favour of the Security Agent as trustee for the Secured Parties;

- (c) any other amounts or property, whether rights, entitlements, choses in action or otherwise, actual or contingent, which the Security Agent is required by the terms of the Finance Documents to hold as trustee on trust for the Secured Parties.

**"Sellers"** means Standard Chartered Bank Korea Limited in its capacity as trustee of Mirae Asset Maps Global Infrastructure Private Special Asset Investment Trust, Standard Chartered Bank Korea Limited in its capacity as trustee of Mirae Asset Maps Global Infrastructure Private Special Asset Investment Trust 2, CAM Global Infrastructure Fund SICAV-FIS S.A. Sub-Fund I formerly known as DB Global Infrastructure Fund SICAV-FIS S.A. Sub-Fund I, CAM Global Infrastructure Fund SICAV-FIS S.A. Sub-Fund II formerly known as DB Global Infrastructure Fund SICAV-FIS S.A. Sub-Fund II, CAM Global Infrastructure Fund SICAV-FIS S.A. Sub-Fund III formerly known as DB Global Infrastructure Fund SICAV-FIS S.A. Sub-Fund III and Aberdeen Global Infrastructure Partners Carry LP.

**"Subsidiary"** means a subsidiary within the meaning of section 1159 of the Companies Act 2006.

**"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).

**"Total Commitments"** means the aggregate of the Commitments.

**"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 the Guernsey Share Charge, the Delaware Share Charge and the Account Charge, together with any other document entered into by the Borrower creating or expressed to create any Security over all or any part of its assets in respect of its obligations 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 Borrower.

**"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 Transaction"** 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 the Borrower under the Finance Documents.

**"US"** means the United States of America.

**"US Project"** means Denver Fastracks.

**"US Tax Obligor"** means:

- (a) the Borrower to the extent it is or is in due course treated as resident for tax purposes in the US; or
- (b) the Borrower to the extent some or all of its payments under the Finance Documents are treated as being from sources within the US for US federal income tax purposes.

**"USD Facility"** has the meaning given to it in Clause 2.1.

**"USD Facility Commitments"** means:

- (a) in relation to an Original Lender:
  - (i) the amount set opposite its name under the heading "USD Facility Commitment" in Schedule 1 (*The Original Lenders*); and
  - (ii) the amount of any other USD Facility Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*); and
- (b) in relation to any other Lender, the amount of any USD Facility Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*),

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

**"USD Revenue Account"** means the account held in the name of the Borrower with Lloyds Bank Corporate Markets Plc, Guernsey Branch with account number 29649002, sort code 30-16-63 and the SWIFT code LOYDGB2L.

**"Utilisation"** means a utilisation of a Facility.

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

**"Utilisation Request"** means a notice substantially in the form set out in Schedule 3 (*Utilisation Request*).

**"VAT"** means:

- (a) any value added tax imposed by the Value Added Tax Act 1994;

- (b) 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
- (c) any other tax of a similar nature, whether imposed in the United Kingdom or in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraphs (a) or (b) above, or imposed elsewhere.

**"Waterfall"** means the payment waterfall set out in Clause 18.2 (*Waterfall*).

## 1.2 Construction

- (a) Unless a contrary indication appears, any reference in this Agreement to:
  - (i) the **"Agent"**, any **"Finance Party"**, any **"Lender"** any **"Party"**, any **"Secured Party"** or 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) **"assets"** includes present and future properties, revenues and rights of every description;
  - (iii) **"including"** shall be construed as a reference to "including without limitation", so that any list of items or matters appearing after the word "including" shall be deemed not to be an exhaustive list, but shall be deemed rather to be a representative list, of those items or matters forming a part of the category described prior to the word "including";
  - (iv) a **"Finance Document"** or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, renewed, extended replaced or restated from time to time (in any case, however fundamentally) and includes any increase in, addition to, extension of or other change to any facility or indebtedness made available under such agreement or instrument;
  - (v) **"guarantee"** means 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;
  - (vi) **"Borrower"** is a reference to the Borrower acting through the General Partner.
  - (vii) a **"group of Lenders"** includes all the Lenders;

- (viii) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (ix) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
- (x) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
- (xi) "**indexed**" in reference to a figure in a Finance Document means that figure as adjusted on an annual basis only in direct proportion to the change in the US CPI to the published US CPI at the date of this deed.
- (xii) a provision of law is a reference to that provision as amended or re-enacted from time to time;
- (xiii) the singular includes a reference to the plural and vice versa; and
- (xiv) a time of day is a reference to London time.
- (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) Any Default or Event of Default is "continuing" if it has not been remedied or waived.
- (f) If there is any conflict between the provisions of this Agreement and any other Finance Document, the provisions of this Agreement shall prevail.

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

- (a) "**USD**" and "**US dollars**" denote the lawful currency of the United States of America and "**AUD**" and "**Australian dollars**" denote the lawful currency of Australia.
- (b) Any payment made in accordance with this Agreement shall be made in the currency in which the relevant Facility is denominated.

#### 1.4 **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 to 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.

#### 1.5 **Limited recourse**

- (a) References in the Finance Documents to the General Partner are, unless otherwise stated in this Clause 1.5, references solely to the General Partner acting in its capacity as general partner of the Borrower (and not, for the avoidance of doubt, to the General Partner in its own capacity).
- (b) Notwithstanding any other provision of this Agreement to the contrary, in respect of any amounts due and payable to the Lenders under any Finance Documents the Lenders shall have recourse only to the assets of the Borrower (and not, for the avoidance of doubt, to any assets of the General Partner in its own capacity).
- (c) No recourse shall be had against the General Partner (in its own capacity) or any officer, director, employee, security holder or incorporator of the General Partner personally or their successors, assigns or assignees and (ii) no assets of the General Partner (held on its own account or on account of any person other than the Borrower) will be available for the payment of any amounts due and payable to the Finance Parties in connection with the Finance Documents.
- (d) The Finance Parties may not make a petition or take any action to commence any case, proceeding, proposal or other action under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganisation, arrangement in the nature of insolvency proceedings, adjustment, winding-up, liquidation, examinership, reorganisation, dissolution, composition or other relief against the General Partner (in its own capacity, where it is not acting in its capacity as general partner of the Borrower) or any officer, director, employee, security holder or incorporator of the General Partner (acting in its own capacity, where it is not acting in its capacity as general partner of the Borrower).
- (e) Nothing in this Clause 1.5 limits or excludes the General Partner's liability arising as a result of its own fraud while acting in its capacity as general partner of the Borrower.
- (f) The provisions of this Clause 1.5 shall survive the termination of this Agreement.

## 1.6 **Guernsey terms**

Without prejudice to the generality of any provision of this Agreement, in this Agreement where it relates to the Borrower or the General Partner, a reference to:

- (a) a composition, compromise, assignment or arrangement with any creditor, winding up, administration, insolvency or dissolution includes, without limitation, any procedure or process referred to in Parts XXI, XXII and XXIII of the Companies (Guernsey) Law 2008, as amended and any other similar proceedings affecting the rights of creditors generally under Guernsey law, and shall be construed so as to include any equivalent or analogous proceedings;
- (b) a receiver, administrative receiver, or the like includes, without limitation, the Sheriff of the Royal Court of Guernsey or any other person performing the same function of the foregoing;
- (c) a creditor's process includes, without limitation, "saisie" under the Saisie Procedure (Simplification) (Bailiwick) Order 1952;
- (d) a lien or a security interest includes, without limitation, any assignment or any hypothèque granted or arising by operation of law and any security interest created pursuant to the Security Interest (Guernsey) Law 1993; and
- (e) any analogous step or procedure being taken in connection with insolvency includes any step taken in connection with the commencement of proceedings towards the making of a declaration of en désastre in respect of any assets of such entity (or the making of such declaration).

## SECTION 2 THE FACILITIES

### 2. THE FACILITIES

#### 2.1 The Facilities

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

- (a) a US dollar term loan facility in an aggregate amount equal to the USD Facility Commitments (the “**USD Facility**”);
- (b) an Australian dollar term loan facility in an aggregate amount equal to the AUD Facility Commitments (the “**AUD Facility**”).

#### 2.2 Increase

- (a) The Borrower may by giving prior notice to the Agent by no later than the date falling 20 Business Days after the effective date of a cancellation of the Commitment of a Lender in accordance with:

- (i) Clause 7.2 (*Illegality*); or
  - (ii) paragraph (a) of Clause 7.4 (*Right of replacement or repayment and cancellation in relation to a single Lender*),

request that the Commitments relating to a Facility be increased (and the Commitments relating to that Facility shall be so increased) in an aggregate amount in the relevant currency of up to the amount of the Commitments relating to that Facility so cancelled as follows:

- (iii) the increased Commitments will be assumed by one or more Eligible Institutions (each an “**Increase Lender**”) 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 in respect of those Commitments;
    - (iv) the Borrower and any Increase Lender shall assume obligations towards one another and/or acquire rights against one another as the Borrower and the Increase Lender would have assumed and/or acquired had the Increase Lender been an Original Lender in respect of that part of the increased Commitments which it is to assume;
    - (v) 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 in respect of that part of the increased Commitments which it is to assume;

- (vi) the Commitments of the other Lenders shall continue in full force and effect; and
  - (vii) any increase in the Commitments relating to Facility shall take effect on the date specified by the Borrower in the notice referred to above or any later date on which the Agent executes an otherwise duly completed Increase Confirmation delivered to it by the relevant Increase Lender.
- (b) The Agent shall, subject to paragraph (c) below, as soon as reasonably practicable after receipt by it of a duly completed Increase Confirmation appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Increase Confirmation.
- (c) The Agent shall only be obliged to execute an Increase Confirmation delivered to it by an Increase Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assumption of the increased Commitments by that Increase Lender.
- (d) 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 in accordance with this Agreement and that it is bound by that decision to the same extent as it would have been had it been an Original Lender.
- (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 21.4 (*Assignment or transfer fee*) if the increase was a transfer pursuant to Clause 21.6 (*Procedure for transfer*) and if the Increase Lender was a New Lender.
- (f) Neither the Agent nor any Lender shall have any obligation to find an Increase Lender and in no event shall any Lender whose Commitment is replaced by an Increase Lender be required to pay or surrender any of the fees received by such Lender pursuant to the Finance Documents.
- (g) Clause 21.5 (*Limitation of responsibility of Existing Lenders*) shall apply *mutatis mutandis* in this Clause 2.2 in relation to an Increase Lender as if references in that Clause to:
- (i) an "**Existing Lender**" were references to all the Lenders immediately prior to the relevant increase;
  - (ii) the "**New Lender**" were references to that "**Increase Lender**"; and
  - (iii) a "**re-transfer**" and "**re-assignment**" were references to respectively a "**transfer**" and "**assignment**".



## 2.3 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 the Borrower is a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with paragraph (c) below. 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 the Borrower which relates to a Finance Party's participation in the Facilities 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 the Borrower.
- (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.

## 3. PURPOSE

### 3.1 Purpose

The Borrower shall apply all amounts borrowed by it under the Facilities towards funding distributions in accordance with the Purchase Agreement and Clause 9 of the Limited Partnership Agreement and any liabilities and expenses of the Borrower and the General Partner, including costs, liabilities and expenses related to the Acquisition.

### 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 Borrower may not deliver a Utilisation Request unless the Agent has received all of the documents and other evidence listed in Schedule 2 (*Conditions precedent*) in form and substance satisfactory to the Agent. The Agent shall notify the Borrower and the Lenders promptly upon being satisfied that it has received all of such documents and other evidence except for the Written Notice (as defined in the Escrow Agreement).
- (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 paragraph (a) above, the Lenders authorise 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**

- (a) The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) if on the date of the Utilisation Request and on the proposed Utilisation Date:
  - (i) no Default is continuing or would result from the proposed Loan; and
  - (ii) the Repeating Representations to be made by the Borrower and the General Partner (as applicable) are true in all material respects.

**4.3 Maximum number of Loans**

Unless otherwise agreed between the Parties,

- (a) the Borrower may not deliver a Utilisation Request if as a result of the proposed Utilisation more than 4 Loans would be outstanding.
- (b) the Borrower may not request that a Loan be divided if, as a result of the proposed division, more than 4 Loans would be outstanding.

### **SECTION 3 UTILISATION**

#### **5. UTILISATION**

##### **5.1 Delivery of a Utilisation Request**

The Borrower may utilise the Facilities by delivery to the Agent of a duly completed Utilisation Request on or before the proposed Utilisation Date.

##### **5.2 Completion of a Utilisation Request**

- (a) Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:
  - (i) the proposed Utilisation Date is a Business Day within the Availability Period; and
  - (ii) the currency and amount of the Utilisation complies with Clause 5.3 (*Currency and amount*).
- (b) Multiple Utilisations may be requested in respect of the Financial Closing Date.

##### **5.3 Currency and amount**

The currency specified in a Utilisation Request must be AUD (in respect of the AUD Facility) or USD (in respect of the USD Facility).

##### **5.4 Lenders' participation**

- (a) If the conditions set out in this Agreement have been met, each Lender shall make its participation in each Loan available by the date agreed under the Purchase Agreement.
- (b) 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.

##### **5.5 Deemed drawdown**

Upon receipt by Hogan Lovells International LLP of the Written Notice (as defined in the Escrow Agreement) in accordance with the Escrow Agreement and the Purchase Agreement, each Utilisation Request dated on the Utilisation Date shall be deemed effective as required by Clause 5.1, amounts to be Utilised on the initial Utilisation Date shall be deemed to have been drawn down (and shall be deemed to be constituted by the relevant part of the Completion Drawdown Amounts (as defined in the Purchase Agreement) standing to the credit of the Escrow Account (as defined in the Escrow Agreement)), and the release of such funds to the Sellers in accordance with the Escrow Agreement shall be deemed to constitute the application by the Borrower under this Agreement of those funds to make payment to the Sellers as permitted by Clause 3.1 (*Purpose*) of this Agreement.

## **5.6 Cancellation of Commitment**

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

**SECTION 4**  
**REPAYMENT, PREPAYMENT AND CANCELLATION**

**6. REPAYMENT**

**6.1 Repayment of Loans**

- (a) Subject to the terms of this Agreement (including without limitation cash sweep payments made in accordance with Clause 7.1(a) (*Cash sweep*) and the Cash Sweep Prepayment Schedule), the Borrower shall repay each Loan in full on the Maturity Date.
- (b) The Borrower shall specify which Loan is being repaid upon repayment pursuant to paragraph (a) above.
- (c) The Borrower may repay PIK Amounts and/or PIK Interest at any time without premium or penalty.
- (d) Repayment or prepayment of any Loan, interest, PIK Amount or PIK Interest shall be made in the currency in which the relevant Facility is denominated.

**6.2 Reborrowing**

The Borrower may not reborrow any part of a Facility which is repaid.

**7. PREPAYMENT AND CANCELLATION**

**7.1 Mandatory prepayment**

- (a) Cash sweep
  - (i) Subject to the provisions of this Clause 7.1(a) and Clause 18.2 (*Waterfall*), the Borrower shall on the dates set out in the relevant Cash Sweep Prepayment Schedule prepay the relevant Facilities from amounts standing to the credit of the relevant Revenue Account in accordance with the Waterfall either (x) if there is sufficient cash standing to the credit of the Revenue Accounts to do so, in such amounts as are required such that the amount of principal outstanding under each Facility after the making of such payments is equal to the amount set out in the column headed "Closing Balance" of the relevant Cash Sweep Prepayment Schedule, or (y) if there are insufficient funds standing to the credit of the relevant Revenue Account on such date to reduce the principal outstanding to such Closing Balance, then in the amount then available in the relevant Revenue Accounts in accordance with paragraphs (ii) to (iv) below having made all superior payments from the relevant Revenue Account required to be made under the Waterfall on such date.
  - (ii) Subject to paragraphs (iii) and (iv) below, in applying amounts standing to the credit of the relevant Revenue Account in accordance with paragraph (a)(i) above:

- (A) amounts standing to the credit of the USD Revenue Account shall be applied first in respect of the USD Facility; and
  - (B) amounts standing to the credit of the AUD Revenue Account shall be applied first in respect of the AUD Facility.
- (iii) If, on any Interest Payment Date, the payment referred to in paragraph (a)(i) above in relation to the USD Facility does not result in the total amount outstanding under the USD Facility being equal to the Closing Balance on the USD Facility Cash Sweep Prepayment Schedule for such Interest Payment Date, and if there remain any funds standing the credit of the AUD Revenue Account on such date having made all AUD (or where relevant USD) denominated payments required to be made up to and including “fifth” under the Waterfall, then (x) if the amount standing to the credit of the AUD Revenue Account is sufficient to do so, the Borrower shall apply an amount from the AUD Revenue Account in prepayment of principal outstanding under the USD Facility in order to reduce the balance outstanding on the USD Facility to the relevant “Closing Balance” on the USD Facility Cash Sweep Prepayment Schedule for such Interest Payment Date (allowing for currency exchange costs required to be incurred to make such payment in USD), or (y) if the amount standing to the credit of the AUD Revenue Account is insufficient to fully reduce the USD Facility to be equal to the Closing Balance on the USD Cash Sweep Prepayment Schedule for such Interest Payment Date, then the Borrower shall apply the amount then available in the AUD Revenue Account towards making such payment (having made all superior payments under the Waterfall on such date, and allowing for currency exchange costs); and
- (iv) If, on any Interest Payment Date, the payment referred to in paragraph (a)(i) above in relation to the AUD Facility does not result in the total amount outstanding under the AUD Facility being equal to the Closing Balance on the AUD Facility Cash Sweep Prepayment Schedule for such Interest Payment Date, and if there remain any funds standing the credit of the USD Revenue Account on such date having made all USD (or where relevant AUD) denominated payments required to be made up to and including “fifth” under the Waterfall, then (x) if the amount standing to the credit of the USD Revenue Account is sufficient to do so, the Borrower shall apply an amount from the USD Revenue Account in prepayment of principal outstanding under the AUD Facility in order to reduce the balance outstanding on the AUD Facility to the relevant “Closing Balance” on the AUD Facility Cash Sweep Prepayment Schedule for such Interest Payment Date (allowing for currency exchange costs required to be incurred to make such payment in AUD), or (y) if the amount standing to the credit of the USD Revenue Account is insufficient to fully reduce the AUD Facility to be equal to the Closing Balance on the AUD Cash Sweep Prepayment Schedule for such Interest Payment Date, then the Borrower shall apply the amount then available in the USD Revenue Account towards making such payment (having

made all superior payments under the Waterfall on such date, and allowing for currency exchange costs).

- (v) To the extent the Borrower prepays (other than pursuant to this Clause 7.1(a)) a Facility in accordance with this Agreement, the Agent and the Borrower shall agree updates to the Cash Sweep Prepayment Schedule which shall, unless agreed otherwise, reduce the Closing Balance for each subsequent payment date referred to in the Cash Sweep Prepayment Schedules pro rata.

(b) Dispositions

- (i) Unless otherwise agreed by the Agent, and subject to paragraph (iii) below, in the event that the Borrower:

- (A) sells or otherwise disposes of its interest in the US Project; or
- (B) receives proceeds from any capital redemption or share buy-back in respect of the US Project,

the Borrower shall apply 100% of the net proceeds of such disposition, capital redemption or share buy-back received by it in prepayment of the USD Facility as soon as reasonably practicable upon receipt of such proceeds;

- (ii) Unless otherwise agreed by the Agent, and subject to paragraph (iii) below, in the event that the Borrower:

- (A) sells or otherwise disposes of its interest in any of the Australian Projects; or
- (B) receives proceeds from any capital redemption or share buy-back in respect of any of the Australian Projects,

the Borrower shall apply 100% of the net proceeds of such disposition, capital redemption or share buy-back received by it in prepayment of the AUD Facility as soon as reasonably practicable upon receipt of such proceeds.

- (iii) If there are outstanding PIK Amounts and/or PIK Interest at any time when an amount is required to be prepaid under either of paragraphs (i) or (ii) above, the relevant net proceeds shall be first applied towards reducing the then outstanding PIK Amounts and PIK Interest to zero (without premium or penalty) before applying such net proceeds in prepayment of principal under the relevant Facility.

(c) First distribution following resolution of the Adelaide Dispute

Following the resolution of the Adelaide Dispute, the Borrower shall promptly on receipt apply 100% of the first distribution amounts arising out of or in connection with the New Royal Adelaide Hospital up to an aggregate amount

equal to AUD 18,930,000 (the “**First Distribution after Resolution**”) in prepayment of the AUD Facility. Following the date of such prepayment each subsequent amount stated in the column headed “Closing Balance” in Part II (*Payment Schedule (AUD Facility)*) of Schedule 7 (*Cash Sweep Prepayment Schedule*) shall be automatically reduced by an amount equal to the First Distribution after Resolution, and Part II (*Payment Schedule (AUD Facility)*) of Schedule 7 (*Cash Sweep Prepayment Schedule*) shall be deemed amended to reflect such reduction.

## 7.2 **Illegality**

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

- (a) that Lender shall promptly notify the Agent upon becoming aware of that event;
- (b) upon the Agent notifying the Borrower, the Available Commitment of that Lender will be immediately cancelled; and
- (c) to the extent that the Lender's participation has not been transferred pursuant to paragraph (d) of Clause 7.4 (*Right of replacement or repayment and cancellation in relation to a single Lender*), the 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 Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law) and that Lender's corresponding Commitment shall be immediately cancelled in the amount of the participations repaid.

## 7.3 **Voluntary prepayment of Loans**

- (a) At any time in the six months prior to the Maturity Date, the Borrower may, if it gives the Agent not less than 5 Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of any Loan without premium or penalty to the extent it is made on the Interest Payment Date and, for the avoidance of doubt, without any Make-Whole Amount.
- (b) Subject to paragraph (a), and provided there are no outstanding PIK Amounts or PIK Interest at such time (or if there are outstanding PIK Amounts and/or PIK Interest, provided that all such then outstanding PIK Amounts and PIK Interest will be repaid (without premium or penalty) prior to, or simultaneous with, the prepayment of principal under this paragraph (b)), the Borrower may, if it gives the Agent not less than 5 Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of any Loan on an Interest Payment Date provided such prepayment is accompanied by the relevant Make-Whole Amount calculated in accordance with Clause 7.7 (*Make-Whole*).



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

**7.4 Right of replacement or repayment and cancellation in relation to a single Lender**

- (a) If:
  - (i) any sum payable to any Lender by the Borrower is required to be increased under paragraph (c) of Clause 11.2 (*Tax gross-up*); or
  - (ii) any Lender claims indemnification from the Borrower under Clause 11.3 (*Tax indemnity*) or Clause 12.1 (*Increased Costs*),

the Borrower may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Agent notice of cancellation of the Commitment of that Lender and its intention to procure the repayment of that Lender's participation in the Loans or give the Agent notice of its intention to replace that Lender in accordance with paragraph (d) below.
- (b) On receipt of a notice of cancellation referred to in paragraph (a) above, the Available Commitment of that Lender shall be immediately reduced to zero.
- (c) On the last day of each Interest Period which ends after the Borrower has given notice of cancellation under paragraph (a) above (or, if earlier, the date specified by the Borrower in that notice), the Borrower shall repay that Lender's participation in that Loan and that Lender's corresponding Commitment shall be immediately cancelled in the amount of the participations repaid.
- (d) If:
  - (i) any of the circumstances set out in paragraph (a) above apply to a Lender; or
  - (ii) the Borrower becomes obliged to pay any amount in accordance with Clause 7.2 (*Illegality*) to any Lender,

the Borrower may, on 10 Business Days' prior notice to the Agent and that Lender, replace that Lender by requiring that Lender to (and, to the extent permitted by law, that Lender shall) transfer pursuant to Clause 21 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement to an Eligible Institution which confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with Clause 21 (*Changes to the Lenders*) for a purchase price in cash payable at the time of the transfer in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Loans and all accrued interest (to the extent that the Agent has not given a notification under Clause 21.10 (*Pro rata interest settlement*)), and other amounts payable in relation thereto under the Finance Documents.

- (e) The replacement of a Lender pursuant to paragraph (d) above shall be subject to the following conditions:
  - (i) the Borrower shall have no right to replace the Agent;
  - (ii) neither the Agent nor any Lender shall have any obligation to find a replacement Lender;
  - (iii) in no event shall the Lender replaced under paragraph (d) above be required to pay or surrender any of the fees received by such Lender pursuant to the Finance Documents; and
  - (iv) the Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (d) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer.
- (f) A Lender shall perform the checks described in paragraph (e)(iv) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (d) above and shall notify the Agent and the Borrower when it is satisfied that it has complied with those checks.

## 7.5 Restrictions

- (a) Any notice of cancellation or prepayment given by any Party under this Clause 7 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.
- (b) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and (save for any voluntary prepayment of principal pursuant to Clause 7.3(b) (*Voluntary prepayment of Loans*), where a Make-Whole Amount shall apply as provided in such paragraph) without premium or penalty.
- (c) The Borrower may not reborrow any part of a Facility which is prepaid.
- (d) The Borrower shall not 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.
- (e) Subject to Clause 2.2 (*Increase*), no amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
- (f) If the Agent receives a notice under this Clause 7 it shall promptly forward a copy of that notice to either the Borrower or the affected Lender, as appropriate.
- (g) If all or part of any Lender's participation in a Loan is repaid or prepaid an amount of that Lender's Commitment (equal to the amount of the participation which is repaid or prepaid) will be deemed to be cancelled on the date of repayment or prepayment.

## 7.6 Application of prepayments

Any prepayment of a Loan pursuant to Clause 7.3 (*Voluntary prepayment of Loans*) shall be applied *pro rata* to each Lender's participation in that Loan.

## 7.7 Make-Whole

(a) If the Borrower elects to make a prepayment under Clause 7.3 (*Voluntary prepayment of Loans*) it shall at the same time pay to the Agent (for the account of each Lender) the Make-Whole Amount in respect of the principal amount prepaid.

(b) For the purpose of this Clause 7:

**“Make-Whole Amount”** means with respect to Loan, an amount equal to the excess, if any, of the Discounted Value of the Remaining Scheduled Payments with respect to the Called Principal of such Loan over the amount of such Called Principal, provided that the Make-Whole Amount may in no event be less than zero. For purposes of determining the Make-Whole Amount, the following terms have the following meanings:

**“Called Principal”** means, with respect to any Loan, the principal of such Loan that is to be prepaid or has become or is declared to be immediately due and payable, as the context requires.

**“Discounted Value”** means, with respect to the Called Principal of any Loan, the amount obtained by discounting all Remaining Scheduled Payments with respect to such Called Principal from their respective scheduled due dates to the Settlement Date with respect to such Called Principal, in accordance with accepted financial practice and at a discount factor (applied on the same periodic basis as that on which interest on the Loan is payable) equal to the Reinvestment Yield with respect to such Called Principal.

**“Reinvestment Yield”** means:

(I) with respect to the Called Principal of the USD Facility, the sum of (x) 0.50% (50 basis points) plus (y) the yield to maturity implied by the “Ask Yield(s)” reported as of 10:00 a.m. (New York City time) on the second business day preceding the Settlement Date with respect to such Called Principal, on the display designated as “Page PX1” (or such other display as may replace Page PX1) on Bloomberg Financial Markets for the most recently issued actively traded on-the-run U.S. Treasury securities (**“Reported”**) having a maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date. If there are no such U.S. Treasury securities Reported having a maturity equal to such Remaining Average Life, then such implied yield to maturity will be determined by (a) converting U.S. Treasury bill quotations to bond equivalent yields in accordance with accepted financial practice and (b) interpolating linearly between the “Ask Yields” Reported for the applicable most recently issued actively traded on-the-run U.S. Treasury securities with the maturities (1) closest to and greater

than such Remaining Average Life and (2) closest to and less than such Remaining Average Life. The Reinvestment Yield shall be rounded to the number of decimal places as appears in the interest rate of the applicable Loan.

If such yields are not Reported or the yields Reported as of such time are not ascertainable (including by way of interpolation), then **“Reinvestment Yield”** means, with respect to the Called Principal of a Loan, the sum of (x) 0.50% (50 basis points) plus (y) the yield to maturity implied by the U.S. Treasury constant maturity yields reported, for the latest day for which such yields have been so reported as of the second business day preceding the Settlement Date with respect to such Called Principal, in Federal Reserve Statistical Release H.15 (or any comparable successor publication) for the U.S. Treasury constant maturity having a term equal to the Remaining Average Life of such Called Principal as of such Settlement Date. If there is no such U.S. Treasury constant maturity having a term equal to such Remaining Average Life, such implied yield to maturity will be determined by interpolating linearly between (1) the U.S. Treasury constant maturity so reported with the term closest to and greater than such Remaining Average Life and (2) the U.S. Treasury constant maturity so reported with the term closest to and less than such Remaining Average Life. The Reinvestment Yield shall be rounded to the number of decimal places as appears in the interest rate of the applicable Loan.

- (II) with respect to the Called Principal of the AUD Facility, the sum of (x) 0.50% (50 basis points) plus (y) the yield to maturity implied by the “Ask Yield(s)” reported as of 10:00 a.m. (New York City time) on the second business day preceding the Settlement Date with respect to such Called Principal, on the display designated as “Page PX1” (or such other display as may replace Page PX1) on Bloomberg Financial Markets for the most recently issued actively traded on-the-run U.S. Treasury securities (**“Reported”**) having a maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date. If there are no such U.S. Treasury securities Reported having a maturity equal to such Remaining Average Life, then such implied yield to maturity will be determined by (a) converting U.S. Treasury bill quotations to bond equivalent yields in accordance with accepted financial practice and (b) interpolating linearly between the “Ask Yields” Reported for the applicable most recently issued actively traded on-the-run U.S. Treasury securities with the maturities (1) closest to and greater than such Remaining Average Life and (2) closest to and less than such Remaining Average Life. The Reinvestment Yield shall be rounded to the number of decimal places as appears in the interest rate of the applicable Loan.

If such yields are not Reported or the yields Reported as of such time are not ascertainable (including by way of interpolation), then **“Reinvestment Yield”** means, with respect to the Called Principal of a Loan, the sum of (x) 0.50% (50 basis points) plus (y) the yield to

maturity implied by the U.S. Treasury constant maturity yields reported, for the latest day for which such yields have been so reported as of the second business day preceding the Settlement Date with respect to such Called Principal, in Federal Reserve Statistical Release H.15 (or any comparable successor publication) for the U.S. Treasury constant maturity having a term equal to the Remaining Average Life of such Called Principal as of such Settlement Date. If there is no such U.S. Treasury constant maturity having a term equal to such Remaining Average Life, such implied yield to maturity will be determined by interpolating linearly between (1) the U.S. Treasury constant maturity so reported with the term closest to and greater than such Remaining Average Life and (2) the U.S. Treasury constant maturity so reported with the term closest to and less than such Remaining Average Life. The Reinvestment Yield shall be rounded to the number of decimal places as appears in the interest rate of the applicable Loan.

**“Remaining Average Life”** means, with respect to any Called Principal, the number of years obtained by dividing (i) such Called Principal into (ii) the sum of the products obtained by multiplying (a) the principal component of each Remaining Scheduled Payment with respect to such Called Principal by (b) the number of years, computed on the basis of a 360-day year composed of twelve 30-day months and calculated to two decimal places, that will elapse between the Settlement Date with respect to such Called Principal and the scheduled due date of such Remaining Scheduled Payment.

**“Remaining Scheduled Payments”** means, with respect to the Called Principal of Loan, all payments of such Called Principal and interest thereon that would be due after the Settlement Date with respect to such Called Principal if no payment of such Called Principal were made prior to its scheduled due date, provided that if such Settlement Date is not a date on which interest payments are due to be made under the Loans, then the amount of the next succeeding scheduled interest payment will be reduced by the amount of interest accrued to such Settlement Date and required to be paid on such Settlement Date.

**“Settlement Date”** means, with respect to the Called Principal of Loan, the date on which such Called Principal is to be prepaid or has become or is declared to be immediately due and payable, as the context requires.

## SECTION 5 COSTS OF UTILISATION

### 8. INTEREST

#### 8.1 Calculation of interest

The principal amounts outstanding under each Loan shall accrue interest at a rate of 4.25% per annum.

#### 8.2 Payment of interest

- (a) Subject to paragraph (b) below, the Borrower shall pay accrued and unpaid interest on each Loan on each Interest Payment Date and on the Maturity Date.
- (b) The Borrower may 2 Business Days prior to any Interest Payment Date if it considers that there will be insufficient amounts standing to the credit of the Revenue Accounts to fully fund the amount of interest that would otherwise fall due on such Interest Payment Date, deliver a PIK Amount Notice to the Agent notifying the Agent that it elects that some or all of such accrued and unpaid interest set out in such notice be treated as a new PIK Amount.
- (c) All outstanding PIK Amounts shall accrue interest in accordance with this Agreement as if they were amounts of outstanding Loan principal (such amounts of interest accruing on PIK Amounts being referred to herein as “**PIK Interest**”).
- (d) PIK Interest shall be payable on each Interest Payment Date in accordance with the Waterfall, unless the Borrower considers that there will be insufficient amounts standing to the credit of the Revenue Accounts to fully fund the amount of PIK Interest that would otherwise fall due on such Interest Payment Date, in which case, the Borrower may 2 Business Days prior to such Interest Payment Date deliver a PIK Amount Notice to the Agent notifying the Agent that it elects that some or all of the accrued and unpaid PIK Interest set out in such notice be treated as a new PIK Amount. For the avoidance of doubt, PIK Interest shall not be treated as forming part of the PIK Amount unless designated as a new PIK Amount in accordance with this paragraph (d), but once so designated as a PIK Amount shall be treated as forming part of the PIK Amount (and not thereafter treated as PIK Interest).
- (e) Following delivery of a PIK Amount Notice to the Agent, each amount designated therein as a New PIK Amount shall be treated as part of the then total aggregate PIK Amount.
- (f) The Borrower may 2 Business Days prior to any Interest Payment Date if it considers that there will be insufficient amounts standing to the credit of the Revenue Accounts to fully fund the amount of any PIK Amount that would otherwise fall due on such Interest Payment Date, deliver a PIK Amount Notice to the Agent notifying the Agent that it elects that some or all of such accrued and unpaid PIK Amount set out in such notice continue to be treated as a PIK

Amount and not fall due for payment until the subsequent Interest Payment Date in accordance with the PIK Amount Notice.

- (g) For the avoidance of doubt, the exercise of any right to defer the payment of any amount of interest, PIK Interest or PIK Amounts by designating such amounts as New PIK Amounts, PIK Amounts or PIK Interest pursuant to this Clause 8.2 shall have the effect of rendering such amounts not due for payment, so that any failure to pay such amounts following the exercise of such a right shall not constitute a non-payment of any such amount for any purposes under this Agreement (including Clause 8.3 (*Default interest*) and any non-payment Default or Event of Default).

### 8.3 **Default interest**

- (a) If the Borrower fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is one (1) per cent. per annum higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Agent (acting reasonably). Any interest accruing under this Clause 8.3 shall be immediately payable by the Borrower 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 (1) per cent. per annum higher than the rate which would have applied if the overdue amount had not become due.
- (c) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.
- (d) For the avoidance of doubt, default interest shall not accrue on PIK Amounts or PIK Interest.

## 9. **INTEREST PERIODS**

### 9.1 **Interest Periods**

- (a) The first Interest Period for a Loan shall start on the Utilisation Date and end on the next Interest Payment Date. Thereafter, each Interest Period shall be the period from and including the Interest Payment Date to (but excluding) the next Interest Payment Date.

(b) An Interest Period for a Loan shall not extend beyond the Maturity Date.

**9.2 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).

**10. FEES**

**10.1 Agency fee**

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

**10.2 Security Agency fee**

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



## SECTION 6 ADDITIONAL PAYMENT OBLIGATIONS

### 11. TAX GROSS-UP AND INDEMNITIES

#### 11.1 Definitions

In this Agreement:

**"Borrower DTTP Filing"** means an HM Revenue & Customs' Form DTTP2 duly completed and filed by the 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 Schedule 1 (*The Original Lenders*), and is filed with HM Revenue & Customs within 30 days of the date of this Agreement; 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 is filed with HM Revenue & Customs within 30 days of that date.

**"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 respects any payments of interest made in respect of that advance or would be within such charge as respects such payments 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 within the charge to United Kingdom corporation tax as respects 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.

**"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 the Borrower to a Finance Party under Clause 11.2 (*Tax gross-up*) or a payment under Clause 11.3 (*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 which must be met under the Treaty for residents of such Treaty State to obtain full exemption from tax on interest imposed by the United Kingdom, except that for this purpose it shall be assumed that any necessary procedural formalities are 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.

Unless a contrary indication appears, in this Clause 11 a reference to **"determines"** or **"determined"** means a determination made in the absolute discretion of the person making the determination.

## 11.2 Tax gross-up

- (a) The Borrower shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) The Borrower shall promptly upon becoming aware that it 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 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 notify the Borrower.
- (c) If a Tax Deduction is required by law to be made by the Borrower, the amount of the payment due from the Borrower shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) A payment shall not be increased under paragraph (c) above by reason of a Tax Deduction on account of Tax imposed by the United Kingdom, if on the date on which the payment falls due:
  - (i) the payment could have been made to the relevant Lender without a Tax Deduction if the Lender had been a Qualifying Lender, but on that date that Lender is not or has ceased to be a Qualifying Lender other than as a result of any change after the date it became a Lender under this Agreement in (or in the interpretation, administration, or application of) any law or Treaty or any published practice or published concession of any relevant taxing authority; or
  - (ii) the relevant Lender is a Qualifying Lender solely by virtue of paragraph (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 Borrower 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 Borrower ; 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 Borrower, on the basis that the Tax Confirmation would have enabled the Borrower 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 Borrower is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had that Lender complied with its obligations under paragraph (g) or (h) (as applicable) below.
- (e) If the Borrower is required to make a Tax Deduction, the Borrower 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 thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower 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 paragraph (ii) below, a Treaty Lender and the Borrower shall co-operate in completing any procedural formalities necessary for the Borrower to obtain authorisation to make that payment without a Tax Deduction.
  - (ii)
    - (A) A Treaty Lender which is an Original Lender and that holds a passport under the HMRC DT Treaty Passport scheme, and which wishes that scheme to apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence opposite its name in Schedule 1 (*The Original Lenders*); and
    - (B) a Treaty Lender which is not an Original Lender and 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 paragraph (i) above.
- (h) If a Lender has confirmed its scheme reference number and its jurisdiction of tax residence in accordance with paragraph (g)(ii) above and:
  - (i) the Borrower has not made the Borrower DTTP Filing in respect of that Lender; or

- (ii) the Borrower has made the Borrower DTTP Filing in respect of that Lender but:
  - (A) the Borrower DTTP Filing has been rejected by HM Revenue & Customs;
  - (B) HM Revenue & Customs has not given the Borrower authority to make payments to that Lender without a Tax Deduction within 60 days of the date of the Borrower DTTP Filing; or
  - (C) HM Revenue & Customs has given the Borrower authority to make payments to that Lender without a Tax Deduction but such authority has subsequently been revoked or expired,

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

- (i) If a Lender has not confirmed its scheme reference number and jurisdiction of tax residence in accordance with paragraph (g)(ii) above, the Borrower shall not make a Borrower DTTP Filing or file any other form relating to the HMRC DT Treaty Passport scheme in respect of that Lender's Commitment or its participation in any Loan unless the Lender otherwise agrees.
- (j) The 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.

### 11.3 Tax indemnity

- (a) The Borrower 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) Paragraph (a) above 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 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 11.2 (*Tax gross-up*);
  - (B) would have been compensated for by an increased payment under Clause 11.2 (*Tax gross-up*) but was not so compensated solely because one of the exclusions in paragraph (d) of Clause 11.2 (*Tax gross-up*) applied; or
  - (C) relates to a FATCA Deduction required to be made by a Party.
- (c) A Protected Party making, or intending to make a claim under paragraph (a) above shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Borrower.
- (d) A Protected Party shall, on receiving a payment from the Borrower under this Clause 11.3, notify the Agent.

#### 11.4 Tax Credit

If the Borrower 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 Borrower 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 Borrower.

#### 11.5 Lender status confirmation

Each Lender which is not an Original Lender shall indicate, in the documentation which it executes on becoming a Party as a Lender, and for the benefit of the Agent and without liability to the Borrower, 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 11.5 then that Lender shall be treated for the purposes of this Agreement (including by the Borrower) 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 Borrower). For the avoidance of doubt, the documentation which a Lender executes on becoming a Party as a Lender shall not be invalidated by any failure of a Lender to comply with this Clause 11.5.

#### 11.6 Stamp taxes

The Borrower shall pay and, within three Business Days of demand, indemnify each Finance Party against any cost, loss or liability that Finance Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document, except those payable on or by reference to or in consequence of the transfer of the whole or any part of the rights of a Finance Party under a Finance Document.

#### 11.7 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 paragraph (b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).
- (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 paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
  - (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- (c) Where a 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 11.7 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.

#### 11.8 **FATCA information**

- (a) Subject to paragraph (c) below, each Party shall, within ten Business Days of a reasonable request by another Party:
  - (i) confirm to that other Party whether it is:
    - (A) a FATCA Exempt Party; or
    - (B) not a FATCA Exempt Party;
  - (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 paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Paragraph (a) above shall not oblige any Finance Party to do anything, and paragraph (a)(iii) above shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:
  - (i) any law or regulation;
  - (ii) any fiduciary duty; or
  - (iii) any duty of confidentiality.



- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (a)(i) or (a)(ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (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 the 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 ten Business Days of:
  - (i) where the Borrower is a US Tax Obligor and the relevant Lender is an Original Lender, the date of this Agreement;
  - (ii) where the Borrower is a US Tax Obligor on a date on which any other Lender becomes a Party as a Lender, that date;
  - (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, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) above to the Borrower.
- (g) If any withholding certificate, withholding statement, document, authorisation or waiver provided to the Agent by a Lender pursuant to paragraph (e) above 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 Borrower.
- (h) The Agent may rely on any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) or (g) above without further verification. The Agent shall not be liable for any action taken by it under or in connection with paragraphs (e), (f) or (g) above.

## 11.9 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 Borrower and the Agent and the Agent shall notify the other Finance Parties.

## 12. INCREASED COSTS

### 12.1 Increased Costs

- (a) Subject to Clause 12.3 (*Exceptions*) and Clause 12.2 (*Increased Cost claims*) the Borrower shall, within three Business Days of a demand by the Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party 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;
  - (iii) 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 or Finance Party); or
  - (iv) the implementation or application of, or compliance with, Basel III or any law or regulation that implements or applies Basel III, including CRD IV (to the extent it relates to Basel III),

in each case, after the date of this Agreement and to the extent that such Increased Costs could not be reasonably calculated as at the date of this Agreement.

- (b) In this Agreement:
  - (i) “**Increased Costs**” means:
    - (A) a reduction in the rate of return from the relevant Facility or on a Finance Party's overall capital;

- (B) an additional or increased cost; or
- (C) a reduction of any amount due and payable under any Finance Document,

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

(ii) "Basel **III**" means:

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

(iii) "**CRD IV**" means EU CRD IV and UK CRD IV.

(iv) "**EU CRD IV**" means:

- (A) "Regulation (EU) No 575/2013 of the European Parliament and of the Council dated 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012" as amended from time to time; and
- (B) "Directive 2013/36/EU of the European Parliament and of the Council dated 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 Directives 2006/48/EC and 2006/49/EC", as amended from time to time.

(v) "**UK CRD IV**" means:

- (A) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending

Regulation (EU) No 648/2012 as it forms part of domestic law of the United Kingdom by virtue of the European Union (Withdrawal) Act 2018 (the "**Withdrawal Act**");

- (B) the law of the United Kingdom or any part of it, which immediately before IP completion day (as defined in the European Union (Withdrawal Agreement) Act 2020) implemented Directive 2013/36/EU of the European Parliament and of the Council 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 Directives 2006/48/EC and 2006/49/EC and its implementing measures; and
- (C) direct EU legislation (as defined in the Withdrawal Act), which immediately before IP completion day (as defined in the European Union (Withdrawal Agreement) Act 2020) implemented EU CRD IV as it forms part of domestic law of the United Kingdom by virtue of the Withdrawal Act.

## 12.2 Increased Cost claims

- (a) A Finance Party intending to make a claim pursuant to Clause 12.1 (*Increased Costs*) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Borrower.
- (b) Each Finance Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount of its Increased Costs.

## 12.3 Exceptions

- (a) Clause 12.1 (*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 the Borrower;
  - (ii) attributable to a FATCA Deduction required to be made by a Party;
  - (iii) compensated for by Clause 11.3 (*Tax indemnity*) (or would have been compensated for under Clause 11.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 11.3 (*Tax indemnity*) applied); or
  - (iv) attributable to the wilful breach by the relevant Finance Party of any law or regulation.
- (b) In this Clause 12.3, a reference to a "**Tax Deduction**" has the same meaning given to that term in Clause 11.1 (*Definitions*).

## 13. OTHER INDEMNITIES

### 13.1 Currency indemnity

- (a) If any sum due from the Borrower 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 the Borrower; or
  - (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

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

- (b) The Borrower 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.

### 13.2 Other indemnities

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

- (a) the occurrence of any Event of Default;
- (b) a failure by the Borrower to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 26 (*Sharing among the Finance Parties*);
- (c) funding, or making arrangements to fund, its participation in a Loan requested by the 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
- (d) a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower.

### 13.3 Indemnity to the Agent

The Borrower shall promptly indemnify the Agent against any cost, loss or liability incurred by the Agent (acting reasonably) as a result of:

- (a) investigating any event which it reasonably believes is a Default;

- (b) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
- (c) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement; and
- (d) any costs, loss or liability incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) in acting as Agent under the Finance Documents.

#### **13.4 Indemnity to the Security Agent**

- (a) The Borrower shall promptly after demand indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability incurred by any of them as a result of:
  - (i) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
  - (ii) the taking, holding, protection or enforcement of the Transaction Security provided that, in the case of enforcement only, its commencement was in accordance with the Finance Documents;
  - (iii) 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 in each case in accordance with and as permitted by the terms of the Finance Documents;
  - (iv) any default by the Borrower in the performance of any of the obligations expressed to be assumed by it in the Finance Documents;
  - (v) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this agreement; or
  - (vi) acting as Security Agent, Receiver or Delegate under the Finance Documents or which otherwise relates to any of the Charged Property (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).
- (b) 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 13.4 and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all moneys payable to it.

### **14. MITIGATION BY THE LENDERS**

#### **14.1 Mitigation**

- (a) Each Finance Party shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any

amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.2 (*Illegality*), Clause 11 (*Tax gross-up and indemnities*) or Clause 12 (*Increased Costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.

- (b) Paragraph (a) above does not in any way limit the obligations of the Borrower under the Finance Documents.

#### 14.2 **Limitation of liability**

- (a) The Borrower 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 14.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under Clause 14.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

### 15. **COSTS AND EXPENSES**

#### 15.1 **Transaction expenses**

The Borrower shall, within five Business Days of demand, pay the Agent and the Security Agent the amount of all costs and expenses (including legal fees agreed in advance by the Borrower) reasonably incurred by any of them (and, in the case of the Security Agent, by any Receiver or Delegate) in connection with the negotiation, preparation, printing, execution and perfection.

- (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.

#### 15.2 **Amendment costs**

If:

- (a) the Borrower requests an amendment, waiver or consent; or
- (b) an amendment is required pursuant to Clause 27.9 (*Change of currency*),

the Borrower shall, within five Business Days of demand, reimburse the Agent and the Security Agent for the amount of all costs and expenses (including legal fees agreed in advance by the Borrower) 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.

#### 15.3 **Enforcement costs**

The Borrower shall, within five Business Days of 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.



## **SECTION 8**

### **REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT**

#### **16. REPRESENTATIONS**

The Borrower (in respect of itself) makes the representations and warranties set out in this Clause 16 to each Finance Party.

The General Partner (in respect of itself in its capacity as general partner of the Borrower) makes the representations and warranties set out in Clauses 16.1(b) (*Status*), 16.2 (*Binding obligations*), 16.3 (*Non-conflict with other obligations*), 16.4 (*Power and authority*), 16.5 (*Validity and admissibility in evidence*), 16.6 (*Governing law and enforcement*), 16.7 (*Insolvency*), 16.9 (*No filing or stamp taxes*), 16.11 (*No misleading information*), 16.14 (*Taxation*), 16.15(b) (*Security and Financial Indebtedness*), 16.16 (*Legal and beneficial ownership*), 16.18 (*Sanctions*), 16.19 (*Anti-corruption law*), 16.20 (*Fund Documents*) to each Finance Party.

##### **16.1 Status**

- (a) The Borrower is a limited partnership (without separate legal personality), duly established and validly existing under the laws of Guernsey.
- (b) The General Partner is a non cellular company, duly incorporated and validly existing under the law of Guernsey.
- (c) The Borrower (acting through the General Partner) has the power to own its assets and carry on its business as it is being conducted.

##### **16.2 Binding obligations**

Subject to the Legal Reservations (and, in the case of the Transaction Security Documents, subject to 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 paragraph (a) above), each Transaction Security Document to which it is a party creates the security interests which that Transaction Security Document purports to create and those security interests are valid and effective.

##### **16.3 Non-conflict with other obligations**

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

- (a) any law or regulation applicable to it;
- (b) its constitutional documents or the constitutional documents of any of its Subsidiaries which are subject to the Transaction Security;

- (c) the Fund Documents to which it is a party; or
- (d) any agreement or instrument binding upon it or any of its Subsidiaries or any of its assets to the extent that such a conflict has or would reasonably be expected to have a Material Adverse Effect,

in the case of (a), in any material respect.

#### 16.4 **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 Finance Documents to which it is a party and the transactions contemplated by those Finance Documents.
- (b) No limit on its powers will be exceeded as a result of the borrowing or the granting of Security or indemnities contemplated by the Finance Documents to which it is a party.

#### 16.5 **Validity and admissibility in evidence**

Subject to the Perfection Requirements, all Authorisations required:

- (a) to enable it (in the case of the General Partner, in its capacity as general partner of the Borrower only) lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party; and
- (b) to make the Finance Documents to which it is a party admissible in evidence in each Relevant Jurisdiction,

have been obtained or effected and are in full force and effect.

#### 16.6 **Governing law and enforcement**

Subject to the Legal Reservations,

- (a) the choice of the governing law of the Finance Documents will be recognised and enforced in each of 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.

#### 16.7 **Insolvency**

No:

- (a) corporate action, legal proceeding or other procedure or step described in paragraph (a) of Clause 20.7 (*Insolvency proceedings*); or
- (b) creditors' process described in Clause 20.8 (*Creditors' process*),

has been taken or, to the knowledge of the Borrower or the General Partner, threatened in relation to the Borrower or the General Partner; and none of the circumstances described in Clause 20.6 (*Insolvency*) applies to the Borrower or the General Partner.

#### 16.8 **Deduction of Tax**

It is not required to make any Tax Deduction (as defined in Clause 11.1 (*Definitions*)) 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"; or
  - (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
- (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).

#### 16.9 **No filing or stamp taxes**

Subject to the Perfection Requirements, under the law of each Relevant Jurisdiction it is not necessary that the Finance Documents to which it is a party be registered, filed, recorded, notarised or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar tax or fees be paid on or in relation to the Finance Documents to which it is a party or the transactions contemplated by such Finance Documents.

#### 16.10 **No default**

- (a) No Event of Default and, on the date of this Agreement and the first Utilisation Date, no Default is continuing or would reasonably be expected to result from the making of any Utilisation.
- (b) No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or to which its assets are subject which has or is reasonably likely to have a Material Adverse Effect.

#### 16.11 **No misleading information**

So far as it is aware, having made all reasonable enquiries, all written factual information supplied to the Agent and the Lenders by it in connection with the Finance Documents was true, complete and accurate in all material respects as at the date it was expressed to be given or stated and, as at the date it was expressed to be given or stated, was not, misleading in any material respect. The financial projections contained in the information provided by it to the Agent and the Lenders have been prepared on the basis of recent historical information and on the basis of reasonable assumptions. No

information has been given or withheld that results in such provided and/or supplied information being untrue or misleading in any material respect.

#### **16.12 Financial statements**

There has been no material adverse change in the business or financial condition of the Borrower since the date of the most recently delivered financial statements.

#### **16.13 No proceedings**

- (a) No litigation, arbitration, investigation or administrative proceedings of or before any court, arbitral body or agency which is expected to be adversely determined, and which, if it were so adversely determined, would have, or be reasonably expected to have, a Material Adverse Effect, has or have (to the best of its knowledge and belief) been started or threatened against the Borrower or any of its Subsidiaries (save, in each case, for those disclosed through the Data Room (as defined in the Purchase Agreement)).
- (b) No judgment or order of a court, arbitral body or agency which would have, or would be reasonably expected to have, a Material Adverse Effect has (to the best of its knowledge and belief) been made against the Borrower and is subsisting.

#### **16.14 Taxation**

- (a) It is not materially overdue in the filing of any Tax returns and it is not overdue in the payment of any amount in respect of Tax (except to the extent that (i) payment is being contested in good faith, and (ii) it has maintained adequate reserves for those Taxes).
- (b) No claims or investigations are being, or are reasonably likely to be, made or conducted against it with respect to Taxes.
- (c) It is resident for Tax purposes only in its jurisdiction of incorporation or registration.

#### **16.15 Security and Financial Indebtedness**

- (a) No Security or Quasi-Security exists over all or any of the present or future assets of the Borrower other than any Security permitted under Clause 19.7 (*Negative pledge*).
- (b) No Security or Quasi-Security exists over any part of any General Partner's right to operate the Revenue Accounts in accordance with the terms of the Fund Documents (other than pursuant to the Security Documents).
- (c) The Borrower does not have any Financial Indebtedness outstanding other than as permitted by this Agreement.

#### **16.16 Legal and beneficial ownership**

The General Partner has legal title to the assets of the Borrower over which it purports to grant Transaction Security pursuant to a Transaction Security Document, save for any assets which are at any time the subject of a Permitted Disposal or Permitted Transaction.

#### **16.17 Shares**

The shares of, or limited liability company interests in, each company whose shares, or, where relevant, limited liability company interests, are subject to the Transaction Security are fully paid and not subject to any option to purchase or similar rights. The constitutional documents of companies whose shares are subject to the Transaction Security do not restrict or inhibit any transfer of those shares on creation or enforcement of the Transaction Security.

#### **16.18 Sanctions**

So far as it is aware, having made reasonable enquiry, it is not a Restricted Person and does not (to the best of its knowledge) directly engage in regular business with any person, entity or body that is on a Sanctions List.

#### **16.19 Anti-corruption law**

It has conducted its businesses in compliance with applicable anti-corruption laws in all material respects and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

#### **16.20 Fund Documents**

- (a) The Fund Documents are true, correct, up to date and in the form delivered to the Agent or the Lenders pursuant to Schedule 2 (*Conditions Precedent*).
- (b) The Fund Documents contain all the material terms of all the agreements and arrangements between the Borrower and the General Partner.
- (c) The Utilisations made, and security granted, by the Borrower pursuant to the Finance Documents are permitted under the Fund Documents.
- (d) The General Partner has the power, capacity and authority to act on behalf of Borrower.

#### **16.21 Ranking**

The Transaction Security has or will have first ranking priority and it is not subject to any prior ranking or *pari passu* ranking Security.

#### **16.22 Timing of representations**

- (a) The representations and warranties specified in this Clause 16 are made by the Borrower and the General Partner on the date of this Agreement by reference to the facts and circumstances existing on such date.

- (b) The Repeating Representations are deemed to be made by each of the Borrower and the General Partner (as applicable in accordance with this Clause 16 (*Representations*)) by reference to the facts and circumstances then existing on the date of each Interest Payment Date.

## 17. INFORMATION

The undertakings in this Clause 17 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.

### 17.1 Financial statements

The Borrower 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 Accounting Period (as defined in the Limited Partnership Agreement) the audited annual accounts of the Borrower.
- (b) as soon as the same becomes available, but in any event within 20 days after each Quarter Date (as defined in the Limited Partnership Agreement), its audited accounts for the period in question.

### 17.2 Requirements as to financial statements

- (a) The Borrower shall procure that each set of its annual financial statements shall be audited by the Borrower's auditors.
- (b) Each set of financial statements delivered by the Borrower pursuant to Clause 17.1 (*Financial statements*):
  - (i) shall be certified by a director of the General Partner as giving a true and fair view, in accordance with applicable Guernsey law, the LPA and IFRS, of the state of affairs of the Borrower and of the profit or loss of the Borrower 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 Limited Partners by the auditors of those annual financial statements and accompanying those annual financial statements; and
  - (ii) shall be prepared using IFRS, accounting practices and financial reference periods consistent with those applied in the preparation of the most recently delivered financial statements unless, in relation to any set of financial statements, it notifies the Agent that there has been a change in IFRS, the accounting practices or reference periods and its auditors deliver to the Agent:
    - (A) a description of any change necessary for those financial statements to reflect the IFRS, accounting practices and reference periods upon which the most recently delivered financial statements were prepared; and

- (B) sufficient information, in form and substance as may be reasonably required by the Agent, to enable the Lenders to make an accurate comparison between the financial position indicated in those financial statements and the most recently delivered financial statements.

Any reference in this Agreement to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the most recently delivered financial statements were prepared.

### 17.3 **Information: miscellaneous**

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

- (a) promptly upon becoming aware of them, the details of any litigation, arbitration, administrative proceedings or investigations which are current, threatened or pending against the Borrower or the General Partner (in its capacity as general partner of the Borrower only), and which are expected to be adversely determined and which, if so adversely determined, would have, or would be reasonably expected to have, a Material Adverse Effect;
- (b) promptly upon becoming aware of them, the details of any judgment or order of a court, arbitral body or agency which is made against the Borrower or the General Partner (in its capacity as general partner of the Borrower only) and which would have, or would be reasonably expected to have, a Material Adverse Effect;
- (c) promptly, such information as the Security Agent may reasonably require about the Charged Property and compliance of the Borrower with the terms of any Transaction Security Documents;
- (d) promptly, such further information regarding the financial condition, business and operations of the Borrower as any Finance Party (through the Agent) may reasonably request;
- (e) a copy of all material formal documents dispatched by the Borrower to its creditors generally as soon as reasonably practicable after they are dispatched;
- (f) promptly all formal documents dispatched by the Borrower to the Limited Partners, which the Borrower considers to be material;
- (g) promptly, details of any proposed or actual change to the identity of the General Partner;
- (h) promptly, notice of any proposed amendment to the Limited Partnership Agreement other than any amendment which is technical or administrative in nature and could not be reasonably be expected to have a material effect on the interests of the Lenders under the Finance Documents; and

- (i) promptly upon becoming aware of them, copies of any Fund Documents entered into after the date of this Agreement.

#### 17.4 **Notification of default**

- (a) The Borrower shall notify the Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.
- (b) Promptly upon a request by the Agent, the Borrower shall supply to the Agent a certificate signed by two senior officers or authorised signatories of the General Partner 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).

#### 17.5 **Direct electronic delivery by Borrower**

The Borrower may satisfy its obligation under this Agreement to deliver any information in relation to a Lender by delivering that information directly to that Lender in accordance with Clause 29.5 (*Electronic communication*) to the extent that Lender and the Agent agree to this method of delivery.

#### 17.6 **"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 the Borrower or the General Partner after the date of this Agreement; or
  - (iii) a proposed assignment or transfer by a Lender of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

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

- (b) Each Lender shall promptly upon the request of the Security Agent or the Agent supply, or procure the supply of, such documentation and other evidence as is



reasonably requested by the Security Agent or the Agent (for itself) in order for the Security Agent or 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.

## 18. **BANK ACCOUNTS AND WATERFALL**

### 18.1 **Bank accounts**

- (a) The Borrower shall open and maintain at all times hereafter the Revenue Accounts.
- (b) The Borrower shall ensure that all payments received by it from the Investment Vehicles shall be deposited into the respective Revenue Accounts.
- (c) The General Partner shall have sole rights to operate, or direct the operation of, each Revenue Account.
- (d) The Revenue Accounts shall not be permitted by the Borrower to become overdrawn.
- (e) The Security Agent shall, at the request of the Borrower following such date as the Security Agent is satisfied that no amounts are or may become due by the Borrower to a Finance Party under any Finance Document, confirm to the account bank that the Revenue Accounts may at the election and entire discretion of the Borrower be closed and any balance then standing to the credit of the Revenue Accounts be paid promptly as the Borrower may request.
- (f) The Borrower may open a replacement Revenue Account with such bank or financial institution which complies with the requirements of the Limited Partnership Agreement, provided that:
  - (i) each such replacement bank account is charged in favour of the Security Agent on terms substantially similar to those of the relevant Transaction Security Document as at the date of this Agreement or otherwise acceptable to the Security Agent (acting on instructions of the Majority Lenders); and
  - (ii) on the date that the new bank account is opened, the Borrower gives notice to the financial institution at which the replacement bank account is to be opened on terms substantially similar to those of the relevant notice (if any) delivered under the equivalent Transaction Security Document as at the date of this Agreement or otherwise acceptable to the Security Agent (acting on instructions of the Majority Lenders).

### 18.2 **Waterfall**

- (a) Subject to paragraph (b) below and Clause 8.2 (*Payment of Interest*), (x) on each Interest Payment Date, (y) in the case of payments referred to in paragraph (ii) (*Second*) below, any date on which such payments are required to be paid or

such transfers made, and, (z) where relevant, the Maturity Date, the amounts standing in the respective Revenue Accounts shall be applied in the following order against payments falling due on such date):

- (i) **First**, as when due and payable, fees, costs and expenses (including reasonable legal fees, expenses incurred in connection with security interests, banking fees and other ordinary transaction expenses) due in respect of the USD Facility and the AUD Facility;
  - (ii) **Second**, fees, costs, liabilities and expenses with respect to the Borrower (including, for the avoidance of doubt, the Borrower's operating costs in the ordinary course, audit, legal fees, taxes and similar payments (including where the Borrower requires by way of transfers of such funds to another account of the Borrower as are required in order to meet payments in respect of such amounts from such account)), and the General Partner's Share pursuant to (and as defined in) Clause 9 of the Limited Partnership Agreement;
  - (iii) **Third**, the payment of interest or PIK Interest accrued in respect of the USD Facility and the AUD Facility;
  - (iv) **Fourth**, PIK Amounts in relation to the USD Facility and the AUD Facility;
  - (v) **Fifth**, any mandatory prepayment of principal of the USD Facility or the AUD Facility in respect a cash sweep or any other mandatory prepayment event pursuant to Clause 7.1 (*Mandatory Prepayment*);
  - (vi) **Sixth**, any voluntary prepayment of principal of the USD Facility or the AUD Facility;
  - (vii) **Seventh**, payment of all then outstanding principal in respect of the USD Facility and the AUD Facility on the Maturity Date; and
  - (viii) **Eighth**, to make restricted payments (including distributions, dividends and other payments to Limited Partners (in their capacity as such)) permitted to be made under and in accordance with the Finance Documents.
- (b) In applying amounts standing to the credit of the Revenue Accounts in accordance with paragraph (a):
- (i) amounts standing to the credit of the USD Revenue Account shall be applied (x) first towards USD Facility payments falling due under first to fifth of the Waterfall, (y) second towards any payments then due under first to fifth of the Waterfall in respect of the AUD Facility (taking into account any related currency exchange costs) if any such payments would otherwise remain unpaid from the AUD Revenue Account on such Interest Payment Date, (z) third towards any amounts payable under sixth to eighth of the Waterfall in respect of the USD Facility) and (aa) fourth towards any amounts the payable under sixth to eighth

of the Waterfall in respect of the AUD Facility (taking into account any related currency exchange costs) if any such payments would otherwise remain unpaid from the AUD Revenue Account on such Interest Payment Date; and

- (ii) amounts standing to the credit of the AUD Revenue Account shall be applied (x) first towards AUD Facility payments falling due under first to fifth of the Waterfall, (y) second towards any payments then due under first to fifth of the Waterfall in respect of the USD Facility (taking into account any related currency exchange costs) if any such payments would otherwise remain unpaid from the USD Revenue Account on such Interest Payment Date, (z) third towards any amounts payable under sixth to eighth of the Waterfall in respect of the AUD Facility) and (aa) fourth towards any amounts the payable under sixth to eighth of the Waterfall in respect of the USD Facility (taking into account any related currency exchange costs) if any such payments would otherwise remain unpaid from the USD Revenue Account on such Interest Payment Date.

## 19. GENERAL UNDERTAKINGS

The undertakings in this Clause 19 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.

### 19.1 Authorisations

The Borrower and the General Partner shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply certified copies to the Agent of,

any Authorisation required under any law or regulation of its Relevant Jurisdictions:

- (i) enable it to perform its obligations under the Finance Documents to which it is a party;
- (ii) enable it to perform its obligations under the Fund Documents to which it is a party;
- (iii) ensure (subject to the Legal Reservations) the legality, validity, enforceability against it or admissibility in evidence in each of its Relevant Jurisdictions of any Finance Document; and
- (iv) carry on its business, where failure to do so has or is reasonably likely to have a Material Adverse Effect.

## **19.2 Compliance with Fund Documents**

The Borrower and the General Partner shall comply in all material respects with the Fund Documents.

## **19.3 Compliance with laws**

The Borrower and the General Partner shall comply in all respects with all laws to which it may be subject, if failure so to comply is reasonably likely to have a Material Adverse Effect.

## **19.4 Environmental compliance**

(a) The Borrower shall:

- (i) comply with all Environmental Law;
- (ii) obtain, maintain and ensure compliance with all requisite Environmental Permits;
- (iii) 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.

## **19.5 Anti-corruption law**

(a) The Borrower shall not directly or indirectly use the proceeds of either Facility 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) The Borrower shall:

- (i) conduct its business in compliance with applicable anti-corruption laws; and
- (ii) maintain policies and procedures designed to promote and achieve compliance with such laws.

## **19.6 Taxation**

(a) The Borrower shall 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 17.1 (*Financial statements*); and

(iii) such payment can be lawfully withheld.

(b) The Borrower may not change its residence for Tax purposes.

#### 19.7 **Negative pledge**

In this Clause 19.7, "**Quasi-Security**" means an arrangement or transaction described in paragraph (b) below.

(a) Neither the Borrower nor the General Partner shall create or permit to subsist any Security over any of the Borrower's assets.

(b) Neither the Borrower nor the General Partner shall:

(i) sell, transfer or otherwise dispose of any of the Borrower's assets on terms whereby they are or may be leased to or re-acquired by the Borrower or the General Partner;

(ii) sell, transfer or otherwise dispose of any of the Borrower's receivables on recourse terms;

(iii) enter into any arrangement (in the case of the General Partner, acting only in its capacity as general partner of the Borrower) 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 the case of the General Partner, acting only in its capacity as general partner of the Borrower),

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

(c) Paragraphs (a) and (b) above do not apply to any Security or (as the case may be) Quasi-Security, listed below:

(i) any lien arising by operation of law and in the ordinary course of trading;

(ii) any netting or set-off arrangement entered into by the Borrower or the General Partner in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;

(iii) any payment or close out netting or set-off arrangement pursuant to any Treasury Transaction or foreign exchange transaction;

(iv) any Quasi-Security arising as a result of a disposal which is a Permitted Disposal;

- (v) any Security or Quasi-Security entered into pursuant to any Finance Document or with the prior written consent of the Agent.

#### 19.8 Disposals

- (a) Except as permitted under paragraph (b) below, the Borrower shall not 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 all or any part of any asset.
- (b) Paragraph (a) above does not apply to any sale, lease, transfer or other disposal which is a Permitted Disposal or a Permitted Transaction.

#### 19.9 Merger

- (a) Neither the Borrower nor the General Partner shall enter into any amalgamation, demerger, merger or corporate reconstruction, without the prior written consent of the Agent (not to be unreasonably withheld or delayed).
- (b) Paragraph (a) above does not apply to any sale, lease, transfer or other disposal permitted pursuant to Clause 19.8 (*Disposals*).

#### 19.10 Change of business

The Borrower shall procure that no substantial change is made to the general nature of the business of the Borrower from that carried on at the date of this Agreement.

#### 19.11 Conduct of business

The Borrower shall not conduct any business other than as permitted by the Fund Documents or its constitutional documents and shall comply in all material respects with its obligations and requirements under its constitutional documents.

#### 19.12 Distributions

- (a) Subject paragraph (b) below, following the date of this Agreement the Borrower shall not pay any distributions or dividends or other payments to any Limited Partner (in its capacity as Limited Partner of the Borrower),
  - (i) at any time where:
    - (A) a Default under any of Clauses 20.1 (*Non-payment*), 20.6 (*Insolvency*), 20.7 (*Insolvency proceedings*) or 20.8 (*Creditors' process*) has occurred and is continuing or would be reasonably likely to occur as a consequence of any such payments;
    - (B) any Event of Default has occurred and is continuing or would be reasonably likely to occur as a consequence of any such payments; and
  - (ii) other than in accordance with the Waterfall.

- (b) For the avoidance of doubt, nothing in this clause 19.12 shall prevent any payment being made in accordance with Clause 3.1 (Purpose) and the Purchase Agreement.

#### **19.13 Share capital**

The Borrower shall ensure that no Investment Vehicle issues any shares except pursuant to a Permitted Share Issue.

#### **19.14 Loans or credit**

- (a) Except as permitted under paragraph (b) below, the Borrower shall not be a creditor in respect of any Financial Indebtedness.
- (b) Paragraph (a) above does not apply to a Permitted Loan or a Permitted Transaction.

#### **19.15 No guarantees or indemnities**

- (a) Except as permitted under paragraph (b) below, the Borrower shall not incur or allow to remain outstanding any guarantee in respect of any obligation of any person.
- (b) Paragraph (a) does not apply to any guarantee given in favour of the Finance Parties under the Finance Documents or which constitutes Permitted Financial Indebtedness, which arises under or is permitted by the Fund Documents, or which is otherwise a Permitted Transaction.

#### **19.16 Indebtedness**

- (a) Except as permitted under paragraph (b) below, the Borrower shall not incur, create (including by way of loan or advance) or permit to subsist or have outstanding any Financial Indebtedness or enter into any agreement or arrangement whereby it is entitled to incur, create (including by way of loan or advance) or permit to subsist any Financial Indebtedness.
- (b) Paragraph (a) above does not apply to Financial Indebtedness which is Permitted Financial Indebtedness or a Permitted Transaction.

#### **19.17 Constitutional and Fund Documents**

The Borrower and the General Partner shall not amend, supplement or otherwise modify or supersede any of their constitutional documents or, as applicable, the Fund Documents in a manner which would reasonably be expected to have a material and adverse effect on the Lenders' interests under the Finance Documents without the prior written consent of the Agent.

#### **19.18 Year-end**

The Borrower shall not change its Accounting Reference Date.

#### 19.19 Access

If an Event of Default is continuing or the Agent reasonably suspects an Event of Default is continuing or may occur, the Borrower shall permit the Agent and/or the Security Agent and/or accountants or other professional advisers and contractors of the Agent or Security Agent access at reasonable times and on reasonable notice at the risk and cost of the Borrower to (a) the premises, assets, books, accounts and records of the Borrower, and (b) meet and discuss matters with senior management of the Borrower.

#### 19.20 Further assurance

- (a) The Borrower shall promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may reasonably specify (and in such form as the Security Agent may reasonably require in favour of the Security Agent or its nominee(s)):
  - (i) to perfect the Security created or intended to be created under or evidenced by the Transaction Security Documents (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Transaction Security) or for the exercise of any rights, powers and remedies of the Security Agent or the 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 the Borrower located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to the Transaction Security Documents; and/or
  - (iii) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Transaction Security.
- (b) The Borrower shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Finance Parties by or pursuant to the Finance Documents.

### 20. EVENTS OF DEFAULT

Each of the events or circumstances set out in Clause 20 is an Event of Default (save for Clause 20.14 (*Acceleration*)).

#### 20.1 Non-payment

The Borrower 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 its failure to pay is caused by:

- (a) administrative or technical error; or



- (b) a Disruption Event; and

payment is made within 5 Business Days of its due date.

## 20.2 Other obligations

- (a) The Borrower does not comply with any provision of the Finance Documents (other than those referred to in Clause 20.1 (*Non-payment*)).
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within 20 Business Days of the earlier of (A) the Agent giving notice to the Borrower and (B) the Borrower becoming aware of the failure to comply.

## 20.3 Transaction Security Documents

The Borrower does not comply with any material provision of any Transaction Security Document.

## 20.4 Misrepresentation

- (a) Any representation or statement made or deemed to be made by the Borrower in the Finance Documents or any other document delivered by or on behalf of the Borrower under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.
- (b) No Event of Default under paragraph (a) above will occur if the circumstances giving rise to the misrepresentation are capable of remedy or the effect capable of being cured, and is so remedied or so cured within 20 Business Days of the earlier of (A) the Agent giving notice to the Borrower and (B) the Borrower becoming aware of the failure to comply.

## 20.5 Cross default

- (a) Any Financial Indebtedness of the Borrower is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of the Borrower 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 the Borrower is cancelled or suspended by a creditor of the Borrower as a result of an event of default (however described).
- (d) Any creditor of the Borrower becomes entitled to declare any Financial Indebtedness of the Borrower 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 20.5 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling

within paragraphs (a) to (d) above is less than USD 5,000,000 (or its equivalent in any other currency or currencies).

## **20.6 Insolvency**

- (a) The Borrower:
  - (i) is unable or admits inability to pay its debts as they fall due;
  - (ii) suspends making payments on any of its debts; or
  - (iii) 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) A moratorium is declared in respect of any indebtedness of the Borrower.

## **20.7 Insolvency proceedings**

Any corporate action, legal proceedings or other procedure or step is taken in relation to:

- (a) 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 the Borrower ;
- (b) a composition, compromise, assignment or arrangement with any creditor of the Borrower;
- (c) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Borrower or any of its assets; or
- (d) enforcement of any Security over any assets of the Borrower,

or any analogous procedure or step is taken in any jurisdiction.

This Clause 20.7 shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of commencement.

## **20.8 Creditors' process**

Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of the Borrower and is not discharged within 14 days.

## **20.9 Unlawfulness and invalidity**

- (a) It is or becomes unlawful for the Borrower to perform any of its material 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.

- (b) Any material obligations of the Borrower under any Finance Documents are not (subject to the Legal Reservations) or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lenders under the Finance Documents.
- (c) Any Finance Document ceases to be in full force and effect or any Transaction Security 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 in a manner that is material and adverse to the interests of the Finance Parties.

#### **20.10 Fund matters**

- (a) The occurrence of any event which terminates or dissolves the Borrower.
- (b) The General Partner ceases to be the general partner of the Borrower other than in accordance with the Fund Documents or as otherwise agreed with the Agent in accordance with Clause 22.2(b).
- (c) Any Fund Document is terminated, rescinded or otherwise ceases to be legally binding or enforceable in any material respect without being replaced by an agreement on terms no less advantageous to the Borrower.
- (d) An Investment Vehicle is not or ceases to be a Subsidiary of the Borrower other than as permitted by and in accordance with the Finance Documents.

#### **20.11 Unlawfulness**

It is or becomes unlawful for the Borrower to perform any of its material obligations under the Finance Documents.

#### **20.12 Repudiation**

The Borrower rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document or any of the Transaction Security or evidences an intention to rescind or repudiate a Finance Document or any of the Transaction Security.

#### **20.13 Litigation**

Any litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency are started or threatened, or any judgment or order of a court, arbitral body or agency is made, in relation to the Finance Documents or the transactions contemplated in the Finance Documents or against the Borrower which has, or is reasonably likely to have, a Material Adverse Effect.

#### **20.14 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 Borrower:

- (i) cancel the Available Commitment of each Lender whereupon each such Available Commitment shall immediately be cancelled and the Facilities shall immediately cease to be available for further utilisation;
  - (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, whereupon they shall become immediately due and payable; and/or
  - (iii) declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on 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.

## SECTION 9 CHANGES TO PARTIES

### 21. CHANGES TO THE LENDERS

#### 21.1 Assignments and transfers by the Lenders

Subject to this Clause 21, a Lender (the "**Existing Lender**") may:

- (a) assign any of its rights; or
- (b) transfer by novation any of its rights and obligations,

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**").

#### 21.2 Borrower consent

- (a) The consent of the Borrower is required for an assignment or transfer by an Existing Lender, unless the assignment or transfer is:
  - (i) to another Lender or an Affiliate of any Lender; or
  - (ii) made at a time when an Event of Default is continuing.
- (b) The consent of the Borrower to an assignment or transfer must not be unreasonably withheld or delayed. The Borrower will be deemed to have given its consent ten (10) Business Days after the Existing Lender has requested it unless consent is expressly refused by the Borrower within that time.

#### 21.3 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 as it would have been under if it had been an Original Lender; and
  - (ii) 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 procedure set out in Clause 21.6 (*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, the Borrower would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 11 (*Tax gross-up and indemnities*) or Clause 12 (*Increased Costs*),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred. This paragraph (c) shall not apply in relation to Clause 11.2 (*Tax gross-up*), to a Treaty Lender that has included a confirmation of its scheme reference number and its jurisdiction of tax residence in accordance with paragraph (g)(ii)(B) of Clause 11.2 (*Tax gross-up*) if the Borrower has not made a Borrower DTTP Filing in respect of that Treaty Lender.

- (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.

#### 21.4 Assignment or transfer fee

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 USD 3,500.

#### 21.5 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 Finance Documents, the Transaction Security or any other documents;
  - (ii) the financial condition of the Borrower;
  - (iii) the performance and observance by the Borrower of its obligations under the Finance Documents or any other documents; or
  - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,

and any representations or warranties implied by law are excluded.

- (b) Each New Lender confirms to the Existing Lender and the other Finance Parties that it:
  - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of the Borrower and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender in connection with any Finance Document or the Transaction Security; and
  - (ii) will continue to make its own independent appraisal of the creditworthiness of the Borrower 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 21; or
  - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by the Borrower of its obligations under the Finance Documents or otherwise.

#### 21.6 Procedure for transfer

- (a) Subject to the conditions set out in Clause 21.2 (*Borrower consent*) and Clause 21.3 (*Other conditions of assignment or transfer*) a transfer is effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate.
- (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 other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.
- (c) Subject to Clause 21.10 (*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 the Borrower 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) the Borrower 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 the Borrower and the New Lender have assumed and/or acquired the same in place of the Borrower and the Existing Lender;
- (iii) the Agent, the Security Agent, the New Lender and other Lenders 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 Security Agent 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".

## 21.7 Procedure for assignment

- (a) Subject to the conditions set out in Clause 21.2 (*Borrower consent*) and Clause 21.3 (*Other conditions of assignment or transfer*) an assignment may be effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.
- (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 other similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.
- (c) Subject to Clause 21.10 (*Pro rata interest settlement*), on the Transfer Date:
  - (i) the Existing Lender will assign absolutely to the New Lender the 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 by the Borrower and the other Finance Parties from the obligations owed by it (the "**Relevant Obligations**") and 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 21.7 to assign their rights under the Finance Documents (but not, without the consent of the Borrower or unless in accordance with Clause 21.6 (*Procedure for transfer*), to obtain a release by the Borrower from the obligations owed to the Borrower by the Lenders nor the assumption of equivalent obligations by a New Lender) **provided that** they comply with the conditions set out in Clause 21.2 (*Borrower consent*) and Clause 21.3 (*Other conditions of assignment or transfer*).

#### **21.8 Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Borrower**

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 Borrower a copy of that Transfer Certificate, Assignment Agreement or Increase Confirmation.

#### **21.9 Security over Lenders' rights**

In addition to the other rights provided to Lenders under this Clause 21, each Lender may without consulting with or obtaining consent from the Borrower, 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 Security for the Lender as a party to any of the Finance Documents; or
- (ii) require any payments to be made by the Borrower other than or in excess of, 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.

#### **21.10 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 21.6 (*Procedure for transfer*) or any assignment pursuant to Clause 21.7 (*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; 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 to 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 21.10, have been payable to it on that date, but after deduction of the Accrued Amounts.
- (b) In this Clause 21.10 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 21.10 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.

## **22. CHANGES TO THE BORROWER OR GENERAL PARTNER**

### **22.1 Assignments and transfer by Borrower**

The Borrower may not assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

### **22.2 Assignments and transfer by General Partner**

- (a) Subject to paragraph (b), the General Partner may not assign any of its rights or transfer any of its rights or obligations under the Finance Documents.
- (b) In the event that the General Partner is to be replaced as general partner of the Borrower in accordance with the Limited Partnership Agreement, the General Partner may assign or transfer its rights and/or obligations under the Finance Documents to such replacement general partner provided that such replacement accedes to this Agreement in such capacity, and the Agent and Lenders shall agree to amendments to this Agreement reasonably necessary to accommodate the accession of such replacement general partner, including, without limitation,

amendments to the representations and covenants to reflect the status and jurisdiction of establishment or incorporation of such new general partner.

**SECTION 10**  
**THE FINANCE PARTIES**

**23. ROLE OF THE AGENT**

**23.1 Appointment of the Agent**

- (a) Each of the Lenders appoints the Agent to act as its agent under and in connection with the Finance Documents.
- (b) Each of 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.

**23.2 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; and
    - (B) in all other cases, the Majority Lenders; and
  - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above.
- (b) The 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 Lender or group of Lenders, from that Lender or group of Lenders) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion. 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) The Agent may refrain from acting in accordance with any instructions of any Lender or group of Lenders until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in

advance) for any cost, loss or liability which it may incur in complying with those instructions.

- (e) In the absence of instructions, the Agent may act (or refrain from acting) as it considers to be in the best interest of the Lenders.
- (f) The Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (f) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Transaction Security Documents or enforcement of the Transaction Security or Transaction Security Documents.

### 23.3 Duties of the Agent

- (a) The Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) Subject to paragraph (c) below, the Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party.
- (c) Without prejudice to Clause 21.8 (*Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Borrower*), paragraph (b) above 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 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).

### 23.4 No fiduciary duties

- (a) Nothing in any Finance Document constitutes the Agent as a trustee or fiduciary of any other person.
- (b) The Agent shall not be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

### 23.5 Business with the Borrower

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

### 23.6 Rights and discretions

- (a) The Agent may:
  - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
  - (ii) assume that:
    - (A) any instructions received by it from the Majority Lenders, any Lenders or any group of Lenders are duly given in accordance with the terms of the Finance Documents; and
    - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
  - (iii) rely on a certificate from any person:
    - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
    - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:
  - (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 20.1 (*Non-payment*)); and
  - (ii) any right, power, authority or discretion vested in any Party or any group of Lenders has not been exercised.
- (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 provided the fees for such advice or services are approved in advance by the Borrower (such approval not to be unreasonably withheld).
- (d) The Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the 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.

- (e) The Agent may act in relation to the Finance Documents through its officers, employees and agents.
- (f) 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.
- (g) Notwithstanding any other provision of any Finance Document to the contrary, the Agent is not obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (h) 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.

### **23.7 Responsibility for documentation**

The Agent is not responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Agent, the Borrower, the General Partner or any other person in or in connection with any Finance Document 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.

### **23.8 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.

## 23.9 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Agent), the Agent will not be liable 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, other than by reason of its gross negligence or wilful misconduct; or
  - (iii) without prejudice to the generality of paragraphs (i) and (ii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation, for 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:
    - (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) may take any proceedings against any officer, employee or agent of the Agent in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of the Agent may rely on this paragraph (b) subject to Clause 1.4 (*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 to carry out:
  - (i) any "know your customer" or other checks in relation to any person; or
  - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Lender,on behalf of any Lender and each Lender confirms to the Agent 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.
- (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 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.

#### **23.10 Lenders' indemnity to the Agent**

Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, within three Business Days of demand, against any cost, loss or liability 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 27.10 (*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 the Borrower pursuant to a Finance Document).

#### **23.11 Resignation of the Agent**

- (a) The Agent may resign and appoint one of its Affiliates as successor by giving notice to the Lenders and the Borrower.
- (b) Alternatively the Agent may resign by giving 30 days' notice to the Lenders and the Borrower, in which case the Majority Lenders (after consultation with the Borrower) may appoint a successor Agent.
- (c) If the Majority Lenders have not appointed a successor Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given,

the retiring Agent (after consultation with the Borrower) may appoint a successor Agent.

- (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 paragraph (c) above, the Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Agent to become a party to this Agreement as Agent) agree with the proposed successor Agent amendments to this Clause 23 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, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- (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 paragraph (e) above) but shall remain entitled to the benefit of Clause 13.3 (*Indemnity to the Agent*) and this Clause 23 (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) After consultation with the Borrower, the Majority Lenders may, by notice to the Agent, require it to resign in accordance with paragraph (b) above. In this event, the Agent shall resign in accordance with paragraph (b) above.
- (i) The Agent shall resign in accordance with paragraph (b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Agent pursuant to paragraph (c) above) if on or after the date which is three months before the earliest FATCA Application Date relating to any payment to the Agent under the Finance Documents, either:
  - (i) the Agent fails to respond to a request under Clause 11.8 (*FATCA information*) and the Borrower or 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 11.8 (*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 Borrower 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) the Borrower or 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 the Borrower or that Lender, by notice to the Agent, requires it to resign.

### 23.12 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.

### 23.13 Relationship with the Lenders

- (a) Subject to Clause 21.10 (*Pro rata interest settlement*), the Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office:
  - (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 29.5 (*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 29.2 (*Addresses*) and paragraph (a)(ii) of Clause 29.5 (*Electronic communication*) and the Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.

#### **23.14 Credit appraisal by the Lenders**

Without affecting the responsibility of the Borrower and the General Partner for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to the Agent that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- (a) the financial condition, status and nature of the Borrower;
- (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 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 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.

#### **23.15 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.

### **24. THE SECURITY AGENT**

#### **24.1 Security Agent as trustee**

- (a) Each other Finance Party appoints the Security Agent as its trustee for the purposes of the Transaction Security Documents and the Transaction Security on the terms set out in this Clause 24.
- (b) The Security Agent declares that it holds the Security Property on trust for the Secured Parties on the terms contained in this Agreement.

- (c) Each of the Finance Parties authorises the Security Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Security Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

## 24.2 Instructions

- (a) The Security Agent shall:
  - (i) subject to paragraphs (d) and (e) below, exercise or refrain from exercising any right, power, authority or discretion vested in it as Security Agent in accordance with any instructions given to it by the Majority Lenders; and
  - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above.
- (b) The Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Security Agent may refrain from acting unless and until it receives those instructions or that clarification.
- (c) Unless a contrary intention appears in this Agreement, any instructions given to the Security Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Secured Parties.
- (d) Paragraph (a) above shall not apply:
  - (i) where a contrary indication appears in this Agreement;
  - (ii) where this Agreement requires the Security Agent to act in a specified manner or to take a specified action;
  - (iii) in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role of Security Agent for the Secured Parties;
- (e) If giving effect to instructions given by the Majority Lenders would (in the Security Agent's opinion) have an effect equivalent to an amendment or waiver of this Agreement, the Security Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Security Agent) whose consent would have been required in respect of that amendment or waiver.
- (f) In exercising any discretion to exercise a right, power or authority under the Finance Documents where it has not received any instructions as to the exercise

of that discretion the Security Agent shall do so having regard to the interests of all the Secured Parties.

- (g) The Security Agent may refrain from acting in accordance with any instructions of the Majority Lenders until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.
- (h) Without prejudice to the remainder of this Clause 24, in the absence of instructions, the Security Agent may act (or refrain from acting) as it considers in its discretion to be appropriate.

#### **24.3 Duties of the Security Agent**

- (a) The Security Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) The Security Agent shall promptly:
  - (i) forward to the Agent a copy of any document received by the Security Agent from the Borrower under any Finance Document; and
  - (ii) forward to a Party the original or a copy of any document which is delivered to the Security Agent for that Party by any other Party.
- (c) Except where a Finance Document specifically provides otherwise, the Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) If the Security Agent receives notice from a Party referring to any Finance Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Finance Parties (to the extent the Lenders have not already been notified by the Agent).
- (e) The Security 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).

#### **24.4 No fiduciary duties to the Borrower**

Nothing in this Agreement constitutes the Security Agent as an agent, trustee or fiduciary of the Borrower.

#### **24.5 No duty to account**

The Security Agent shall not be bound to account to any other Secured Party for any sum or the profit element of any sum received by it for its own account.

## 24.6 Business with the Borrower

The Security Agent may accept deposits from, lend money to and generally engage in any kind of banking or other business with the Borrower.

## 24.7 Rights and discretions

- (a) The Security Agent may:
  - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
  - (ii) assume that:
    - (A) any instructions received by it from the Majority Lenders or any Lenders are duly given in accordance with the terms of the Finance Documents;
    - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
    - (C) if it receives any instructions to act in relation to the Transaction Security, that all applicable conditions under the Finance Documents for so acting have been satisfied; and
  - (iii) rely on a certificate from any person:
    - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
    - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Security Agent may assume (unless it has received notice to the contrary in its capacity as security trustee for the Secured Parties) that:
  - (i) no Default has occurred; and
  - (ii) any right, power, authority or discretion vested in any Party or the Majority Lenders has not been exercised.
- (c) The Security Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts provided the fees for such advice or services are approved in advance by the Borrower.
- (d) The Security Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Security 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.

- (e) The Security Agent, any Receiver and any Delegate may act in relation to the Finance Documents and the Security Property through its officers, employees and agents and 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 Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct.

- (f) Unless this Agreement expressly specifies otherwise, the Security Agent may disclose to any other Party any information it reasonably believes it has received as security trustee under this Agreement.
- (g) Notwithstanding any other provision of any Finance Document to the contrary, the Security Agent is not obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (h) Notwithstanding any provision of any Finance Document to the contrary, the Security 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.

#### **24.8 Responsibility for documentation**

None of the Security Agent, any Receiver nor any Delegate is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Security Agent, the Borrower or any other person in or in connection with any Finance Document 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, the Security Property 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 Security Property; or
- (c) any determination as to whether any information provided or to be provided to any Secured 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.

#### **24.9 No duty to monitor**

The Security 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.

#### **24.10 Exclusion of liability**

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate), none of the Security Agent, any Receiver nor any Delegate will be liable 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 Security Property 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 Security Property 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 Security Property;
  - (iii) any shortfall which arises on the enforcement or realisation of the Security Property; or
  - (iv) without prejudice to the generality of paragraphs (i) to (iii) above, any damages, costs, losses, 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; 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 Security Agent, that Receiver or that Delegate (as applicable)) may take any proceedings against any officer, employee or agent of the Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Security Agent, a Receiver or a Delegate 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 Security Property and any officer, employee or agent of the Security Agent, a Receiver or a Delegate may rely on this paragraph (b) subject to Clause 1.4 (*Third party rights*) and the provisions of the Third Parties Act.
- (c) Nothing in this Agreement shall oblige the Security Agent 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 Finance Parties,

on behalf of any Finance Parties and each Finance Parties confirms to the Security Agent 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 Security Agent.

- (d) Without prejudice to any provision of any Finance Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate, any liability of the Security Agent, any Receiver or Delegate arising under or in connection with any Finance Document or the Security Property 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 Security Agent, Receiver or Delegate (as the case may be) 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 Security Agent, Receiver or Delegate (as the case may be) at any time which increase the amount of that loss. In no event shall the Security Agent, any Receiver or Delegate 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 Security Agent, Receiver or Delegate (as the case may be) has been advised of the possibility of such loss or damages.

#### **24.11 Finance Parties' indemnity to the Security Agent**

- (a) Each Finance Party shall (in the proportion that the liabilities due to it bear to the aggregate of the liabilities due to all the Finance Parties for the time being (or, if the liabilities due to the Finance Parties are zero, immediately prior to their being reduced to zero)), indemnify the Security Agent and every Receiver and every Delegate, within three Business Days of demand, against any cost, loss or liability incurred by any of them (otherwise than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful

misconduct) in acting as Security Agent, Receiver or Delegate under, or exercising any authority conferred under, the Finance Documents (unless the relevant Security Agent, Receiver or Delegate has been reimbursed by the Borrower pursuant to a Finance Document).

- (b) Subject to paragraph (c) below, the Borrower shall immediately on demand reimburse any Finance Party for any payment that Finance Party makes to the Security Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Finance Party claims reimbursement relates to a liability of the Security Agent to the Borrower.

#### 24.12 **Resignation of the Security Agent**

- (a) The Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the Finance Parties and the Borrower.
- (b) Alternatively the Security Agent may resign by giving 30 days' notice to the Finance Parties and the Borrower in which case the Majority Lenders may appoint a successor Security Agent.
- (c) If the Majority Lenders have not appointed a successor Security Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Security Agent (after consultation with the Agent) may appoint a successor Security Agent.
- (d) The retiring Security Agent shall, at its own cost, make available to the successor Security Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Finance Documents. In the event the Majority Lenders require the Security Agent to resign pursuant to paragraph (g) below, the Borrower shall, within three Business Days of demand, reimburse the retiring Security 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.
- (e) The Security Agent's resignation notice shall only take effect upon:
  - (i) the appointment of a successor; and
  - (ii) the transfer of all the Security Property to that successor.
- (f) Upon the appointment of a successor, the retiring Security Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) of Clause 24.24 (*Winding up of trust*) and paragraph (d) above) but shall remain entitled to the benefit of this Clause 24 and Clause 13.4 (*Indemnity to the Security Agent*) (and any Security Agent fees for the account of the retiring Security 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 that successor had been an original Party.

- (g) The Majority Lenders may, by notice to the Security Agent, require it to resign in accordance with paragraph (b) above. In this event, the Security Agent shall resign in accordance with paragraph (b) above but the cost referred to in paragraph (d) above shall be for the account of the Borrower.

#### **24.13 Confidentiality**

- (a) In acting as trustee for the Secured Parties, the Security Agent shall be regarded as acting through its trustee 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 Security Agent, it may be treated as confidential to that division or department and the Security Agent shall not be deemed to have notice of it.
- (c) Notwithstanding any other provision of any Finance Document to the contrary, the Security Agent is not obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty.

#### **24.14 Information from the Creditors**

Each Creditor shall supply the Security Agent with any information that the Security Agent may reasonably specify as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent.

#### **24.15 Credit appraisal by the Secured Parties**

Without affecting the responsibility of the Borrower for information supplied by it or on its behalf in connection with any Finance Document, each Secured Party confirms to the Security Agent that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- (a) the financial condition, status and nature of the Borrower;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document, the Security Property 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 Security Property;
- (c) whether that Secured Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the Security Property, 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 Security Property;

- (d) the adequacy, accuracy or completeness of any information provided by the Security 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.

#### 24.16 Security Agent's management time and additional remuneration

- (a) Any amount payable to the Security Agent under Clause 13.4 (*Indemnity to the Security Agent*), Clause 15 (*Costs and expenses*) or Clause 24.11 (*Finance Parties' Indemnity to the Security Agent*) 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 Borrower and the Lenders, and is in addition to any other fee paid or payable to the Security Agent.
- (b) Without prejudice to paragraph (a) above, in the event of:
  - (i) a Default; or
  - (ii) the Security Agent being requested by the Borrower or the Majority Lenders to undertake duties which the Security Agent and Borrower agree to be of an exceptional nature or outside the scope of the normal duties of the Security Agent under the Finance Documents; or
  - (iii) the Security Agent and the Borrower agreeing that it is otherwise appropriate in the circumstances,

the Borrower shall pay to the Security Agent any additional remuneration (together with any applicable VAT) that may be agreed between them or determined pursuant to paragraph (c) below.

- (c) If the Security Agent and the Borrower fail to agree upon the nature of the duties or upon the additional remuneration referred to in paragraph (b) above 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 Borrower 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 Borrower) and the determination of any investment bank shall be final and binding upon the Parties.

#### **24.17 Reliance and engagement letters**

The Security Agent may obtain and rely on any certificate or report from the Borrower's auditor and may enter into any reliance letter or engagement letter relating to that certificate or report on such terms as it may consider appropriate (including, without limitation, restrictions on the auditor's liability and the extent to which that certificate or report may be relied on or disclosed).

#### **24.18 No responsibility to perfect Transaction Security**

The Security Agent shall not be liable for any failure to:

- (a) require the deposit with it of any deed or document certifying, representing or constituting the title of the Borrower to any of the Charged Property;
- (b) obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any Finance Document or the Transaction Security;
- (c) register, file or record or otherwise protect any of the Transaction Security (or the priority of any of the Transaction Security) under any law or regulation or to give notice to any person of the execution of any Finance Document or of the Transaction Security;
- (d) take, or to require the Borrower to take, any step to perfect its title to any of the Charged Property or to render the Transaction Security effective or to secure the creation of any ancillary Security under any law or regulation; or
- (e) require any further assurance in relation to any Security Document.

#### **24.19 Insurance by Security Agent**

- (a) The Security Agent shall not be obliged:
  - (i) to insure any of the Charged Property;
  - (ii) to require any other person to maintain any insurance; or
  - (iii) to verify any obligation to arrange or maintain insurance contained in any Finance Document,

and the Security Agent shall not be liable for any damages, costs or losses to any person as a result of the lack of, or inadequacy of, any such insurance.

- (b) Where the Security Agent is named on any insurance policy as an insured party, it shall not be liable for any damages, costs or losses to any person as a result of its failure to notify the insurers of any material fact relating to the risk assumed by such insurers or any other information of any kind, unless the Majority Lenders requests it to do so in writing and the Security Agent fails to do so within fourteen days after receipt of that request.

#### **24.20 Custodians and nominees**

The Security Agent may appoint and pay any person to act as a custodian or nominee on any terms in relation to any asset of the trust as the Security Agent may determine, including for the purpose of depositing with a custodian this Agreement or any document relating to the trust created under this Agreement and the Security Agent shall not be responsible for any loss, liability, expense, demand, cost, claim or proceedings incurred by reason of the misconduct, omission or default on the part of any person appointed by it under this Agreement or be bound to supervise the proceedings or acts of any person.

#### **24.21 Delegation by the Security Agent**

- (a) Each of the Security Agent, any Receiver and any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any right, power, authority or discretion vested in it in its capacity as such.
- (b) That delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions that the Security Agent, that Receiver or that Delegate (as the case may be) may, in its discretion, think fit in the interests of the Secured Parties.
- (c) No Security Agent, Receiver or Delegate shall be bound to supervise, or be in any way responsible for any damages, costs or losses incurred by reason of any misconduct, omission or default on the part of, any such delegate or sub-delegate.

#### **24.22 Additional Security Agents**

- (a) The Security Agent may at any time appoint (and subsequently remove) any person to act as a separate trustee or as a co-trustee jointly with it:
  - (i) if it considers that appointment to be in the interests of the Secured Parties;
  - (ii) for the purposes of conforming to any legal requirement, restriction or condition which the Security Agent deems to be relevant; or
  - (iii) for obtaining or enforcing any judgment in any jurisdiction,and the Security Agent shall give prior notice to the Borrower and the Finance Parties of that appointment.
- (b) Any person so appointed shall have the rights, powers, authorities and discretions (not exceeding those given to the Security Agent under or in connection with the Finance Documents) and the duties, obligations and responsibilities that are given or imposed by the instrument of appointment.
- (c) The remuneration that the Security Agent may pay to that person, and any costs and expenses (together with any applicable VAT) incurred by that person in

performing its functions pursuant to that appointment shall, for the purposes of this Agreement, be treated as costs and expenses incurred by the Security Agent.

#### **24.23 Acceptance of title**

The Security Agent shall be entitled to accept without enquiry, and shall not be obliged to investigate, any right and title that the Borrower may have to any of the Charged Property and shall not be liable for, or bound to require the Borrower to remedy, any defect in its right or title.

#### **24.24 Winding up of trust**

If the Security Agent, with the approval of the Agent, determines that:

- (a) all liabilities and obligations secured by the Transaction Security Documents have been fully and finally discharged; and
- (b) no Secured Party is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to the Borrower pursuant to the Finance Documents,

then:

- (i) the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Transaction Security Documents; and
- (ii) any Security Agent which has resigned pursuant to Clause 24.12 (*Resignation of the Security Agent*) shall release, without recourse or warranty, all of its rights under each Transaction Security Document.

#### **24.25 Powers supplemental to Trustee Acts**

The rights, powers, authorities and discretions given to the Security Agent under or in connection with the Finance Documents shall be supplemental to the Trustee Act 1925 and the Trustee Act 2000 and in addition to any which may be vested in the Security Agent by law or regulation or otherwise.

#### **24.26 Disapplication of Trustee Acts**

Section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Agent in relation to the trusts constituted by this Agreement. Where there are any inconsistencies between the Trustee Act 1925 or the Trustee Act 2000 and the provisions of this Agreement, the provisions of this Agreement shall, to the extent permitted by law and regulation, prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of this Agreement shall constitute a restriction or exclusion for the purposes of that Act.



## 25. 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.

## 26. SHARING AMONG THE FINANCE PARTIES

### 26.1 Payments to Finance Parties

If a Finance Party (a "**Recovering Finance Party**") receives or recovers any amount from the Borrower other than in accordance with Clause 27 (*Payment mechanics*) (a "**Recovered Amount**") and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery to the Agent;
- (b) 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 27 (*Payment mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
- (c) 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 27.5 (*Partial payments*).

### 26.2 Redistribution of payments

The Agent shall treat the Sharing Payment as if it had been paid by the Borrower and distribute it between the Finance Parties (other than the Recovering Finance Party) (the "**Sharing Finance Parties**") in accordance with Clause 27.5 (*Partial payments*) towards the obligations of the Borrower to the Sharing Finance Parties.

### 26.3 Recovering Finance Party's rights

On a distribution by the Agent under Clause 26.2 (*Redistribution of payments*) of a payment received by a Recovering Finance Party from the Borrower, as between the Borrower 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 the Borrower.

#### 26.4 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 Borrower and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by the Borrower.

#### 26.5 Exceptions

- (a) This Clause 26 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 Borrower.
- (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 that other Finance Party of the legal or arbitration proceedings; and
  - (ii) that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

## **SECTION 11 ADMINISTRATION**

### **27. PAYMENT MECHANICS**

#### **27.1 Payments to the Agent**

- (a) On each date on which the Borrower or a Lender is required to make a payment under a Finance Document, the Borrower 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.

#### **27.2 Distributions by the Agent**

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 27.3 (*Distributions to the Borrower*) and Clause 27.4 (*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).

#### **27.3 Distributions to the Borrower**

The Agent may (with the consent of the Borrower or in accordance with Clause 28 (*Set-off*)) apply any amount received by it for the Borrower in or towards payment (on the date and in the currency and funds of receipt) of any amount due from the Borrower under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

#### **27.4 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 paragraph (c) below 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 is willing to make available amounts for the account of the 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 the Borrower:
  - (i) the Agent shall notify the Borrower of that Lender's identity and the Borrower 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, 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.

#### 27.5 Partial payments

- (a) If the Agent receives a payment that is insufficient to discharge all the amounts then due and payable by the Borrower under the Finance Documents, the Agent shall apply that payment towards the obligations of the Borrower under the 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 this Agreement;
  - (iii) **thirdly**, in or towards payment *pro rata* of any principal due but unpaid under this Agreement; 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, vary the order set out in paragraphs (a)(ii) to (a)(iv) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by the Borrower.

#### 27.6 No set-off by the Borrower

All payments to be made by the Borrower under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

#### 27.7 Business Days

- (a) Unless otherwise expressly stated, 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.

#### **27.8 Currency of account**

- (a) 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.
- (b) 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.
- (c) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.

#### **27.9 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 Borrower); 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 Borrower) 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.

#### **27.10 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 Borrower that a Disruption Event has occurred:

- (a) the Agent may, and shall if requested to do so by the Borrower, consult with the Borrower with a view to agreeing with the Borrower 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 Borrower in relation to any changes mentioned in paragraph (a) above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) the Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) above but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- (d) any such changes agreed upon by the Agent and the Borrower 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 33 (*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 27.10; and
- (f) the Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

## 28. SET-OFF

A Finance Party may set off any matured obligation due from the Borrower under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to the Borrower, 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.

## 29. NOTICES

### 29.1 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.

### 29.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

- (a) in the case of the Borrower, that identified with its name below;
- (b) in the case of the General Partner, that identified with its name below;

- (c) in the case of each Lender, that notified in writing to the Agent on or prior to the date on which it becomes a Party; and
- (d) in the case of the Agent or the Security Agent, that identified with its name below,

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

### **29.3 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 29.2 (*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 the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Agent's or the Security Agent's signature below (or any substitute department or officer as the Agent or the Security Agent shall specify for this purpose).
- (c) All notices from or to the Borrower and/or the General Partner shall be sent through the Agent.
- (d) Any communication or document which becomes effective, in accordance with paragraphs (a) to (c) above, after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

### **29.4 Notification of address and fax number**

Promptly upon changing its address or fax number, the Agent shall notify the other Parties.

### **29.5 Electronic communication**

- (a) Any communication or document to be made or delivered by one Party to another under or in connection with the Finance Documents may be made or delivered 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 or delivery as specified in paragraph (a) above to be made between the Borrower 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 or delivery.
- (c) Any such electronic communication or document as specified in paragraph (a) above made or delivered by one Party to another will be effective only when actually received (or made available) in readable form and in the case of any electronic communication or document made or delivered by a Party to the Agent or the Security Agent only if it is addressed in such a manner as the Agent or the Security Agent shall specify for this purpose.
- (d) Any electronic communication or document which becomes effective, in accordance with paragraph (c) above, after 5:00 p.m. in the place in which the Party to whom the relevant communication or document 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 or a document being delivered shall be construed to include that communication or document being made available in accordance with this Clause 29.5.

## **29.6 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.



### **30. CALCULATIONS AND CERTIFICATES**

#### **30.1 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.

#### **30.2 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.

#### **30.3 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 a year of three hundred sixty-five (365) days, or three hundred sixty-six (366) days, as applicable, and actual days elapsed

### **31. 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.

### **32. REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of any Finance 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 of the Finance Documents. No election to affirm any Finance Document on the part of any Finance Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

### **33. AMENDMENTS AND WAIVERS**

#### **33.1 Required consents**

- (a) Subject to Clause 33.2 (*All Lender matters*) and Clause 33.3 (*Other exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Borrower 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 33.

- (c) Paragraph (c) of Clause 21.10 (*Pro rata interest settlement*) shall apply to this Clause 33.

### 33.2 All Lender matters

An 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 changing or which relates to:

- (a) the definition of "Majority Lenders" in Clause 1.1 (*Definitions*);
- (b) an extension to the date of payment of any amount under the Finance Documents (other than amendments to the Cash Sweep Prepayment Schedule following (i) a prepayment or cancellation pursuant to Clause 7 (*Prepayment and cancellation*) or (ii) any election in relation to interest, PIK Interest or PIK Amounts under Clause 8.2 (*Payment of interest*));
- (c) a reduction in the amount of any payment of principal, interest, PIK Interest, PIK Amount, fees or commission payable;
- (d) a change in currency of payment of any amount under the Finance Documents (other than in accordance with the Finance Documents);
- (e) an increase in any Commitment, an extension of the Availability Period or any requirement that a cancellation of Commitments reduces the Commitments of the Lenders rateably under the Facilities other than in accordance with the Finance Documents;
- (f) any provision which expressly requires the consent of all the Lenders;
- (g) Clause 2.3 (*Finance Parties' rights and obligations*), Clause 21 (*Changes to the Lenders*), this Clause 33, Clause 36 (*Governing law*) or Clause 37.1 (*Jurisdiction*);
- (h) (other than as expressly permitted by the provisions of any Finance Document) the nature or scope of:
  - (i) the Charged Property; or
  - (ii) the manner in which the proceeds of enforcement of the Transaction Security are distributed

except insofar as it relates to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document; or

- (i) the release 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 permitted under this Agreement or any other Finance Document,

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

### 33.3 Other exceptions

An amendment or waiver which relates to the rights or obligations of the Agent or the Security Agent (each in their capacity as such) may not be effected without the consent of the Agent or the Security Agent, as the case may be.

## 34. CONFIDENTIAL INFORMATION

### 34.1 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 34.2 (*Disclosure of Confidential Information*) and Clause 34.3 (*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.

### 34.2 Disclosure of Confidential Information

Any Finance Party may disclose:

- (a) to any of its Affiliates (other than any Competitor) and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
  - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more 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 (other than any Competitor), 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 the Borrower and to any of that person's Affiliates (other than any Competitor), Representatives and professional advisers;
  - (iii) (other than any Competitor) appointed by any Finance Party or by a person to whom paragraph (b)(i) or (ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation,

any person appointed under paragraph (b) of Clause 23.13 (*Relationship with the Lenders*));

- (iv) (other than any Competitor) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;
- (v) to whom information is required or requested to be disclosed by any 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 21.9 (*Security over Lenders' rights*);
- (viii) who is a Party;
- (ix) with the consent of the Borrower; or
- (x) to whom information is required to be disclosed in connection with any Insurance;

in each case, such Confidential Information as that Finance Party shall consider appropriate if:

- (A) in relation to paragraphs (b)(i), (b)(ii) and (b)(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
- (B) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
- (C) in relation to paragraphs (b)(v), (b)(vi) and (b)(vii) above, (i) 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, and (ii) that Finance Party has confirmed to the Borrower that such recipient is not a Competitor; and

- (c) to any person appointed by that Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Borrower and the relevant Finance Party; and
- (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 Borrower 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.

### 34.3 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 the Borrower the following information:
  - (i) name of the Borrower;
  - (ii) country of domicile of Borrower;
  - (iii) place of incorporation of Borrower;
  - (iv) date of this Agreement;
  - (v) Clause 36 (*Governing law*)
  - (vi) the names of the Agent;
  - (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) Maturity Date for the Facilities;
- (xiv) changes to any of the information previously supplied pursuant to paragraphs (i) to (xiii) above; and
- (xv) such other information agreed between such Finance Party and the Borrower,

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 the Borrower by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.
- (c) The Agent shall notify the Borrower and the other Finance Parties of:
  - (i) the name of any numbering service provider appointed by the Agent in respect of this Agreement and/or the Facilities; and
  - (ii) the number or, as the case may be, numbers assigned to this Agreement and/or the Facilities by such numbering service provider.

#### 34.4 **Entire agreement**

This Clause 34 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.

#### 34.5 **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.

#### 34.6 **Notification of disclosure**

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Borrower:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 34.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and

- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 34.

**34.7 Continuing obligations**

The obligations in this Clause 34 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 Borrower under or in connection with this Agreement 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.

**35. 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**

#### **36. GOVERNING LAW**

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

#### **37. ENFORCEMENT**

##### **37.1 Jurisdiction**

- (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) Notwithstanding paragraphs (a) and (b) above, no Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.

##### **37.2 Service of process**

Without prejudice to any other mode of service allowed under any relevant law, the Borrower and the General Partner each:

- (a) irrevocably appoints Aberdeen Asset Managers Limited, Bow Bells House, 1 Bread Street, London, EC4M 9HH as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
- (b) agrees that failure by a process agent to notify the Borrower or the General Partner of the process will not invalidate the proceedings concerned.

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



**SCHEDULE 1**  
**THE ORIGINAL LENDERS**

<b>Name of Original Lender</b>	<b>USD Facility Commitment</b>	<b>AUD Facility Commitment</b>	<b>Treaty Passport scheme reference number and jurisdiction of tax residence (if applicable)</b>
NongHyup Bank acting as trustee of Shinhan AIM Infrastructure Fund 10 duly organized and validly existing under the laws of the Republic of Korea, having its principal place of business at 120, Tongil-ro, jung-gu Seoul, Republic of Korea	USD 51,925,448.25	AUD 80,744,887.05	[Intentionally blank]
NongHyup Bank acting as trustee of Hanwha US AUS PPP Private Fund 2 duly organized and validly existing under the laws of the Republic of Korea, having its principal place of business at 120, Tongil-ro, jung-gu, Seoul, Republic of Korea	USD 51,925,448.25	AUD 80,744,887.05	

## **SCHEDULE 2**

### **CONDITIONS PRECEDENT**

#### **1. Borrower and General Partner**

- (a) The substantially agreed form of the Limited Partnership Agreement;
- (b) The agreed form of each Assignment and Assumption Agreement.
- (c) A copy of the Investment Advisory Agreement.
- (d) A copy of the constitutional documents of the General Partner.
- (e) A copy of a resolution of the board of directors of the General Partner:
  - (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which the Borrower is a party and resolving that it execute, deliver and perform the Finance Documents to which the Borrower is a party;
  - (ii) authorising a specified person or persons to execute the Finance Documents to which the Borrower is a party on its behalf; and
  - (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) to be signed and/or despatched by it under or in connection with the Finance Documents to which the Borrower is a party.
- (f) A specimen of the signature of each person authorised by the resolution referred to in paragraph (e) above.
- (g) A certificate of the General Partner (signed by a director) confirming that borrowing or guaranteeing, as appropriate, the Total Commitments would not cause any borrowing, guaranteeing or similar limit binding on the Borrower to be exceeded.
- (h) A certificate of an authorised signatory of the General Partner certifying that each copy document relating to it or the Borrower specified in this Schedule 2 is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.

#### **2. Finance Documents**

- (a) A copy of:
  - (i) this Agreement;
  - (ii) the Account Charge;
  - (iii) the Delaware Share Charge;

- (iv) the Guernsey Share Charge; and
  - (v) each Fee Letter.
- (b) A copy of all notices required to be sent under the Transaction Security Documents executed by the Borrower.
  - (c) Original share certificates with respect to the Securities as defined in the Guernsey Share Pledge, and transfers and stock transfer forms or equivalent duly executed by the Borrower 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.
  - (d) Copies of written special resolutions of each of Aberdeen Infrastructure Investments (Mundaring) Limited, Aberdeen Infrastructure Investments (NGR) Limited and Aberdeen Infrastructure Investments (NRAH) Limited amending the Articles of Incorporation of each of those companies, in each case signed by the Borrower as sole eligible member of the relevant company.

**3. Legal opinions**

- (a) A legal opinion of Clyde & Co LLP, legal advisers to the Lenders in England, addressed to the Security Agent and the Agent, substantially in the form distributed to the Original Lenders prior to signing this Agreement.
- (b) A legal opinion of Morris, Nichols, Arsht & Tunnell LLP, legal advisers to the Lenders in Delaware, addressed to the Security Agent and the Agent, substantially in the form distributed to the Original Lenders prior to signing this Agreement.
- (c) A legal opinion of Mourant Ozannes, legal advisers to the Borrower in Guernsey, addressed to the Security Agent and the Agent, substantially in the form distributed to the Original Lenders prior to signing this Agreement.

**4. Other documents and evidence**

- (a) Evidence that any process agent referred to in Clause 37.2 (*Service of process*) has accepted its appointment.
- (b) Delivery of documentation and other information required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations.
- (c) Evidence that the Written Notice (as defined in the Escrow Agreement) has been received by Hogan Lovells International LLP in accordance with the Escrow Agreement and the Purchase Agreement.
- (d) Evidence that the fees, costs and expenses then due from the Borrower pursuant to Clause 10 (*Fees*) and Clause 15 (*Costs and expenses*) have been paid or will be paid within 5 Business Days after the first Utilisation Date.

**SCHEDULE 3  
UTILISATION REQUEST**

From: [Borrower]

To: [Agent]

Dated:

Dear Sirs

**[Borrower] – [ ] Facility Agreement  
dated [ ] (the "Agreement")**

1. We refer to the Agreement. This is a Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to borrow a Loan on the following terms:  
  
Proposed Utilisation Date: [ ] (or, if that is not a Business Day, the next Business Day)  
  
Facility to be utilised: [AUD Facility] / [USD Facility]  
  
Currency of Loan: [ ]  
  
Amount: [ ] or, if less, the Available Facility
3. We confirm that each condition specified in Clause 4.2 (*Further conditions precedent*) of the Agreement is satisfied on the date of this Utilisation Request.
4. We confirm that upon receipt by Hogan Lovells International LLP of the Written Notice (as defined in the Escrow Agreement) in accordance with the Escrow Agreement and the Purchase Agreement, this Utilisation Request shall be deemed effective as required by Clause 5.1 (*Delivery of a Utilisation Request*), the proceeds of this Loan shall be deemed to have been drawn down in accordance with the Agreement (and shall be deemed to be constituted by the relevant part of the Completion Drawdown Amounts (as defined in the Purchase Agreement) standing to the credit of the Escrow Account (as defined in the Escrow Agreement)), and the release of such funds to the Sellers in accordance with the Escrow Agreement shall be deemed to constitute the application by the Borrower under this Agreement of those funds to make payment to the Sellers as permitted by Clause 3.1 (*Purpose*) of the Agreement.
5. This Utilisation Request is irrevocable.

Yours faithfully

.....  
authorised signatory for  
[*name of Borrower*]

**SCHEDULE 4**  
**FORM OF TRANSFER CERTIFICATE**

To: [ ] as Agent

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

Dated:

**[Aberdeen Global Infrastructure Partners LP] – [ ] Facility Agreement**  
**dated [ ] (the "Agreement")**

1. We refer to the Agreement. This is a Transfer Certificate. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
2. We refer to Clause 21.6 (*Procedure for transfer*) of the 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 21.6 (*Procedure for transfer*) of the Agreement, all of the Existing Lender's rights and obligations under the Agreement and the other Finance Documents and in respect of the Transaction Security which relate to that portion of the Existing Lender's Commitment and participations in Loans under the Agreement as specified in the Schedule.
  - (b) The proposed Transfer Date is [ ].
  - (c) The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 29.2 (*Addresses*) of the Agreement are set out in the Schedule.
3. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 21.5 (*Limitation of responsibility of Existing Lenders*) of the Agreement.
4. The New Lender confirms, for the benefit of the Agent and without liability to the Borrower, that it is:
  - (a) [a Qualifying Lender (other than a Treaty Lender);]
  - (b) [a Treaty Lender;]
  - (c) [not a Qualifying Lender].<sup>1</sup>

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<sup>1</sup> Delete as applicable. Each New Lender is required to confirm which of these three categories it falls within.

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;
  - (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.]<sup>2</sup>
5. [The New Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number [ ]) and is tax resident in [ ]<sup>3</sup>, so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax.]

[5/6]. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.

[6/7]. This Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by English law.

[7/8]. This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.

**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.**

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<sup>2</sup> Include if New Lender comes within paragraph (a)(ii) of the definition of Qualifying Lender in Clause 11.1 (*Definitions*)

<sup>3</sup> Insert jurisdiction of tax residence.

**THE SCHEDULE**

**Commitment/rights and obligations to be transferred**

*[Insert relevant details]*

*[Facility Office address, fax number and attention details for notices and account details for payments,]*

[Existing Lender]

[New Lender]

By:

By:

This Transfer Certificate is accepted by the Agent and the Transfer Date is confirmed as [      ].

[Agent]

By:



**SCHEDULE 5**  
**FORM OF ASSIGNMENT AGREEMENT**

To: [ ] as Agent and [ ] as Borrower

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

Dated:

**[Aberdeen Global Infrastructure Partners LP] - [ ] Facility Agreement**  
**dated [ ] (the "Agreement")**

1. We refer to the Agreement. This is an Assignment Agreement. Terms defined in the Agreement have the same meaning in this Assignment Agreement unless given a different meaning in this Assignment Agreement.
2. We refer to Clause 21.7 (*Procedure for assignment*) of the Agreement:
  - (a) The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Agreement and the other Finance Documents and in respect of the Transaction Security which relate to that portion of the Existing Lender's Commitment and participations in Loans under the 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 and participations in Loans under the Agreement specified in the Schedule.
  - (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 (b) above.<sup>4</sup>
3. The proposed Transfer Date is [ ].
4. On the Transfer Date the New Lender becomes Party to the Finance Documents as a Lender.
5. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 29.2 (*Addresses*) of the Agreement are set out in the Schedule.
6. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 21.5 (*Limitation of responsibility of Existing Lenders*) of the Agreement.

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<sup>4</sup> If the Assignment Agreement is used in place of a Transfer Certificate in order to avoid a novation of rights/obligations for reasons relevant to a civil jurisdiction, local law advice should be sought to check the suitability of the Assignment Agreement due to the assumption of obligations contained in paragraph 2(c). This issue should be addressed at primary documentation stage.

7. The New Lender confirms, for the benefit of the Agent and without liability to the Borrower, that it is:
- (a) [a Qualifying Lender (other than a Treaty Lender);]
  - (b) [a Treaty Lender;]
  - (c) [not a Qualifying Lender].<sup>5</sup>
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.]<sup>6</sup>
8. [The New Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number [ ]) and is tax resident in [ ]<sup>7</sup>, so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax.]
- [8/9]. This Assignment Agreement acts as notice to the Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 21.8 (*Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Borrower*) of the Agreement, to the Borrower of the assignment referred to in this Assignment Agreement.
- [9/10]. This Assignment 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 Assignment Agreement.

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<sup>5</sup> Delete as applicable. Each New Lender is required to confirm which of these three categories it falls within.

<sup>6</sup> Include only if New Lender is a UK Non-Bank Lender - i.e. falls within paragraph (a)(ii) of the definition of Qualifying Lender in Clause 11.1 (*Definitions*).

<sup>7</sup> Insert jurisdiction of tax residence.

[10/11]. This Assignment Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

[11/12]. This Assignment Agreement has been entered into on the date stated at the beginning of this Assignment 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

### **Rights to be assigned and obligations to be released and undertaken**

*[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 Assignment Agreement is accepted by the Agent and the Transfer Date is confirmed as [    ].

Signature of this Assignment Agreement by the Agent constitutes confirmation by the Agent of receipt of notice of the assignment referred to herein, which notice the Agent receives on behalf of each Finance Party.

[Agent]

By:

**SCHEDULE 6**  
**FORM OF INCREASE CONFIRMATION**

To: [ ] as Agent and [ ] as the Borrower

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

Dated:

**[Aberdeen Global Infrastructure Partners LP] – [ ] Facility Agreement**  
**dated [ ] (the "Agreement")**

1. We refer to the Agreement. This is an Increase Confirmation. Terms defined in the Agreement have the same meaning in this Increase Confirmation unless given a different meaning in this Increase Confirmation.
2. We refer to Clause 2.2 (*Increase*) of the 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 had been an Original Lender under the Agreement in respect of the Relevant Commitment.
4. The proposed date on which the increase in relation to the Increase Lender and the Relevant Commitment is to take effect (the "**Increase Date**") is [ ].
5. On the Increase Date, the Increase Lender becomes party to the Finance Documents as a Lender.
6. The Facility Office and address, fax number and attention details for notices to the Increase Lender for the purposes of Clause 29.2 (*Addresses*) of the Agreement are set out in the Schedule.
7. The Increase Lender expressly acknowledges the limitations on the Lenders' obligations referred to in paragraph (g) of Clause 2.2 (*Increase*) of the Agreement.
8. The Increase Lender confirms, for the benefit of the Agent and without liability to the Borrower, that it is:
  - (a) [a Qualifying Lender (other than a Treaty Lender);]
  - (b) [a Treaty Lender;]
  - (c) [not a Qualifying Lender].<sup>8</sup>

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<sup>8</sup> Delete as applicable. Each Increase Lender is required to confirm which of these three categories it falls within.

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.]<sup>9</sup>
9. [The Increase Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number [ ]) and is tax resident in [ ]\*, so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax.]

[9/10]. This Increase Confirmation 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 Increase Confirmation.

[10/11]. This Increase Confirmation and any non-contractual obligations arising out of or in connection with it are governed by English law.

[11/12]. This Increase Confirmation has been entered into on the date stated at the beginning of this Increase Confirmation.

**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.**

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<sup>9</sup> Include only if Increase Lender is a UK Non-Bank Lender i.e. falls within paragraph (a)(ii) of the definition of Qualifying Lender in Clause 11.1 (*Definitions*).

\* Insert jurisdiction of tax residence.

**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 Increase Confirmation is accepted by the Agent and the Increase Date is confirmed as [    ].

Agent

By:

**SCHEDULE 7**  
**CASH SWEEP PREPAYMENT SCHEDULE**

**PART I**  
**PAYMENT SCHEDULE (USD FACILITY)**

(Unit: Thousand USD)

Prepayment date	Closing Balance
30-Jun-20	103,527
31-Dec-20	103,527
30-Jun-21	103,527
31-Dec-21	103,527
30-Jun-22	103,527
31-Dec-22	103,527
30-Jun-23	103,527
31-Dec-23	103,527
30-Jun-24	103,527
31-Dec-24	103,527
30-Jun-25	103,429
31-Dec-25	101,977
30-Jun-26	99,470
31-Dec-26	99,167
30-Jun-27	98,711
31-Dec-27	97,651
30-Jun-28	96,370
31-Dec-28	96,370
30-Jun-29	94,497
31-Dec-29	94,322
30-Jun-30	92,214
31-Dec-30	90,633



30-Jun-31	86,213
31-Dec-31	86,213
30-Jun-32	84,747
31-Dec-32	84,747
30-Jun-33	82,564
31-Dec-33	82,564
30-Jun-34	77,634
31-Dec-34	77,070
30-Jun-35	71,206
31-Dec-35	69,308
30-Jun-36	59,085
31-Dec-36	59,085
30-Jun-37	54,162
31-Dec-37	52,319
30-Jun-38	47,061
31-Dec-38	46,707
30-Jun-39	41,905
31-Dec-39	37,231
30-Jun-40	29,524
31-Dec-40	27,613
30-Jun-41	15,444
31-Dec-41	10,312
30-Jun-42	3,676
31-Dec-42	3,038
30-Jun-43	0

**PART II**  
**PAYMENT SCHEDULE (AUD FACILITY)**

(Unit: Thousand AUD)

Prepayment date	Closing Balance
30-Jun-20	161,246
31-Dec-20	161,246
30-Jun-21	157,541
31-Dec-21	156,522
30-Jun-22	154,241
31-Dec-22	153,145
30-Jun-23	150,585
31-Dec-23	149,651
30-Jun-24	148,138
31-Dec-24	146,757
30-Jun-25	144,382
31-Dec-25	143,400
30-Jun-26	143,376
31-Dec-26	140,947
30-Jun-27	137,712
31-Dec-27	135,598
30-Jun-28	134,371
31-Dec-28	131,375
30-Jun-29	127,912
31-Dec-29	125,423
30-Jun-30	123,084
31-Dec-30	121,519
30-Jun-31	121,238
31-Dec-31	118,191

30-Jun-32	113,887
31-Dec-32	110,355
30-Jun-33	106,695
31-Dec-33	103,866
30-Jun-34	101,600
31-Dec-34	99,154
30-Jun-35	95,488
31-Dec-35	93,582
30-Jun-36	93,075
31-Dec-36	90,956
30-Jun-37	87,292
31-Dec-37	84,248
30-Jun-38	81,076
31-Dec-38	79,006
30-Jun-39	75,947
31-Dec-39	75,679
30-Jun-40	75,234
31-Dec-40	74,091
30-Jun-41	69,675
31-Dec-41	69,675
30-Jun-42	61,684
31-Dec-42	58,108
30-Jun-43	53,990
31-Dec-43	51,909
30-Jun-44	49,840
31-Dec-44	39,674
30-Jun-45	18,930
31-Dec-45	0

Dear Sirs

**[Borrower] – [ ] Facility Agreement**  
**dated [ ] (the “Agreement”)**

1. We refer to the Agreement. This is a PIK Amount Notice in respect of [interest/PIK Interest/existing PIK Amounts] that would otherwise be payable on [*insert relevant Interest Payment Date falling 2 Business Days after the date of the notice*] (the “**Current Interest Payment Date**”).
2. Terms defined in the Agreement have the same meaning in this PIK Amount Notice unless given a different meaning in this PIK Amount Notice. The term “**Next Interest Payment Date**” shall mean the Interest Payment Date falling immediately after the Current Interest Payment Date.
3. We hereby confirm the following:
  - (a) We expect the balance standing to the credit of the Revenue Accounts on the Current Interest Payment Date and available for payments of interest, PIK Interest and PIK Amounts to the Finance Parties will be no greater than:
    - (i) AUD Revenue Account: AUD [     ]
    - (ii) USD Revenue Account: USD [     ].
  - (b) [The interest that would otherwise be due on outstanding Loans on the Current Interest Payment Date is:
    - (i) AUD Facility: AUD [     ]
    - (ii) USD Facility: USD [     ].]
  - (c) [The PIK Interest that would otherwise be due on the Current Interest Payment Date is:
    - (i) AUD Facility: AUD [     ]
    - (ii) USD Facility: USD [     ].]

- (d) [The PIK Amount that would otherwise be due on the Current Interest Payment Date is:
- (i) AUD Facility: AUD [ ]
  - (ii) USD Facility: USD [ ].]
4. [We hereby elect in accordance with Clause 8.2 (*Payment of Interest*) of the Facility Agreement that an amount equal to (a) [AUD [ ]] [and] [USD [ ]] which would otherwise be payable as interest on the Current Interest Payment Date be designated as new PIK Amount[s] (such amount[s] referred to herein as the “**New PIK Amount[s]**”), and therefore fall due for payment, subject to any further PIK Amount Notice, on the Next Interest Payment Date.]
5. [We hereby elect that an amount equal to (a) [AUD [ ]] [and] [USD [ ]] which would otherwise be payable as PIK Interest on the Current Interest Payment Date be designated as new PIK Amount[s] (such amount[s] referred to herein as the “**New PIK Amount[s]**”), and therefore fall due for payment, subject to any further PIK Amount Notice, on the Next Interest Payment Date.]
6. [We hereby elect that an amount equal to (a) [AUD [ ]] [and] [USD [ ]] which would otherwise be payable as the PIK Amount on the Current Interest Payment Date shall continue to be designated as a PIK Amount and shall therefore not fall due for payment on the Current Interest Payment Date and shall only fall due for payment, subject to any further PIK Amount Notice, on the Next Interest Payment Date.]
7. The aggregate PIK Amount and PIK Interest that has been repaid or prepaid since the most recently delivered PIK Amount Notice is:
- (a) PIK Amount in respect of the AUD Facility: [ ]
  - (b) PIK Interest in respect of the AUD Facility: [ ]
  - (c) PIK Amount in respect of the USD Facility: [ ]
  - (d) PIK Interest in respect of the USD Facility: [ ].
8. The outstanding aggregate PIK Amount and PIK Interest following the Current Interest Payment Date (having taken into account all repayments and prepayments of PIK Amounts and PIK Interest made since the last Interest Payment Date)(and including the adjustments to the respective PIK Interest and PIK Amounts referred to in this notice) will be [ ], being made up of:
- (a) AUD PIK Amount: AUD [ ]
  - (b) USD PIK Amount: USD [ ]
  - (c) AUD PIK Interest: AUD [ ]
  - (d) USD PIK Interest: USD [ ].

Yours faithfully

.....  
authorised signatory for  
[*name of Borrower*]

## **SIGNATURES**

### **THE BORROWER**

**ABERDEEN GLOBAL INFRASTRUCTURE PARTNERS LP (ACTING THROUGH ITS GENERAL PARTNER, ABERDEEN GLOBAL INFRASTRUCTURE GP LIMITED)**

By:

Address: c/o Aberdeen Asset Managers Limited, Bow Bells House, 1 Bread Street, London, EC4M 9HH

Attention: David Joyce and Ivan Wong

Email: [Ivan.Wong@Aberdeenstandard.com](mailto:Ivan.Wong@Aberdeenstandard.com); [David.Joyce@Aberdeenstandard.com](mailto:David.Joyce@Aberdeenstandard.com)

### **THE GENERAL PARTNER**

**ABERDEEN GLOBAL INFRASTRUCTURE GP LIMITED**

By:

Address: c/o Aberdeen Asset Managers Limited, Bow Bells House, 1 Bread Street, London, EC4M 9HH

Attention: David Joyce and Ivan Wong

Email: [Ivan.Wong@Aberdeenstandard.com](mailto:Ivan.Wong@Aberdeenstandard.com); [David.Joyce@Aberdeenstandard.com](mailto:David.Joyce@Aberdeenstandard.com)

**THE AGENT**

**CSC CAPITAL MARKETS (IRELAND) LIMITED**

By:

Address: 3rd Floor Fleming Court, Fleming's Place, Dublin 4, Ireland

Attention: Agency Team

Email: [agencyservices@cscgfm.com](mailto:agencyservices@cscgfm.com)

**THE SECURITY AGENT**

**CSC TRUSTEES LIMITED**

By:

Address: 10th Floor, 5 Churchill Place, London, E14 5HU, United Kingdom

Attention: Corporate trustee team

Email: [csctrustees@cscgfm.com](mailto:csctrustees@cscgfm.com)



**THE ORIGINAL LENDERS**

**NONGHYUP BANK ACTING AS TRUSTEE OF SHINHAN AIM  
INFRASTRUCTURE FUND 10**

By:

Address: 13F, 120, Tongil-ro, Jung-gu, Seoul, Korea

Fax: +82-2-2080-3697, +82-2-2080-3704

Email: [nhbank0221@nonghyup.com](mailto:nhbank0221@nonghyup.com)

**NONGHYUP BANK ACTING AS TRUSTEE OF HANWHA US AUS PPP PRIVATE  
FUND 2**

By:

Address: 13F, 120, Tongil-ro, Jung-gu, Seoul, Korea (04517)

Fax: +82-2-2080-3697, +82-2-2080-3704

Email: [nhbank0221@nonghyup.com](mailto:nhbank0221@nonghyup.com)