

**FACILITIES AGREEMENT**

**DATED** 2 July **2024**

**HOUTING B.V.  
as the Company**

**arranged by**

**JPMORGAN CHASE BANK, N.A.,  
acting through its Hong Kong Branch**

**with**

**JPMORGAN CHASE BANK, N.A.,  
acting through its Hong Kong Branch  
as Agent**

**and**

**GLAS TRUST CORPORATION LIMITED  
as Security Agent**

**KIRKLAND & ELLIS**

## TABLE OF CONTENTS

<b>Clause</b>		<b>Page</b>
1.	Definitions and Interpretation	4
2.	The Facilities	92
3.	Purpose	101
4.	Conditions of Utilisation	102
5.	Utilisation – Loans	106
6.	Utilisation - Letters of Credit	107
7.	Letters of Credit	112
8.	Optional Currencies	117
9.	Ancillary Facilities	117
10.	Repayment	124
11.	Illegality, Voluntary Prepayment and Cancellation	127
12.	Mandatory Prepayment	129
13.	Restrictions	133
14.	Interest	134
15.	Interest Periods	136
16.	Changes to the Calculation of Interest	138
17.	Fees	140
18.	Tax Gross-Up and Indemnities	142
19.	Increased Costs	155
20.	Other Indemnities	157
21.	Mitigation by the Lenders	159
22.	Costs and Expenses	159
23.	Guarantee and indemnity	160
24.	Representations	164
25.	Information Undertakings	173
26.	Financial Covenants	180
27.	General Undertakings	191
28.	Events of Default	208
29.	Changes to the Lenders	215
30.	Debt Purchase Transactions	222
31.	Changes to the Obligors	224
32.	Role of the Agent, the Arranger, the Issuing Bank and Others	226
33.	Conduct of Business by the Finance Parties	237
34.	Sharing among the Secured Parties	238
35.	Payment Mechanics	240

36.	Set-Off	244
37.	Notices	244
38.	Calculations and Certificates	247
39.	Partial Invalidity	248
40.	Remedies and Waivers	248
41.	Amendments and Waivers	248
42.	Confidentiality	255
43.	Counterparts	261
44.	Governing Law	262
45.	Enforcement	262
Schedule 1	The Original Parties	264
Schedule 2	Conditions Precedent	266
Schedule 3	Requests and Notices	273
Schedule 4	Form of Transfer Certificate	278
Schedule 5	Form of Assignment Agreement	282
Schedule 6	Form of Compliance Certificate	286
Schedule 7	Timetables	287
Schedule 8	Form of Increase Confirmation – Cancelled Commitments	290
Schedule 9	Forms of Notifiable Debt Purchase Transaction Notice	293
Schedule 10	Form of Confidentiality Undertaking	295
Schedule 11	Approved Banks	300
Schedule 12	Form of Hedging Accession Letter	303
Schedule 13	Hedging Provisions	304
Schedule 14	Security Agency Provisions	322
Schedule 15	Additional Facility	342
Schedule 16	Form of Accession Letter	349
Schedule 17	Form of Resignation letter	351
Schedule 18	ESG Conditions	352
Schedule 19	Form of ESG Performance Certificate	353
Schedule 20	Benchmark Schedule	354
Schedule 21	Form of Letter of Credit	356
Schedule 22	Security Limitations	359
Schedule 23	Form of QPP Certificate	362
Schedule 24	Compounded Rate Terms	363
Schedule 25	Daily Non-Cumulative Compounded RFR Rate	365
Schedule 26	Security Jurisdictions	367

**THIS AGREEMENT** is dated 2 July 2024 and made **BETWEEN**:

- (1) **HOUTING B.V.**, a private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*) incorporated under the laws of the Netherlands, having its official seat in Amsterdam, the Netherlands, and registered with the Dutch trade register under number 86503820 (the *Company* or the *Original Borrower*);
- (2) **HOUTING HOLDING B.V.**, private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*) incorporated under the laws of the Netherlands, having its official seat in Amsterdam, the Netherlands, and registered with the Dutch trade register under number 86495739 (the *Parent*);
- (3) **EACH OF THE PERSON(S)** listed in Part I (*The Original Guarantors*) of Schedule 1 (*The Original Parties*) as original guarantors (the *Original Guarantors*);
- (4) **JPMORGAN CHASE BANK, N.A., acting through its Hong Kong Branch**, a national banking association organised under the laws of United States of America with limited liability, as mandated lead arranger and bookrunner (the *Arranger*);
- (5) **THE FINANCIAL INSTITUTIONS** listed in Part II (*The Original Lenders*) of Schedule 1 (*The Original Parties*) as lenders (the *Original Lenders*);
- (6) **JPMORGAN CHASE BANK, N.A., acting through its Hong Kong Branch**, a national banking association organised under the laws of United States of America with limited liability, in its capacity as agent of the other Finance Parties other than the Security Agent (the *Agent*); and
- (7) **GLAS TRUST CORPORATION LIMITED**, in its capacity as security trustee and security agent for the Secured Parties (the *Security Agent*).

**IT IS AGREED** as follows:

## **1. DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

In this Agreement:

**75% Date** means, in the case of an Offer, the first date on which the Offer has been accepted in respect of Target Shares (and/or Bidco otherwise holds Target Shares) carrying (in aggregate) 75% or more of the voting rights attributable to the capital of the Target which are then exercisable at a general meeting of the Target.

**Acceleration Event** means an Event of Default in respect of which the Agent has taken any action pursuant to paragraph 28.16(a)(ii), 28.16(a)(iii) (but only to the extent the Agent has demanded immediate payment in full of an amount previously placed on demand under and in accordance with paragraph 28.16(a)(iii) of Clause 28.16 (*Acceleration*)), 28.16(a)(v) or 28.16(a)(vi) (but only to the extent the Agent has demanded immediate payment in full of an amount previously placed on demand under and in accordance with paragraph 28.16(a)(vi) of Clause 28.16 (*Acceleration*)), or upon the occurrence of an automatic acceleration referred to in paragraph (b) of Clause 28.16 (*Acceleration*), in each case in respect of the full principal amount of each of the Utilisation(s) then outstanding.

**Acceleration Notice** means a notice delivered by the Agent pursuant to Clause 28.16 (*Acceleration*).

**Accession Letter** means an accession letter substantially in the form set out in Schedule 16 (*Form of Accession Letter*).

**Accounting Principles** means, in respect of:

- (a) a Group Member incorporated or organised in a jurisdiction which has generally accepted accounting principles, standards and practices, the generally accepted accounting principles, standards and practices in that jurisdiction or IFRS; or
- (b) the consolidated Group or a Group Member incorporated or organised in a jurisdiction which does not have generally accepted accounting principles, standards and practices, IFRS.

**Acquired Entity** has the meaning given to that term in Clause 26.1 (*Financial definitions*).

**Acquisition** means the acquisition of shares in the Target pursuant to or otherwise in connection with a Scheme and/or Offer and, if applicable, a Squeeze-Out or any other acquisition of shares in the Target (together with any other payments in connection with, related to or in lieu of such acquisition, including any contribution and/or transfer of shares in the Target to Bidco).

**Acquisition Costs** means all fees, costs (including any hedging cost), expenses and stamp, registration and other Taxes incurred by (or on behalf of) any Group Member in connection with the Acquisition or the Transaction Documents.

**Acquisition Documents** means:

- (a) if the Acquisition is to be effected by means of a Scheme, the Scheme Documents;
- (b) if the Acquisition is to be effected by means of an Offer, the Offer Documents,

and any other document designated as an Acquisition Document by the Arranger and the Company.

**Acquisition/Investment Commitment Date** means the date of any Group Member's entry into a legally binding commitment to make a Permitted Business Acquisition or a Permitted Joint Venture Investment (as applicable).

**Additional Business Day** means any day specified as such in the applicable Compounded Rate Terms.

**Additional Borrower** means a company which becomes an Additional Borrower under the Initial Revolving Facility in accordance with Clause 31.2 (*Additional Borrowers*).

**Additional Facility** means an Additional Term Facility or an Additional Revolving Facility.

**Additional Facility Commencement Date** means in respect of an Additional Facility, the date specified as such in the Additional Facility Notice relating to that Additional Facility (being the date when the relevant Additional Facility is available for utilisation) **provided that** such date is at least two Business Days after the date on which the Additional Facility Notice was delivered by the Company to the Agent and the Security Agent.

**Additional Facility Commitment** means:

- (a) in relation to an Additional Facility Lender, the amount set out in each Additional Facility Notice signed by that Additional Facility Lender and the amount of any other Additional Facility Commitment transferred to it under this Agreement or assumed by

it in accordance with Clause 2.2 (*Increase – Cancelled Commitments*) or Clause 2.3 (*Additional Facility*); and

- (b) in relation to any other Lender, the amount of any Additional Facility Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase – Cancelled Commitments*) or Clause 2.3 (*Additional Facility*),

to the extent:

- (i) not cancelled, reduced or transferred by it under this Agreement;
- (ii) not deemed to be zero pursuant to Clause 30.2 (*Debt Purchase Transactions by Sponsor Affiliates*).

**Additional Facility Lender** means any Lender or other bank, financial institution, fund, entity or other person which signs an Additional Facility Notice and confirms its willingness to provide all or a part of an Additional Facility.

**Additional Facility Lender Accession Notice** means a notice substantially in the form set out in Part I (*Form of Additional Facility Lender Accession Notice*) of Schedule 15 (*Additional Facility*) or any other form agreed between the Agent and the Company (each acting reasonably).

**Additional Facility Loan** means an Additional Term Facility Loan or an Additional Revolving Facility Loan.

**Additional Facility Notice** means, in respect of an Additional Facility, a notice substantially in the form set out in Part II (*Form of Additional Facility Notice for Additional Facility*) of Schedule 15 (*Additional Facility*) (or any other form agreed between the Agent and the Company (each acting reasonably)) delivered by the Company to the Agent in accordance with Clause 2.3 (*Additional Facility*).

**Additional Guarantor** means a person that becomes a Guarantor in accordance with Clause 31.3 (*Additional Guarantors*).

**Additional Obligor** means an Additional Borrower or an Additional Guarantor.

**Additional Revolving Facility** means one or more additional revolving loan facilities made available pursuant to Clause 2.3 (*Additional Facility*), including as new or existing facility commitment(s) and/or as an additional tranche or class of, or an increase of, or an extension of a previously incurred Additional Revolving Facility.

**Additional Revolving Facility Loan** means a loan made or to be made under any Additional Revolving Facility or the principal amount outstanding for the time being of that loan (including any amount which is outstanding prior to an Additional Facility Commencement Date).

**Additional Revolving Facility Utilisation** means an Additional Revolving Facility Loan or a letter of credit issued or to be issued under any Additional Revolving Facility.

**Additional Term Facility** means one or more additional term loan facilities made available pursuant to Clause 2.3 (*Additional Facility*), including as new or existing facility commitment(s) and/or as an additional tranche or class of, or an increase of, or an extension of, any existing Facility or a previously incurred Additional Term Facility.

**Additional Term Facility Loan** means a loan made or to be made under any Additional Term

Facility or the principal amount outstanding for the time being of that loan (including any amount which is outstanding prior to an Additional Facility Commencement Date).

**Adjusted EBITDA** has the meaning given to that term in Clause 26.1 (*Financial definitions*).

**Affected Lender** has the meaning given to that term in paragraph (b) of Clause 16.2 (*Market disruption*).

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

**Agent's Spot Rate of Exchange** means,

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

for the purchase of the relevant currency with the Base Currency in the New York foreign exchange market at or about 11:00 a.m. on a particular day.

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

**Ancillary Commitment** means, in relation to an Ancillary Lender and an Ancillary Facility, the maximum Base Currency Amount which that Ancillary Lender has agreed (whether or not subject to satisfaction of conditions precedent) to make available from time to time under an Ancillary Facility and which has been authorised as such under Clause 9 (*Ancillary Facilities*), to the extent that amount is not cancelled or reduced under this Agreement or the Ancillary Documents relating to that Ancillary Facility.

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

**Ancillary Facility** means any ancillary facility made available by an Ancillary Lender in accordance with Clause 9 (*Ancillary Facilities*).

**Ancillary Lender** means each Lender (or Affiliate of a Lender) which makes available an Ancillary Facility in accordance with Clause 9 (*Ancillary Facilities*).

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

- (a) the principal amount under each overdraft facility and on-demand short term loan facility (net of any Available Credit Balance);
- (b) the face amount of each guarantee, bond and letter of credit under that Ancillary Facility; and
- (c) the amount fairly representing the aggregate exposure (excluding interest and similar charges) of that Ancillary Lender under each other type of accommodation provided under that Ancillary Facility,

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

**Announcement** means the press release made by or on behalf of the Company or Bidco announcing a firm intention to make an Offer or, as the case may be, implement a Scheme, in each case in accordance with Rule 2.7 of the City Code.

**Annual Financial Statements** means the financial statements of each of the Company, Topco, Midco, Bidco and the Target Group, in each case, for a Financial Year delivered pursuant to paragraph (a) of Clause 25.1 (*Financial statements*).

**Anti-Corruption Laws** mean all laws of any jurisdiction applicable to an Obligor, the Parent or any Group Member from time to time relating to anti-bribery or anti-corruption.

**Anti-Money Laundering and Anti-Terrorism Financing Laws** means all applicable financial record keeping and reporting requirements and anti-money laundering and anti-terrorism financing statutes (including all applicable rules and regulations thereunder) and all applicable rules and regulations and any related or similar rules, regulations or guidelines: (a) issued, administered or enforced by any governmental agency having jurisdiction over an Obligor, the Parent or any Group Member (or any of its officers, directors, employees, shareholders or agents) or otherwise issued, administered or enforced in each of the jurisdictions in which an Obligor, the Parent and each Group Member is incorporated or domiciled (as the case may be); and/or (b) of all jurisdictions in which an Obligor, the Parent or any Group Member (or any of its officers, directors, employees shareholders or agents) conducts business, including (without limitation) the US Currency and Foreign Transactions Reporting Act of 1970 (as amended), the Money Laundering Control Act of 1986, Public Law 99-570, the Currency and Foreign Transactions Reporting Act, 31 U.S.C. §§ 5311-5330 and 12 U.S.C. §§ 1818(s), 1820(b) and 1951-1959, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., the Trading with the Enemy Act, 50 U.S.C. App. §§ 1 et seq., the US United Nations Participation Act, the US Syria Accountability and Lebanese Sovereignty Act, the US Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, the Iran Sanctions Act, Section 1245 of the National Defense Authorization Act of 2012, any other regulation issued under authority of any Executive Order or administered by OFAC, the Prevention of Terrorism Act 2005 of the United Kingdom, any sanction implemented or effective in the United Kingdom under the United Nations Act 1946 or the Emergency Laws (Re-enactments and Repeals) Act 1964 or the Anti-Terrorism, Crime and Security Act 2001 of the United Kingdom or under the Treaty establishing the European Community, the United Nations (Anti-Terrorism Measures) Regulations, the Terrorism (Suppression of Financing) Act (Chapter 325) and Prevention of Money Laundering and Countering the Financing of Terrorism (MAS Notice 626) or (c) to which an Obligor, the Parent or any Group Member or any of their officers, directors, employees, shareholders, representatives or agents is subject.

**Applicable Securities Laws** means the City Code, the Companies Act 2006, the London Stock Exchange, any other applicable stock exchange and/or any other applicable law, rule, regulation and/or other such requirements.

**Approved Bank** means:

- (a) a Finance Party or any Affiliate of a Finance Party;
- (b) any bank or financial institution listed in Schedule 11 (*Approved Banks*);
- (c) a commercial bank which is rated at least BBB- by Standard & Poor's Ratings Group or Baa3 by Moody's Investors Service, Inc. or a comparable rating from an internationally recognised credit rating agency for its long term debt obligations; or



- (d) any other bank or financial institution approved by the Agent (acting on the instructions of the Majority Lenders),

*provided that* in the case of paragraph (c) above, no bank or financial institution shall cease to be an **Approved Bank** as a result of a downgrade to its rating below the applicable rating threshold as set out in paragraph (c) above unless (i) 90 Business Days has passed since the earlier of the date on which the Agent (acting on the instructions of the Majority Lenders) has notified the Company of such downgrade or the Company becomes aware of such downgrade and (ii) that bank or financial institution's rating on such date remains below the applicable rating threshold as set out in paragraph (c) above.

**Article 55 BRRD** means Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms.

**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.

**Assumed Commitment** has the meaning given to that term in Clause 2.2 (*Increase – Cancelled Commitments*).

**Auditors** means:

- (a) PricewaterhouseCoopers, Ernst & Young, KPMG, Deloitte & Touche, BDO or a recognised firm of independent auditors of international standing;
- (b) any Affiliate of any auditors referred to in paragraph (a) above;
- (c) any successor of, or any entity resulting from amalgamation of, any auditor referred to in paragraph (a) above or any Affiliate referred to in paragraph (b) above; or
- (d) any other firm approved in advance by the Majority Lenders (such approval not to be unreasonably withheld or delayed).

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

**Authorised Signatory** means the CEO, the CFO of, or any director, officer or other person duly authorised to represent, or sign on behalf of, the Company.

**Availability Period** means:

- (a) (in relation to the Initial Term Facility) the period from and including the Signing Date to and including the end of the Certain Funds Period;
- (b) (in relation to the Initial Revolving Facility) the period from and including the Signing Date to and including the date falling 1 Month prior to its Termination Date; and
- (c) (in relation to any Additional Facility) the availability period specified in the Additional Facility Notice delivered by the Company in accordance with Clause 2.3 (*Additional Facility*) for that Additional Facility.

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

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

in each case, **provided that** for the purposes of calculating a Lender's Available Commitment in relation to any proposed Utilisation under the Initial Revolving Facility and any Additional Revolving Facility only, that Lender's participation in any Initial Revolving Facility Utilisations and any Additional Revolving Facility Loan(s) (as the case may be) that are due to be repaid or prepaid on or prior to the proposed Utilisation Date and that Lender's (and its Affiliate's) Ancillary Commitments to the extent that they are due to be reduced or cancelled on or before the proposed Utilisation Date shall not be deducted from that Lender's Initial Revolving Facility Commitment, or Additional Facility Commitment in respect of an Additional Revolving Facility (as the case may be).

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

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

**Bail-In Action** means the exercise of any Write-down and Conversion Powers.

**Bail-In Legislation** means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 BRRD, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time;
- (b) in relation to any state other than such an EEA Member Country and the United Kingdom, any analogous law or regulation from time to time which requires contractual recognition of any Writedown and Conversion Powers contained in that law or regulation; and
- (c) in relation to the United Kingdom, the UK Bail-In Legislation.

**Bank Levy** means any amount payable by any Finance Party or any of its Affiliates on the basis of, or in relation to:

- (a) its balance sheet or capital base or any part of that person or its liabilities or minimum regulatory capital or any combination thereof (including the United Kingdom bank levy as set out in the Finance Act 2011 (as amended), the Dutch *bankenbelasting* as set out in the Dutch bank levy act (*Wet bankenbelasting*), and any other levy or tax in any jurisdiction levied on a similar basis or for a similar purpose;
- (b) any bank surcharge or banking corporation tax surcharge as set out in Chapter 4 of Part

7A of the United Kingdom Corporation Tax Act 2010 and any other surcharge or tax of a similar nature implemented in any other jurisdiction; or

- (c) any financial activities taxes (or other taxes) of a kind contemplated in the European Commission consultation paper on financial sector taxation dated 22 February 2011 or the Single Resolution Mechanism established by EU Regulation 806/2014 of 15 July 2014,

in each case, in force on the date of this Agreement or, if later, the date that the relevant Lender becomes a party to this Agreement.

**Base Case Model** means the base case model relating to the Group delivered to the Agent pursuant Clause 4.1 (*Initial conditions precedent*) (as may be subsequently amended, updated or supplemented by the Company with the consent of the Arranger (acting reasonably and such consent shall not be unreasonably withheld or delayed)).

**Base Currency** means US dollars.

**Base Currency Amount** means:

- (a) in relation to a Utilisation, the amount specified in the Utilisation Request delivered by a Borrower for that Utilisation (or, if the amount requested is not denominated in the Base Currency, that amount converted into the Base Currency at the Agent's Spot Rate of Exchange on the date which is three Business Days before the Utilisation Date or, if later, on the date the Agent receives the Utilisation Request in accordance with the terms of this Agreement) and, in the case of a Letter of Credit, as adjusted under Clause 6.8 (*Revaluation of Letters of Credit*);
- (b) in relation to an Ancillary Commitment, the amount specified as such in the notice delivered to the Agent by the Company pursuant to Clause 9.2 (*Availability*) (or, if the amount specified is not denominated in the Base Currency, that amount converted into the Base Currency at the Agent's Spot Rate of Exchange on the date which is three Business Days before the Ancillary Commencement Date for that Ancillary Facility or, if later, the date the Agent receives the notice of the Ancillary Commitment in accordance with the terms of this Agreement); and
- (c) in relation to an Additional Facility Commitment, the amount specified as such in the Additional Facility Notice delivered to the Agent by the Company pursuant to Clause 2.3 (*Additional Facility*) (or, if the amount specified is not denominated in the Base Currency, that amount of the Additional Facility converted into the Base Currency at the Agent's Spot Rate of Exchange on the date which is three Business Days before the Additional Facility Commencement Date for that Additional Facility or, if later, the date the Agent receives the notice of the Additional Facility in accordance with the terms of this Agreement),

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

**Basel II** has the meaning given to that term in paragraph (b) of Clause 19.1 (*Increased Costs*).

**Basel III** has the meaning given to that term in paragraph (b) of Clause 19.1 (*Increased Costs*).

**Benchmark Rate Change** has the meaning given to that term in Clause 41.9 (*Changes to reference rates*).

**Benchmark Schedule** means a document substantially in the form set out in Schedule 20 (*Benchmark Schedule*).

**Beneficial Ownership Regulation** means 31 C.F.R. § 1010.230.

**Bidco** means Houting UK Limited, a private limited company incorporated in England and Wales with registered company number 15452897 and with registered address at Suite 1, 7th Floor 50 Broadway, London, United Kingdom, SW1H 0DB.

**Blocking Law** means:

- (a) any provision of Council Regulation (EC) No 2271/1996 of 22 November 1996 (or any law or regulation implementing such Regulation in any member state of the European Union or the United Kingdom);
- (b) section 7 of the German Foreign Trade Regulation (*Außenwirtschaftsverordnung*); or
- (c) any similar blocking or anti-boycott law in the United Kingdom.

**Borrower** means the Original Borrower or any Additional Borrower unless, in each case, it has ceased to be a Borrower in accordance with Clause 31 (*Changes to the Obligors*).

**Borrowings** has the meaning given to that term in Clause 26.1 (*Financial definitions*).

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

- (a) in respect of a Term Rate Loan:
  - (i) the interest (excluding any portion thereof representing the Margin) which a Lender should have received for the period from the date of receipt of all or any part of its participation in any Loan or any Unpaid Sum to the last day of the current Interest Period in respect of that Loan or that Unpaid Sum, had the principal amount of that Loan or that Unpaid Sum received been paid on the last day of that Interest Period;

exceeds:

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

**Business Day** means a day (other than a Saturday or Sunday) on which banks are open for general business in Hong Kong, London, Singapore, The Netherlands and Taipei and:

- (a) (in relation to any date for payment or purchase of (or the fixing of an interest rate in relation to) an Other Currency) any day specified as such in respect of that currency in Schedule 20 (*Benchmark Schedule*);
- (b) (in relation only to any date for payment or purchase of Euro) which is a TARGET Day;
- (c) (in relation to the fixing of an interest rate for a Loan in USD) which is a US

Government Securities Business Day;

(d) in relation to:

- (i) any date for payment or purchase of a Compounded Rate Currency;
- (ii) the determination of the first day or the last day of an Interest Period for a Compounded Rate Loan; or
- (iii) the determination of the length of an Interest Period for a Compounded Rate Loan,

an Additional Business Day relating to the relevant currency or Loan,

**provided that**, with respect to any Utilisation of an Initial Facility on or prior to the end of the Certain Funds Period, Singapore, The Netherlands and Taipei shall not be counted as Business Days for the purpose of Clause 5.1 (*Delivery of a Utilisation Request*), Clause 5.4(d) (*Lenders' participation*) or Clause 15.1(c) (*Selection of Interest Periods*).

**Cancellation Notice** has the meaning given to that term in Clause 41.5 (*Replaceable Lender*).

**Cancelled Commitment** has the meaning given to that term in Clause 2.2 (*Increase – Cancelled Commitments*).

**Capital Expenditure** has the meaning given to that term in Clause 26.1 (*Financial definitions*).

**Capitalised Lease Obligations** has the meaning given to that term in Clause 26.1 (*Financial definitions*).

**Cash** means, at any time, cash in hand or at bank and (in the latter case) credited to an account (including, but not limited to, any credit balance on any deposit, savings, current or other account) in the name of a Group Member with an Approved Bank and to which a Group Member is alone (or together with other Group Members) beneficially entitled and for so long as:

- (a) that cash is repayable within 30 days after the relevant date of calculation;
- (b) repayment of that cash is not contingent on the prior discharge of any other Financial Indebtedness of any Group Member or of any other person whatsoever or on the satisfaction of any other condition outside the control of the Group Members;
- (c) there is no Security over that cash except for any Permitted Security; and
- (d) that cash is denominated in US dollars, EUR, GBP, AUD, NZD, CAD, SGD, RMB, JPY, HKD or other freely transferable and freely convertible currency and (except as mentioned in paragraphs (a) and/or (c) above) immediately available to the applicable Group Member (or, in the case of any term deposit, available at the expiry of the applicable term of such deposit or at any time subject to any loss of interest upon breaking the applicable term of such deposit),

and shall include cash in tills or safes and cash in transit and any payments made by cheques or debt cards which are yet to be received in cleared funds (and including, for the avoidance of doubt any cash in any Excluded Account), and **provided further** that any cash which is held as collateral for or otherwise secures Financial Indebtedness taken into account in the calculation of Group Net Debt shall be included.

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

- (a) (i) certificates of deposit or time deposits (in each case) maturing within one year, or  
(ii) structured deposits maturing within six Months, (in each case) after the relevant date of calculation and issued or distributed by an Approved Bank;
- (b) any investment in marketable debt obligations maturing within one year after the relevant date of calculation which is not convertible or exchangeable to any other security, issued or guaranteed by a government, Governmental Agency or multilateral intergovernmental organisation and, in each case, which is rated at least A-1 by S&P Global Ratings, F1 by Fitch Ratings Ltd. or P-1 by Moody's Investors Service Limited;
- (c) any investment in debt securities maturing within one year after the relevant date of calculation which is not convertible or exchangeable into any other security and is rated either A-1 or higher by S&P Global Ratings, F1 or higher by Fitch Ratings Ltd. or P-1 or higher by Moody's Investors Service Limited (or, if no rating is available in respect of such debt securities, the issuer of which has, in respect of its long-term debt obligations, an equivalent rating);
- (d) commercial paper not convertible or exchangeable to any other security or other debt securities:
  - (i) for which a recognised trading market exists;
  - (ii) which matures within one year after the relevant date of calculation; and
  - (iii) which:
    - (A) has a credit rating of either A-1 or higher by S&P Global Ratings, F1 or higher by Fitch Ratings Ltd. or P-1 or higher by Moody's Investors Service Limited; or
    - (B) is rated the highest available rating by any local rating agency of the relevant country in which the issuer operates,or if no rating is available in respect of such commercial paper, the issuer of which has, in respect of its long-term unsecured and non-credit enhanced debt obligations, an equivalent rating;
- (e) investments accessible within 3 months in money market funds which:
  - (i) have a credit rating of either A-1 or higher by S&P Global Ratings, F-1 or higher by Fitch Ratings Ltd. or P-1 or higher by Moody's Investors Service Limited or the highest available rating by any local rating agency of the relevant country in which the issuer operates; and
  - (ii) invest substantially all of their assets in securities or investments of the types described in paragraphs (a) to (d) above;
- (f) time deposit accounts, certificates of deposit and money market deposits (which mature within one year after the relevant date of calculation) with:
  - (i) any Approved Bank; or
  - (ii) any other bank or trust company organised under the laws of the PRC or

Taiwan whose long-term debt is rated as high as or higher than any of those entities referred to in paragraph (f)(i) above; or

- (g) any other debt security or equivalent investment approved by the Agent (acting on the instructions of the Majority Lenders, with each Lender acting reasonably),

in each case, denominated in US dollars, EUR, GBP, AUD, NZD, CAD, SGD, RMB, JPY, HKD or other freely transferable and freely convertible currencies and which any Group Member is alone (or together with other Group Members) beneficially entitled at that time and which is not issued or guaranteed by any Group Member or subject to any Security (other than any Permitted Security).

**Central Bank Rate** has the meaning given to that term in the applicable Compounded Rate Terms.

**Central Bank Rate Adjustment** has the meaning given to that term in the applicable Compounded Rate Terms.

**Central Bank Rate Spread** has the meaning given to that term in the applicable Compounded Rate Terms.

**CEO** means the chief executive officer of the Group for the time being (or such person(s) undertaking such equivalent role from time to time).

**Certain Funds Event** means:

- (a) a Major Representation:
- (i) is not correct in any material respect (or, where such representation or statement is qualified by reference to materiality or Material Adverse Effect, in any respect); or
  - (ii) will not be correct in any material respect,
- in each case, immediately after a proposed Certain Funds Utilisation is made;
- (b) a Major Default:
- (i) is continuing; or
  - (ii) would occur after a proposed Certain Funds Utilisation is made; or
- (c) a Change of Control pursuant to paragraph 1.1(a) of the definition of Change of Control has occurred.

**Certain Funds Illegality Event** means:

- (a) on or after the date of this Agreement, it becomes unlawful in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or to fund, issue or maintain its participation in a Certain Funds Utilisation (**provided that** this shall not affect the obligation of any other Lender); and
- (b) any funding shortfall created as a result of such illegality or unlawfulness referred to in paragraph (a) above is not and cannot be met by the aggregate of:
- (i) funding or commitment provided by one or more new or existing Lenders as a

result of all or part of the Commitment (attributable to such first-mentioned Lender) being transferred or assigned to (or as a result of equivalent Commitment(s)) assumed by such new or existing Lenders in accordance with Clause 2.2 (*Increase – Cancelled Commitments*), Clause 2.3 (*Additional Facility*), Clause 21 (*Mitigation by the Lenders*), paragraph (I) of Clause 29.2 (*Conditions of Transfers*) or Clause 41.5 (*Replaceable Lender*); and

- (ii) at the discretion of the Company, the Group's own funds (including the proceeds of any New Shareholder Injections).

***Certain Funds Period*** means the period commencing on the Signing Date and ending at 11.59 p.m. (London time) on the date which is the earliest of (and including):

- (a) if the Acquisition is intended to be completed pursuant to a Scheme, the date on which the Scheme lapses (including, subject to exhausting any rights of appeal, if a relevant court refuses to sanction the Scheme) or is withdrawn with the written approval of the Panel, in each case, in accordance with the terms set out in the Announcement or the Scheme Circular, other than where (i) prior to such date the Company has notified the Agent that Bidco proposes to make an Offer or effect the Acquisition pursuant to a different Scheme, (ii) such lapse or withdrawal is as a result of the exercise of Bidco's right to effect a switch from a Scheme to an Offer or (iii) such lapse or withdrawal is otherwise to be followed within 20 Business Days by an Announcement made by Bidco to implement the Acquisition by a different offer or scheme (as applicable);
- (b) if the Acquisition is intended to be completed pursuant to an Offer, the date upon which the Offer lapses or is withdrawn with the written approval of the Panel, in each case, in accordance with the terms set out in the Announcement or the Offer Document, other than where (i) prior to such date the Company has notified the Agent that Bidco proposes to effect the Acquisition by way of a Scheme or implement the Acquisition pursuant to a different Offer, (ii) such lapse or withdrawal is as a result of the exercise of Bidco's right to effect a switch from an Offer to a Scheme or (iii) such lapse or withdrawal is otherwise to be followed within 20 Business Days by an Announcement made by the Company or Bidco to implement the Acquisition by a different offer or scheme (as applicable);
- (c) the later of the Completion Date and the date on which the Initial Term Facility has been utilised in full or the Initial Term Facility has been cancelled in full; and
- (d) 21 April 2025 or, if earlier, the Long Stop Date (as defined in the Announcement) (***Outside Date***),

or, in each case, such later time and/or date as agreed by the Arranger, ***provided that*** the Outside Date will be extended : (x) if the Acquisition is intended to be completed pursuant to a Scheme, by six weeks; or (y) if the Acquisition is intended to be completed pursuant to an Offer, by eight weeks.

For the avoidance of any doubt, a switch from a Scheme to an Offer or from an Offer to a Scheme shall not in any circumstances constitute a lapse, withdrawal, cancellation or termination of a Scheme or an Offer (respectively) nor itself otherwise cause the Certain Funds Period to end.

***Certain Funds Utilisation*** means:

- (a) a Utilisation made or to be made under an Initial Term Facility during the Certain Funds Period; or



- (b) a Utilisation made or to be made under the Initial Revolving Facility during the Certain Funds Period but only to the extent the proceeds of any such Utilisation are applied towards financing or refinancing:
  - (i) the purchase price (along with interest, if any) payable for the Acquisition;
  - (ii) any Acquisition Costs or other amounts contemplated by the Funds Flow Statement; and/or
  - (iii) any repayment of Existing Indebtedness.

**CFO** means the chief financial officer of the Group for the time being (or such person(s) undertaking such equivalent role from time to time).

**Change in Law** means any change which occurs after the later of the date of this Agreement and (as applicable):

- (a) the date on which the relevant Lender became a Lender pursuant to this Agreement; or
- (b) in the case of a Lender which is a New RCF Lender, after the date on which the relevant Lender became such a New RCF Lender pursuant to this Agreement,

in any law, regulation or treaty (or in the published interpretation, administration or application of any law, regulation or treaty) or any published practice or published concession of any relevant tax authority other than any change that occurs pursuant to, or in connection with the adoption, ratification, approval or acceptance of, the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting of 24 November 2016 in or by any jurisdiction.

**Change of Control** means:

- (a)
  - (i) the Parent does not or ceases to:
    - (A) hold at least 100 per cent. of the total issued ordinary and voting shares in the Company; or
    - (B) (directly or indirectly) have the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to appoint or remove (or control the appointment or removal of) the majority of the board of directors of the Company; or
    - (C) (directly or indirectly) have the power to give directions with respect to the operating and financial policies of the Company with which the board of directors of the Company are obliged to comply;
  - (ii) the Company does not or ceases to, directly or indirectly:
    - (A) hold at least 100 per cent. of the total issued ordinary and voting shares in Bidco (*provided that* for the avoidance of doubt and notwithstanding any other provision in this Agreement, the Company shall be permitted to hold such shares directly or through one or more of its wholly-owned Subsidiaries, including any of new Subsidiaries which may be incorporated from time to time and which (x) have (or

- will) become Guarantors, (y) have granted (or will grant) Transaction Security over their material assets and (z) are (or will be) subject to the restrictions in Clause 27.8 (*Holding Companies*)); or
- (B) have the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to appoint or remove (or control the appointment or removal of) the majority of the board of directors of Bidco; or
  - (C) have the power to give directions with respect to the operating and financial policies of Bidco with which the board of directors of Bidco is obliged to comply;
- (iii) the Investors do not or cease to hold, directly or indirectly, in aggregate, at least 50.10 per cent. of the total issued ordinary and voting shares in the Parent;
- (b) after the Completion Date:
- (i) the Bidco does not or ceases to, directly:
    - (A) hold the Target Shares which it acquired on the Completion Date pursuant to the terms of the Scheme or Offer (as applicable) (or, in the case of an Offer, acquired pursuant to a Squeeze Out); or
    - (B) have the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to appoint or remove (or control the appointment or removal of) the majority of the board of directors of the Target; or
    - (C) have the power to give directions with respect to the operating and financial policies of the Target with which the board of directors of the Target is obliged to comply; or
  - (ii) the Investors and management of the Group (taken together, the *Controllers*) do not or cease to hold, directly or indirectly, in aggregate, at least 50.10 per cent. of the total issued ordinary and voting shares in the Target; or
  - (iii) another party (other than the *Controllers* or an Affiliate or Related Fund of any Investors) directly or indirectly acquires the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to appoint or remove (or control the appointment or removal of) the majority of the board of directors of the Target; or
  - (iv) another party (other than the *Controllers* or an Affiliate or Related Fund of any Investors) directly or indirectly acquires the power to give directions with respect to the operating and financial policies of the Target with which the board of directors of Target is obliged to comply.

***Charged Property*** means all of the assets of the Obligors, the Parent or any Security Provider which from time to time are, or are expressed to be, the subject of the Transaction Security.

***City Code*** means the UK City Code on Takeovers and Mergers issued by the Panel, as amended from time to time.

***Clean-Up Date*** means:

- (a) in respect of the Acquisition, the date falling 120 days after the Completion Date; and
- (b) in respect of any Permitted Business Acquisition or any acquisition falling within paragraph (b) of the definition of **Permitted Acquisition**, the date falling 120 days from the closing of that Permitted Business Acquisition or acquisition.

**Clean-Up Default** means an Event of Default other than an Event of Default under Clauses 28.1 (*Non-payment*), 28.6 (*Insolvency*), 28.7 (*Insolvency proceedings*), 28.8 (*Creditors' process*), 28.9 (*Unlawfulness and Invalidity*) and Clause 28.13 (*Repudiation and rescission of agreements*).

**Clean-Up Representation** means any of the representations and warranties under Clause 24 (*Representations*).

**Clean-Up Undertaking** means any of the undertakings specified in Clause 25 (*Information Undertakings*) and Clause 27 (*General Undertakings*).

**Closing Legal Opinion** means the legal opinions of:

- (a) Allen Overy Shearman Sterling, legal advisors to the Arranger as to the laws of Hong Kong and England and Wales; and
- (b) Allen Overy Shearman Sterling, legal advisors to the Arranger as to the laws of The Netherlands.

**provided that**, in each case, if such legal advisor to the Arranger is not willing to issue such legal opinion, the Company's legal counsel may deliver such legal opinion in a materially equivalent form or such other form agreed between the Arranger and the Company's legal counsel.

**Code** means the US Internal Revenue Code of 1986, as amended from time to time.

**Commitment** means the Initial Term Facility Commitment, the Initial Revolving Facility or an Additional Facility Commitment, **provided that**:

- (a) any reference to a Commitment in relation to the Initial Term Facility shall be a reference to Initial Term Facility Commitment;
- (b) any reference to a Commitment in relation to the Initial Revolving Facility shall be a reference to Initial Revolving Facility Commitment; and
- (c) any reference to a Commitment in relation to an Additional Facility shall be a reference to Additional Facility Commitment.

**Commodity Exchange Act** means the United States Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

**Competitor** means any person or entity (other than a Group Member) one of whose principal activities is the same or a substantially similar business as engaged in by the Group as at the Initial Utilisation Date and each Affiliate of such person or entity engaged in such activities.

**Completion Date** means:

- (a) if the Acquisition is effected pursuant to a Scheme, the date following the Scheme Effective Date on which the consideration pursuant to the Scheme has been paid in full; or

- (b) if the Acquisition is effected pursuant to an Offer, the date following the Unconditional Date on which the Offer is closed to acceptances and Bidco is the beneficial owner of at least 75 per cent. of the issued ordinary share capital of Target and all Target Shares tendered pursuant to the Offer (and, if applicable, the Squeeze Out) and all consideration payable in respect thereof has been paid in full).

**Compliance Certificate** means a certificate substantially in the form set out in Schedule 6 (*Form of Compliance Certificate*).

**Compounded Rate Interest Payment** means, in relation to a Compounded Rate Currency, the aggregate amount of interest that:

- (a) relates to a Compounded Rate Loan in that Compounded Rate Currency; and
- (b) has, or is scheduled to become, payable during the applicable Interest Period.

**Compounded Rate Currency** means any currency for which there are Compounded Rate Terms.

**Compounded Rate Loan** means any Loan or, if applicable, Unpaid Sum which is denominated in a Compounded Rate Currency.

**Compounded Rate Supplement** means, in relation to any currency, a document which:

- (a) is agreed in writing by the Obligors' Agent and the Agent (acting on the instructions of the Majority Lenders (acting reasonably and in good faith)); and
- (b) sets out, for that currency, the relevant terms and provisions relating to an alternative benchmark rate, base rate or reference rate (**New Rate**) and setting out any amendment or waiver of the terms of this Agreement or other Finance Documents for that New Rate, including making appropriate adjustments for basis, duration, time and periodicity for determination of that New Rate for any Interest Period and making other consequential and/or incidental changes.

**Compounded Rate Terms** means in relation to:

- (a) a currency;
- (b) a Loan or an Unpaid Sum in that currency;
- (c) an Interest Period for such a Loan or Unpaid Sum (or other period for the accrual of commission or fees in respect of that currency); or
- (d) any term of this Agreement relating to the determination of a rate of interest in relation to such a Loan or Unpaid Sum, the terms set out for that currency in Schedule 24 (*Compounded Rate Terms*) or in any Compounded Rate Supplement.

**Compounded Reference Rate** means, in relation to any RFR Banking Day during the Interest Period of a Compounded Rate Loan, the percentage rate per annum which is the applicable the Daily Non-Cumulative Compounded RFR Rate for that RFR Banking Day.

**Compounding Methodology Supplement** means, in relation to the Daily Non-Cumulative Compounded RFR Rate for any currency, a document which:

- (a) is agreed in writing by the Obligors' Agent, the Agent (in its own capacity) and the Agent (acting on the instructions of the Majority Lenders);

- (b) specifies a calculation methodology for that rate; and
- (c) has been made available to the Obligors' Agent and each Finance Party.

**Confidential Information** means all information relating to the Sponsors, the Investors, the Parent, the Company, the Group, the Acquisition, the Transaction Documents or the Facilities which is provided to a Finance Party in its capacity as, or for the purpose of it becoming, a Finance Party (the **Receiving Party**) in relation to the Acquisition, the Finance Documents or the Facilities by a Sponsor, the Parent, the Company, the Group or any of their Affiliates or advisers (the **Providing Party**), in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

- (a) is or becomes public information other than as a direct or indirect result of any breach by the Receiving Party of a confidentiality agreement to which that Receiving Party is party;
- (b) is identified in writing at the time of delivery as non-confidential by the Providing Party; or
- (c) is known by the Receiving Party before the date such information is disclosed to the Receiving Party by the Providing Party or is lawfully obtained by the Receiving Party after that date, from a source which is, as far as the Receiving Party is aware, unconnected with the Sponsors, the Investors, the Parent, the Company and the Group and which, in either case, as far as the Receiving 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 the form as set out in Schedule 10 (*Form of Confidentiality Undertaking*) or in any other form agreed between the Company and the relevant Finance Party, in each case which is capable of being relied upon by the Company without requiring its signature and which has not been materially amended without the consent of the Company.

**Conflicted Lender** means any Lender (which term, for the purposes of this definition shall include any Affiliate or Related Fund of that Lender) other than an Original Lender or any entity which, as at the Signing Date, is an Affiliate or Related Fund of that Original Lender which is or is acting on behalf of (including in its capacity as the grantor of a Participation or any other agreement pursuant to which such rights may pass):

- (a) a Competitor; or
- (b) an equity investor or equity holder in a Competitor that is, in each case, a controlling person in a Competitor,

in each case whether at the time of or after such person becomes a Lender and including where a Lender notifies the Agent that it is such (in a Transfer Certificate or otherwise) and where it has been notified as such to the Agent by the Company (acting reasonably and in good faith), **provided that** a Lender will not be deemed to be a Conflicted Lender solely by virtue of that Lender:

- (i) dealing in shares in or securities of a Competitor, where the relevant teams and employees of that Lender engaged in such dealings operate on the public side of an Information Barrier;
- (ii) becoming an investor or equity holder in a Competitor as a consequence of a debt-for-

equity swap in, or enforcement of security over shares of, that Competitor; **provided that** the relevant teams and employees of that Lender involved in such transactions are separated from any teams or employees of that Lender working in relation to the Group and the Finance Documents (and related transactions) by way of an Information Barrier;

- (iii) engaging in any merger and acquisition or other advisory activity in relation to or on behalf of a Competitor or any person referred to in paragraph (b) above, **provided that** the relevant teams and employees of that Lender involved in such advisory activity are separated from any teams or employees of that Lender working in relation to the Group and the Finance Documents (and related transactions) by way of an Information Barrier; or
- (iv) being an investor or equity holder in a Competitor or any person referred to in paragraph (b) above through a separately managed private equity investment fund owned or managed by that Lender, **provided that** the relevant teams and employees of that Lender involved in such private equity fund are separated from any teams or employees of that Lender working in relation to the Group and the Finance Documents (and related transactions) by way of an Information Barrier.

**Court** means the High Court of Justice of England and Wales.

**Court Meeting** means a meeting of the shareholders of the Target (and any adjournment thereof) to be convened at the direction of the Court pursuant to Part 26 of the Companies Act 2006 at which a resolution will be proposed to approve the Scheme.

**Court Order** means the order of the Court sanctioning the Scheme.

**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
- (b) 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.

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

**Cure Amount** has the meaning given to that term in Clause 26.5 (*Cure rights*).

**Daily Non-Cumulative Compounded RFR Rate** means, in relation to any RFR Banking Day during an Interest Period for a Compounded Rate Loan, the percentage rate per annum determined by the Agent (or any other person which is appointed to determine that rate in place of the Agent from time to time, in each case with the consent of that person and the Obligors' Agent) in accordance with the methodology set out in Schedule 25 (*Daily Non-Cumulative Compounded RFR Rate*) or in any relevant Compounding Methodology Supplement.

**Daily Rate** means the rate specified as such in the applicable Compounded Rate Terms.

**De Minimis Proceeds** means amounts which are excluded from the Group's obligation to mandatorily prepay any of the Facilities out of or by reference to Proceeds and which are permitted to be received and retained by the Group, in each case, by reason of the operation of paragraph (b) of the definition of **Excluded Disposal Proceeds**, paragraph (c) of the definition

of *Excluded Insurance Proceeds* or paragraph (b) of the definition of *Excluded Recovery Proceeds*.

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

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

any Commitment (or any commitment represented thereby) or amount outstanding under this Agreement.

**Default** means an Event of Default or any event or circumstance specified in Clause 28 (*Events of Default*) (save for Clause 28.16 (*Acceleration*) and Clause 28.17 (*Clean-up period*)) 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, **provided that** any such event or circumstance which requires the satisfaction of a condition or a making of a determination as to materiality before it becomes an Event of Default shall not be a Default until that condition is satisfied or that determination has been made.

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

- (a) which has failed to make its participation in a Loan available or has notified the Agent that it will not make its participation in a Loan available by the Utilisation Date for such Loan in accordance with Clause 5.4 (*Lenders' participation*) unless:
  - (i) its failure to pay is caused by:
    - (A) administrative or technical error; or
    - (B) a Disruption Event; andpayment is made within three Business Days of its due date; or
  - (ii) that Lender is disputing in good faith whether it is contractually obliged to make the payment in question;
- (b) which has otherwise rescinded or repudiated any of its material obligations under a Finance Document; or
- (c) with respect to which an Insolvency Event has occurred and is continuing.

**Deferred Consideration** means, in relation to a Permitted Acquisition, any vendor loan, earn out or other deferred payment arrangement entered into in connection with that Permitted Acquisition (including any Outstanding Consideration).

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

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

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

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

**Disposal Proceeds** means an amount equal to the Net Proceeds of any Disposal made by any Group Member, except for Excluded Disposal Proceeds *provided that*:

- (a) such Net Proceeds (the **Relevant Disposal Proceeds**) shall not constitute **Disposal Proceeds** unless and until the aggregate of such Relevant Disposal Proceeds received by Group Members in a Financial Year, when aggregated with any and all other Net Proceeds of Disposals made by Group Members (excluding Excluded Disposal Proceeds) received by Group Members during that Financial Year which do not constitute **Disposal Proceeds** due to the application of this paragraph (a) and paragraph (b) below (such other Net Proceeds being the **Other Disposal Proceeds**), exceed US\$20,000,000 (or its equivalent); and
- (b) if such Relevant Disposal Proceeds received by Group Members in a Financial Year, when aggregated with such Other Disposal Proceeds received by Group Members in that Financial Year, exceed US\$20,000,000 (or its equivalent), then:
  - (i) such Relevant Disposal Proceeds and such Other Disposal Proceeds shall constitute **Disposal Proceeds**; and
  - (ii) for the purposes of Clause 12.2 (**Disposal Proceeds, Insurance Proceeds and Recovery Proceeds**) such Relevant Disposal Proceeds or, as the case may be, such Other Disposal Proceeds shall be deemed to have been received in a Financial Year upon the later of (A) the time when such Relevant Disposal Proceeds or, as the case may be, such Other Disposal Proceeds were actually received by a Group Member in that Financial Year and (B) the time when such Relevant Disposal Proceeds, when aggregated with such Other Disposal Proceeds received by Group Members in that Financial Year, exceed US\$20,000,000 (or its equivalent).

**Disposed Entity** has the meaning given to that term in Clause 26.1 (*Financial definitions*).

**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 any of 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; and/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.

**EEA Member Country** means any member state of the European Union, Iceland, Liechtenstein and Norway.

**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 air within natural or man-made structures, whether above or below ground);
- (b) water (including territorial, coastal and inland waters, water under or within land and water in drains and sewers); and
- (c) land (including 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 any waste.

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

**ERISA** means the United States Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

**ERISA Affiliate** means any person that is or would be deemed at any relevant time to be (a) under common control with an Obligor within the meaning of Section 4001 of ERISA or (b) a single employer with an Obligor under Section 414 of the Code.

**ERISA Event** means (a) a “reportable event” within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to a Pension Plan, (b) the failure by an Obligor or any ERISA Affiliate to meet all applicable requirements under the ERISA Pension Funding Rules or the filing of an application for the waiver of the minimum funding standards under the ERISA Pension Funding Rules, (c) a complete or partial withdrawal by an Obligor or any ERISA Affiliate from a Multiemployer Plan, (d) the filing of a notice of intent to terminate a Pension Plan under, or the treatment of a Pension Plan amendment as a termination under, Section 4041 of ERISA, or (e) the determination that any Pension Plan is, or is expected to be, in “at-risk status” (within the meaning of Section 430 of the Code or Section 303 of ERISA) or that a Multiemployer Plan is, or is expected to be, “insolvent”, in “endangered status” or “critical status” (within the meaning of Section 432 of the Code or Section 305 of ERISA).

**ERISA Pension Funding Rules** means the rules of the Code and ERISA regarding minimum funding standards and minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in Sections 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

**ESG Performance Certificate** means a certificate substantially in the form set out in Schedule 19 (*Form of ESG Performance Certificate*) and delivered by the Obligors' Agent to the Agent under Clause 25.3 (*Provision of ESG Performance Certificate*).

**ESG Trigger** has the meaning given to that term in Schedule 18 (*ESG Conditions*).

**EU Bail-In Legislation Schedule** means the document described as such and published by the Loan Market Association (or any successor person) from time to time.

**EUR** means the single currency of the Participating Member States.

**EURIBOR** means, in relation to any Term Rate Loan denominated in euro:

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

as of, in the case of paragraphs (a) and (c) above, the Specified Time on the Quotation Day for the offering of deposits in euro for a period equal in length to the Interest Period of the relevant Loan or Unpaid Sum and if, in any case, that rate is less than zero, EURIBOR shall be deemed to be zero.

**Event of Default** means any event or circumstance specified as such in Clause 28 (*Events of Default*) (save for Clause 28.16 (*Acceleration*) and Clause 28.17 (*Clean-up period*)).

**Exceptional Items** has the meaning given to that term in Clause 26.1 (*Financial definitions*).

**Excluded Account** has the meaning given to it in Clause 27.27 (*Security and Guarantees*).

**Excluded Disposal Proceeds** means any proceeds of any Disposal:

- (a) to the extent not otherwise excluded by this definition (and not being proceeds of a disposal otherwise falling within paragraph (t) or 1.1(w) of the definition of **Permitted Disposal**), which are applied or committed or designated by the board of directors (or equivalent) of the relevant Group Member to be applied in reinvestment in other assets to be used in the business of the Group or for financing Capital Expenditure (or refinancing Capital Expenditure incurred in the 12 Months immediately prior to that Disposal) or for financing a Permitted Acquisition or a Permitted Joint Venture Investment (or refinancing a Permitted Acquisition or a Permitted Joint Venture Investment incurred in the 12 Months immediately prior to that Disposal) or for any

other working capital or general corporate purposes (other than to fund a Permitted Payment) within 12 Months of when those proceeds are received by the applicable Group Member (or, if so committed or designated in that 12 Month period, are actually applied within 18 Months of receipt by the applicable Group Member), **provided that** immediately following the expiry of the applicable period for such application by a Group Member, any proceeds not so applied shall cease to be excluded under this paragraph (a);

- (b) to the extent that the aggregate Net Proceeds in respect of all Disposals (other than those referred to in paragraphs (a) above and (c) below) received in the relevant Financial Year do not exceed US\$9,000,000 (or its equivalent); or
- (c) under paragraphs (a), (b), (e) or (s) of the definition of **Permitted Disposal**.

**Excluded Insurance Policies** has the meaning given to that term in paragraph (a) of the definition of **Excluded Insurance Proceeds**.

**Excluded Insurance Proceeds** means any proceeds of an Insurance Claim:

- (a) in respect of business interruption or loss of earnings, or which are applied to meet or cover any third party, public liability, personal injury, workers' compensation, directors' and officers' liability or similar claims in respect of which the claim was made (**Excluded Insurance Policies**);
- (b) which are applied or committed or designated by the board of directors (or equivalent) of the relevant Group Member to be applied in the replacement, reinstatement and/or repair of the assets (or reimbursement of a Group Member for funding any of the foregoing), or otherwise in amelioration of the loss or meeting liabilities in respect of such insurance claim (including, but not limited to, settling outstanding tax or costs, environmental claim, and/or working capital deficiency or reimbursing a Group Member who has discharged such liability), in respect of which that Insurance Claim was made, or otherwise which are applied or committed or designated by the board of directors (or equivalent) of the relevant Group Member to be applied in reinvestment in other assets to be used in the business of the Group or for financing Capital Expenditure of the Group (or refinancing any such Capital Expenditure incurred in the 12 Months immediately prior to that Disposal) or for financing a Permitted Acquisition or a Permitted Joint Venture Investment (or refinancing a Permitted Acquisition or a Permitted Joint Venture Investment incurred in the 12 Months immediately prior to that Disposal) or for any other working capital or general corporate purposes (other than to fund a Permitted Payment) within 12 Months of when those proceeds are received by the applicable Group Member (and, if committed or designated in that period, are actually applied within 18 Months of receipt by the applicable Group Member), **provided that** immediately following the expiry of the applicable period for such application by a Group Member, any proceeds not so applied shall cease to be excluded under this paragraph (b); or
- (c) to the extent that the aggregate Net Proceeds in respect of all Insurance Claims (other than those referred to in paragraphs (a) and (b) above) received in the relevant Financial Year do not exceed US\$9,000,000 (or its equivalent).

**Excluded Recovery Proceeds** means any proceeds of a Recovery Claim:

- (a) which are applied or committed or designated by the board of directors (or equivalent) of the relevant Group Member to be applied:

- (i) to satisfy (or reimburse a Group Member which has discharged) any liability, charge or claim upon a Group Member by a person which is not a Group Member or rectify any deficiency (including settlement of any outstanding Taxes or costs of any environmental claim and working capital deficiency); or
- (ii) in compensation for a loss or in replacement, reinstatement and/or repair of assets of Group Members which have been lost, destroyed or damaged; or
- (iii) in reinvestment in other assets to be used in the business of the Group or for financing Capital Expenditure of a Group Member (or refinancing Capital Expenditure incurred in the 12 Months immediately prior to receipt of such proceeds) or for financing a Permitted Acquisition or a Permitted Joint Venture Investment (or refinancing a Permitted Acquisition or a Permitted Joint Venture Investment incurred in the 12 Months immediately prior to receipt of such proceeds) or for any other working capital or general corporate purposes (other than to fund a Permitted Payment),

(in the case of (i) and (ii) above, as a result of the events or circumstances giving rise to that Recovery Claim) if those proceeds are so applied or committed or designated by the board of directors (or equivalent) of the relevant Group Member to be so applied within 12 Months of receipt of such proceeds by the applicable Group Member (and if committed or designated in that period, are actually applied within 18 Months of receipt by the applicable Group Member), **provided that** immediately following the expiry of the applicable period for such application by a Group Member, any proceeds not so applied shall cease to be excluded under this paragraph (a); or

- (b) to the extent that the aggregate Net Proceeds in respect of all Recovery Claims (other than those referred to in paragraph (a) above) received in the relevant Financial Year do not exceed US\$9,000,000 (or its equivalent).

**Existing Indebtedness** means all Financial Indebtedness of the Target Group outstanding immediately prior to the Initial Utilisation Date.

**Existing Joint Venture** means any Joint Venture existing or entered into by the Target or any of its Subsidiaries on or prior to the Initial Utilisation Date.

**Existing LC** means any letter of credit, guarantee, bond, indemnity, documentary or like credit or any other instrument of suretyship or payment issued, undertaken or made by a lender or Affiliate of a lender under an existing facility (including an ancillary facility made available under an existing facility).

**Exit Event** means:

- (a) the occurrence of a Change of Control; or
- (b) a sale of all or substantially all of the assets of the Group to a person who is not a Group Member whether in a single transaction or a series of related transactions.

**Expiry Date** means, for a Letter of Credit, the last day of its Term.

**Facility** means an Initial Facility or an Additional Facility and **Facilities** means all of them.

**Facility Office** means:

- (a) in respect of a Lender or Issuing Bank, the office or offices notified by that Lender or Issuing Bank to the Agent in writing on or before the date it becomes a Lender or

Issuing Bank (or, following that date, by not less than five Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement; or

- (b) in respect of any other Finance Party, the office in the jurisdiction in which it is resident for tax purposes.

**FATCA** means:

- (a) sections 1471 to 1474 (or any successor sections thereto) of the Code, any associated regulations and other official guidance;
- (b) any treaty, law, regulation or other official guidance enacted in any other jurisdiction, or relating to an intergovernmental agreement between the United States and any other jurisdiction, which (in either case) facilitates the implementation of paragraph (a) above; or
- (c) any agreement pursuant to the implementation of paragraphs (a) or (b) above with the United States Internal Revenue Service, the government of the United States 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 United States), 1 July 2014;
- (b) in relation to a "*withholdable payment*" described in section 1473(1)(A)(ii) of the Internal Revenue Code (which relates to "*gross proceeds*" from the disposition of property of a type that can produce interest from sources within the US), the first date from which such payment may become subject to a deduction or withholding required by FATCA; or
- (c) in relation to a "passthru payment" described in section 1471(d)(7) of the Code not falling within paragraphs (a) or (b) above, 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 imposed under FATCA.

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

**Fee Letter** means:

- (a) the Upfront Fee Letter;
- (b) any letter or letters (other than the Upfront Fee Letter) between a Finance Party and the Company setting out any of the fees referred to in Clause 17 (*Fees*); and
- (c) any agreement setting out fees payable to a Finance Party referred to in paragraph (e) of Clause 2.2 (*Increase – Cancelled Commitments*) or Clause 2.3 (*Additional Facility*) or under any other Finance Document.

**Finance Document** means this Agreement, any Compliance Certificate, any Fee Letter, any

Hedging Agreement, the Subordination Agreement, any Syndication Agreement, any Selection Notice, any Increase Confirmation – Cancelled Commitments, any Ancillary Document, any Additional Facility Notice, any Additional Facility Lender Accession Notice, any Accession Letter, any Benchmark Schedule, any Transaction Security Document, any Utilisation Request, any Compounded Rate Supplement, any Compounding Methodology Supplement or any other document designated as a **Finance Document** by the Agent and the Company in writing, **provided that** where the term **Finance Document** is used in, and construed for the purposes of, this Agreement, a Hedging Agreement shall be a Finance Document only for the purposes of:

- (a) the definition of **Material Adverse Effect**;
- (b) paragraph (a) of the definition of **Permitted Transaction**;
- (c) the definition of **Transaction Documents**;
- (d) Clauses 2.4 (*Finance Parties' rights and obligations*) and 2.5 (*Obligors' Agent*);
- (e) the definition of **Transaction Security Documents**;
- (f) paragraph (a)(v) of Clause 1.2 (*Construction*);
- (g) Clause 23 (*Guarantee and indemnity*);
- (h) Clause 27.23 (*Further assurance*);
- (i) Clause 28 (*Events of Default*);
- (j) Schedule 13 (*Hedging Provisions*); and
- (k) Schedule 14 (*Security Agency Provisions*).

**Finance Lease** means any lease or hire purchase contract which would, in accordance with the Accounting Principles, be treated as a finance or capital lease.

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

- (a) the definition of **Secured Party**;
- (b) paragraph (a)(i) of Clause 1.2 (*Construction*);
- (c) paragraph (c) of the definition of **Material Adverse Effect**;
- (d) Clauses 2.4 (*Finance Parties' rights and obligations*) and 2.5 (*Obligors' Agent*);
- (e) Clause 23 (*Guarantee and indemnity*);
- (f) Clause 28.13 (*Repudiation and rescission of agreements*);
- (g) Clause 27.23 (*Further assurance*); and
- (h) Clause 33 (*Conduct of Business by the Finance Parties*).

**Financial Indebtedness** means (without double counting) at any time any indebtedness for or

in respect of:

- (a) moneys borrowed;
- (b) any moneys raised under or pursuant to any debenture, bond, note or loan stock or other similar debt instrument (but, in each case, excluding Trade Instruments);
- (c) any amount raised pursuant to any acceptance or documentary credit or by a bill discounting or factoring credit facility or dematerialised equivalents thereof (other than to the extent the same is discounted or factored on a non-recourse basis);
- (d) receivables sold or discounted (otherwise than on a non-recourse basis) but only to the extent of the recourse to the relevant Group Member;
- (e) the amount of liability under any deferred purchase agreement arranged primarily as a method of raising finance and is either treated as a borrowing under the Accounting Principles or to the extent payable more than 180 days after the period customarily allowed by the relevant supplier (save where payment is deferred because of a dispute with the supplier or because of contractual terms establishing payment schedules linked with contractual performance where the deferred payment does not represent normal trade credit and/or the results of operational testing and excluding earn outs and other contingent consideration arrangements);
- (f) Capitalised Lease Obligations;
- (g) any counter indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary or any other instrument (excluding any Trade Instrument) issued by a bank or financial institution (each, an *instrument*) **provided that** the underlying obligation in respect of which the instrument was issued would, under one or more of the other paragraphs of this definition, be treated as being Financial Indebtedness;
- (h) amounts raised under any other transaction (not contemplated by the other paragraphs of this definition) which is classified as a borrowing under the Accounting Principles;
- (i) any guarantee, indemnity or other legally binding obligation in respect of financial loss of any person in respect of any indebtedness falling within one or more of the other paragraphs of this definition;
- (j) any Treasury Transaction (and, when calculating the value of that Treasury Transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that Treasury Transaction, that due amount) as at that time shall be taken into account); or
- (k) shares which are expressed to be redeemable (otherwise than solely at the option of the issuer thereof) prior to the date falling six months after the Termination Date,

but excluding all indebtedness for or in respect of pension, retirement or post-employment benefit related liabilities, and **provided that** any obligation or liability (whether actual or contingent) of any Group Member for, or in respect of, (A) any acquisition of shares, ownership interests or securities (whether pursuant to any put option or otherwise) which are owned by minority shareholders in Group Members, or Joint Venture partners in Joint Ventures and (B) any Outstanding Consideration,, shall not, in each case, be regarded as Financial Indebtedness.

**Financial Quarter** has the meaning given to that term in Clause 26.1 (*Financial definitions*).

**Financial Year** has the meaning given to that term in Clause 26.1 (*Financial definitions*).

**First Test Date** means the first Quarter Date that occurs at the end of the third full Financial Quarter after the Initial Utilisation Date.

**Funds Flow Statement** means a statement showing, amongst other things, the anticipated flow of funds in connection with the Initial Utilisation Date.

**Future Acquisition Target** means the target of any acquisition by a Group Member, being (a) the entity any shares or equity interests in which are being acquired by that Group Member pursuant to such acquisition or (b) the business or undertaking which is being acquired by that Group Member pursuant to such acquisition.

**General Meeting** means the general meeting of the shareholders of the Target (and any adjournment thereof) to be convened in connection with the Scheme for the purpose of considering, and, if thought fit, approving the shareholder resolutions necessary to enable the Target to implement the Acquisition by means of the Scheme.

**Governmental Agency** means any government or any governmental agency, semi-governmental or judicial entity or authority (including any stock exchange or any self-regulatory organisation established under statute).

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

**Group** means the Company and its Subsidiaries from time to time, and (on and from the Completion Date) including the Target Group (each a **Group Member**).

**Group Cash and Cash Equivalent Investments** has the meaning given to that term in Clause 26.1 (*Financial definitions*).

**Group Current Assets** has the meaning given to that term in Clause 26.1 (*Financial definitions*).

**Group Current Liabilities** has the meaning given to that term in Clause 26.1 (*Financial definitions*).

**Group EBITDA** has the meaning given to that term in Clause 26.1 (*Financial definitions*).

**Group Initiative** has the meaning given to that term in paragraph (b)(iii) of Clause 26.3 (*Financial testing*).

**Group Interest Income** has the meaning given to that term in Clause 26.1 (*Financial definitions*).

**Group Interest Payable** has the meaning given to that term in Clause 26.1 (*Financial definitions*).

**Group Net Cash Interest Costs** has the meaning given to that term in Clause 26.1 (*Financial definitions*).

**Group Net Debt** has the meaning given to that term in Clause 26.1 (*Financial definitions*).

**Group Structure Chart** means a structure chart for the Group delivered in accordance with Part I (*Conditions Precedent to First Utilisation*) of Schedule 2 (*Conditions Precedent*).



**Group Working Capital** has the meaning given to that term in Clause 26.1 (*Financial definitions*).

**Guarantor** means an Original Guarantor or an Additional Guarantor, unless it has ceased to be a Guarantor in accordance with Clause 31 (*Changes to the Obligors*).

**Guarantor Certificate** has the meaning given to that term in Clause 25.2 (*Provision and contents of Compliance Certificate*).

**Hedge Counterparty** means any entity which is a Lender or Affiliate of a Lender and which has become a Party as a Hedge Counterparty in accordance with Schedule 13 (*Hedging Provisions*) unless it has ceased to be a Hedge Counterparty in accordance with this Agreement (and for the avoidance of doubt, such entity shall not cease to be a Hedge Counterparty solely because such entity (or an Affiliate of that entity) ceases to be a Lender in accordance with this Agreement).

**Hedging Accession Letter** means a document substantially in the form set out in Schedule 12 (*Form of Hedging Accession Letter*).

**Hedging Agreement** means any master agreement, confirmation, schedule or other agreement entered into or to be entered into by an Obligor under paragraphs (a) or (b) of the definition of **Permitted Treasury Transaction**, *provided that*, to the extent it is to be secured by any Transaction Security, such documents comply with the requirements in relation to hedging documents stipulated in Schedule 13 (*Hedging Provisions*).

**HMRC** means HM Revenue & Customs.

**Holding Company** means, in relation to a company, corporation or entity, any other company, corporation or entity in respect of which it is a Subsidiary.

**Hong Kong** means the Special Administrative Region of Hong Kong.

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

**Illegal Lender** means a Lender whom an Obligor is or becomes obliged to repay or prepay pursuant to Clause 11.1 (*Illegality*).

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

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

unless in the case of paragraph (a) above:

- (i) its failure to pay is caused by:
  - (A) administrative or technical error; or

(B) a Disruption Event,

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

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

**Increase Confirmation – Cancelled Commitments** means a confirmation substantially in the form set out in Schedule 8 (*Form of Increase Confirmation – Cancelled Commitments*).

**Increase Lender** has the meaning given to that term in paragraph (a)(i) of Clause 2.2 (*Increase – Cancelled Commitments*).

**Increased Costs** has the meaning given to that term in paragraph (b) of Clause 19.1 (*Increased Costs*).

**Increased Costs Lender** means a Lender to whom the Company is required to pay Increased Costs under Clause 19 (*Increased Costs*), to make any Tax Deduction under paragraph 18.2(e) of Clause 18.2 (*Tax gross-up*) or any tax indemnity payment under Clause 18.3 (*Tax indemnity*).

**Indirect Tax** means:

- (a) any value added tax imposed pursuant to the United Kingdom 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) (as amended) and any national legislation implementing that Directive or any predecessor to it or supplemental to that Directive; 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.

**Information Barrier** means:

- (a) in relation to a Lender (as that term is used in the definition of **Conflicted Lender** and which term, for the purposes of this definition shall include any Affiliate or Related Fund of that Lender), a system of controls and monitoring (including, but not limited to, physical segregation of employees and restrictions on access to and flow of information) sufficient to ensure that:
  - (i) information relating to the Group and the Finance Documents (and related transactions) held by that Lender is not disclosed to any person who is or who is acting on behalf of either a Competitor or an investor or equity holder in a Competitor or who is engaged in any merger and acquisition or other advisory activity in relation to or on behalf of a Competitor; and
  - (ii) information available to any team or employee of that Lender who is or who is acting on behalf of either a Competitor or an investor or equity holder in a Competitor or who is engaged in any merger and acquisition or other advisory activity in relation to a Competitor is not disclosed to any team or employee of that Lender acting in relation to the Group or the Finance Documents (and related transactions); or

- (b) in relation to a Relevant Business Group of a Relevant Entity (each as defined in the definition of *Non-Commercial Investor*), a system of controls and monitoring (including, but not limited to, physical segregation of employees and restrictions on access to and flow of information) sufficient to ensure that:
  - (i) information relating to the Group and the Finance Documents (and related transactions) held by that Relevant Business Group is not disclosed to any team or employee of the business groups within that Relevant Entity which are established for or invest in distressed debt as one of their principal business activities; and
  - (ii) information available to any team or employee of any business group within that Relevant Entity which is established for or principally invests in distressed debt is not disclosed to any team or employee of that Relevant Business Group.

**Information Memorandum** means the document (if any) in the form approved by the Company concerning the Company and the Target Group which, at the request of the Company and on its behalf, is prepared in relation to the Initial Facilities, is approved by the Company and distributed by the Arranger in connection with the Syndication.

**Information Package** means the Information Memorandum and the Base Case Model.

**Initial Facilities** means the Initial Term Facility, and the Initial Revolving Facility (each an *Initial Facility*).

**Initial Facility Loan** means an Initial Term Facility Loan, or an Initial Revolving Loan.

**Initial Material Subsidiary** has the meaning given to that term in Clause 27.27 (*Security and Guarantees*).

**Initial Revolving Facility** means the revolving facility made available under this Agreement as described in paragraph (a)(ii) of Clause 2.1 (*The Initial Facilities*).

**Initial Revolving Facility Borrower** means:

- (a) the Original Borrower; or
- (b) any Additional Borrower under the Initial Revolving Facility.

**Initial Revolving Facility Commitment** means:

- (a) in relation to an Original Revolving Facility Lender, the amount in US\$ set opposite its name under the heading **Initial Revolving Facility Commitment** in Part II (*The Original Lenders*) of Schedule 1 (*The Original Parties*) and the amount of any other Initial Revolving Facility Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase – Cancelled Commitments*) or Clause 2.3 (*Additional Facility*); and
- (b) in relation to any other Initial Revolving Facility Lender, the amount in US\$ of any Initial Revolving Facility Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase – Cancelled Commitments*) or Clause 2.3 (*Additional Facility*),

to the extent:

- (i) not cancelled, reduced or transferred by it under this Agreement; and
- (ii) not deemed to be zero pursuant to Clause 30.2 (*Debt Purchase Transactions by Sponsor Affiliates*).

**Initial Revolving Facility Lender** means:

- (a) any Original Revolving Facility Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become an Initial Revolving Facility Lender in accordance with Clause 2.2 (*Increase – Cancelled Commitments*), Clause 2.3 (*Additional Facility*) or Clause 29 (*Changes to the Lenders*),

which, in each case, has not ceased to be an Initial Revolving Facility Lender in accordance with this Agreement, and for which purposes the:

- (i) termination in full of all of the Initial Revolving Facility Commitment(s) of any Initial Revolving Facility Lender; and
- (ii) payment in full of all amounts which are payable to such Initial Revolving Facility Lender under the Finance Documents,

will result in that Initial Revolving Facility Lender ceasing to be regarded as an Initial Revolving Facility Lender for the purposes of and in relation to any provision of any of the Finance Documents requiring consultation with or the consent or approval of or instruction from all the Lenders, the Majority Lenders and/or any class or group of Lenders.

**Initial Revolving Facility Utilisation** means an Initial Revolving Loan or a Letter of Credit.

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

**Initial Term Facility** means the term loan facility made available under this Agreement as described in paragraph (a)(i) of Clause 2.1 (*The Initial Facilities*).

**Initial Term Facility Commitment** means:

- (a) in relation to an Original Term Facility Lender, the amount in US\$ set opposite its name under the heading **Initial Term Facility Commitment** in Part II (*The Original Lenders*) of Schedule 1 (*The Original Parties*) and the amount of any other Initial Term Facility Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase – Cancelled Commitments*) or Clause 2.3 (*Additional Facility*); and
- (b) in relation to any other Initial Term Facility Lender, the amount in US\$ of any Initial Term Facility Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase – Cancelled Commitments*) or Clause 2.3 (*Additional Facility*),

to the extent:

- (i) not cancelled, reduced or transferred by it under this Agreement; and
- (ii) not deemed to be zero pursuant to Clause 30.2 (*Debt Purchase Transactions by Sponsor Affiliates*).

**Initial Term Facility Lender** means:

- (a) any Original Term Facility Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become an Initial Term Facility Lender in accordance with Clause 2.2 (*Increase – Cancelled Commitments*), Clause 2.3 (*Additional Facility*) or Clause 29 (*Changes to the Lenders*),

which, in each case, has not ceased to be an Initial Term Facility Lender in accordance with this Agreement, and for which purposes the:

- (i) termination in full of all of the Initial Term Facility Commitment(s) of any Initial Term Facility Lender; and
- (ii) payment in full of all amounts which are payable to such Initial Term Facility Lender under the Finance Documents,

will result in that Initial Term Facility Lender ceasing to be regarded as an Initial Term Facility Lender for the purposes of and in relation to any provision of any of the Finance Documents requiring consultation with or the consent or approval of or instruction from all the Lenders, the Majority Lenders and/or any class or group of Lenders.

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

**Initial Term Facility Repayment Date** means each date set out in Clause 10.1 (*Repayment of Initial Term Facility Loans*).

**Initial Term Facility Repayment Instalment** means each repayment instalment for the Initial Term Facility Loans calculated and payable as set out in Clause 10.1 (*Repayment of Initial Term Facility Loans*).

**Initial Utilisation** means the first Utilisation of the Initial Term Facility.

**Initial Utilisation Date** means the date on which the Initial Utilisation is made or to be made.

**Insolvency Event** in relation to a Finance Party means that such Finance Party:

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due and in each case, that Finance Party is under an insolvency, bankruptcy or governmental proceeding or process that is public and not dismissed, discharged, stayed or restrained, in each case within 30 days of the institution or presentation thereof;
- (c) makes a general assignment, arrangement or composition with, or for the benefit of, its creditors;
- (d) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator,

supervisor or similar official;

- (e) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition is instituted or presented by a person or entity not described in paragraph (d) above and:
  - (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or
  - (ii) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof;
- (f) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (g) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets (other than, for so long as it is required by law or regulation not to be publicly disclosed, any such appointment which is to be made, or is made, by a person or entity described in paragraph (d) above);
- (h) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter;
- (i) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (h) above; or
- (j) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

**Insurance Claim** means any insurance claim under any insurance maintained by any Group Member.

**Insurance Proceeds** means, in relation to any Insurance Claim by a Group Member, the Net Proceeds of such Insurance Claim except for Excluded Insurance Proceeds **provided that**:

- (a) such Net Proceeds (the **Relevant Insurance Proceeds**) shall not constitute **Insurance Proceeds** unless and until the aggregate of such Relevant Insurance Proceeds received by Group Members in a Financial Year, when aggregated with any and all other Net Proceeds of Insurance Claims (excluding Excluded Insurance Proceeds) received by Group Members during that Financial Year which do not constitute **Insurance Proceeds** due to the application of this paragraph (a) and paragraph (b) below (such other Net Proceeds being the **Other Insurance Proceeds**), exceed US\$20,000,000 (or its equivalent); and
- (b) if such Relevant Insurance Proceeds received by Group Members in a Financial Year, when aggregated with such Other Insurance Proceeds received by Group Members in that Financial Year, exceed US\$20,000,000 (or its equivalent), then:

- (i) such Relevant Insurance Proceeds and such Other Insurance Proceeds shall constitute **Insurance Proceeds**; and
- (ii) for the purposes of Clause 12.2 (*Disposal Proceeds, Insurance Proceeds and Recovery Proceeds*) such Relevant Insurance Proceeds or, as the case may be, such Other Insurance Proceeds shall be deemed to have been received in a Financial Year upon the later of (A) the time when such Relevant Insurance Proceeds or, as the case may be, such Other Insurance Proceeds were actually received by a Group Member in that Financial Year and (B) the time when such Relevant Insurance Proceeds received by Group Members in a Financial Year, when aggregated with such Other Insurance Proceeds, exceed US\$20,000,000 (or its equivalent).

**Intellectual Property** means:

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

**Interest** has the meaning given to that term in Clause 26.1 (*Financial definitions*).

**Interest Cover** has the meaning given to that term in Clause 26.1 (*Financial definitions*).

**Interest Period** means:

- (a) in relation to an Initial Facility Loan, each period determined in accordance with Clause 15 (*Interest Periods*);
- (b) in relation to an Additional Facility Loan (in respect of any Additional Facility), each period determined in accordance with the Additional Facility Notice relating to such Additional Facility; and
- (c) in relation to an Unpaid Sum, each period determined in accordance with Clause 14.3 (*Default interest*).

**Interpolated Screen Rate** means, in relation to any Reference Rate for any Term Rate Loan (other than any Term Rate Loan denominated in USD) and any Interest Period relating thereto, the rate per annum (rounded upwards to four decimal places as the two Screen Rates referred to in paragraphs (a) and (b) below) for the period that is equal in length to such Interest Period which results from interpolating on a linear basis between:

- (a) the rate per annum that is equal to the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the length of such Interest Period; and
- (b) the rate per annum that is equal to the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the length of such Interest Period,

each as of the Specified Time on the Quotation Day for the currency of that Term Rate Loan and for such Interest Period.

**Interpolated Term SOFR** means, in relation to the applicable Term SOFR for any Term Rate Loan denominated in US dollars and any Interest Period relating thereto, the rate per annum (rounded upwards to the same number of decimal places as Term SOFR) which results from interpolating on a linear basis between:

- (a) either:
  - (i) the rate per annum that is equal to the applicable Term SOFR for the longest period (for which Term SOFR is available) which is less than the length of the Interest Period of that Loan; or
  - (ii) if no such Term SOFR is available for a period which is less than the Interest Period of that Term Rate Loan, SOFR for the day which is not less than two US Government Securities Business Days before the Quotation Day; and
- (b) the most recent applicable Term SOFR for the shortest period (for which Term SOFR is available) which exceeds the length of the Interest Period of that Term Rate Loan,

each as of the Specified Time for the currency of that Loan.

**Investors** means funds, partnerships and other entities owned, advised, managed and/or controlled by the Sponsors, Canada Pension Plan Investment Board, Temasek Holdings (Private) Limited and/or any of their Affiliates (other than the Parent or any Group Member).

**IPO** means the listing or admission to trading of any part of the share capital of any Group Member on any recognised stock exchange in any jurisdiction.

**Issuing Bank** means any Party which has become an Issuing Bank pursuant to Clause 6.10 (*Appointment of Issuing Banks*) (and if there is more than one such Party, such Parties shall be referred to, whether acting individually or together, as the **Issuing Bank**) *provided that*, in respect of a Letter of Credit issued or to be issued pursuant to the terms of this Agreement, the **Issuing Bank** shall be the Issuing Bank which has issued or agreed to issue that Letter of Credit.

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

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

**Joint Venture Investment** means, in respect of a Joint Venture:

- (a) an amount subscribed for shares in, lent to, or invested in, that Joint Venture by any Group Member since the Completion Date;
- (b) the continuing amount of a contingent liability of a Group Member under any outstanding guarantee given in respect of the liabilities of that Joint Venture; and
- (c) an amount equal to the market value of assets transferred by any Group Member to that Joint Venture since the Completion Date,

(in each case without double-counting), *provided that* (i) for the avoidance of doubt, an amount will no longer be a Joint Venture Investment and deemed never to have been made on and from the date that the Joint Venture it relates to becomes a Group Member (and no longer a Joint Venture) and (ii) **Joint Venture Investment** in respect of any Joint Venture and any Financial Year shall mean (A) any such amount (falling within paragraph (a)) so subscribed for shares in, lent to or invested in that Joint Venture during that Financial Year, (B) the continuing



amount of a contingent liability of a Group Member under any such outstanding guarantee (falling within paragraph (b)) granted during that Financial Year in respect of the liabilities of that Joint Venture and (C) any such amount (falling within paragraph (c)) in respect of assets transferred by any Group Member to that Joint Venture during that Financial Year, in each case without double-counting.

**Knowledge** means, in respect of an Obligor, the Parent or a Group Member, to the best of the knowledge and belief of the directors of such Obligor, the Parent or such Group Member (as the case may be) (after due and careful enquiry).

**L/C Proportion** means in relation to a Lender in respect of any Letter of Credit, the proportion (expressed as a percentage) borne by that Lender's Available Commitment to the relevant Available Facility immediately prior to the issue of that Letter of Credit, adjusted to reflect any assignment or transfer under this Agreement to or by that Lender.

**Liabilities** means all present and future liabilities and obligations at any time due, owing or incurred by the Obligors or the Parent to any Secured Party under the Finance Documents, both actual and contingent and whether incurred solely or jointly, as principal or surety or in any other capacity together with any of the following matters relating to or arising in respect of those liabilities and obligations:

- (a) any refinancing, novation, deferral or extension;
- (b) any claim for breach of representation, warranty or undertaking or on an event of default or under any indemnity given under or in connection with any document or agreement evidencing or constituting any other liability or obligation falling within this definition;
- (c) any claim for damages or restitution; and
- (d) any claim as a result of any recovery by the Obligors or the Parent of a payment, prepayment, repayment, redemption, defeasance or discharge of those liabilities or obligations on the grounds of preference or otherwise,

and any amounts which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowance of those amounts in any insolvency or other proceedings.

**Legal Opinion** means any legal opinion delivered to the Agent under Clause 4.1 (*Initial conditions precedent*) or Clause 31 (*Changes to the Obligors*).

**Legal Reservations** means:

- (a) the principle that certain (including equitable and remedies that are analogous to equitable remedies in the applicable jurisdiction) remedies may be granted or refused at the discretion of a court, the principle of reasonableness and fairness where implied by law and the limitation of enforcement by laws relating to bankruptcy, insolvency, reorganisation, court schemes, administration, moratoria and other laws generally affecting the rights of creditors;
- (b) the time barring of claims under applicable statutes of limitation (or equivalent legislation), the possibility that an undertaking to assume liability for or indemnify a person against non-payment of stamp duty may be void and defences of acquiescence, set off or counterclaim;

- (c) similar principles, rights and defences in respect of the enforceability of a contract, agreement or undertaking under the laws of any Relevant Jurisdiction or any limitations or restrictions in relation to any Security pursuant to any exchange control laws of the relevant country;
- (d) the principle that in certain circumstances Security granted by way of fixed charge may be recharacterised as a floating charge or that Security purported to be constituted as an assignment may be recharacterised as a charge;
- (e) the principle that additional interest imposed pursuant to any relevant agreement may be held to be unenforceable on the grounds that it is a penalty and thus void;
- (f) the principle that a court may not give effect to an indemnity for legal costs incurred by an unsuccessful litigant;
- (g) the principle that the creation or purported creation of Security over any contract or agreement which is subject to a prohibition on transfer, assignment or charging may be void, ineffective or invalid and may give rise to a breach of the contract or agreement over which Security has purportedly been created; and
- (h) any (x) other matters which are set out as qualifications or reservations (howsoever described) as to matters of law of general application and which are set out in the Legal Opinions (as if references therein to any document to which such Legal Opinions apply were references to any document to which any representation or warranty under any Finance Document (which is qualified by the Legal Reservations) relates) and (y) similar principles, rights and defences under the laws of any applicable jurisdiction.

***Lender*** means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party in accordance with Clause 2.2 (*Increase – Cancelled Commitments*), Clause 2.3 (*Additional Facility*) or Clause 29 (*Changes to the Lenders*),

which, in each case, has not ceased to be a Lender in accordance with this Agreement, and for which purposes the:

- (i) payment in full of all amounts which are payable to such Lender under the Finance Documents; and
- (ii) termination in full of all of the Commitment(s) of any Lender,

will result in that Lender ceasing to be regarded as a Lender for the purposes of and in relation to any provision of any of the Finance Documents requiring consultation with or the consent or approval of or instruction from all the Lenders, the Majority Lenders and/or any class or group of Lenders.

***Letter of Credit*** means in relation to the Initial Revolving Facility:

- (a) a letter of credit, substantially in the form set out in Schedule 21 (*Form of Letter of Credit*) or in any other form requested by the Company and agreed by the Agent with the prior consent of the Majority Lenders, the Issuing Bank and (to the extent it or one of its Affiliates is a Lender) each Arranger; or

- (b) any guarantee, indemnity or other instrument in a form requested by the Company and agreed by the Agent with the prior consent of the Majority Lenders, the Issuing Bank and (to the extent it or one of its Affiliates is a Lender) each Arranger.

**LMA** means the Loan Market Association.

**Loan** means an Initial Facility Loan or an Additional Facility Loan *provided that*:

- (a) any reference to **Loan** in relation to an Initial Facility shall be a reference to an Initial Facility Loan; and
- (b) any reference to **Loan** in relation to an Additional Facility shall be a reference to an Additional Facility Loan in respect of that Additional Facility.

**Lookback Period** means the number of days specified as such in the applicable Compounded Rate Terms.

**Major Default** means any Event of Default (with respect to an Original Primary Obligor and the Parent only and excluding any other Group Member or Target Group Member) under any of Clause 28.1 (*Non-payment*) (in respect of principal or interest under an Initial Facility or any fees payable in respect of an Initial Facility pursuant to paragraphs 1 and 2 of the Upfront Fee Letter (and excluding, for the avoidance of doubt, any fees payable to the Agent or Security Agent or pursuant to Clause 17.6 (*Commitment fee*)), Clause 28.3 (*Other obligations*) (only insofar as it relates to a breach of a Major Undertaking), Clause 28.4 (*Misrepresentation*) (only insofar as it relates to a breach of any Major Representation), paragraphs 28.6(a) or 28.6(b)(i) of Clause 28.6 (*Insolvency*) (and *provided that* the reference to “one or more of its creditors” shall be replaced with a reference to “its creditors generally”), Clause 28.7 (*Insolvency proceedings*), Clause 28.9 (*Unlawfulness and Invalidity*) or paragraph (a) of Clause 28.13 (*Repudiation and rescission of agreements*).

**Major Finance Document** means this Agreement, any Fee Letter, the Subordination Agreement, any Syndication Agreement or any Original Security Document.

**Major Representation** means a representation or warranty given by an Original Primary Obligor and, subject to paragraph (b) of Clause 24.1 (*General*), the Parent only (and excluding any other Group Member or Target Group Member or reference to any Group Member or Target Group Member) with respect to itself under any of Clause 24.2 (*Status*) to Clause 24.5 (*Power and authority*) (inclusive) (but excluding paragraph 24.4(c) of Clause 24.4) and paragraph (a) of Clause 24.6 (*Authorisations*).

**Major Undertaking** means an undertaking given by an Original Primary Obligor and, subject to Clause 1.6 (*Parent*), the Parent described in Clauses 27.4 (*Merger*), 27.6 (*Acquisitions*), 27.12 (*No encumbrance*), 27.13 (*Disposals*), 27.15 (*Loans or credit*), 27.16 (*No guarantees or indemnities*), 27.17 (*Dividends, share redemption and other restricted payments*), 27.18 (*Financial Indebtedness*) and an undertaking given by the Company or Bidco under paragraphs (a) to (c) of 27.28 (*Conduct of Offer and/or Scheme*), in each case, as it relates to that Original Primary Obligor and/or the Parent only (as applicable) and excluding any obligation of any Original Primary Obligor and/or the Parent to procure in relation to any other Group Member or Target Group Member.

**Majority Lender Objection** means, in respect of a document, supplement, proposal, request or amendment in relation to paragraph (a) of Clause 41.9 (*Changes to reference rates*), that such document, supplement, proposal, request or amendment has been rejected by the Majority Lenders, in each case by 11 a.m. on the date falling 10 Business Days (or such longer period which the Company notifies to the Agent) after the date on which the Company (or other Group

Member) delivers the relevant document, supplement, proposal, request or amendment to the Agent. Unless the Company notifies the Agent, Clause 41.8 (*Disenfranchisement of Conflicted Lenders, and Defaulting Lenders and treatment of Non-Responding Lenders*) shall not apply when determining the Majority Lenders for these purposes.

**Majority Lenders** means a Lender or Lenders whose Commitments aggregate more than 50.10 per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 50.10 per cent. of the Total Commitments immediately prior to the reduction of the Total Commitments to zero).

**Margin** means:

(a) in respect of an Initial Facility Loan, 4.00 per cent. per annum,

but if:

- (i) no Event of Default has occurred and is continuing;
- (ii) a period of at least 9 Months has expired since the Initial Utilisation Date; and
- (iii) the Most Recent Net Leverage (based on Relevant Financial Statements) specified in the Compliance Certificate setting out such Most Recent Net Leverage delivered to the Agent pursuant to Clause 25.2 (*Provision and contents of Compliance Certificate*) is within a range set out in the table below,

then the applicable Margin will be the percentage per annum set out below in the column opposite that range:

<b>Most Recent Net Leverage</b>	<b>Margin (% p.a.)</b> <b>(Applicable if the currency of the relevant Initial Facility Loan)</b>
Greater than or equal to 4.75:1	4.00
Greater than or equal to 4.00:1 but less than 4.75:1	3.75
Greater than or equal to 3.25:1 but less than 4.00:1	3.50
Less than 3.25:1	3.25

**provided that** if the Obligors' Agent delivers an ESG Performance Certificate stating that any one or more of the ESG Triggers apply and have been achieved (as determined at the end of the Financial Year to which the ESG Performance Certificate relates) (each an **ESG Notification**), from the date of such ESG Notification to the end of the Financial Year in which the ESG Notification is delivered only, the Margin in respect of an Initial Facility Loan for that Financial Year (the **Initial Facility Loan Margin**) at each level of the table above as it relates the Initial Facility Loan Margin (the **Initial Facility Loan Margin Grid**) shall be automatically reduced by 0.05 per cent. for each ESG Trigger that applies and has been achieved; **provided that** the maximum decrease to the Initial Facility Loan Margin in any Financial Year attributable solely to the operation of any or all ESG Triggers shall be cumulatively 0.25 per cent. For the

avoidance of doubt, any adjustment to the Initial Facility Loan Margin levels set forth in the table above, triggered by an ESG Notification, shall apply exclusively to the Interest Periods falling within the Financial Year to which that ESG Notification applies; accordingly, the Initial Facility Loan Margin levels will be (subject to delivery of any further ESG Performance Certificates in respect of that Financial Year) reset to the original levels set forth above at the start of the following Financial Year; and

- (b) in relation to any Additional Facility Loan, the percentage rate per annum specified by the Company in the relevant Additional Facility Notice.

However:

- (i) any increase or decrease in the Margin for any Loan as a result of a change to the Most Recent Net Leverage will take effect from and including the later of (A) the date falling 9 Months after the Initial Utilisation Date and (B) the first day of the Interest Period during which the Compliance Certificate setting out such Most Recent Net Leverage is delivered to the Agent pursuant to Clause 25.2 (*Provision and contents of Compliance Certificate*);
- (ii) there will be no limit on the number of step-downs or step-ups on the date any adjustment of Margin takes place;
- (iii) if and for so long as an Event of Default has occurred and is continuing, the Margin for an Initial Facility Loan shall be the highest percentage per annum set out above (or, in respect of any Additional Facility, the highest percentage rate per annum set out in the notice delivered by the Company in accordance with Clause 2.3 (*Additional Facility*) in respect of the relevant Additional Facility Commitments);
- (iv) if an Event of Default has occurred, but is no longer continuing, then the Margin for each Loan will be re-calculated with effect from the date that such Event of Default is no longer (and there are no other Events of Default) continuing on the basis of the Most Recent Net Leverage (as set out in the applicable Compliance Certificate) and the provisions of this definition (on the assumption that as at the date such Compliance Certificate was delivered no such Event of Default had occurred or was continuing);
- (v) if, following receipt by the Agent of the Annual Financial Statements of the Company and related Compliance Certificate, those statements (together with the each set of other Annual Financial Statements) and the Compliance Certificate do not confirm the basis for a reduced or increased Margin for any Loan, then the relevant provisions of Clause 14.2 (*Payment of interest*), shall apply and the Margin for that Loan shall be the percentage per annum determined using the table above (or, in respect of any Additional Facility, the percentage rate per annum set out in the notice delivered by the Company in accordance with Clause 2.3 (*Additional Facility*) in respect of the relevant Additional Facility Commitments) and the revised Most Recent Net Leverage calculated using the figures in that Compliance Certificate;
- (vi) for the purpose of determining the Margin, Net Leverage and Relevant Period shall be determined in accordance with Clause 26.1 (*Financial definitions*); and
- (vii) for the avoidance of doubt, no Default or Event of Default (howsoever described) shall arise as a result of failure to meet any ESG Trigger and/or

failure to provide certification in respect of any ESG Trigger and/or an ESG Notification. A certification by the Company in an ESG Notification shall be conclusive as to whether an ESG Trigger applies and no third party diligence or verification shall be required.

**Market Disruption Event** has the meaning given to that term in paragraph (b) of Clause 16.2 (*Market disruption*).

**Material Adverse Effect** means a material adverse effect (after taking into account all resources, insurance, indemnity and assurance available to the Group and the timing and likelihood of recovery) on:

- (a) the consolidated business, assets or financial condition of the Group (taken as a whole); or
- (b) the ability of the Obligors (taken as a whole) to perform their payment obligations under any Finance Document; or
- (c) subject to the applicable Legal Reservations and Perfection Requirements, the validity or the enforceability of any Finance Document in accordance with their terms or the effectiveness of any Transaction Security granted pursuant to any of the Finance Documents in any way which is:
  - (i) materially adverse to the interests of the Lenders (taken as a whole) under the Finance Documents (taken as a whole); and
  - (ii) if capable of remedy, not remedied within 20 Business Days of the Company first becoming aware of such event or circumstance or being given notice of such event or circumstance by the Agent (with such cure period to run in parallel with any cure period in respect of a Default which would be triggered by the relevant event or circumstance constituting a Material Adverse Effect under this paragraph (c)).

**Material Entities** means each Obligor, each Material Subsidiary and each Material Subsidiary Holdco (each a **Material Entity**).

**Material Subsidiary** means, at any time after the Completion Date, a Group Member which is directly or indirectly wholly owned by the Group and which is incorporated in a Security Jurisdiction and:

- (a) whose earnings before interest, tax, depreciation and amortisation (in each case, calculated on the same basis as Group EBITDA but excluding intra-group items and investments in Subsidiaries) represent more than 10 per cent. of the Group EBITDA (which shall be tested annually by reference to the Annual Financial Statements); or
- (b) which has turnover (on an unconsolidated basis and excluding intra-group items) representing more than 10 per cent. of the turnover of the Group (which shall be tested annually by reference to the Annual Financial Statements).

Compliance with the condition set out above in relation to a Group Member shall be determined by reference to the latest annual audited financial statements of that Group Member (or, prior to the delivery of the first set of Relevant Financial Statements to the Agent pursuant to paragraph 25.1(a) of Clause 25.1 (*Financial statements*), the Original Financial Statements, as if the Completion Date had occurred at the commencement of the period to which the Original Financial Statements relate). However, if a person becomes a Group Member after the date as

at which the latest annual audited financial statements were prepared, such financial statements shall, for such purposes, be deemed to be adjusted in order to take into account such person's becoming a Group Member (that adjustment being certified by the Company as representing an accurate reflection of the revised gross assets or revenue of the Group) as if such person had become a Group Member as at the commencement of the period to which such financial statements relate. A report by the Auditors of the Group that a Group Member is or is not a Material Subsidiary shall, in the absence of manifest error, be conclusive and binding on all Parties.

**Material Subsidiary Holdco** means any Holding Company (other than Bidco or any Holding Company of Bidco) which, for the purposes of its consolidated financial statements, consolidates the financial condition or results of operation of any Material Subsidiary, and excluding any entity which is an Obligor and/or a Material Subsidiary (for so long as such entity is an Obligor and/or Material Subsidiary, as applicable).

**Midco** means Houting Midco Limited, a private limited company incorporated in England and Wales with registered company number 15452346 and with registered address at Suite 1, 7th Floor 50 Broadway, London, United Kingdom, SW1H 0DB.

**Minimum Equity Investment** means the aggregate of:

- (a) cash proceeds of fully paid ordinary or non-redeemable (other than at the option of the Company) preference shares in the Company, which are issued to its shareholder(s) for cash on or prior to the Initial Utilisation Date; and
- (b) cash proceeds of shareholder loans received by the Company and/or Bidco (on behalf of the Company, Topco or Midco) on or prior to the Initial Utilisation 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) other than where paragraph (b) below applies:
  - (i) (subject to paragraph (iii) 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;
  - (ii) 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
  - (iii) 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,

**provided that** the rules in paragraphs (i) to (iii) above will only apply to the last Month of any period;

- (b) in relation to an Interest Period for any Loan (or any other period for the accrual of commission or fees) in a Compounded Rate Currency for which there are rules specified as "Business Day Conventions" in respect of that currency in the applicable Compounded Rate Terms, those rules shall apply.

**Most Recent Net Leverage** means, at any time, the Net Leverage for the Most Recent Relevant

Period as at such time.

**Most Recent Relevant Period** means, as at any date, the most recently elapsed Relevant Period in respect of which Relevant Financial Statements for a period ending on the last day of such Relevant Period and the accompanying Compliance Certificate have been delivered to the Agent in accordance with Clauses 25.1 (*Financial statements*) and 25.2 (*Provision and contents of Compliance Certificate*) **provided that** if such date falls prior to the date on which the first set of Relevant Financial Statements and the accompanying Compliance Certificate shall have been delivered to the Agent in accordance with paragraphs (a) and (b) of Clause 25.1 (*Financial statements*) and Clause 25.2 (*Provision and contents of Compliance Certificate*), then:

- (a) the Most Recent Relevant Period as at such date shall be deemed to be the Relevant Period ending on the date to which the Original Financial Statements were prepared;
- (b) the Relevant Financial Statements for such Most Recent Relevant Period shall be deemed to be the Original Financial Statements and the Completion Date shall be deemed to have occurred as at the commencement of such Most Recent Relevant Period; and
- (c) to extent any provision of this Agreement requires pro forma compliance with any financial covenant or other requirement set out in Clause 26.2 (*Financial condition*), the financial covenants and other requirements under Clause 26.2 (*Financial condition*) applicable to the Relevant Period ending on the First Test Date shall be deemed to apply to such Most Recent Relevant Period.

**Multiemployer Plan** means a multiemployer plan (as defined in Section 4001(a)(3) of ERISA) to which contributions have been made by the Obligor or any ERISA Affiliate and which is covered by Title IV of ERISA.

**Multiple Employer Plan** means a Pension Plan that has two (2) or more contributing sponsors at least two (2) of whom are not under common control, as such Pension Plan is described in Section 4064 of ERISA.

**Net Cash Interest Costs** has the meaning given to that term in Clause 26.1 (*Financial definitions*).

**Net Proceeds** means the cash proceeds received or recovered by a Group Member (and if that Group Member is not the Company or a direct or indirect wholly-owned Subsidiary of the Company, a percentage of such cash proceeds) which is equal to the percentage interest (direct or indirect) held by the Company in that Group Member) of any Disposal, Insurance Claim or Recovery Claim after deducting:

- (a) fees, costs and expenses incurred by any Group Member with respect to that Disposal, Insurance Claim or Recovery Claim to persons who are not Group Members (including bonus payments to management of the disposed business or entity (in the case of a Disposal));
- (b) any Tax incurred and required to be paid or reserved for by any Group Member, seller or claimant in connection with that Disposal, Insurance Claim or Recovery Claim (as reasonably determined by the relevant Group Member, seller or claimant and taking into account any available credit or relief) or the transfer of the proceeds thereof intra-Group for the purpose of making any prepayment of the Facilities from such proceeds;
- (c) in the case of a Disposal, amounts retained to cover anticipated liabilities reasonably



expected to arise in connection with that Disposal in the 18 Months immediately following the date of such Disposal **provided that** where such anticipated liabilities do not materialise in that 18-Month period, those amounts retained shall, upon the expiry of that 18-Month period, be deemed to be Net Proceeds;

- (d) in the case of any Disposal, costs of closure, relocation, reorganisation and restructuring, and costs incurred preparing any asset for such Disposal as certified by the Company as being reasonably incurred in connection with such Disposal and payable to a person who is not a Group Member;
- (e) the amount of any repayment of Financial Indebtedness or amounts owed to joint venture partners in Permitted Joint Ventures or to minority shareholders in non-wholly owned Group Members as a consequence of any such Disposal Insurance Claim or Recovery Claim;
- (f) amounts to be repaid to any entity disposed of (or any Subsidiary thereof) in respect of intra-Group indebtedness; and
- (g) third party debt secured on any assets disposed of (or secured on any assets of any entity disposed of or any of its Subsidiaries) which is to be repaid out of those proceeds.

**New Lender** has the meaning given to that term in Clause 29.1 (*Transfers by the Lenders*).

**New Shareholder Injections** has the meaning given to that term in Clause 26.1 (*Financial definitions*).

**Non-Acceptable L/C Lender** means a Lender under the Initial Revolving Facility which:

- (a) is not an Approved Bank within the meaning of paragraph (b) or (c) of the definition of **Approved Bank** (other than a Lender which each Issuing Bank has agreed is acceptable to it notwithstanding that fact);
- (b) is a Defaulting Lender; or
- (c) has failed to make (or has notified the Agent that it will not make) a payment to be made by it under Clause 7.3 (*Indemnities*) or Clause 32.11 (*Lenders' indemnity to the Agent*) or any other payment to be made by it under the Finance Documents to or for the account of any other Finance Party in its capacity as Lender by the due date for payment unless the failure to pay falls within the description of any of those items set out at paragraphs (a)(i) and (a)(ii) of the definition of **Defaulting Lender**.

**Non-Commercial Investor** means any hedge fund, loan to own fund, vulture fund, distressed debt fund debt restructuring fund or a trust fund or any other entity which is established for or principally invests in distressed debt (including a business group within a private equity fund or financial institution) (each a **Relevant Entity**) but excluding:

- (a) business groups (each a **Relevant Business Group**) which are separated from such business group by way of an Information Barrier (or any similar fund or entity) but excluding any Sponsor Affiliate; and
- (b) an Original Lender.

**Non-Consenting Lender** means any Lender which does not consent to any decision requiring a waiver or amendment or other consent, if:

- (a) the Company, through the Agent, has requested that consent, waiver or amendment in relation to any Finance Document; and
- (b) the Majority Lenders have agreed to that consent, waiver or amendment,

**provided that** where a Lender has split its Commitment in accordance with Clause 41.4 (*Split Voting*), it shall be a **Non-Consenting Lender** only in respect of the portion of its Commitment in respect of which it does not and continues not to consent or agree to such waiver or amendment or other consent.

**Non-Group Entity** has the meaning given to that term in Clause 26.1 (*Financial definitions*).

**Non-Market Lender** means any Lender whose Commitment is being included to trigger a Market Disruption Event pursuant to paragraph (B) of the definition of that term.

**Non-Responding Lender** means any Lender that fails to:

- (a) accept or reject in writing, or abstains from responding to a request by or on behalf of the Obligors or the Parent for any waiver, amendment or other consent requested in relation to any of the Facilities within 10 Business Days (or any other period of time specified by the Company with, if less than 10 Business Days, the prior agreement of the Agent) of a written request being made or notifies the relevant Agent in writing that it is abstaining from responding to such request; or
- (b) sign a Transfer Certificate within five Business Days of any request pursuant to paragraph (a) of Clause 41.5 (*Replaceable Lender*) where obliged to do so in accordance with paragraph (a)(iv) of Clause 41.6 (*Conditions of replacement of a Replaceable Lender*).

**Notifiable Debt Purchase Transaction** has the meaning given to that term in paragraph (b) of Clause 30.2 (*Debt Purchase Transactions by Sponsor Affiliates*).

**Obligor** means a Borrower or a Guarantor.

**Obligors' Agent** means the Company, appointed to act on behalf of the Parent and each Obligor in relation to the Finance Documents pursuant to Clause 2.5 (*Obligors' Agent*).

**OFAC** means the Office of Foreign Assets Control of the United States Department of the Treasury (or any successor thereto).

**Offer** means a takeover offer (within the meaning of Chapter 3 of Part 28 of the Companies Act 2006) in respect of the Target by Bidco in accordance with the City Code, with an acceptance condition initially set at not less than 75 per cent. of the Target Shares.

**Offer Document** means an offer document dispatched to shareholders of the Target setting out the terms and conditions of an Offer.

**Opening Margin** means 4.00 per cent. per annum.

**Optional Currency** means a currency (other than the Base Currency) which complies with the conditions set out in Clause 4.4 (*Conditions relating to Optional Currencies*).

**Original Financial Statements** means the audited consolidated financial statements of the Target Group for the financial year ended 31 December 2023.

**Original Jurisdiction** means:

- (a) in relation to an Original Obligor or the Parent, the jurisdiction under whose laws that Obligor or the Parent is incorporated or organised as at the Signing Date; and
- (b) in relation to an Additional Obligor, the jurisdiction under whose laws that Obligor is incorporated or organised as at the date on which that Additional Obligor becomes a party to this Agreement.

**Original Obligor** means the Original Borrower or the Original Guarantors.

**Original Primary Obligor** means the Original Borrower, Midco and Bidco (in its capacity as an Original Guarantor).

**Original Revolving Facility Lender** means a Lender listed in Part II (*The Original Lenders*) of Schedule 1 (*The Original Parties*) as having an Initial Revolving Facility Commitment.

**Original Security Documents** means each of the documents listed as being an Original Security Document in Part II (*Original Security Documents*) of Schedule 2 (*Conditions Precedent*).

**Original Term Facility Lender** means a Lender listed in Part II (*The Original Lenders*) of Schedule 1 (*The Original Parties*) as having an Initial Term Facility Commitment.

**Other Currency** means any Optional Currency where the Agent and the Company agree that the interest rate for the Loan in that Optional Currency shall not be set by reference to Term SOFR, EURIBOR or an RFR.

**Outstanding Consideration** means any deferred consideration or earn out, or any other deferred payment arrangement, (in each case, whether actual or contingent) entered into in connection with any acquisition by any member of the Target Group referred to in any Report or which is permitted under paragraph (b) of the definition of **Permitted Acquisition**.

**Outstanding Consideration Liabilities** means, by reference to the table titled *Material Acquisitions – Outstanding Consideration Summary Table* in the legal due diligence report referred to in paragraph 1.1(b) of the definition of **Reports**, each of the Outstanding Consideration liabilities which are specified on pages 34 to 39 of such table under the headings “*Likely to be satisfied before completion of the Transaction*” and “*Likely to be satisfied following completion of the Transaction*”, in each case, to the extent not paid or satisfied on or prior to the Initial Utilisation Date.

**Panel** means The Panel on Takeovers and Mergers.

**Parent Liabilities** means all present and future moneys, debts and liabilities due, owing or incurred from time to time by the Company to the Parent (whether alone or jointly, or jointly and severally, with any other person, whether actually or contingently, and whether as principal, surety or otherwise) including, without limitation, in respect of any claims under any Financial Indebtedness owed by the Company to the Parent or any share application money (or similar amount) paid by the Parent for shares or ownership interests of the Company which have not been issued to the Parent.

**Parent Loan Document** means any document or intercompany account pursuant to which any loan is owing from the Company to the Parent.

**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.

**Participation** means a Debt Purchase Transaction other than a purchase falling within paragraph (a) of the definition thereof.

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

**Pension Plan** means any employee pension benefit plan (as defined in Section 3(2) of ERISA) (including a Multiple Employer Plan, but excluding a Multiemployer Plan) that is maintained or is contributed to by an Obligor or any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

**Perfection Requirements** means the making of the appropriate registrations, filings, endorsements, notarisation, stamping, notifications or other actions or steps to be made in any jurisdiction in order to perfect Security created by a Transaction Security Document and/or in order to achieve the relevant priority for the Security created thereunder.

**Permitted Acquisition** means:

- (a) the Acquisition, and/or any purchase of Target Shares in connection with the Acquisition as part of any stake-building exercise (or similar);
- (b) an acquisition under and pursuant to the terms of any agreement or commitment entered into by a Group Member on or prior to the Completion Date, **provided that**, unless such terms have been disclosed to the Finance Parties before the Signing Date, such acquisition has not been procured or approved by the Company in contemplation of this restriction;
- (c) an acquisition which constitutes or is part of a Permitted Disposal, a Permitted Share Issue or a Permitted Transaction;
- (d) an acquisition of securities which are Cash Equivalent Investments;
- (e) the acquisition by a Group Member of the entire issued share capital of a limited liability company (including by way of formation) which has not traded and has no assets or any liabilities prior to the date of such acquisition;
- (f) an acquisition by a Group Member constituting a Permitted Joint Venture Investment (including any acquisition by a Group Member of further shares or ownership interests in any existing Permitted Joint Venture Investment (where such further acquisition constitutes a Permitted Joint Venture Investment));
- (g) a Permitted Business Acquisition;
- (h) any acquisition by a Group Member of any assets (but not shares or a business or undertaking) that constitutes Capital Expenditure that is not prohibited by a Finance Document;
- (i) the reacquisition by a Group Member of any asset previously owned by any Group Member upon the termination of a Finance Lease that is Permitted Financial Indebtedness;
- (j) any acquisition by the Parent of shares in the Company or any Original Obligor (or by any Obligor of shares in any other Original Obligor) as contemplated under paragraph (f) of the definition of **Permitted Share Issue, provided that**, to the extent that Transaction Security is granted over those shares in the Company or relevant Obligor prior to the proposed acquisition, such Transaction Security remains in full force and

effect;

- (k) any acquisition by a Group Member of any shares, ownership interests or securities owned by minority shareholders in members of the Group;
- (l) any acquisition of assets by any Group Member from any Permitted Joint Venture in the ordinary course of business; and
- (m) any acquisition to which the Majority Lenders have given their prior written consent.

**Permitted Business Acquisition** means an acquisition by any Group Member of any Future Acquisition Target, if:

- (a) that Future Acquisition Target ((if it has any Subsidiary) together with its Subsidiaries, taken as a whole) carries on a business substantially the same as, complementary to or compatible with, that carried on by the Group;
- (b) no Event of Default is continuing on the Acquisition/Investment Commitment Date and no Event of Default would result from such acquisition (taking into account the effect of Clause 28.17 (*Clean-up period*) in connection with such acquisition) by reference to the facts and circumstances known to the Group as at the Acquisition/Investment Commitment Date;
- (c) if the Net Leverage referred to in paragraph (b) of Clause 26.2 (*Financial condition*) were re-calculated consolidating the financial statements of the Future Acquisition Target for the Most Recent Relevant Period (as at the Acquisition/Investment Commitment Date of that acquisition) with the Relevant Financial Statements (construed in accordance with the definition of **Most Recent Relevant Period**) relevant to that Most Recent Relevant Period on a *pro forma* basis (calculated on the same basis as Adjusted EBITDA) and as if the consideration for such acquisition had been paid and the Financial Indebtedness incurred or to be incurred in connection with such acquisition had been utilised at the start of that Most Recent Relevant Period, it would be not more than 4.85:1; and
- (d) the Future Acquisition Target's earnings before interest, tax, depreciation and amortisation (calculated on the same basis as Group EBITDA, including any Pro Forma Adjustments in connection with the acquisition) for the 12-Month period prior to the Acquisition/Investment Commitment Date (or, at the Company's election, the most recently ended reporting period for that Future Acquisition Target) is positive or, if it is negative, is less than US\$5,000,000.

**Permitted Cash Pooling** means any cash pooling, netting or set-off arrangement entered into by any Group Member in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances of any Group Member(s) (including an overdraft comprising more than one account).

**Permitted Disposal** means a Disposal:

- (a) of assets in the ordinary course of trading of the disposing entity;
- (b) of any asset by a Group Member to another Group Member, **provided that**, in the case of a disposal of shares in a Material Subsidiary, if the shares or ownership interests in such Material Subsidiary were subject to Transaction Security (or were due to become subject to the Transaction Security) immediately prior to the proposed Permitted Disposal, such shares are (or upon disposal become) subject to Transaction Security;

- (c) of assets by a Group Member in exchange for, replacement for or investment in other assets (which are of a comparable or superior type, value or quality) which are used in the operation of the business of the Group;
- (d) of assets which are obsolete, unused, redundant or no longer required for the business or operations of the Group;
- (e) of cash or Cash Equivalent Investments (including by way of realisation) which is not specifically prohibited by the terms of the Finance Documents (including payments for transactions permitted to be undertaken by this Agreement);
- (f) by a Group Member constituting a Permitted Joint Venture Investment;
- (g) arising as a result of any Permitted Security (other than paragraph (f) of the definition of **Permitted Security** to the extent that it relates to any Permitted Disposal) or which constitutes, is part of, or is made under or is necessary to implement, a Permitted Transaction or Permitted Share Issue or is otherwise expressly permitted elsewhere in a Finance Document;
- (h) of receivables (including those which are overdue or delinquent accounts receivables in connection with the collection or compromise of the unpaid accounts relating to those receivables) for cash either:
  - (i) on a non-recourse (as regards the ability of the account debtors of the relevant receivables to pay) basis; or
  - (ii) on a recourse basis to the extent constituting, part of or made in connection with Permitted Financial Indebtedness;
- (i) that is constituted by any collection of trade receivables in the ordinary course of day to day business;
- (j) under Finance Leases, hire purchase, conditional sale and other similar arrangements, in each case, which are otherwise permitted by the Finance Documents or constitute, or are part of, a Permitted Sale and Leaseback;
- (k) constituting a licence, lease, sub-licence or sub-lease of real property or a licence of intellectual property rights, in each case in the ordinary course of business;
- (l) of interests in real property (together with fixtures thereon) by a Group Member to any person on terms whereby it is leased back to a Group Member **provided that** the net proceeds of all such Disposals (excluding any Disposal falling within any other paragraph of this definition) do not exceed US\$35,000,000 (or its equivalent) over the life of the Facilities;
- (m) required by law or regulation or any order of any government entity made thereunder (including any seizure, expropriation or compulsory purchase of any asset or any shares or equity interests in any Group Member by (or by the order of) any Governmental Agency, **provided that** such seizure, expropriation or compulsory purchase does not result from any default or breach by the Parent or any Group Member);
- (n) under and pursuant to the terms of any agreement or commitment entered into by a Group Member on or prior to the Completion Date;
- (o) by a Future Acquisition Target (that is the subject of any Permitted Business

Acquisition and that was not a Group Member prior to such Permitted Business Acquisition but becomes a Group Member pursuant to such Permitted Business Acquisition) or any Subsidiary thereof under and pursuant to the terms of any agreement existing at completion of that Permitted Business Acquisition;

- (p) of rights relating to Treasury Transactions, constituted by any termination or close-out of such Treasury Transaction (*provided that*, in the case of any Treasury Transaction under any Hedging Agreement, such termination is permitted under Schedule 13 (*Hedging Provisions*));
- (q) of treasury shares (or shares otherwise already held by a Group Member) (or any equivalent ownership interest) in any Group Member in connection with share incentive schemes;
- (r) of shares, ownership interests or equity interests in a Group Member for cash on arm's length terms or better *provided that* (i) the relevant Group Member continues to be a Group Member; (ii) no Event of Default is continuing on the date of such Disposal and no Event of Default would result from such Disposal; and, (iii) if the shares in such Group Member were subject to Transaction Security immediately prior to the proposed Permitted Disposal, such shares or ownership interests, as applicable, and to the extent disposed to a Group Member, are (or upon disposal become) subject to Transaction Security;
- (s) of assets of Group Members for cash where the Net Proceeds of that Disposal (when aggregated with the Net Proceeds receivable for any other Disposal allowed under the paragraphs of this definition of *Permitted Disposal*) does not exceed US\$15,000,000 (or its equivalent) in any Financial Year and does not exceed US\$70,000,000 (or its equivalent) in aggregate over the life of the Facilities;
- (t) of assets of Group Members (other than shares or material intellectual property necessary for the operation of the day to day business of the Group) on normal commercial terms where the proceeds of which are applied or committed or designated by the board of directors (or equivalent) of the relevant Group Member to be applied in reinvestment in other assets to be used in the business of the Group or for financing Capital Expenditure (or refinancing Capital Expenditure incurred in the 12 Months immediately prior to that Disposal) or for financing a Permitted Acquisition or a Permitted Joint Venture Investment (or refinancing a Permitted Acquisition or a Permitted Joint Venture Investment incurred in the 12 Months immediately prior to that Disposal) or for any other working capital or general corporate purposes (other than to fund a Permitted Payment or to repay any Permitted Financial Indebtedness) within 12 Months of when those proceeds are received by the applicable Group Member (or, if so committed or designated in that 12-month period, are actually applied within 18 Months of receipt by the applicable Group Member) or are applied in prepayment of any of the Facilities in accordance with Clause 12.2 (*Disposal Proceeds, Insurance Proceeds and Recovery Proceeds*);
- (u) any disposals of assets by any Group Member (other than shares in Group Members) to any Permitted Joint Venture in the ordinary course of business;
- (v) disposals pursuant to the grant or termination of leasehold interests in, or licences of, property in the ordinary course of business, excluding exclusive leases or leases of real property required for the ongoing trading of the Group;
- (w) of shares, ownership interests or equity interests in a Group Member, to a person who is not a Group Member, for cash on arm's length terms or better; and

- (x) any disposal to which the Majority Lenders have given their prior written consent.

***Permitted Financial Indebtedness*** means:

- (a) Financial Indebtedness arising under any of the Finance Documents;
- (b) Financial Indebtedness which constitutes:
  - (i) any Financial Indebtedness of the Parent owed to its shareholders or others and which is used to fund payments in connection with the Acquisition, Permitted Holding Company Activities and/or New Shareholder Injections; or
  - (ii) Financial Indebtedness of the Company owed to the Parent (including Parent Liabilities) that is subordinated to the Facilities on terms of the Subordination Agreement or on terms that are otherwise satisfactory to the Agent (acting reasonably) but only if the creditor's rights in respect of such Financial Indebtedness are assigned to the Security Agent by way of security on terms satisfactory to the Agent (acting on the instructions of the Majority Lenders, each acting reasonably);
- (c) Financial Indebtedness constituting, or that is part of or made or incurred under, a Permitted Guarantee (other than paragraph (d) of the definition of ***Permitted Guarantee***, to the extent that it applies to any Permitted Financial Indebtedness), a Permitted Loan (other than paragraph (b) of the definition of ***Permitted Loan*** to the extent that it applies to any Permitted Financial Indebtedness), Permitted Cash Pooling or a Permitted Treasury Transaction;
- (d) Financial Indebtedness of a Group Member arising under any earn-out or similar arrangement constituting Deferred Consideration;
- (e) Financial Indebtedness raised by the issue of redeemable shares or ownership interests which are held by another wholly-owned Group Member pursuant to a Permitted Share Issue;
- (f) Financial Indebtedness incurred by any person acquired by the Group (or indebtedness attaching to the assets of such person) pursuant to a Permitted Acquisition and which is in existence at the time of that acquisition and not incurred or increased in contemplation of the acquisition and is discharged within four months of completion of the acquisition unless otherwise permitted to remain outstanding pursuant to another paragraph of this definition;
- (g) Financial Indebtedness arising between members of the Group;
- (h) until the date that is 25 Business Days after the Completion Date, the Existing Indebtedness;
- (i) to the extent covered by a Letter of Credit or other letter of credit, guarantee or indemnity issued under an Ancillary Facility;
- (j) Financial Indebtedness of any Group Member (whether secured or unsecured) including, but not limited, to Financial Indebtedness incurred or arising under (i) Finance Leases of vehicles, equipment, computers or fixed assets; (ii) any vendor financing relating to purchased equipment; (iii) an arrangement for the sale or discounting of receivables of Group Members on a recourse basis (including by way of securitisation or similar programme and where the recourse is limited to such



receivables), and excluding (for the avoidance of doubt) any capitalised operating leases to the extent applicable; and (iv) any arrangement evidencing Financial Indebtedness which replaces (or refinances) any Existing Indebtedness, **provided that** the principal amount of such Financial Indebtedness does not (when aggregated (without duplication) with the aggregate principal amount of other Financial Indebtedness incurred under this paragraph (j)) at any time exceed the greater of:

- (i) US\$197,700,000 (or its equivalent); and
- (ii) an amount equal to 100 per cent. of Adjusted EBITDA for the Most Recent Relevant Period as at which such Financial Indebtedness is incurred, and for these purposes, all Financial Indebtedness of the Target Group Members outstanding on the Signing Date and to the extent they are not otherwise permitted under any other paragraph of this definition, will be deemed to be incurred for the purposes of the computation under this paragraph (j);
- (k) Financial Indebtedness arising as a result of daylight exposures of any Group Member in respect of banking arrangements entered into in the ordinary course of its treasury activities;
- (l) Financial Indebtedness (i) incurred in the ordinary course of trading in respect of obligations of any Group Member to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services and/or (ii) in respect of letters of credit, bankers' acceptances, bank guarantees or similar instruments supporting trade payables, warehouse receipts or similar facilities entered into in the ordinary course of trading;
- (m) Financial Indebtedness arising under capitalised operating leases;
- (n) Financial Indebtedness of any Group Member consisting of (i) the financing of insurance premiums, (ii) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business, and/or (iii) obligations to reacquire assets or inventory in connection with customer financing arrangements in the ordinary course of business;
- (o) Financial Indebtedness of any Group Member representing deferred compensation or other similar arrangements to directors, officers, employees, members of management and managers of any Group Member in the ordinary course of business; and
- (p) any other Financial Indebtedness to which the Majority Lenders have given their prior written consent,

**provided that** in the event that any Financial Indebtedness (**Refinancing Debt**) is incurred for the purposes of refinancing any other Financial Indebtedness (**Refinanced Debt**), any temporary non-compliance of any foregoing limit shall not result in any Refinancing Debt or Refinanced Debt not being permitted, as long as such limit would have been complied with had the proceeds of such Refinancing Debt been applied towards such refinancing and the applicable Group Members are taking reasonable steps to apply the proceeds of such Refinancing Debt towards the refinancing of such Refinanced Debt **provided further that** such application towards refinancing of such Refinanced Debt will be made within one Business Day after the date of utilisation of such Refinancing Debt.

**Permitted Guarantee** means:

- (a) any guarantee under the Finance Documents;

- (b) the endorsement of negotiable instruments and the giving of indemnities by a Group Member in the ordinary course of business;
- (c) guarantees granted by a Group Member in relation to performance by any Group Member under any contract entered into in the ordinary course of business (and counter-indemnities to financial institutions which have guaranteed such performance) but, in each case, not in respect of Financial Indebtedness;
- (d) guarantees granted by a Group Member which constitute, are part of or are given under, any Permitted Financial Indebtedness (other than paragraph (c) of the definition of **Permitted Financial Indebtedness** to the extent it relates to any Permitted Guarantee), any Permitted Cash Pooling, any Permitted Joint Venture Investment in a Permitted Joint Venture, a Permitted Transaction (to the extent not constituting a guarantee of Financial Indebtedness) or a Permitted Treasury Transaction;
- (e) guarantees granted by a Group Member on or prior to the Completion Date;
- (f) guarantees granted by any Future Acquisition Target (that is the subject of any Permitted Business Acquisition and that was not a Group Member prior to such Permitted Business Acquisition but becomes a Group Member pursuant to such Permitted Business Acquisition) or any Subsidiary thereof and existing at the time of such Permitted Business Acquisition, **provided that** if any such guarantees constitute Financial Indebtedness, such guarantees shall only be permitted to the extent such guarantees could remain outstanding pursuant to paragraph (j) of the definition of **Permitted Financial Indebtedness**;
- (g) indemnities (in customary form) given in the ordinary course of the documentation of an acquisition or disposal transaction;
- (h) guarantees required by a court, tribunal, arbitral body or agency in connection with arbitration and other legal proceedings not otherwise being an Event of Default;
- (i) guarantees given by any Group Member in respect of the obligations of another Group Members;
- (j) guarantees given by a Group Member to landlords in the ordinary course of business and guarantees and counter-indemnities in favour of financial institutions which have guaranteed rent obligations of a Group Member in respect of real property in the ordinary course of business for such Group Members;
- (k) guarantees granted by any Group Member in substitution for an extension of credit permitted under the definition of **Permitted Loan** to the extent that that Group Member would have been entitled to extend credit in an equivalent amount under the definition of **Permitted Loan** (taking into account the substitution of such credit with the guarantees and indemnities as contemplated in this paragraph (k)) to the person whose obligations are being so guaranteed or, as applicable, indemnified;
- (l) any guarantee granted by any Group Member to the trustee of any employee share option or employee unit trust scheme of that Group Member;
- (m) customary indemnities given in mandate, engagement and commitment letters and financing documentation and to professional advisers and consultants;
- (n) customary indemnities in favour of directors and officers of any Group Member in their capacity as such in connection with the performance of their duties to that Group

Member;

- (o) any counter-indemnity obligations of any Group Member in respect of any performance bond or similar instrument issued by a bank or financial institution guaranteeing or in support of performance by any Group Member under any contract entered into in the ordinary course of its business (and not relating to Financial Indebtedness);
- (p) any liability arising as a result of a fiscal unity (*fiscale eenheid*) for Dutch corporate income tax purposes involving the Parent and the Company;
- (q) guarantees given by the Company to the Dutch tax authorities as a result of being a member of a fiscal unity (*fiscale eenheid*) for Dutch corporate income tax or VAT purposes involving the Parent and the Company;
- (r) guarantees granted or arising under or in connection with legislation relating to tax or corporate law under which any Group Member assumes general liability for the obligations of another Group Member incorporated or tax resident in the same jurisdiction; and
- (s) any guarantees or indemnities to which the Majority Lenders have given their prior written consent.

***Permitted Holding Company Activity*** means:

- (a) liabilities arising from the incurrence of fees, costs, commissions, expenses and undertaking activities (other than the incurrence of Financial Indebtedness not permitted by the Finance Documents) in the ordinary course of business of a holding company including in connection with maintenance of existence, all necessary filings and compliance with all applicable laws and liabilities arising by operation of law or agreement of similar effect;
- (b) treasury and normal holding company activities, including the provision of administrative, management, legal and accounting services to other Group Members of a type customarily provided by a holding company to its subsidiaries;
- (c) (x) the entry into and performance of its obligations under or as contemplated by the Transaction Documents, and (y) making or receiving Permitted Loans, giving or benefiting from Permitted Guarantees, making any Permitted Treasury Transactions, making or receiving any Permitted Payments, issuing or subscribing for a Permitted Share Issue, making a Permitted Disposal or Permitted Acquisition or acquiring rights or incurring liabilities otherwise permitted under the Finance Documents and incurring any Permitted Financial Indebtedness including:
  - (i) any rights and liabilities that are Parent Liabilities or (in respect of the Parent) any loans or indebtedness arising between the Parent and its Holding Company (or any Affiliate of its Holding Company);
  - (ii) any Financial Indebtedness and/or other liabilities incurred under the Transaction Documents;
  - (iii) any Financial Indebtedness between Group Members; and
  - (iv) any guarantee or indemnity given under the Finance Documents or in connection with the Acquisition;

- (d) acquisition and ownership (in the case of (i) and (ii), whether directly or indirectly) of:
  - (i) in respect of the Parent, shares or ownership interests in the Company;
  - (ii) in respect of the Company and the Original Obligors, shares or ownership interests in Topco, Midco, Bidco, the Target or its other Subsidiaries (as applicable);
  - (iii) in respect of the Parent and the Original Obligors, credit balances in bank accounts, cash and Cash Equivalent Investments;
- (e) the payment of salaries, bonuses and other similar expenses or amounts to management, directors, officers, employees and consultants of the relevant entity or the Group in the ordinary course of business of a holding company;
- (f) any action taken pursuant to a Permitted Transaction that does not result in the incurrance of Financial Indebtedness and any arrangement in respect of, or the making of, a Permitted Payment or entering into a transaction to facilitate making a Permitted Payment;
- (g) non-trading activities customary for non-trading companies in a transaction of this nature, entry into (and payment of related fees, costs and expenses) any escrow arrangements contemplated by any Transaction Documents, and/or incurrance of liabilities in connection with Taxes, including as a result of acting as the person responsible for payment of Taxes in a tax group (or equivalent);
- (h) any activity (other than the incurrance of Financial Indebtedness not permitted by the Finance Documents) in connection with any employee or participation scheme operated by a Group Member or any Holding Company thereof;
- (i) any listing or admission to trading of any part of the share capital of the Parent on any recognised stock exchange in any jurisdiction or any activity in connection thereof (including, in each case, any payments of fees, costs and expenses incurred in connection with any such listing or admission); and
- (j) any other activity or transaction permitted by the Agent (with the consent of the Majority Lenders).

***Permitted Joint Venture*** means:

- (a) any Joint Venture entered into by a Group Member which ((if it has any Subsidiary) together with its Subsidiaries, taken as a whole) carries on a business substantially the same as, complementary to or compatible with, that carried on by the Group;
- (b) any Joint Venture entered into by a Group Member constituting, being part of or entered into under or pursuant to, a Permitted Transaction; and
- (c) any Existing Joint Venture.

***Permitted Joint Venture Investment*** means:

- (a) any Joint Venture Investment by any person which becomes a Group Member in accordance with the terms of this Agreement, after the Initial Utilisation Date, ***provided that*** any further investment in such Joint Venture is committed on or prior to the date on which such person becomes a Group Member; or

- (b) any Joint Venture Investment by a Group Member in a Permitted Joint Venture:
- (i) where, as at the Acquisition/Investment Commitment Date in respect of that Joint Venture Investment, no Event of Default is continuing or would result from such Joint Venture Investment, in each case by reference to the facts and circumstances known to the Group as at the Acquisition/Investment Commitment Date; and
  - (ii) if the Net Leverage referred to in paragraph (b) of Clause 26.2 (*Financial condition*) were re-calculated for the Most Recent Relevant Period (as at the Acquisition/Investment Commitment Date) on a *pro forma* basis (calculated on the same basis as Adjusted EBITDA) and as if the consideration for such Joint Venture Investment had been paid and the Financial Indebtedness to be incurred in connection with such Joint Venture Investment had been utilised at the start of that Most Recent Relevant Period, it would have complied with the requirements of paragraphs (a) and (b) of Clause 26.2 (*Financial condition*) for that Most Recent Relevant Period, it would be not more than 4.85:1.

***Permitted Loan*** means:

- (a) any trade credit extended by a Group Member in the ordinary course of day-to-day business and/or any deposit or advance payment made (including advance payment in relation to permitted Capital Expenditure) in the ordinary course of day-to-day business;
- (b) a loan or credit which constitutes, is part of or is made under or is necessary to implement, any Permitted Financial Indebtedness (except under paragraph (c) thereof to the extent that such paragraph (c) relates to any Permitted Loan), a Permitted Joint Venture Investment, a Permitted Payment or a Permitted Transaction ***provided that*** any indebtedness incurred by the Company in connection with such loan is Permitted Financial Indebtedness under paragraph (b)(ii) of that definition;
- (c) any loan or credit made available for the purposes of enabling a Borrower or an Obligor to meet its payment obligations under the Finance Documents or in respect of any Parent Liabilities permitted under the Finance Documents, to make a Permitted Payment or to facilitate compliance with applicable law ***provided that*** any indebtedness incurred by the Company in connection with such loan is Permitted Financial Indebtedness under paragraph (b)(ii) of that definition;
- (d) any loan or credit made available by a Group Member to another Group Member;
- (e) any loan or credit made available by the Parent to the Company (including, in each case, any loan or credit made available by the Parent pursuant to the Parent Loan Document) that is subject to Transaction Security and also subordinated to the Facilities pursuant to the Subordination Agreement or otherwise on terms that are acceptable to the Agent (acting reasonably);
- (f) a loan made by any Group Member to a director, officer, manager or employee of any Group Member if the amount of that loan when aggregated with the amount of all other such loans (excluding any loan falling within any other paragraph of this definition) does not exceed US\$30,000,000 (or its equivalent) at any time;
- (g) any loan or credit arrangement made by a Group Member on or prior to the Completion Date ***provided that*** the principal amount of that loan or credit arrangement is not increased from the principal amount outstanding on the Completion Date (except

pursuant to a commitment binding on any Group Member as at the Completion Date);

- (h) any loan or credit made (or committed to be made) by a Future Acquisition Target (the subject of a Permitted Business Acquisition, which Future Acquisition Target was not a Group Member prior to such Permitted Business Acquisition but becomes a Group Member pursuant to such Permitted Business Acquisition) or any Subsidiary thereof, which loan or credit is existing as at the closing date of such Permitted Business Acquisition (as any such loan or credit arrangement may be transferred to another Group Member), **provided that** the principal amount of that loan or credit arrangement is not increased from the principal amount outstanding on the date of closing of such Permitted Business Acquisition (except pursuant to a commitment binding on such Future Acquisition Target or any Subsidiary thereof as at the date of closing of such Permitted Business Acquisition);
- (i) any loan or credit representing deferred consideration on a Permitted Disposal which loan or credit is no more than 50 per cent. of the total consideration for that Permitted Disposal (**provided that** contingent consideration arrangements (including earn-outs) shall not be treated as a loan or credit for this purpose) and the terms of such deferred consideration are that it shall be paid within 18 months of the closing date of such Permitted Disposal;
- (j) any loan or credit constituted by any cash credit balance at a bank or other financial institution;
- (k) loans or extensions of credit to the extent the amount thereof would be permitted under paragraph (k) of the definition of **Permitted Guarantee** if such loans or extensions of credit were made by third parties under and with the benefit of the guarantee of the Company or any other Group Member (for the amount of such loans or extensions of credit);
- (l) any loan or credit granted by a Group Member the outstanding principal amount of which, when aggregated with the outstanding principal amount of all other loans or credits under this paragraph (l) (excluding any permitted under any other paragraph of this definition) and any guarantee or indemnity under paragraph (k) of the definition of **Permitted Guarantee**, does not exceed US\$22,000,000 (or its equivalent) in aggregate at any time;
- (m) any trade credit extended by any Target Group Member to its customers on normal commercial terms and in the ordinary course of its day-to-day business; and
- (n) any other loan to which the Majority Lenders have given their prior written consent.

**Permitted Payment** means:

- (a) the making of any Restricted Payment (not falling within paragraph (c) of the definition of **Restricted Payment**), by a Group Member (other than the Company):
  - (i) in favour of the holder(s) of shares or equity interests in such Group Member *pro rata* according to the applicable holding of shares or equity interests in such first-mentioned Group Member held by such holder(s); or
  - (ii) in favour of the holder(s) of shares or equity interests in such Group Member pursuant to a buyback of shares or equity interests in such Group Member;
- (b) a payment to any Sponsor and any of its Affiliates to cover transaction fees and

expenses incurred in connection with the Acquisition, **provided that** such payments are reflected in the Funds Flow Statement;

- (c) payments by Group Members to departing managers, directors, employees or officers of the Group in accordance with the terms of their service contracts (**provided that** their service contracts relate principally to the business of the Group) **provided that** the aggregate amount of such payments by Group Members under this paragraph (c) and paragraph (d) below does not in any Financial Year exceed US\$8,000,000 (or its equivalent);
- (d) payment to or for the account of a (direct or indirect) Holding Company of the Company in order to enable that Holding Company (i) to maintain its corporate existence (including payment of applicable regulatory costs), (ii) to pay fees, costs and expenses related to the Group, (iii) to pay fees and expenses (including ad hoc advisory fees) and (iv) to make distributions in respect of Taxes to the extent they relate to or are attributable to the Group (including as a result of any tax grouping or similar arrangement), **provided that** the aggregate of such payments by Group Members under this paragraph (d)(i), (d)(ii) and (d)(iii) (when aggregated with payments by Group Members under paragraph (c) above) does not exceed US\$8,000,000 (or its equivalent) in any Financial Year;
- (e) the declaration and payment of a Restricted Payment in cash by the Company at any time, **provided that**:
  - (i) no Event of Default is continuing or would result from such payment being made; and
  - (ii) the Most Recent Net Leverage (as at the time of declaration of such Restricted Payment) calculated giving *pro forma* effect to such payment (and any Financial Indebtedness incurred or to be incurred to finance such payment) is less than or equal to 3.75:1 as at the time of declaration of such Restricted Payment;
- (f) a payment by a Group Member constituting, or that is part of or made under, a Permitted Transaction or pursuant to the Acquisition Documents;
- (g) any payment to directly or indirectly acquire shares or other ownership interests (and/or to cancel, discharge, purchase or repay any related loans and other amounts owing to the Group) held by (or owing to) any present or former employees, directors, officers, managers or consultants of Group Members (or any transferee thereof) (or their estates or the beneficiaries of such estates) in respect of any management equity, incentive, benefit or stock option plan (or other similar agreement or arrangement) not exceeding US\$35,000,000 (or its equivalent) over the life of the Facilities;
- (h) the declaration and payment of a Restricted Payment in cash by the Company to the Parent from the proceeds of any prepayments that have been waived by one or more Lenders **provided that** no Event of Default is continuing at the time of payment of such Restricted Payment by the Company or would result from such payment being made;
- (i) the declaration and payment of a Restricted Payment in cash by the Company of an amount no greater than New Shareholder Injections (other than any New Shareholder Injections applied by a Borrower for the purposes of Clause 26.5 (*Cure rights*) or Clause 27.31 (*Outstanding Consideration*)) made or contributed by the Parent after the first Utilisation Date **provided that**, no Event of Default is continuing or would result from such payment being made; or

- (j) any payment of any management, advisory, transaction, consulting, structuring or other fee or similar amount by the Company to, or to the order of, any of the shareholders of the Company, the Parent or any Sponsor (or a Sponsor Affiliate) not exceeding (per Financial Year) the greater of:
  - (i) US\$10,000,000 (or its equivalent); and
  - (ii) an amount equal to 5 per cent. of Adjusted EBITDA for the Most Recent Relevant Period as at which such payment is made,
 provided that:
  - (A) no Event of Default is continuing at the time of payment of such Restricted Payment by the Company; and
  - (B) the Most Recent Net Leverage (as at the time of declaration of such Restricted Payment) calculated giving *pro forma* effect to such payment is less than or equal to the maximum permitted Net Leverage for the Most Recent Relevant Period;
- (k) any Restricted Payment by any Group Member (other than the Company) directly or indirectly to the Company for the purposes of debt service of the Group (including any prepayment or repayment thereof) at any time;
- (l) any other payment to which the Majority Lenders have given their prior written consent.

**Permitted Reorganisation** means the liquidation, dissolution, reorganisation, merger, demerger, amalgamation, consolidation or corporate reconstruction (a **Reorganisation**) on a solvent basis of any Group Member (other than the Company) so long as any payments or assets distributed as a result of such Reorganisation are distributed to other Group Members (or to the holder(s) of shares or equity interests in such Group Member pro rata according to their respective holding of shares or equity interests in such Group Member).

**Permitted Sale and Leaseback** means the disposal of one or more assets (including any real property (or any fixtures thereon)) by a Group Member on terms where they may be leased back to a Group Member, **provided that** the aggregate amount of the higher of the market value of those assets and the proceeds raised from that disposal does not exceed (in aggregate for any and all such disposals) US\$41,000,000 (or its equivalent) over the life of the Facilities.

**Permitted Security** means:

- (a) any Security or Quasi-Security arising by operation of law or agreement of similar effect and in the ordinary course of business;
- (b) any Security or Quasi-Security subsisting over assets of a Group Member arising in connection with Permitted Cash Pooling and any Security or Quasi-Security granted to a financial institution on that financial institution's standard terms and conditions (or better) or under applicable law in respect of accounts and services;
- (c) any Security or Quasi-Security over or affecting any asset acquired by a Group Member after the Completion Date if:
  - (i) that Security or Quasi-Security was not created in contemplation of (and was subsisting at the time of) the acquisition of that asset by that Group Member;



- (ii) the principal amount secured (otherwise than by a capitalisation of interest) has not been increased in contemplation of or since the acquisition of that asset by that Group Member; and
  - (iii) that Security or Quasi-Security is removed or discharged within four months of the date of acquisition of that asset by that Group Member (save to the extent that such Security or Quasi-Security constitutes Permitted Security under another paragraph of this definition);
- (d) any Security or Quasi-Security over or affecting any asset of any person which becomes a Group Member after the Completion Date, where that Security or Quasi-Security is created prior to the date on which that person becomes a Group Member; if:
- (i) that Security or Quasi-Security was not created in contemplation of that person's becoming a Group Member;
  - (ii) the principal amount secured has not increased (otherwise than by capitalisation of interest) in contemplation of or since that person's becoming a Group Member; and
  - (iii) that Security or Quasi-Security is removed or discharged within four months of that person's becoming a Group Member (save to the extent that such Security or Quasi-Security constitutes Permitted Security under another paragraph of this definition);
- (e) any Security or Quasi-Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to any Group Member in the ordinary course of business and on the supplier's standard or usual terms and not as a result of any default or omission by any Group Member;
- (f) any Security or Quasi-Security arising in connection with a Permitted Disposal (other than paragraphs (f) or (h)(ii) of the definition of *Permitted Disposal* to the extent it relates to any Permitted Security) or a Permitted Acquisition;
- (g) any payment or close-out netting or set-off arrangements under Permitted Treasury Transactions, *provided that* such arrangements shall not provide for any amount owing to any Obligor to be netted or set-off against any obligations or liabilities of any person other than an Obligor or a Group Member;
- (h) any set-off or netting arrangements under Permitted Financial Indebtedness, *provided that* such arrangements shall not provide for any amount owing to any Obligor to be set off or netted against any obligations or liabilities of any person other than an Obligor or a Group Member;
- (i) any Transaction Security including cash collateral to secure, and any blocked accounts in respect of, obligations under the Finance Documents;
- (j) any Security or Quasi-Security arising out of judgments or awards and/or arising by operation of law or the rules of any applicable court in respect of litigation involving any Group Member (including any escrow payment into court);
- (k) any Security or Quasi-Security over any rental deposits or similar amounts placed into escrow in respect of any property or other assets leased or licensed by any Group Member in the ordinary course of business;

- (l) any Security or Quasi-Security over documents of title and goods and rights relating to those goods created by any Group Member as part of a documentary credit transaction;
- (m) any Security or Quasi-Security (arising by operation of law or pursuant to mandatory provisions of applicable law) over any assets of any Group Member as security for the payment of any taxes, assessments, charges or claims of or imposed by any Governmental Agency against or on such Group Member **provided that** such Security or Quasi-Security is discharged within 30 days or would otherwise not be materially adverse to the interests of the Secured Parties (taken as a whole);
- (n) any Security or Quasi-Security over any assets of any Group Member which does not secure any outstanding actual or contingent obligation, **provided that** the relevant Group Member takes commercially reasonable steps to procure the release of that Security or Quasi-Security;
- (o) any Security or Quasi-Security over cash paid into an escrow, controlled account or similar account in connection with a Permitted Disposal or a Permitted Acquisition including those in favour of any tax, customs or bonding authorities;
- (p) any cash collateral provided by a Group Member in respect of letters of credit or bank guarantees to the issuer of those letters of credit or bank guarantees (where such letters of credit or bank guarantees are issued for the benefit of any Group Member);
- (q) deposits by a Group Member to secure the performance of bids, trade contracts, governmental contracts and leases (in each case other than Financial Indebtedness), statutory obligations, surety, stays, customs and appeal bonds, performance bonds and other obligations of a like nature (including those to secure health, safety and environmental obligations) of any Group Member incurred in the ordinary course of business;
- (r) any Security or Quasi-Security over any asset of a Group Member constituted by easements, rights-of-way, restrictions, encroachments, protrusions and other similar encumbrances and title defects affecting real property which, in the aggregate, do not materially interfere with the ordinary conduct of the business of the applicable Group Member;
- (s) utility easements, building restrictions and such other Security against real property owned or occupied by a Group Member as are of a nature generally existing with respect to properties of a similar character;
- (t) any Security or Quasi-Security subsisting over assets of a Group Member (including, but not limited to, Excluded Accounts, but excluding shares in any Material Subsidiary Holdco and, to the extent not subject to any Transaction Security, shares in any Material Subsidiary) in respect of Financial Indebtedness incurred under paragraph (j) of the definition of **Permitted Financial Indebtedness** (including, where required, second ranking security over any assets subject to Transaction Security subject, where second ranking security is to be granted, to execution of an intercreditor or subordination agreement with the providers of such indebtedness in form and substance satisfactory to the Finance Parties (acting reasonably));
- (u) any Security or Quasi-Security granted in respect of any Existing Indebtedness **provided that** any such Security or Quasi-Security is released as soon as practicable after the date on which such Existing Indebtedness is repaid in full and in any event no later than three Business Days after the date on which such Existing Indebtedness is repaid in full;

- (v) any security interest or right of set-off in favour of Dutch banks arising from their general banking conditions (*algemene bankvoorwaarden*); and
- (w) any other Security or Quasi-Security to which the Majority Lenders have given their prior written consent.

***Permitted Share Issue*** means an issue of shares or ownership interests:

- (a) by the Company to the Parent, in each case, which is not redeemable at the option of the holder thereof before the date falling six Months after the Termination Date, where such shares or ownership interests, as applicable, are (or upon issuance become) subject to Transaction Security;
- (b) by a Group Member (other than the Company) to its Holding Company(ies) or (in the case of the Target) to Bidco, ***provided*** (i) such Holding Companies are themselves Group Members, and (ii) if the shares or ownership interests of such Group Member were subject to Transaction Security prior to the proposed Permitted Share Issue, such new shares or ownership interests, as applicable, are (or upon issuance become) subject to Transaction Security;
- (c) by a Group Member (other than the Company) on arm's length terms or better to a person (that is not a Group Member) and such Group Member remains a Group Member after such issuance;
- (d) by a Group Member (other than the Company) to managers, officers, directors, employees or distributors of the Group pursuant to any share incentive scheme or any employee stock ownership plan, ***provided that*** such issuance will be in compliance with paragraph (c) above;
- (e) by a Group Member constituting, or that is part of or made under or pursuant to, a Permitted Transaction which does not give rise to a Change of Control or, if it does give rise to a Change of Control, Clause 12.1 (*Exit Event*) is complied with ***provided that*** (i) to the extent such Permitted Share Issue does not give rise to a Change of Control, such Group Member remains a Group Member after such issuance and (ii) if the shares or ownership interests of such Group Member were subject to Transaction Security immediately prior to the proposed Permitted Share Issue, such new shares or ownership interests, as applicable and to the extent issued to a Group Member, are (or upon issuance become) subject to Transaction Security;
- (f) by the Company or an Original Obligor of shares or ownership interests as consideration for any Permitted Acquisition, ***provided that*** such shares or ownership interests, as applicable, (if issued to any person other than the Parent or an Original Obligor) are promptly transferred directly or indirectly (whether through equity contribution or otherwise) to the Parent or an Original Obligor and become subject to Transaction Security (free from any claims, third party rights or competing interests);
- (g) by a Group Member (other than the Company), ***provided that*** (i) such issue would not result in a Default under Clause 27.25 (*Sponsor investments*); (ii) if the shares or ownership interests in such Group Member were subject to Transaction Security immediately prior to the proposed Permitted Share Issue, such shares or ownership interests, as applicable, and to the extent issued to a Group Member are (or upon issuance become) subject to Transaction Security; and, (iii) such Group Member remains a Group Member after such issuance;
- (h) by a Group Member in connection with an IPO where such issue would not result in a

Change of Control or, if it would result in a Change of Control, the Company complies with Clause 12.1 (*Exit Event*) and Clause 27.19 (*Share capital*);

- (i) by a Group Member (other than the Company or an Obligor) to a person that is not a Group Member on arm's length terms or better, and such Group Member does not remain a Group Member after such issuance; and
- (j) any other issuance of shares to which the Majority Lenders have given their prior written consent.

***Permitted Transaction*** means:

- (a) any disposal required, Financial Indebtedness incurred, guarantee, indemnity or Security or Quasi-Security given, or other payment or transaction arising, under the Finance Documents or the Acquisition Documents;
- (b) a Permitted Reorganisation;
- (c) where necessary to comply with Tax or other legislation, any conversion into distributable reserves or share capital, capitalisation, forgiveness, waiver, release or other discharge of a loan or credit (including an intercompany account) outstanding between Group Members or between the Parent and the Company, ***provided that*** if that loan or credit was subject to Transaction Security prior to such event, the Finance Parties will enjoy equivalent Transaction Security over any asset resulting from such event;
- (d) any payment or other transaction set out in, described in or contemplated by the Acquisition Documents, the Funds Flow Statement or permitted by the Majority Lenders, or any action or intermediate or facilitative step necessary to implement any such payment or transaction, or any payment in respect of Outstanding Consideration;
- (e) any acquisition by any Group Member of, or any loan to a trust or special purpose vehicle to fund the acquisition of, shares or other ownership interests or loan notes of managers, directors, officers and employees of a Group Member on their ceasing to be employed or appointed, but only if the aggregate amount of consideration paid (excluding any such consideration funded from any New Shareholder Injection or Permitted Financial Indebtedness) does not exceed the threshold set out in paragraph (g) of the definition of ***Permitted Payment***;
- (f) any acquisition by way of merger or amalgamation (***provided that*** such acquisition is a Permitted Acquisition other than pursuant to paragraph (c) of that definition);
- (g) the execution, delivery and performance of any documents relating to the formation and maintenance of any consolidated group or fiscal unity for accounting, cash pooling, management or tax purposes ***provided that*** any cash pooling is between members of the Group or otherwise permitted under this Agreement;
- (h) transactions (including, where relevant, any listing) relating to the issuance and subscription by Group Members of notes or debt instruments representing Permitted Financial Indebtedness under paragraph (g) of that definition.

***Permitted Transferee*** means, in relation to a Transfer:

- (a) a Lender or an Affiliate of a Lender; or

- (b) any other bank, financial institution, trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets,

but in each case excluding any such entity which is a Defaulting Lender, a Conflicted Lender, a Non-Commercial Investor, the Parent or any Group Member.

**Permitted Treasury Transaction** means:

- (a) any hedging transaction in respect of interest rate or foreign exchange liabilities and/or risks relating to the Facilities **provided that** subject to paragraph 3.13 (*Total Interest Rate Hedging and Total Exchange Rate Hedging*) of Schedule 13 (*Hedging Provisions*), the aggregate notional amount of such hedging transaction does not exceed the aggregate principal amount then outstanding under the Facilities (or, if any such excess arises, the applicable Obligor or Group Member takes prompt action to eliminate such excess, including through close-out or termination of any such hedging transaction in whole or in part in accordance with paragraph 3.13 (*Total Interest Rate Hedging and Total Exchange Rate Hedging*) of Schedule 13 (*Hedging Provisions*));
- (b) spot and forward delivery foreign exchange transactions entered into in the ordinary course of business and not for speculative purposes;
- (c) spot and forward delivery foreign exchange transactions entered into in relation to the Acquisition or Acquisition Documents for which no contingent liability exists as at a Utilisation Date except to the extent the funding of such liability is contemplated in the relevant Funds Flow Statement; and
- (d) any Treasury Transaction entered into by a Group Member for the hedging of actual or projected real exposures arising in the ordinary course of trading activities of a Group Member and not for speculative purposes.

**PRC** means the People's Republic of China which, for the purpose of this Agreement, does not include Hong Kong, Macau or Taiwan.

**Prevailing Market Determination** means a determination by the Agent (that shall be made by the Agent acting in good faith and promptly) in relation to the provisions of any document or any Benchmark Rate Change, where such determination shall be given if such provisions broadly reflect at such time any prevailing London or Asian market position for loans in the relevant currency.

**Pro Forma Adjustments** means any adjustment made in accordance with paragraph (c) of Clause 26.3 (*Financial testing*).

**Proceeds** means Disposal Proceeds, Insurance Proceeds and Recovery Proceeds.

**PSC Notice** means a “restrictions notice” as defined in paragraph 1 of Schedule 1B of the Companies Act 2006.

**PSC Register** means “PSC register” within the meaning of section 790C(10) of the Companies Act 2006.

**Qualified ECP Guarantor** means, in respect of any Swap Obligation, each Obligor that has total assets exceeding US\$10,000,000 at the time the relevant guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other person as constitutes an “eligible contract participant” under the Commodity Exchange Act or any

regulations promulgated thereunder and can cause another person to qualify as an “eligible contract participant” at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

**Qualifying Lender** means:

- (a) a Dutch Qualifying Lender; or
- (b) a UK Qualifying Lender.

**Quarter Date** has the meaning given to that term in Clause 26.1 (*Financial definitions*).

**Quarterly Financial Statements** means the financial statements of each of the Company, Topco, Midco, Bidco and the Target Group, in each case, delivered pursuant to paragraph (b) of Clause 25.1 (*Financial statements*).

**Quasi-Security** has the meaning given to that term in Clause 27.12 (*No encumbrance*).

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

- (a) (if the currency is USD) two US Government Securities Business Days before the first day of that period;
- (b) (if the currency is Euro) 2 TARGET Days before the first day of that period; or
- (c) (for any other currency) two Business Days before the first day of that period (unless market practice differs in the Relevant Market for that currency, in which case the Quotation Day for that currency and that period will be determined by the Agent in accordance with market practice in the Relevant Market (and if quotations would normally be given by leading banks in the Relevant Market on more than one day, the Quotation Day will be the last of those days)).

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

**Recovered Amount** has the meaning given to that term in Clause 34.1 (*Payments to Secured Parties*).

**Recovering Secured Party** has the meaning given to that term in Clause 34.1 (*Payments to Secured Parties*).

**Recovery Proceeds** means the Net Proceeds of any claim (a **Recovery Claim**) against the provider of any Report (in its capacity as a provider of that Report), except for Excluded Recovery Proceeds **provided that**:

- (a) such Net Proceeds (the **Relevant Recovery Proceeds**) shall not constitute **Recovery Proceeds** unless and until the aggregate of such Relevant Recovery Proceeds received by the relevant Group Member in a Financial Year, when aggregated with any and all other Net Proceeds of Recovery Claims (excluding Excluded Recovery Proceeds) are received by any Group Member during that Financial Year which do not constitute **Recovery Proceeds** due to the application of this paragraph (a) and paragraph (b) below (such other Net Proceeds being the **Other Recovery Proceeds**), exceed US\$20,000,000 (or its equivalent); and
- (b) if such Relevant Recovery Proceeds received by any Group Member in a Financial

Year, when aggregated with such Other Recovery Proceeds received by the Group in that Financial Year, exceeds US\$20,000,000 (or its equivalent), then:

- (i) such Relevant Recovery Proceeds and such Other Recovery Proceeds shall constitute **Recovery Proceeds**; and
- (ii) for the purposes of Clause 12.2 (*Disposal Proceeds, Insurance Proceeds and Recovery Proceeds*) such Relevant Recovery Proceeds or, as the case may be, such Other Recovery Proceeds shall be deemed to have been received in a Financial Year upon the later of (A) the time when such Relevant Recovery Proceeds or, as the case may be, such Other Recovery Proceeds were actually received by a Group Member in that Financial Year and (B) the time when such Relevant Recovery Proceeds, when aggregated with such Other Recovery Proceeds received by any Group Member in that Financial Year, equal or exceed US\$20,000,000 (or its equivalent).

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

- (a) if applicable in relation to any Benchmark Rate specified in the Benchmark Schedule, as the rate at which the relevant Reference Bank could borrow funds in the London interbank market; or
- (b) in relation to EURIBOR, as the rate at which the relevant Reference Bank could borrow funds in the European interbank market,

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

**Reference Banks** means the principal London offices of such banks or financial institutions as may be appointed by the Agent after consultation with the Company, **provided that** no Finance Party may be appointed as a Reference Bank without its prior written consent.

**Reference Rate** means the Compounded Reference Rate and/or the Term Reference Rate, as the context may require.

**Register** has the meaning given to that term in Clause 29.7 (*The Register*).

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

**Relevant Financial Statements** means the Annual Financial Statements and the Quarterly Financial Statements (as applicable).

**Relevant Increase** has the meaning given to that term in Clause 1.5 (*Baskets*).

**Relevant Jurisdiction** means, in relation to an Obligor, the Parent or a Group Member:

- (a) its Original Jurisdiction;
- (b) any jurisdiction where any asset subject to or intended to be subject to the Transaction

Security to be created by it is situated; and

- (c) any jurisdiction where it conducts a material part of its business.

**Relevant Market** means:

- (a) subject to paragraph (b) below:
  - (i) in relation to USD, the market for overnight cash borrowing collateralised by US Government securities;
  - (ii) in relation to Euro, the European interbank market;
  - (iii) in relation to any other Sterling, the London interbank market; and
  - (iv) in relation to any Other Currency, the market specified as such in respect of that currency in the Benchmark Schedule,
- (b) in relation to a Compounded Rate Currency, the market specified as such in the applicable Compounded Rate Terms.

**Relevant Nominating Body** means any applicable central bank, regulator or other supervisory authority or a group of them, or any working group or committee sponsored or chaired by, or constituted at the request of, any of them or the Financial Stability Board.

**Relevant Period** has the meaning given to that term in Clause 26.1 (*Financial definitions*).

**Relevant Property** means any real estate, land or property which is freehold and/or fee simple and with a book value above US\$18,000,000 (or its equivalent).

**Relevant Regulator** means the Panel, the Court, the Competition and Markets Authority and/or any other entity, agency, body governmental authority or person that has regulatory or supervisory authority (or any other similar or equivalent power) in connection with the Acquisition.

**Renewal Request** means a written notice delivered to the Agent in accordance with Clause 6.6 (*Renewal of a Letter of Credit*).

**Repeating Representations** means each of the representations set out in Clause 24.2 (*Status*) to 24.6 (*Authorisations*), paragraph (a) of Clause 24.9 (*No default*), Clause 24.18 (*Legal and beneficial ownership*) and Clause 24.23 (*Anti-corruption, anti money-laundering, anti-terrorism financing laws and sanctions*).

**Replaceable Lender** means a Conflicted Lender, a Defaulting Lender, an Increased Costs Lender, an Illegal Lender, a Non-Consenting Lender, a Non-Responding Lender or a Non-Market Lender.

**Replacement Lender** has the meaning given to that term in Clause 41.5 (*Replaceable Lender*).

**Reporting Day** means the day specified as such in the applicable Compounded Rate Terms.

**Reports** means:

- (a) the commercial due diligence report prepared by Boston Consulting Group dated June 2024;



- (b) the legal due diligence report prepared by Simpson Thacher dated 13 June 2024; and
- (c) the financial due diligence report prepared by PricewaterhouseCoopers dated 24 June 2024.

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

**Request** means any request for a consent, waiver, release, amendment or other vote under the Finance Documents.

**Resignation Letter** means a resignation letter substantially in the form set out in Schedule 17 (*Form of Resignation letter*).

**Resolution Authority** means any body which has authority to exercise any Write-down and Conversion Powers.

**Restricted Payment** means:

- (a) any declaration, making or payment of any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) in each case on or in respect of any shares or equity interests (or any class of shares or equity interests);
- (b) any repayment, return or distribution of any dividend or share premium or other reserve;
- (c) any payment of any management, advisory or other fee to or to the order of any of the shareholders of the Company or any other Sponsor (or Affiliate of a Sponsor);
- (d) any purchase, repurchase, redemption, reduction, retirement, acquisition, defeasance, repayment, cancellation or termination by the applicable person of any shares or equity interests in such person, or any payment (or any payment of interest on any unpaid sum relating to such payment), whether in cash or in kind (and including any payment in any sinking fund or similar deposit) on account of any of the foregoing, or the entering into of any other arrangement having a similar effect; or
- (e) any payment, repayment, prepayment, redemption, purchase, acquisition or defeasance (whether on account of principal, interest, fees or otherwise) on account of any Financial Indebtedness owed to any Sponsor (or Affiliate of a Sponsor that is not a Group Member) or in connection with any Parent Liabilities.

**Restricted Person** means a person that is:

- (a) listed on or owned or controlled by a person listed on any Sanctions List; or
- (b) located in, incorporated under the laws of, or owned or controlled (directly or indirectly) by, or acting on behalf of, a person located in or organised under the laws of a Sanctioned Country or a country or territory that is the target of country-wide or territory-wide Sanctions; or
- (c) a government of a Sanctioned Country, an agency or instrumentality of, or an entity directly or indirectly owned or controlled by, a government of a Sanctioned Country; or

- (d) otherwise a target of Sanctions (*target of Sanctions*) signifying a person with whom a US person or other national of a Sanctions Authority would be prohibited or restricted by law from engaging in trade, business or other activities.

**Retained Net Proceeds** means the aggregate of:

- (a) any Disposal Proceeds;
- (b) any Insurance Proceeds; and
- (c) any Recovery Proceeds,

in each case, which is not (or are not) required to be applied in prepayment of any of the Facilities (other than as a result of Clause 12.5 (*Trapped Amounts*)) whether by reason of them being De Minimis Proceeds or as a result of being allocated in reinvestment in accordance with this Agreement.

**RFR** means the rate specified as such in the applicable Compounded Rate Terms.

**RFR Banking Day** means any day specified as such in the applicable Compounded Rate Terms.

**Rollover Bank Guarantee** means any Existing LC:

- (a) made available by a lender under an existing facility (including any ancillary facility provided under an existing facility) that is (or becomes) an Ancillary Lender under this Agreement; and
- (b) which is listed in a notice delivered by the Company pursuant to paragraph (b) of Clause 9.2 (*Availability*) as being a letter of credit, guarantee, bond, indemnity, documentary or like credit or any other instrument of suretyship or payment to be issued, undertaken or made available by that Ancillary Lender under the Ancillary Facility to be provided by it.

**Rollover Loan** means one or more Initial Revolving Loans:

- (a) made or to be made on the same day that:
  - (i) a maturing Initial Revolving Loan is due to be repaid; or
  - (ii) a demand by the Agent pursuant to a drawing in respect of a Letter of Credit is due to be met;
- (b) the aggregate amount of which is equal to or less than the amount of the maturing Initial Revolving Loan or the relevant claim in respect of that Letter of Credit;
- (c) in the same currency as the maturing Initial Revolving Loan (unless it arose as a result of the operation of Clause 8.2 (*Unavailability of a currency*)) or the relevant claim in respect of that Letter of Credit; and
- (d) made or to be made to the same Borrower for the purpose of:
  - (i) refinancing that maturing Initial Revolving Loan; or
  - (ii) satisfying the relevant claim in respect of that Letter of Credit.

**Sanctioned Country** means, at any time, a country or territory which is, or whose government

is, the target of comprehensive Sanctions (as of the Signing Date, being, the Crimea region, Donetsk and Luhansk regions of Ukraine, Iran, North Korea, Cuba and Syria).

**Sanctions** means any economic, trade or financial sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by:

- (a) the United States government;
- (b) the United Nations;
- (c) the European Union and any Member State;
- (d) the United Kingdom;
- (e) the government of the Republic of Singapore (including the Monetary Authority of Singapore);
- (f) the government of the Hong Kong Special Administrative Region of the People's Republic of China (including the Hong Kong Monetary Authority);
- (g) the government of Japan; or
- (h) the respective governmental institutions and agencies of any of the foregoing, including without limitation, OFAC, the United States Department of State and His Majesty's Treasury,

(together the **Sanctions Authorities**).

**Sanctions List** means the "Specially Designated Nationals and Blocked Persons" list maintained by OFAC, the Consolidated List of Financial Sanctions Targets and the Investment Ban List maintained by His Majesty's Treasury, the US Department of State, the UN Security Council, the European Union, and the Hong Kong Monetary Authority or any similar list issued or maintained and made public by any of the Sanctions Authorities as amended, supplemented or substituted from time to time.

**Scheme** means a scheme of arrangement effected pursuant to Part 26 of the Companies Act 2006 under which the Target Shares will be transferred and Bidco will become the holder of such transferred Target Shares.

**Scheme Circular** means a circular (including any supplemental circular) dispatched by the Target to holders of the Target Shares setting out the terms and conditions of a Scheme and convening a General Meeting and a Court Meeting.

**Scheme Documents** means (i) each Announcement, (ii) the Scheme Circular, (iii) the Court Order, and (iv) any other documents distributed by or on behalf of the Company to (among others) shareholders of the Target in connection with the Scheme.

**Scheme Effective Date** means the date on which the Court Order sanctioning the Scheme is duly delivered on behalf of the Target to the Registrar of Companies in accordance with section 899 of the Companies Act 2006.

**Screen Rate** means:

- (a) in relation to EURIBOR, the Euro interbank offered rate administered by the European Money Markets Institute (or any other person which take over administration of that rate) for the relevant currency and Interest Period displayed on page EURIBOR01 of

the Thomson Reuters screen; and

- (b) in relation to a Benchmark Rate, the rate specified as such in respect of the relevant currency in the Benchmark Schedule,

or, in each case, on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters, provided that if the agreed page or service ceases to be available, the Agent may specify another page or service displaying the relevant rate after consultation with the Obligors' Agent.

**Secured Party** means a Finance Party, a Receiver or any Delegate.

**Security** means any mortgage, charge (fixed or floating), pledge, lien, hypothecation, right of set-off, security trust, assignment, reservation of title or other security interest and any other agreement (including a sale and repurchase arrangement) having the commercial effect of conferring security.

**Security Jurisdiction** means each of the jurisdictions listed in Schedule 26 (*Security Jurisdictions*).

**Security Provider** means any person or entity that provides Transaction Security.

**Selection Notice** means a notice substantially in the form set out in Part III (*Selection Notice*) of Schedule 3 (*Requests and Notices*) given in accordance with Clause 15 (*Interest Periods*).

**Sharing Payment** has the meaning given to that term in Clause 34.1 (*Payments to Secured Parties*).

**Signing Date** means the date of this Agreement.

**SOFR** means the secured overnight financing rate administered by the Federal Reserve Bank of New York (or any other person which takes over the administration of that rate) published (before any correction, recalculation or republication by the administrator) by the Federal Reserve Bank of New York (or any other person which takes over the publication of that rate).

**Specified Time** means a time determined in accordance with Schedule 7 (*Timetables*).

**Sponsor Affiliate** means any Sponsor, each of its affiliates, any trust of which any Sponsor or any of its affiliates is a trustee, any partnership of which any Sponsor or any of its affiliates is a partner and any trust, fund or other entity which is managed or is advised by, or is under the control of, any Sponsor or any of its affiliates, **provided that** any trust, fund or other entity which has been established for the purpose of making, purchasing or investing in loans or debt securities and which is managed or controlled independently from all other trusts, funds or other entities managed or controlled by any Sponsor or any of its affiliates which have been established for the primary purpose or main purpose of investing in the share capital of companies, in each case, shall not constitute a Sponsor Affiliate.

**Sponsors** means funds, partnerships and other entities owned, advised, managed and/or controlled by EQT Partners Asia Pte. Limited and/or any of their Affiliates (other than the Parent or any Group Member).

**Squeeze-Out** means an acquisition of the outstanding shares in the Target that Bidco has not acquired pursuant to the procedures contained in sections 979 to 982 of the Companies Act 2006.

**Structural Adjustment** means:

- (a) the introduction of any additional tranche or facility under the Finance Documents (other than by way of an Additional Facility) (whether ranking junior or *pari passu* to the Facilities) (**provided that** any such additional tranche or facility shall mature at the same time as or after the Facilities and (if amortising) will have an average life no shorter than the remaining average life of the Facilities);
- (b) any increase in or addition of any commitment (other than in respect of an Additional Facility), any extension of the availability of any commitment, the re-denomination of any commitment into another currency, any extension of the date for, or maturity of, or redenomination of, or a reduction of the principal, interest rate, fees, commission or other amount or of any mandatory prepayment owing or payable under the Finance Documents; and
- (c) any changes to the Finance Documents that are consequential on, incidental to or required to implement or reflect any of the foregoing.

**Subordination Agreement** means the subordination agreement dated on or about the date of this Agreement between, among others, the Parent, the Company and the Security Agent.

**Subsidiary** means, in relation to any company, corporation or entity, a company, corporation or entity:

- (a) which is controlled, directly or indirectly, by the first mentioned company, corporation or entity;
- (b) more than half the issued share capital, registered capital or equity interest of which is beneficially owned, directly or indirectly, by the first mentioned company, corporation or entity; or
- (c) which is a Subsidiary of another Subsidiary of the first mentioned company, corporation or entity,

and for this purpose, a company, corporation or entity shall be treated as being controlled by another if that other company, corporation or entity is (i) able to direct its affairs and/or to control the majority of the composition of its board of directors or equivalent body and/or (ii) able to exercise effective control over it or consolidate its financial condition or results of operation in accordance with the Accounting Principles for the purposes of the consolidated financial statements.

**Sum** has the meaning given to that term in paragraph (a) of Clause 20.1 (*Currency indemnity*).

**Swap Obligation** means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a swap within the meaning of section 1a(47) of the Commodity Exchange Act.

**Syndication** means primary syndication of the Initial Facilities.

**Syndication Agreement** means an agreement to be entered into between (among others) the Company, the Agent and certain of the Original Lenders to implement certain Transfers in connection with Syndication.

**Syndication Date** means the last day of the Syndication Period.

**Syndication Period** has the meaning given to that term in the Upfront Fee Letter.

**T2** means the real time gross settlement system operated by the Eurosystem, or any successor system.

**Target** means Keywords Studios Plc.

**Target Group** means the Target and its Subsidiaries (each a **Target Group Member**).

**TARGET Day** means any day on which T2 is open for the settlement of payments in Euro.

**Target Shares** means the issued share capital of the Target.

**Tax** means any tax, levy, impost, duty or other charge or withholding of a similar nature that is imposed or levied by any government or other taxing authority by law or by a Governmental Agency (including any penalty or interest with respect to the foregoing) and Taxes and Taxation shall be construed accordingly.

**Term** means each period determined under this Agreement for which the Issuing Bank is under a liability under a Letter of Credit.

**Term Rate Loan** means any Loan or, if applicable, Unpaid Sum which is not a Compounded Rate Loan.

**Term Reference Rate** means:

- (a) in relation to any Term Rate Loan in US dollars, Term SOFR;
- (b) in relation to any Term Rate Loan in Euro, EURIBOR; and
- (c) in relation to any Term Rate Loan in any Other Currency, the relevant Benchmark Rate specified as such in the relevant Benchmark Schedule.

**Term SOFR** means:

- (a) the term SOFR reference rate administered by CME Group Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant period published (before any correction, recalculation or republication by the administrator) by CME Group Benchmark Administration Limited (or any other person which takes over the publication of that rate) and if such page or service is replaced or ceases to be available, the Agent may specify another page or service displaying the relevant rate in accordance with Clause 41.9 (*Changes to reference rates*);
- (b) (if the term SOFR reference rate is not available for the Interest Period of that Term Rate Loan) Interpolated Term SOFR (rounded to the same number of decimal places as Term SOFR) for that Term Rate Loan; or
- (c) if:
  - (i) no term SOFR reference rate is available for the Interest Period of that Term Rate Loan; and
  - (ii) it is not possible to calculate Interpolated Term SOFR for that Term Rate Loan, the aggregate of the USD Central Bank Rate and the applicable USD Central Bank Rate Adjustment (or if the USD Central Bank Rate is not available at the Specified Time on

the Quotation Day, the percentage rate per annum which is the aggregate of (x) the most recent USD Central Bank Rate for a day which is no more than five US Government Securities Business Days before the Quotation Day, and (y) the applicable USD Central Bank Rate Adjustment),

as of, in the case of paragraphs (a) and (c) above, the Specified Time on the Quotation Day and for a period equal in length to the Interest Period of that Term Rate Loan and, if any such rate applicable to a Term Rate Loan is below zero, Term SOFR for such Term Rate Loan will be deemed to be zero.

**Termination Date** means:

- (a) in respect of an Initial Facility, the date which is 5 years after the Initial Utilisation Date; and
- (b) in respect of any Additional Facility Commitments, the date specified in the relevant Additional Facility Notice (**provided that** such date is in accordance with paragraph (c) of Clause 2.3 (*Additional Facility*)).

**Test Date** has the meaning given to that term in Clause 26.1 (*Financial definitions*).

**Third Parties Ordinance** has the meaning given to that term in Clause 1.4 (*Third party rights*).

**Topco** means Houting Topco UK Limited, a private limited company incorporated in England and Wales with registered company number 15450782 and with registered address at Suite 1, 7th Floor 50 Broadway, London, United Kingdom, SW1H 0DB.

**Total Additional Facility Commitments** means the aggregate of the Additional Facility Commitments.

**Total Commitments** means the aggregate of the Total Initial Term Facility Commitments, the Total Initial Revolving Facility Commitments and the Total Additional Facility Commitments.

**Total Initial Revolving Facility Commitments** means the aggregate of the Initial Revolving Facility Commitments, being US\$225,000,000 at the Signing Date.

**Total Initial Term Facility Commitments** means the aggregate of the Initial Term Facility Commitments, being US\$918,000,000 at the Signing Date.

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

**Transaction Costs** means the Acquisition Costs and costs, fees, commissions and expenses payable in connection with any Permitted Acquisition, Permitted Disposal, Permitted Joint Venture Investment, Permitted Share Issue or Permitted Transaction, in each case, whether or not consummated.

**Transaction Documents** means the Finance Documents, the Acquisition Documents and the Parent Loan Documents.

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

**Transaction Security Documents** means:

- (a) each Original Security Document;
- (b) each of the documents delivered to the Agent under paragraph (a)(ii) of Clause 27.27 (*Security and Guarantees*); and
- (c) any other document entered into by an Obligor, the Parent or any Security Provider creating or expressed to create any Security over all or any part of its assets in respect of the obligations of any of the Obligors under any of the Finance Documents.

**Transfer** means a Debt Purchase Transaction entered into by a Lender as assignor or transferor or by way of Voting Participation.

**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 Company.

**Transfer Date** means, in relation to an assignment or a transfer by a Lender, the later of:

- (a) the proposed Transfer Date specified in the relevant Assignment Agreement or Transfer Certificate relating to such assignment or transfer; and
- (b) the date on which the Agent executes the relevant Assignment Agreement or Transfer Certificate relating to such assignment or transfer.

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

**UK Bail-In Legislation** means Part I of the United Kingdom Banking Act 2009 and any other law or regulation applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings).

**Unconditional Date** means, in the case of an Offer, the date on which the Offer has become or been declared unconditional in all respects.

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

**Upfront Fee Letter** has the meaning given to that term in Clause 17.1 (*Upfront fee*).

**US** and **United States** means the United States of America, its territories and possessions.

**US Government Securities Business Day** means any day other than:

- (a) a Saturday or a Sunday; and
- (b) a day on which the Securities Industry and Financial Markets Association (or any successor organisation) recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in US Government securities.

**USD Central Bank Rate** means the short-term interest rate target set by the US Federal Open Market Committee as published by the Federal Reserve Bank of New York from time to time or, if that target is not a single figure, the arithmetic mean of (i) the upper bound of the short term interest rate target range set by the US Federal Open Market Committee and published by the Federal Reserve Bank of New York, and (ii) the lower bound of that target range.

**USD Central Bank Rate Adjustment** means, in relation to the USD Central Bank Rate



prevailing at close of business on any US Government Securities Business Day, the 20 per cent. trimmed arithmetic mean (calculated by the Agent or by any other Finance Party which agrees to do so in place of the Agent) of the USD Central Bank Rate Spreads for the five most immediately preceding US Government Securities Business Days for which Term SOFR is available.

**USD Central Bank Rate Spread** means, in relation to any US Government Securities Business Day, the difference (expressed as a percentage rate per annum) calculated by the Agent or by any other Finance Party which agrees to do so in place of the Agent between (i) Term SOFR for that US Government Securities Business Day; and (ii) the USD Central Bank Rate prevailing at close of business on that US Government Securities Business Day.

**Utilisation** means a Loan.

**Utilisation Date** means the date of any Utilisation, being the date on which the Loan (the subject of such Utilisation) is to be made or the relevant Letter of Credit is to be issued.

**Utilisation Request** a notice substantially in the relevant form set out in Part I (*Utilisation Request – Loans*) or Part II (*Utilisation Request - Letter of Credit*) of Schedule 3 (*Requests and Notices*).

**Voting Participation** means a Participation which involves a transfer of any voting rights, directly or indirectly, under, or in relation to, the Finance Documents (including arising as a result of being able to direct the way that another person exercises its voting rights).

**Write-down and Conversion Powers** means:

- (a) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule;
- (b) in relation to any other applicable Bail-In Legislation (other than any Bail-In Legislation mentioned in paragraph (a) above and the UK Bail-In Legislation):
  - (i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and
  - (ii) any similar or analogous powers under that Bail-In Legislation; and
- (c) in relation to the UK Bail-In Legislation, any powers under that UK Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the

powers under that UK Bail-In Legislation that are related to or ancillary to any of those powers.

## 1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
- (i) the *Agent*, the *Arranger*, any *Finance Party*, any *Hedge Counterparty*, any *Issuing Bank*, any *Lender*, any *Additional Facility Lender*, the *Parent*, any *Group Member*, any *Obligor*, any *Party*, any *Secured Party*, the *Security Agent* or any other person shall be construed so as to include its successors in title (including the surviving entity of any merger involving that person), permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents or the Acquisition Documents (as applicable) and (i) in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents (including any co-security agent or separate security agent) in accordance with the Finance Documents and (ii) in the case of the Agent, any person for the time being acting as Agent in accordance with the Finance Documents;
  - (ii) a document in *agreed form* is a document which is:
    - (A) previously agreed in writing by or on behalf of the Agent and the Company; or
    - (B) if such document is to be delivered pursuant to Clause 4.1 (*Initial conditions precedent*) or specified in Schedule 2 (*Conditions Precedent*), in the form in respect of which the Agent has given the notification referred to in Clause 4.1 (*Initial conditions precedent*);
  - (iii) an *amendment* includes any amendment, supplement, variation, novation, modification, replacement or restatement (however fundamental), and amend and amended shall be construed accordingly;
  - (iv) *assets* include properties, assets, businesses, undertakings, revenues and rights of every kind (including uncalled share capital), present and future, actual or contingent and any interest in any of the foregoing;
  - (v) a *Finance Document* or a *Transaction Document* or any other agreement or instrument is (unless expressed to be a reference to such document, agreement or instrument in its original form or form as at a particular date) a reference to that Finance Document or Transaction Document or other agreement or instrument as amended, novated, supplemented, extended or restated (however fundamentally and whether or not more onerously) or replaced and includes any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under that Finance Document or other agreement or instrument (in any other manner whatsoever) and including any waiver or consent granted in respect of any term of any Finance Document or Transaction Document from time to time. Any reference to a Finance Document in determining whether a Major

Default or a Major Representation has or will occur shall, instead, be construed as a reference to a Major Finance Document;

- (vi) a **consent** includes an authorisation, permit, approval, consent, exemption, licence, order, filing, registration, recording, notarisation, permission or waiver;
- (vii) a **disposal** includes any sale, transfer, grant, lease, licence or other disposal, whether voluntary or involuntary, and dispose will be construed accordingly;
- (viii) **fair market value** may be conclusively established by means of a certificate or a resolution or other determination made by the board of directors of the person making that resolution (or of any other person authorised or designated by the board of directors of that person to make that determination on its behalf) or other determination in each case acting in good faith and acting reasonably;
- (ix) a **group of Lenders** includes all the Lenders or another subset of the Lenders as appropriate;
- (x) **guarantee** means (other than in Clause 23 (*Guarantee and indemnity*)) any guarantee, counter-indemnity, letter of credit, bond, indemnity or similar assurance against loss in respect of any indebtedness of any other person 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;
- (xi) **indebtedness** includes any obligation (whether incurred as principal or as guarantor or surety) for the payment or repayment of money, whether present or future, actual or contingent (but shall not include deposits held on behalf of clients);
- (xii) a **law** includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty or other legislative measure, in each case of any jurisdiction whatever (and **lawful** and **unlawful** shall be construed accordingly);
- (xiii) the **Interest Period** of a Letter of Credit shall be construed as a reference to the Term of that Letter of Credit;
- (xiv) a Lender's **participation** in relation to a Letter of Credit shall be construed as a reference to the relevant amount that is or may be payable by a Lender in relation to that Letter of Credit;
- (xv) **losses** include losses, actions, damages, claims, proceedings, costs, demands, expenses (including legal and other fees) and liabilities of any kind, and loss shall be construed accordingly;
- (xvi) a **person** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, fund, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);

- (xvii) a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, one with which entities to which the same applies customarily comply) of any governmental, intergovernmental or supranational body, agency or department or of any regulatory, self-regulatory or other authority or organisation;
  - (xviii) **signed** communications, documents or notices refers to written communication, documents or notices that carry a manuscript, or a digital or electronic copy of a manuscript, signature, and **signature** shall be construed accordingly;
  - (xix) a **sub-participation** means any sub-participation or sub-contract (whether written or oral) or any other agreement or arrangement having an economically substantially similar effect, including any credit default or total return swap or derivative (whether disclosed, undisclosed, risk or funded) by a Lender of or in relation to any of its rights or obligations under, or its legal, beneficial or economic interest in relation to, any of the Facilities and/or Finance Documents to a counterparty;
  - (xx) a **merger, transfer, consolidation, amalgamation, assignment, sale, disposition** or similar term shall be deemed to apply to a division of or by a limited liability company or other person, or an allocation of assets to a series of a limited liability company or other person (or, in the case of a merger, consolidation or amalgamation, the unwinding of such a division or allocation) (any such transaction, a **Division**), as if it were a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or similar term, as applicable, to, of or with a separate person. Any Division of a limited liability company or other person shall constitute a separate person hereunder (and each Division of any limited liability company or other person that is a Subsidiary, joint venture or any other like term shall also constitute such a person or entity);
  - (xxi) a Utilisation made or to be made to an Initial Revolving Facility Borrower includes a Letter of Credit issued on its behalf;
  - (xxii) a provision of law is a reference to that provision as amended or re-enacted; and
  - (xxiii) a time of day is a reference to Hong Kong time.
- (b) Any reference in this Agreement to **including** (or similar expressions) means including, without limitation and **includes** and **included** shall be interpreted accordingly.
  - (c) The **equivalent** of an amount (expressed in US\$) in a currency other than US\$ shall, at any time (but without prejudice to Clause 26.4 (*Exchange rates*)), be the amount in such other currency that could purchase such first-mentioned amount in US\$ at that time based on the Agent's Spot Rate of Exchange from such other currency to US\$ at that time.
  - (d) The Parent, an Obligor or a Group Member will only be **aware** of a fact, event or circumstance to the extent that the Parent, such Obligor or such Group

Member (as applicable) has Knowledge of such fact, event or circumstance.

- (e) Any obligation of the Parent, an Obligor or any other Group Member to make **due and careful enquiry** shall be satisfied by such due and careful enquiry being made by it through its directors or other equivalent officers as is practicable in the circumstances and it is assumed that the Parent, such Obligor and such other Group member has the knowledge of its directors.
- (f) Unless a contrary indication appears, a reference in Clause 18 (*Tax Gross-Up and Indemnities*) to **determines** or **determined** (or any similar expression) means a determination made by the person making such determination in good faith.
- (g) Any calculation or determination to be made on a **pro forma basis** will be made after taking into account any applicable adjustments pursuant to paragraphs (b) to (d) of Clause 26.3 (*Financial testing*) assuming the relevant Group Initiative, incurrence, assumption or repayment of Financial Indebtedness had occurred at the beginning of the applicable Most Recent Relevant Period.
- (h) 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.
- (i) Section, Clause and Schedule headings are for ease of reference only.
- (j) 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.
- (k) A Default (including, for the avoidance of doubt, an Event of Default and a Major Default) is **continuing** if it has not been remedied or waived;
- (l) A Default, an Event of Default or a Major Default will be **remedied** (and cease to be continuing) where the underlying circumstances giving rise to the Default, Event of Default or Major Default (as the case may be) cease to exist or where actions have been taken which have addressed the underlying circumstances in each case with the effect that those underlying circumstances (after giving effect to the taking of such actions) no longer constitute a Default, an Event of Default or Major Default (as the case may be), **provided that** if an Acceleration Event has occurred, then such Event of Default is no longer capable of being remedied and will be continuing unless it has been waived.
- (m) An Acceleration Event is **continuing** if the relevant Acceleration Event has occurred and the underlying Acceleration Notice has not been withdrawn by the Agent.
- (n) In addition to paragraph (l) and subject to paragraph (m) above, if a Default (including an Event of Default and a Major Default) occurs for a failure to deliver a required certificate, notice or other document in connection with another default (an **Initial Default**) then at the time such Initial Default is remedied or waived, such Default (including an Event of Default and a Major Default) for a failure to report or deliver a required certificate, notice or other document in connection with the Initial Default will also be cured without any

further action. Any Default (including an Event of Default and a Major Default) for the failure to comply with the time periods prescribed in Clause 25 (*Information Undertakings*), or otherwise to deliver any notice, certificate or other document, as applicable, even though such delivery is not within the prescribed period specified in this Agreement or any other Finance Document, shall be deemed to be cured upon the delivery of any such report required by such covenant or notice, certificate or other document, as applicable, even though such delivery is not within the prescribed period specified in this Agreement or any other Finance Document.

- (o) References to any matter being *permitted* shall include references to such matters not being expressly prohibited by the Finance Documents or otherwise approved by the requisite Lenders.
- (p) If and to the extent that the Majority Lenders are required to act reasonably under the terms of a Finance Document with respect to any matter, each Lender must act reasonably with respect to such matter.
- (q) A Borrower providing *cash cover* for a Letter of Credit or an Ancillary Facility means a Borrower paying an amount in the currency of the Letter of Credit (or, as the case may be, Ancillary Facility) to an interest-bearing account in the name of a Borrower and the following conditions being met:
  - (i) the account is with the Issuing Bank (if the cash cover is to be provided in respect of a Letter of Credit) or Ancillary Lender (if the cash cover is to be provided in respect of an Ancillary Facility) for which that cash cover is to be provided;
  - (ii) subject to paragraph (b) of Clause 7.6 (*Regulation and consequences of cash cover provided by Company*), until no amount is or may be outstanding under that Letter of Credit or Ancillary Facility (as the case may be), withdrawals from the account (other than in respect of accrued interest) may only be made to pay the relevant Issuing Bank, Ancillary Facility Lender or Finance Party (as applicable) amounts due and payable to it under this Agreement in respect of that Letter of Credit or Ancillary Facility (as the case may be); and
  - (iii) a Borrower has executed a security document, in form and substance satisfactory to the Finance Party with which that account is held, creating a first ranking security interest over that account, as security for the obligations owing by that Borrower to that person.
- (r) A Borrower *repaying* or *prepaying* a Letter of Credit or Ancillary Outstandings means:
  - (i) that Borrower providing cash cover for that Letter of Credit or in respect of the Ancillary Outstandings;
  - (ii) in the case of a Letter of Credit, a Borrower has made a payment of that amount under paragraph (b) of Clause 7.2 (*Claims under a Letter of Credit*) in respect of that Letter of Credit or a Borrower has made a reimbursement of that amount in respect of that Letter of Credit under Clause 7.3 (*Indemnities*);

- (iii) in the case of a Letter of Credit, a letter of credit is issued to the Issuing Bank in respect of such Letter of Credit in an amount at least equal to the full unclaimed amount of such Letter of Credit (*provided* such letter of credit or other collateral is on terms satisfactory to the Issuing Bank);
- (iv) the maximum amount payable under the Letter of Credit or Ancillary Facility (as the case may be) is being reduced or cancelled in accordance with its terms in a manner satisfactory to the Issuing Bank in respect of such Letter of Credit or Ancillary Lender in respect of such Ancillary Facility (as the case may be), in each case, acting reasonably;
- (v) the Issuing Bank or Ancillary Lender (as the case may be) being satisfied that it has no further liability under that Letter of Credit or Ancillary Facility (as the case may be, including if the relevant Letter of Credit or Ancillary Facility expires in accordance with its terms or is otherwise released by the beneficiary) and accordingly all of (or such proportion of) the obligations are released or reduced, and has confirmed the same to the Agent accordingly,
- (vi) the Letter of Credit or relevant Ancillary Facility (as the case may be) expires in accordance with its terms or is otherwise returned by the beneficiary with its written confirmation that it is released and cancelled; or
- (vii) a bank or financial institution which is rated at least A-1 by Standard & Poor's Ratings Group or A3 by Moody's Investors Service, Inc. for its long term debt obligations (or such other rating as the Agent and the applicable Issuing Bank, Ancillary Lender (as the case may be) may agree), or by any other institution satisfactory to the applicable Issuing Bank having issued an unconditional and irrevocable guarantee, indemnity, counter-indemnity or similar assurance against financial loss in respect of all amounts due under that Letter of Credit or Ancillary Facility,

and the amount by which a Letter of Credit is, or Ancillary Outstandings are, repaid or prepaid under paragraphs (i) to (vii) above is the amount of the relevant cash cover, payment, release, cancellation, reduction or assurance.

- (s) An amount borrowed includes any amount utilised by way of Letter of Credit (and/or any amount due and payable but unpaid by any Obligor in respect of any Letter of Credit) and/or under an Ancillary Facility.
- (t) A Lender funding its participation in a Utilisation includes a Lender participating in a Letter of Credit.
- (u) Amounts outstanding under this Agreement include amounts outstanding under or in respect of any Letter of Credit.
- (v) An outstanding amount of a Letter of Credit at any time is the maximum amount that is or may be payable by the relevant Borrower in respect of that Letter of Credit at that time after deducting the aggregate amount of any cash cover provided in respect of such Letter of Credit in accordance with (and without double counting) the terms of this Agreement.

- (w) A Borrower's obligation on Utilisations becoming *due and payable* includes a Borrower repaying any Letter of Credit in accordance with paragraph (r) above.
- (x) In ascertaining the Majority Lenders or whether any given percentage of the Total Commitments has been obtained to approve any request for a consent, waiver, amendment or other vote under the Finance Documents or for the purpose of the allocation of any repayment or prepayment or for the purposes of taking any step, decision, direction or exercise of discretion which is calculated by reference to drawn amounts any Commitments not denominated in the Base Currency (*Non-Base Currency Commitments*) shall be deemed to be converted into the Base Currency at the Agent's Spot Rate of Exchange on the date on which that Commitment was provided under this Agreement.
- (y) Notwithstanding any other terms of the Finance Documents, nothing in the Finance Documents shall:
  - (i) prohibit, restrict or limit any action taken by or on behalf of any Group Member or the Target Group to the extent required by (or reasonably determined by the Company or any Group Member (in good faith) as being necessary or desirable to comply with the requirements or requests of) the City Code, the Panel or the Court or any applicable law, regulation or regulatory body or authority; or
  - (ii) require any action to be taken by or on behalf of any Group Member or the Target Group to the extent that doing so (as reasonably determined by the Company (in good faith)) would breach any applicable law or regulation or any requirement of the Code or contravene any requirement or request of the Panel, the Court or any regulatory body or authority.
- (z) A reference in this Agreement to a page or screen of an information service displaying a rate shall include:
  - (i) any replacement page of that information service which displays that rate; and
  - (ii) the appropriate page of such other information service which displays that rate from time to time in place of that information service, and, if such page or service ceases to be available, shall include any other page or service displaying that rate specified by the Agent after consultation with the Obligor's Agent.
- (aa) A reference in this Agreement to a Central Bank Rate shall include any successor rate to, or replacement rate for, that rate.
- (bb) Any Compounded Rate Supplement relating to a currency overrides anything relating to that currency in:
  - (i) Schedule 24 (*Compounded Rate Terms*); or
  - (ii) any earlier Compounded Rate Supplement.



- (cc) A Compounding Methodology Supplement relating to a currency and the Daily Non-Cumulative Compounded RFR Rate overrides anything relating to that currency and rate in:
  - (i) Schedule 25 (*Daily Non-Cumulative Compounded RFR Rate*); or
  - (ii) any earlier Compounding Methodology Supplement.

### 1.3 Currency symbols and definitions

Any reference in this Agreement to:

- (a) *AUD* is to the lawful currency of Australia;
- (b) *EUR* and *Euro* is to the single currency unit of the Participating Member States;
- (c) *GBP* and *Sterling* is to the lawful currency of the United Kingdom;
- (d) *HKD* is to the lawful currency of Hong Kong;
- (e) *JPY* is to the lawful currency of Japan;
- (f) *NZD* is to the lawful currency of New Zealand;
- (g) *RMB* is to the lawful currency of the PRC;
- (h) *SGD* is to the lawful currency of Singapore; and
- (i) *US\$, USD* and *US dollars* is to the lawful currency of the United States.

### 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) Ordinance (Cap. 623) (the *Third Parties Ordinance*) to enforce or enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

### 1.5 Baskets

- (a) If in any Financial Year of the Group, the aggregate amount spent under the basket specified in the *Permitted* definitions in this Agreement (the *Relevant Annual Basket*), at the option of the Company, is less than the maximum amount permitted during such Financial Year (the difference being referred to as the *Unused Amount*), then the maximum Relevant Annual Basket for the immediately following Financial Year may, at the option of the Company, be increased by an amount not greater than the Unused Amount. Any Unused Amount so carried forward will be deemed to be utilised prior to the Relevant Annual Basket for that immediately following Financial Year. Any Unused Amount that has been carried over and not spent in that Financial Year shall cease to be available.
- (b) In any Financial Year, the Group shall be permitted to carry back up to 50 per

cent. of the Relevant Annual Basket from the immediately following Financial Year, and the maximum amount of the Relevant Annual Basket permitted during that immediately following Financial Year shall be decreased by an amount equal to such amount being carried back. Any such amount that is carried back shall be deemed to be utilised after utilising the Relevant Annual basket for that current Financial Year.

- (c) In the event that any amount or transaction meets the criteria of more than one of the baskets or exceptions set out within a single *Permitted* definition in this Agreement, the Company, in its sole discretion, will classify and may from time to time reclassify that amount or transaction to a particular basket or exception and will only be required to include that amount or transaction in one of those baskets or exceptions (and, for the avoidance of doubt, an amount or transaction may at the option of the Company be split between different baskets or exceptions). Baskets for the year in which Completion occurs shall be pro rated to the extent they apply from the Completion Date.

## **1.6 Parent**

Notwithstanding any other provision of the Finance Documents to the contrary, no restriction in any provision of Clause 27 (*General Undertakings*) shall be applicable to the Parent other than in respect of:

- (a) Clause 27.1 (*Authorisations*);
- (b) Clause 27.4 (*Merger*);
- (c) Clause 27.8 (*Holding Companies*);
- (d) Clause 27.10 (*Pari passu ranking*);
- (e) Clause 27.12 (*No encumbrance*);
- (f) Clause 27.13 (*Disposals*);
- (g) Clause 27.23 (*Further assurance*); and
- (h) Clause 27.24 (*Anti-corruption, anti-money laundering, anti-terrorism and sanctions*).

## **1.7 Exchange rate fluctuations**

- (a) Subject to paragraph (c) below, when applying any monetary limits, thresholds and other exceptions to the representations and warranties, undertakings and Events of Default under the Finance Documents, the equivalent to an amount in US dollars shall be calculated at the rate for the conversion of US dollars into the relevant currency of the non-base currency monetary limit, threshold and other exception which would have been used had an audited consolidated balance sheet of the Group been prepared in accordance with the Accounting Principles, or at the option of the Company at the Agent's Spot Rate of Exchange, in each case, as at the date of the Group incurring or making the relevant disposal, acquisition, investment, lease, loan, debt or guarantee or taking any other relevant action.

- (b) Subject to paragraph (c) below, no Event of Default or breach of any representation and warranty or undertaking under this Agreement or the other Finance Documents (without prejudice to Clause 6.8 (*Revaluation of Letters of Credit*)) shall arise merely as a result of a subsequent change in US dollars equivalent or any other currency specified for any basket due to fluctuations in currency exchange rates.
- (c) Paragraphs (a) and (b) above shall not apply to or in respect of the calculation or for the purpose of testing any financial covenant under Clause 26 (*Financial Covenants*).

## **1.8 Excluded Matters**

Notwithstanding any other provisions in this Agreement, prior to the Completion Date (and subject at all times to Clause 4.3 (*Utilisations during the Certain Funds Period*)), no breach of Clauses 24 (*Representations*) to Clause 27 (*General Undertakings*) (both inclusive) or other term of (or actual or potential Event of Default (however so described) under any document relating to) the existing financing arrangements of any member of the Target Group shall constitute a breach under any provisions in Clauses 24 (*Representations*) to Clause 27 (*General Undertakings*) (both inclusive) of this Agreement or any of the other Finance Documents or result in the occurrence of an actual or potential Event of Default.

## **1.9 Personal liability**

No director, officer, employee or other individual acting (or purporting to act) on behalf of a Sponsor Affiliate, the Parent, an Obligor or any Group Member (or any Affiliate of any of the foregoing) shall be personally liable for any representation, certification or statement made or deemed to be made by him or her, a Sponsor Affiliate, the Parent, an Obligor or any Group Member in any Finance Document or any certificate, notice or other document required to be delivered under, or in connection with, any Finance Document, whether or not signed by that director, officer, employee or other individual, save in the case of fraud, or intention to mislead (in which case any liability shall be determined in accordance with applicable law) and each such individual may rely on this Clause subject to Clause 1.4 (*Third party rights*) and the provisions of the Third Parties Ordinance.

## **1.10 No Sponsor Affiliate Recourse**

Subject to Clause 1.9 (*Personal liability*), no Finance Party will have any recourse to any Sponsor Affiliate (excluding the Parent and any Group Member but, in respect of the Parent, on a limited recourse basis and with respect to assets the subject of Transaction Security only) in respect of any term of any Finance Document, any statements by Sponsor Affiliates, or otherwise.

## **1.11 Acquisition**

Subject to compliance with Clause 27.28 (*Conduct of Offer and/or Scheme*), for the avoidance of doubt, it is understood, acknowledged and agreed that (i) nothing in any Finance Document shall prevent the Company or Bidco from changing the form of the Acquisition (including to change from a Scheme to an Offer or from an Offer to a Scheme) and (ii) any change in the structure, form or timing of the Acquisition (including, without limitation, any change from a Scheme to an Offer or an Offer to a Scheme or in the terms of any Scheme or Offer) or in the timing or conditions relating to the Scheme, Offer or Acquisition or in the offer price, purchase price or

consideration agreed, paid or payable or the manner in which purchase consideration is paid, shall (in each case) be permitted and shall not be regarded as being a material condition or being material or adverse to the interests of any of the Finance Parties under this Agreement or any other Finance Documents.

### 1.12 Dutch terms

In this Agreement, where it relates to a Dutch entity, a reference to:

- (a) The Netherlands means the European part of the Kingdom of the Netherlands and Dutch means in or of The Netherlands;
- (b) works council means each works council (*ondernemingsraad*) or central or group works council (*centrale of groeps ondernemingsraad*) having jurisdiction over that person;
- (c) constitutional documents means the articles of association (*statuten*) and deed of incorporation (*akte van oprichting*) and an up-to-date extract of registration of the Trade Register of the Dutch Chamber of Commerce;
- (d) a director means a managing director (*bestuurder*) and board of directors means its managing board (*bestuur*);
- (e) any step or procedure taken in connection with insolvency proceedings includes a Dutch entity having filed a notice under Section 36 of the Tax Collection Act of the Netherlands (*Invorderingswet 1990*);
- (f) a liquidator, receiver or administrative receiver includes a *curator* or a *beoogd curator*;
- (g) an administrator includes a *bewindvoerder* or a *beoogd bewindvoerder*;
- (h) an attachment includes a *beslag*;
- (i) an Authorisation, where applicable, include any action required to comply with the Dutch Works Councils Act (*Wet op de ondernemingsraden*);
- (j) a security interest or security includes any mortgage (*hypotheek*), pledge (*pandrecht*), retention of title arrangement (*eigendomsvoorbehoud*), right of retention (*recht van retentie*), privilege (*voorrecht*), right to reclaim goods (*recht van reclame*) and any right in rem (*beperkt recht*) created for the purpose of granting security (*goederenrechtelijke zekerheid*);
- (k) a moratorium or suspension of payments includes *surseance van betaling* and a moratorium is declared or occurs includes *surseance verleend*; and
- (l) a liquidation, administration, winding-up or dissolution includes a Dutch entity being declared bankrupt (*failliet verklaard*) or dissolved (*ontbonden*).

### 1.13 Security Agent appointment and Hedging Bank Provisions

The provisions of Schedule 13 (*Hedging Provisions*) and Schedule 14 (*Security Agency Provisions*) shall bind each Party.

## 2. THE FACILITIES

## 2.1 The Initial Facilities

- (a) Subject to the terms of this Agreement:
  - (i) the Initial Term Facility Lenders make available to the Original Borrower a US\$ term loan facility in an aggregate amount equal to the Total Initial Term Facility Commitments; and
  - (ii) the Initial Revolving Facility Lenders make available to the Initial Revolving Facility Borrowers a multicurrency revolving credit facility in an aggregate amount equal to the Total Initial Revolving Facility Commitments.
- (b) Subject to the terms of this Agreement and the Ancillary Documents, an Ancillary Lender may make all or part of its Initial Revolving Facility Commitment available to any Initial Revolving Facility Borrower as an Ancillary Facility.

## 2.2 Increase – Cancelled Commitments

- (a) The Company 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 Available Commitment or the Commitment (in respect of any Facility) of an Illegal Lender in accordance with Clause 11.1 (*Illegality*) or Replaceable Lender in accordance with paragraph (b) of Clause 41.5 (*Replaceable Lender*) (such Available Commitment or Commitment so cancelled being the **Cancelled Commitment**) request that the Total Commitments be increased (and the Commitments under that Facility shall be so increased) by an aggregate amount in US\$ of up to the amount of the Cancelled Commitment (as proportionately reduced to take into account any repayment under Clause 10 (*Repayment*) on any Initial Term Facility Repayment Date falling between the effective date of the cancellation and date the proposed increase becomes effective in accordance with paragraph (b) below) as follows:
  - (i) such increased Commitments under that Facility will be assumed by one or more Lenders or persons (other than a Group Member) (each an **Increase Lender**) selected by the Company each of which confirms its willingness to assume and does assume all the obligations of a Lender corresponding to that part of such increased Commitments under that Facility which it is to assume (the **Assumed Commitment** of such Increase Lender), as if it had been an Original Lender;
  - (ii) each of the Obligor, the Parent and any Increase Lender shall assume obligations towards one another and/or acquire rights against one another as the Obligor, the Parent and the Increase Lender would have assumed and/or acquired had that Increase Lender been an Original Lender (with the Assumed Commitment in respect of such Increase Lender, in addition to any other Commitment which such Increase Lender may otherwise have in accordance with this Agreement);
  - (iii) each Increase Lender shall become a Party as a **Lender** and any Increase Lender (with the Assumed Commitment in respect of such Increase Lender, in addition to any other Commitment which such Increase Lender may otherwise have in accordance with this Agreement) and each of the other Finance Parties and Hedge

Counterparties shall assume obligations towards one another and acquire rights against one another as that Increase Lender and those Finance Parties and Hedge Counterparties would have assumed and/or acquired had the Increase Lender been an Original Lender;

- (iv) the Commitments of the other Lenders shall continue in full force and effect; and
  - (v) such increase in the Commitments under that Facility shall take effect on the later of (1) the date specified by the Company in the notice referred to above or (2) any later date on which the conditions set out in paragraph (b) below are satisfied in respect of such increase.
- (b) An increase in the Commitments under any Facility pursuant to this Clause 2.2 will only be effective on:
- (i) the execution by the Agent of an Increase Confirmation – Cancelled Commitments from each relevant Increase Lender in respect of such increase which the Agent shall execute promptly on request; and
  - (ii) in relation to an Increase Lender which is not a Lender immediately prior to the relevant increase the Agent being satisfied that it and the Security Agent 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 Assumed Commitments by that Increase Lender. The Agent shall promptly notify the Company and the Increase Lender upon being so satisfied.
- (c) Each Increase Lender, by executing an Increase Confirmation – Cancelled Commitments, confirms 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 in Commitments (to which such Increase Confirmation – Cancelled Commitments relates) becomes effective.
- (d) The Company shall promptly on demand pay the Agent and the Security Agent the amount of all costs and expenses (including legal fees) properly incurred by any of them and, in the case of the Security Agent, by any Receiver or Delegate in connection with any increase in Commitments under this Clause 2.2.
- (e) An Increase Lender shall, on the date upon which its assumption of any Assumed Commitment 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 29.3 (*Assignment or transfer fee*) if such assumption was a transfer pursuant to Clause 29.5 (*Procedure for transfer*) and if the Increase Lender was a New Lender.
- (f) The Company may pay to an Increase Lender a fee in the amount and at the times agreed between the Company and that Increase Lender in a Fee Letter.
- (g) Clause 29.4 (*Limitation of responsibility of Existing Lenders*) shall apply mutatis mutandis in this Clause 2.2 in relation to an Increase Lender as if references in that Clause to:

- (i) an *Existing Lender* were references to all the Lenders immediately prior to the relevant increase in Commitments;
- (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 Additional Facility

- (a) Subject to this Clause 2.3, the Company may, at any time and from time to time following the Initial Utilisation Date, by delivering to the Agent and the Security Agent a duly completed Additional Facility Notice signed by an Authorised Signatory and complying with paragraphs (b) and (c) below, establish an Additional Facility by way of (i) the introduction of a new additional commitment or facility as a Facility under this Agreement or (ii) as an additional tranche of or increase in an existing Facility (including any previously incurred Additional Facility) under this Agreement.
- (b) No consent of any Finance Party is required to establish an Additional Facility at any time (other than, in relation to an Additional Facility, the relevant Additional Facility Lenders) *provided that*:
  - (i) the purposes of such Additional Facility shall be limited to Permitted Acquisition, Permitted Joint Ventures, Permitted Transactions, Capital Expenditure, working capital and/or general corporate purposes;
  - (ii) the final maturity date of such Additional Facility shall be no earlier than the Termination Date applicable to the Initial Facilities;
  - (iii) the currency of the Additional Facility shall be US\$, GBP, or EUR and if such Additional Facility is in GBP or EUR, the Agent has executed all amendments, confirmations, supplements or revisions contemplated in paragraph (g)(iii) below to ensure that the terms applicable to such an Additional Facility being in GBP or EUR are properly reflected in this Agreement;
  - (iv) the relevant Borrower may not deliver a Utilisation Request under that Additional Facility if (in the case of an Additional Term Facility) as a result of the proposed Utilisation more than three Initial Term Loans and Additional Term Facility Loans would be outstanding or (in the case of an Additional Revolving Facility) as a result of the proposed Utilisation more than five Additional Revolving Facility Loans would be outstanding under all the Facilities;
  - (v) the repayment profile of such Financial Indebtedness is either:
    - (A) a bullet repayment profile with a final maturity date falling on or after the Termination Date applicable to the Initial Facilities; or
    - (B) in relation to an Additional Term Facility only, an amortising repayment profile where (x) the weighted average life of such Additional Facility is no shorter than the remaining weighted average life of the Initial Term Facility or (y) the Lenders of

the Initial Term Facility are offered the same amortisation percentage per annum as the proposed amortising Additional Facility;

- (vi) such Additional Facility shall rank *pari passu* with, or junior to, the Initial Facilities and shall be guaranteed and secured by the same (or fewer) guarantors and the same (or less) Transaction Security as is guaranteeing and securing the Initial Facilities;
  - (vii) as at the date such Additional Facility is committed, the Net Leverage for the Most Recent Relevant Period (recalculated on a pro forma basis, giving pro forma effect to the incurrence and full utilisation of such proposed Additional Facility) is the lower of 4.85:1 and the maximum Net Leverage permitted under paragraph (b) of Clause 26.2 (*Financial condition*) in respect of the Most Recent Relevant Period, provided that if such Additional Facility is incurred prior to the First Test Date, the maximum Net Leverage for that Most Recent Relevant Period shall be deemed to be the maximum Leverage permitted under Clause 26.2 (*Financial condition*) as at the First Test Date;
  - (viii) no Event of Default is continuing at the time the relevant Additional Facility is committed (or would result therefrom) **provided that** nothing in this paragraph (viii) shall prevent the Additional Facility Lenders from agreeing to make available their Additional Facility Commitments on a *certain funds* basis; and
  - (ix) the fees and interest rates applicable to any Additional Facility shall be determined by the Company **provided that** the yield for any Additional Facility incurred in the first 18 months after the Completion Date shall be no more than the yield applicable to the Initial Term Facility as of the Completion Date (and for the purposes of any yield calculation, the upfront fee applicable shall be deemed to be the highest amount paid to any lender as part of syndication (calculated as a percentage)), *plus* 1 per cent. per annum (the **MFN Rate**), unless the rate of interest in respect of the Initial Term Facility is increased by an amount equal to the amount by which the yield for such Additional Facility exceeds the MFN Rate.
- (c) Each Additional Facility Notice shall not be regarded as having been duly completed unless it is signed by the Company and each party thereto and specifies the following matters in respect of such Additional Facility:
- (i) the person(s) to become Additional Facility Lenders (which shall not be a Group Member) in respect of that Additional Facility and the amount of the commitments of such Additional Facility allocated to each Additional Facility Lender;
  - (ii) the aggregate amount of the commitments of that Additional Facility and the currency in which it is being made available;
  - (iii) the purpose and permitted usage of such Additional Facility and any additional conditions to drawdown of such Additional Facility (which may be as agreed between the Company and the Additional Facility Lenders providing that Additional Facility);



- (iv) the rate of interest applicable to that Additional Facility and other fees payable in respect of that Additional Facility and how such rate will be calculated;
- (v) whether and to what extent Clause 15 (*Interest Periods*) shall apply to that Additional Facility;
- (vi) the Additional Facility Commencement Date and Availability Period for that Additional Facility;
- (vii) the Termination Date, repayment profile, amortisation schedule and any mandatory prepayment provisions for that Additional Facility; and
- (viii) each of the requirements of paragraph (b) above are satisfied; and

such Additional Facility Notice shall be deemed to have been duly completed (without any further consent or confirmation being required from the Agent (without prejudice to the terms of Clause 41 (*Amendments and Waivers*))) if it is signed by each party thereto and specifies the matters in paragraphs (c)(i) to (c)(viii) above in respect of such Additional Facility.

- (d) Subject to the conditions set out in paragraphs (b) and (c) of this Clause 2.3 being satisfied, following receipt by the Agent of a duly completed Additional Facility Notice and with effect from the relevant Additional Facility Commencement Date (or any later date on which the conditions set out in paragraph (e) below are satisfied) the relevant Additional Facility shall come into effect and be established in accordance with its terms and:
  - (i) the Additional Facility Lenders participating in the relevant Additional Facility shall make available that Additional Facility in the aggregate amount set out in the Additional Facility Notice;
  - (ii) each of the Obligor and each Additional Facility Lender shall assume such obligations towards one another and/or acquire such rights against one another as the Obligor and such Additional Facility Lenders would have assumed and/or acquired had the Additional Facility Lenders been Original Lenders;
  - (iii) in relation to an Additional Facility Lender which is not already a Lender, each Additional Facility Lender under the relevant Additional Facility shall become a Party to this Agreement as a Lender;
  - (iv) each Additional Facility Lender under the relevant Additional Facility and each of the other Finance Parties and Hedge Counterparties shall assume such obligations towards one another and acquire such rights against one another as those Additional Facility Lenders and those Finance Parties and Hedge Counterparties would have assumed and/or acquired had the Additional Facility Lenders been Original Lenders in respect of the relevant Additional Facility; and
  - (v) the Commitments of the other Lenders shall continue in full force and effect.
- (e) The establishment of an Additional Facility will only be effective on:

- (i) the execution of the Additional Facility Notice relating to such Additional Facility by the Company and the relevant Additional Facility Lender(s) and delivery of such executed notice to the Agent;
  - (ii) in relation to an Additional Facility Lender which is not already a Lender, receipt by the Agent of an Additional Facility Lender Accession Notice from each person referred to in the relevant Additional Facility Notice as an Additional Facility Lender; and
  - (iii) in relation to an Additional Facility Lender which is not already a Lender, the performance by the Agent and the Security Agent of all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to that Additional Facility Lender making available an Additional Facility (after completion of such checks, the Agent and the Security Agent shall promptly notify the Company).
- (f) The Parent and each Obligor:
- (i) irrevocably authorises the Company to sign each Additional Facility Notice and to agree, implement and establish Additional Facilities in accordance with this Agreement on its behalf; and
  - (ii) confirms that all Transaction Security granted by it will, subject only to any applicable limitations in the terms of the Transaction Security Documents, extend to include the Additional Facility Loans and any other obligations arising under or in respect of the Additional Facility Commitments.
- (g) Each Party irrevocably authorises, empowers and instructs:
- (i) the Agent to acknowledge, execute and confirm acceptance of each Additional Facility Notice;
  - (ii) the Agent to acknowledge, execute and confirm acceptance of each Additional Facility Lender Accession Notice; and
  - (iii) the Agent and the Security Agent to execute any necessary amendments, confirmations, supplements or revisions to this Agreement, the Transaction Security Documents and any other Finance Documents as may be required in order to ensure that the terms applicable to the Additional Facility (*provided* such terms are otherwise in accordance with the requirements of this Clause 2.3) are properly reflected in this Agreement.
- (h) The Agent shall as soon as reasonably practicable send to the Company and the Security Agent a copy of each executed Additional Facility Notice and, if applicable, Additional Facility Lender Accession Notice.
- (i) By signing an Additional Facility Notice as an Additional Facility Lender, each such entity agrees to commit the Additional Facility Commitments set out against its name in that notice and, in the case of an entity which is not already a party to this Agreement as a Lender, become a Lender.
- (j) Notwithstanding any provision of a Finance Document to the contrary, there

shall be no obligation or requirement to enter into any hedging arrangement or other derivative transaction in relation to any Additional Facility unless separately agreed with the Additional Facility Lenders.

- (k) Each Additional Facility Lender, by executing the relevant Additional Facility Notice confirms (for the avoidance of doubt) that the Agent has authority to execute on its behalf any consent, release, waiver or amendment 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 relevant Additional Facility becomes effective and that it is bound by that decision and by the operations of any other provisions of this Agreement in relation to such consent, release, waiver or amendment.
- (l) No Lender will have any obligation to participate in an Additional Facility (unless it has executed and delivered an Additional Facility Lender Accession Notice or otherwise become an Additional Facility Lender in respect of that Additional Facility). By signing an Additional Facility Notice as an Additional Facility Lender, each such entity agrees to commit the Additional Facility Commitments set out against its name in that Additional Facility Notice.
- (m) The Agent may, and is authorised to, disclose the terms of any Additional Facility Notice to any of the other Finance Parties and will do so promptly upon request by the Company or other Finance Parties.
- (n) The Company shall as soon as reasonably practicable provide any information requested by the Agent or the Security Agent (in each case acting reasonably and to the extent required by them to perform their respective roles) in relation to any Additional Facility.
- (o) Clause 29.4 (*Limitation of responsibility of Existing Lenders*) shall apply mutatis mutandis in this Clause 2.3 in relation to an Additional Facility Lender as if references in that Clause to:
  - (i) an Existing Lender were references to all the Lenders immediately prior to the establishment of the relevant Additional Facility;
  - (ii) the New Lender were references to that Additional Facility Lender; and
  - (iii) a re-transfer and re-assignment were references to respectively a transfer and assignment.
- (p) The Company may pay to an Additional Facility Lender a fee in the amount and at the times agreed between the Company and the Additional Facility Lender in a Fee Letter.
- (q) The establishment, terms or conditions or use of proceeds of any Additional Facility shall be governed by this Clause 2.3 which shall apply irrespective and notwithstanding any other provision of this Agreement and, except to the extent as provided in this Clause 2.3, the terms applicable to any Additional Facility will be those agreed by the Additional Facility Lenders in respect of that Additional Facility and the Company and set out in the applicable Additional Facility Notice, **provided that**:
  - (i) if there is any inconsistency between any such term agreed in respect

of an Additional Facility and any term of a Finance Document, the term agreed in respect of the Additional Facility shall prevail with respect to such Additional Facility only (subject to the other terms and conditions of this Clause 2.3 and without prejudice to the rights of any Lender with respect to or in connection with any other Facility under the Finance Documents);

- (ii) the terms of any Additional Facility which is an increase of, or an extension of, any existing Facility shall be (except as consented to by the Lenders pursuant to the terms of Clause 41 (*Amendments and Waivers*)) the same as those applicable to that existing Facility (other than the identity of the lenders under that Additional Facility and the amount of the Additional Facility commitment);
- (iii) unless otherwise specified in the applicable Additional Facility Notice, the terms of any Additional Facility which is a term facility shall be the same as the terms given to the Initial Term Facility under this Agreement and the terms of any Additional Facility which is a revolving facility shall be the same as the terms given to the Initial Revolving Facility under this Agreement;
- (iv) the provisions of this Agreement will apply to each Additional Facility and the provisions of Clause 4 (*Conditions of Utilisation*) and Clause 5 (*Utilisation – Loans*) will apply to all Utilisations of any Additional Facility, **provided that** no Utilisation Request in relation to an Additional Facility shall be valid unless prior to (or simultaneously with) such Utilisation Request being delivered, the requirements of this Clause 2.3 have been satisfied; and
- (v) any Additional Facility shall rank *pari passu* with (or if so specified in the Additional Facility Notice, junior to) the other Facilities.

## **2.4 Finance Parties' rights and obligations**

- (a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and they include the right to repayment of any debt owing to that Finance Party under the Finance Documents. Any debt arising under the Finance Documents to a Finance Party from an Obligor or the Parent 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. Any part of a Loan or any other amount owed by an Obligor or the Parent which relates to a Finance Party's participation in any of 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 an Obligor or the Parent (as applicable).
- (c) A Finance Party may, except as specifically provided in the Finance Documents, separately enforce its rights under or in connection with the Finance Documents.

## 2.5 Obligors' Agent

- (a) Each Obligor (other than the Company) and the Parent by its execution of this Agreement or an Accession Letter irrevocably appoints the Company to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:
- (i) the Company on its behalf to supply all information concerning itself contemplated by any Finance Document to the Finance Parties and to give all notices and instructions, to make such agreements and to effect all amendments, supplements and variations capable of being given, made or effected by any Obligor or the Parent (as the case may be), including without limitation pursuant to Clause 41 (*Amendments and Waivers*) and any reaffirmations of guarantees and Security in relation thereto, notwithstanding that they may affect that Obligor or the Parent (as the case may be), without further reference to or the consent of that Obligor or the Parent (as the case may be); and
  - (ii) each Finance Party to give any notice, demand or other communication to that Obligor or the Parent (as the case may be) pursuant to the Finance Documents to the Company,

and in each case that Obligor or the Parent (as the case may be) shall be bound as though that Obligor or the Parent (as the case may be) itself had supplied such information, given such notices and instructions, made such agreements, effected such amendments, supplements and variations and received such relevant notice, demand or other communication.

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

## 3. PURPOSE

### 3.1 Purpose

- (a) The Original Borrower shall apply all amounts borrowed by it under the Initial Term Facility towards (directly or indirectly, including by way of on-lending to the Original Guarantors):
- (i) financing or refinancing amounts payable under or in connection with the Acquisition (including, for the avoidance of doubt, any adjustments, earn-outs or interest payments, however structured, in connection with the Acquisition and amounts payable under or in connection with any Squeeze-Out and/or any other purchase of shares or other interests in the Target);

- (ii) repayment of Existing Indebtedness and payment of related accrued interest, prepayment premium and any other amount payable in connection the repayment of Existing Indebtedness or any hedging to be terminated in connection therewith (including, for such purpose, on-lending any such amount to the relevant Group member which is a borrower in respect of such indebtedness); and/or
- (iii) financing the payment (or reimbursement) of the Acquisition Costs and/or Transaction Costs,

and in the case of paragraphs (i) to (iii) above, as described in the Funds Flow Statement.

- (b) Each Initial Revolving Facility Borrower shall apply all amounts borrowed by it under the Initial Revolving Facility towards financing or refinancing (directly or indirectly, including by way of on-lending to the Original Guarantors):
  - (i) amounts payable under or in connection with the Acquisition (including, for the avoidance of doubt, any adjustments, earn-outs or interest payments, however structured, in connection with the Acquisition and amounts payable under or in connection with any Squeeze-Out and/or any other purchase of shares or other interests in the Target);
  - (ii) any Acquisition Costs and/or Transaction Costs; and/or
  - (iii) the general corporate and working capital requirements of the Group, including (but not limited to) financing Capital Expenditure, Permitted Acquisitions, Permitted Joint Venture Investments and Permitted Reorganisations, together with any costs and expenses incurred in connection therewith and fees, costs, interest and expenses incurred in connection with the Finance Documents.
- (c) Each Additional Facility Borrower shall apply all amounts borrowed by it under an Additional Facility towards the purposes specified in the Additional Facility Notice relating to the relevant Additional Facility Commitments.

### **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**

The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to any Utilisation if on or before the Initial Utilisation Date, the Agent has received (or the Arranger or the Agent (acting on the instructions of the Arranger) has waived the requirement to receive) all of the documents and other evidence listed in Part I (*Conditions Precedent to First Utilisation*) of Schedule 2 (*Conditions Precedent*), unless otherwise specified in Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Agent (acting on the instructions of the Arranger, acting reasonably). The Agent shall notify the Company and the Lenders promptly upon being so satisfied

(or upon receipt, where applicable).

#### **4.2 Further conditions precedent**

- (a) Subject to Clause 4.1 (*Initial conditions precedent*), the Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to a Utilisation under an Initial Facility other than one to which Clause 4.3 (*Utilisations during the Certain Funds Period*) applies if on the date of the Utilisation Request and on the proposed Utilisation Date:
  - (i) in the case of a Rollover Loan, no Acceleration Event is continuing or would result from the proposed Utilisation;
  - (ii) in the case of a Renewal Request, no Acceleration Event is continuing or would result from the proposed Utilisation;
  - (iii) in the case of any Utilisation (other than any Utilisation under paragraphs (i) and (ii) above):
    - (A) no Event of Default is continuing or would result from the proposed Utilisation; and
    - (B) the Repeating Representations to be made by an Obligor or the Parent (as the case may be) are true in all material respects.
- (b) The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to an Additional Facility Loan under any Additional Facility if the conditions to making of such Additional Facility Loan as specified in the Additional Facility Notice relating to such Additional Facility are satisfied (or waived in accordance with the terms of such Additional Facility).
- (c) In the case of an Offer and in relation to the Initial Utilisation Date only (and unless waived by the Agent (acting on the instructions of the Arranger), the Lenders shall be under no obligation to make the Initial Term Facility or Initial Revolving Facility available to the Borrower unless the Company has delivered a certificate to the Agent signed by an authorised signatory confirming that the 75% Date has occurred.

#### **4.3 Utilisations during the Certain Funds Period**

- (a) Subject to Clause 4.1 (*Initial conditions precedent*), during the Certain Funds Period, the Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to a Certain Funds Utilisation if, on the date of the Utilisation Request and on the proposed Utilisation Date:
  - (i) in respect of an Additional Facility, the Company and the relevant Additional Facility Lenders have agreed that the relevant Additional Facility shall be made on a "*certain funds basis*" for a specified purpose in connection with a Permitted Acquisition or such other agreed purpose for such period and on such terms or conditions (if any) as the Company and those relevant Additional Facility Lenders shall agree and notify in writing to the Agent at least three Business Days (or such shorter period agreed with the Agent) prior to the date of the Utilisation Request;

- (ii) no Certain Funds Event has occurred and is continuing; and
  - (iii) no Certain Funds Illegality Event has occurred and is continuing (however, for the avoidance of doubt, such event in relation to a Lender shall not affect the obligation of any other Finance Party to fund or make available any Certain Funds Utilisation).
- (b) During the Certain Funds Period (save in circumstances where, pursuant to paragraph (a) above, a Lender is not obliged to comply with Clause 5.4 (*Lenders' participation*)), none of the Finance Parties shall be entitled to:
- (i) cancel any of its Commitments to the extent to do so would prevent or limit the making of a Certain Funds Utilisation;
  - (ii) rescind, terminate or cancel this Agreement (or any provision hereof or obligation hereunder) or any Initial Facility or exercise any similar right or remedy or take any action or make or enforce any claim under the Finance Documents it may have to the extent to do so would prevent or limit the making of a Certain Funds Utilisation;
  - (iii) refuse to participate in the making of a Certain Funds Utilisation;
  - (iv) exercise any right of set-off or counterclaim in respect of a Utilisation to the extent to do so would directly or indirectly prevent or limit the making of a Certain Funds Utilisation;
  - (v) cancel, accelerate or cause repayment or prepayment of any amounts owing under this Agreement or under any other Finance Document or exercise any enforcement rights under any Transaction Security Document to the extent to do so would prevent or limit the making of a Certain Funds Utilisation;
  - (vi) take any other action or make or enforce any claim (in its capacity as a Lender) to the extent that such action, claim or enforcement would directly or indirectly prevent or limit the making of a Certain Funds Utilisation; or
  - (vii) rescind, terminate or cancel any Finance Document (or any term or provision thereof) or any amounts owing under the Finance Documents or take any similar or analogous step or action or exercise any similar right or remedy in respect of any Finance Document or any other agreement,

***provided that*** immediately upon the expiry of the Certain Funds Period, all such rights, remedies and entitlements shall be available to the Finance Parties notwithstanding that they may not have been used or been available for use during the Certain Funds Period.

#### **4.4 Conditions relating to Optional Currencies**

- (a) A currency will constitute an Optional Currency in relation to an Initial Revolving Facility Utilisation or an Additional Facility if:
  - (i) it is EUR or GBP; or



- (ii)
  - (A) it is readily available in the amount required and freely convertible into US\$ in the wholesale market for that currency on the Quotation Day and the Utilisation Date for that Utilisation; and
  - (B) following a request by the Company or a Borrower by the Specified Time, it has been approved by the Agent (acting on the instructions of all the Lenders participating in the relevant Initial Revolving Facility Utilisation or the relevant Additional Facility (each acting reasonably)) on or prior to receipt by the Agent of the relevant Utilisation Request for that Utilisation.
- (b) If the Agent has received a written request from the Company or a Borrower for a currency to be approved under paragraph (a)(ii)(B) above, the Agent will confirm to the Company by the Specified Time:
  - (i) whether or not the Lenders participating in the relevant Initial Revolving Facility Utilisation or the relevant Utilisation under an Additional Facility (as the case may be) (each acting reasonably) have granted their approval; and
  - (ii) if approval has been granted, the minimum amount for any subsequent Utilisation in that currency (which the Agent (acting on the instructions of the Majority Lenders) shall determine acting reasonably and in consultation with the Company).
- (c) If the Agent has approved a request for an Other Currency under paragraph (b) above, the Company and the Agent (acting on the instructions of all the Lenders participating in the Utilisation(s) denominated in such Other Currency) shall, in respect of any such Loan in that Other Currency, agree and confirm the terms applicable to any Loan in such Other Currency by executing a Benchmark Schedule.

#### **4.5 Maximum number of Utilisations**

- (a) A Borrower may not deliver a Utilisation Request if as a result of the proposed Utilisation:
  - (i) more than three Initial Term Facility Loans would be outstanding; or
  - (ii) more than ten Initial Revolving Loans would be outstanding.
- (b) An Initial Revolving Facility Borrower may not request that a Letter of Credit be issued under the Initial Revolving Facility if, as a result of the proposed Utilisation, more than ten Letters of Credit under the Initial Revolving Facility would be outstanding.
- (c) A Borrower may not deliver a Utilisation Request in respect of an Additional Facility if as a result of the proposed Utilisation more than the maximum number of utilisations of that Additional Facility (as agreed between the Company and the Agent) would be outstanding.
- (d) A Borrower may not request that any Loan be divided.

## **5. UTILISATION – LOANS**

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

A Borrower may utilise a Facility by delivery to the Agent of a duly completed Utilisation Request not later than the Specified Time (or such later time as the Agent may agree).

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

- (a) Each Utilisation Request for a Loan is irrevocable and will not be regarded as having been duly completed unless:
  - (i) it identifies the Facility to be utilised;
  - (ii) the proposed Utilisation Date is a Business Day within the Availability Period for that Facility;
  - (iii) the currency and amount of that Loan comply with Clause 5.3 (*Currency and amount*);
  - (iv) the proposed Interest Period complies with Clause 15 (*Interest Periods*);
  - (v) it specifies the account(s) and bank(s) to which the proceeds of that Loan are to be credited; and
  - (vi) it identifies the Borrower to which the Loan has to be made.
- (b) Multiple Loans may be requested in a Utilisation Request where the proposed Utilisation Date is on (i) the Initial Utilisation Date or (ii) any closing date or completion date relating to a Permitted Acquisition. Only one Utilisation may be requested in each other Utilisation Request.

### **5.3 Currency and amount**

- (a) The currency for a Loan specified in a Utilisation Request must be:
  - (i) in relation to the Initial Term Facility, the Base Currency;
  - (ii) in relation to the Initial Revolving Facility, the Base Currency or an Optional Currency; or
  - (iii) in relation to the Additional Facility, as agreed by the relevant Additional Facility Lenders and specified in the applicable Additional Facility Notice.
- (b) The amount of the proposed Loan must be:
  - (i) (in respect of the Initial Term Facility) an amount that does not exceed the Available Facility for the Initial Term Facility;
  - (ii) (in respect of the Initial Revolving Facility) an amount that does not exceed the Available Facility for the Initial Revolving Facility; or
  - (iii) (in respect of an Additional Facility) an amount that does not exceed

the Available Facility for that Additional Facility.

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

- (a) Subject to Clauses 4.1 (*Initial conditions precedent*), 4.2 (*Further conditions precedent*), 4.3 (*Utilisations during the Certain Funds Period*) and 10.2 (*Repayment of Initial Revolving Loans*), each Lender shall make its participation in each Loan available by the Utilisation Date (for such Loan) through its Facility Office.
- (b) Other than as set out in paragraph (c) below, the amount of each Lender's participation in each Loan under a Facility will be equal to a proportion of that Loan, which proportion is equal to that borne by its Available Commitment (in respect of that Facility) to the Available Facility (in respect of that Facility) immediately prior to the making of that Loan.
- (c) If an Initial Revolving Facility Utilisation is made to repay Ancillary Outstandings, each Lender's participation in that Utilisation will be in an amount which will result as nearly as possible in the aggregate amount of its participation in the Initial Revolving Facility Utilisations then outstanding bearing the same proportion to the aggregate amount of the Initial Revolving Facility Utilisations then outstanding as its Initial Revolving Facility Commitment bears to the Total Initial Revolving Facility Commitments.
- (d) The Agent shall determine the Base Currency Amount of each Initial Revolving Loan which is to be made in an Optional Currency and notify each Lender of the amount, currency and the Base Currency Amount of each Loan and the amount of its participation in that Loan by the Specified Time.

#### **5.5 Cancellation of Commitment**

Upon the expiry of the Availability Period relating to a Facility, the Commitment of each Lender in respect of that Facility shall be reduced by the amount of its Available Commitment in respect of that Facility, and then such Available Commitment in respect of that Facility shall be immediately reduced to zero.

### **6. UTILISATION - LETTERS OF CREDIT**

#### **6.1 The Initial Revolving Facility**

- (a) The Initial Revolving Facility may be utilised by way of Letters of Credit, *provided that* there shall not be any double counting of the following amounts:
  - (i) a Lender's participation in such Utilisation made under the Initial Revolving Facility by way of a Letter of Credit; and
  - (ii) a Lender's participation in any Utilisation made under the Initial Revolving Facility for the purposes of providing cash cover in respect of such Letter of Credit.
- (b) Clause 5 (*Utilisation – Loans*) does not apply to utilisations by way of Letters of Credit.
- (c) In determining the amount of the Available Facility and a Lender's L/C Proportion of a proposed Letter of Credit for the purposes of this Agreement

the Available Commitment of a Lender will be calculated ignoring any cash cover provided for outstanding Letters of Credit.

## **6.2 Delivery of a Utilisation Request for Letters of Credit**

An Initial Revolving Facility Borrower and the Company may request a Letter of Credit to be issued by delivery to the Agent of a duly completed Utilisation Request not later than the Specified Time.

## **6.3 Completion of a Utilisation Request for Letters of Credit**

Each Utilisation Request for a Letter of Credit is irrevocable and will not be regarded as having been duly completed unless:

- (a) it specifies that it is for a Letter of Credit;
- (b) it identifies the Borrower of the Letter of Credit;
- (c) it identifies the Issuing Bank which has agreed to issue the Letter of Credit;
- (d) the proposed Utilisation Date is a Business Day within the Availability Period applicable to the Initial Revolving Facility;
- (e) the currency and amount of the Letter of Credit comply with Clause 6.4 (*Currency and amount*);
- (f) the form of Letter of Credit is attached;
- (g) without prejudice to Clause 6.11 (*Effect of Termination Date*), the Expiry Date of the Letter of Credit falls on or before the Termination Date in respect of the Initial Revolving Facility (unless cash cover is provided, a letter of credit is issued to the Issuing Bank in respect of such Letter of Credit or other collateral is provided (*provided* such letter of credit or other collateral is on terms satisfactory to the Issuing Bank) in respect of the full unclaimed amount of such Letter of Credit prior to the Termination Date in respect of the Initial Revolving Facility);
- (h) the delivery instructions for the Letter of Credit are specified; and
- (i) the identity of the beneficiary of the Letter of Credit is a beneficiary approved by the Issuing Bank.

## **6.4 Currency and amount**

- (a) The currency specified in a Utilisation Request must be the Base Currency or an Optional Currency.
- (b) The amount of the proposed Letter of Credit must be an amount whose Base Currency Amount is not more than the applicable Available Facility and which is, if the currency selected is an Optional Currency, the minimum amount specified by the Agent pursuant to paragraph (b)(ii) of Clause 4.4 (*Conditions relating to Optional Currencies*) or, if less, the Available Facility.

## **6.5 Issue of Letters of Credit**

- (a) If the conditions set out in this Clause 6 have been met, the applicable Issuing Bank shall issue the Letter of Credit on the Utilisation Date.
- (b) Subject to Clause 4.1 (*Initial conditions precedent*), the applicable Issuing Bank will only be obliged to comply with paragraph (a) above in relation to a Letter of Credit issued under the Initial Revolving Facility other than one to which Clause 6.6 (*Renewal of a Letter of Credit*) applies, if on the date of the Utilisation Request and on the proposed Utilisation Date:
  - (i) no Event of Default is continuing or would result from the proposed Utilisation; and
  - (ii) the Repeating Representations to be made by each Obligor or Parent (as the case may be) are true in all material respects.
- (c) The amount of each Lender's participation in each Letter of Credit will be equal to its L/C Proportion.
- (d) The Agent shall determine the Base Currency Amount of each Letter of Credit which is to be issued in an Optional Currency and shall notify the applicable Issuing Bank and each Lender of the details of the requested Letter of Credit and its participation in that Letter of Credit by the Specified Time.
- (e) The applicable Issuing Bank has no duty to enquire of any person whether or not any of the conditions set out in paragraphs (b) or (c) above have been met. The applicable Issuing Bank may assume that those conditions have been met unless it is expressly notified to the contrary by the Agent. The applicable Issuing Bank will have no liability to any person for issuing a Letter of Credit based on such assumption.
- (f) The applicable Issuing Bank is solely responsible for the form of the Letter of Credit that it issues. The Agent has no duty to monitor the form of that document.
- (g) Subject to paragraph (g) of Clause 32.7 (*Rights and discretions*), each of the applicable Issuing Bank and the Agent shall provide the other with any information reasonably requested by the other that relates to a Letter of Credit and its issue.
- (h) The applicable Issuing Bank may issue a Letter of Credit in the form of a SWIFT message or other form of communication customary in the relevant market but has no obligation to do so.

## **6.6 Renewal of a Letter of Credit**

- (a) An Initial Revolving Facility Borrower may request that any Letter of Credit issued on behalf of that Initial Revolving Facility Borrower be renewed by delivery to the Agent of a Renewal Request in substantially similar form to a Utilisation Request for a Letter of Credit by the Specified Time.
- (b) The Finance Parties shall treat any Renewal Request in the same way as a Utilisation Request for a Letter of Credit except that the condition set out in paragraph (f) of Clause 6.3 (*Completion of a Utilisation Request for Letters of Credit*) shall not apply and so long as no Acceleration Event is continuing or would result from the proposed renewal.

- (c) The terms of each renewed Letter of Credit shall be the same as those of the relevant Letter of Credit immediately prior to its renewal, except that:
  - (i) its amount may be less than the amount of the Letter of Credit immediately prior to its renewal; and
  - (ii) its Term shall start on the date which was the Expiry Date of the Letter of Credit immediately prior to its renewal, and shall end on the proposed Expiry Date specified in the Renewal Request.
- (d) Subject to paragraph (e) below, if the conditions set out in this Agreement have been met, the applicable Issuing Bank shall amend and re-issue any Letter of Credit pursuant to a Renewal Request.
- (e) Where a new Letter of Credit is to be issued to replace by way of renewal an existing Letter of Credit, the applicable Issuing Bank is not required to issue that new Letter of Credit until the Letter of Credit being replaced has been returned to the applicable Issuing Bank or the applicable Issuing Bank is satisfied either that it will be returned to it or otherwise that no liability can arise under it.

#### **6.7 Reduction of a Letter of Credit**

- (a) If, on the proposed Utilisation Date of a Letter of Credit, any Lender under the Initial Revolving Facility is a Non-Acceptable L/C Lender and:
  - (i) that Lender has failed to provide cash collateral to the applicable Issuing Bank in accordance with Clause 7.4 (*Cash collateral by Non-Acceptable L/C Lender and Company's option to provide cash cover*); and
  - (ii) the Borrower of that proposed Letter of Credit has not exercised its right to provide cash cover to the applicable Issuing Bank in accordance with paragraph (g) of Clause 7.4 (*Cash collateral by Non-Acceptable L/C Lender and Company's option to provide cash cover*),

the applicable Issuing Bank may reduce the amount of that Letter of Credit by an amount equal to the amount of the participation of that Non-Acceptable L/C Lender in respect of that Letter of Credit and that Non-Acceptable L/C Lender shall be deemed not to have any participation (or obligation to indemnify the applicable Issuing Bank) in respect of that Letter of Credit for the purposes of the Finance Documents.

- (b) The applicable Issuing Bank shall notify the Agent and the Company of each reduction made pursuant to this Clause 6.7.
- (c) This Clause 6.7 shall not affect the participation of each other Lender in that Letter of Credit.

#### **6.8 Revaluation of Letters of Credit**

- (a) If any Letters of Credit are denominated in an Optional Currency, the Agent shall within three days after the end of each half of each of its Financial Years recalculate the Base Currency Amount of each Letter of Credit by notionally converting into the Base Currency the outstanding amount of that Letter of

Credit on the basis of the Agent's Spot Rate of Exchange on the date of calculation.

- (b) The Company shall, if requested by the Agent within five Business Days of any calculation under paragraph (a) above, ensure that within three Business Days sufficient Initial Revolving Facility Utilisations are prepaid to prevent the Base Currency Amount of the Initial Revolving Facility Utilisations exceeding the Total Initial Revolving Facility Commitments (after deducting the total Ancillary Commitments) by an amount which is more than 5 per cent. of the Total Initial Revolving Facility Commitments following any adjustment to a Base Currency Amount under paragraph (a) above.

#### **6.9 Reduction or expiry of Letter of Credit**

If the amount of any Letter of Credit is wholly or partially reduced or it is repaid or prepaid or it expires prior to its Expiry Date, the relevant Issuing Bank and the Borrower that requested (or on behalf of which the Company requested) the issue of that Letter of Credit shall promptly notify the Agent of the details upon becoming aware of them.

#### **6.10 Appointment of Issuing Banks**

Any Lender which has agreed to the Company's request to be an Issuing Bank pursuant to the terms of this Agreement shall become an Issuing Bank for the purposes of this Agreement upon notifying the Agent and the Company that it has so agreed to be an Issuing Bank and on making that notification that Lender shall become bound by the terms of this Agreement as an Issuing Bank.

#### **6.11 Effect of Termination Date**

Each Letter of Credit Loan shall be repaid by the Company or the relevant Initial Revolving Facility Borrower on the Termination Date *provided that* if any Letter of Credit has an Expiry Date ending on or after the Termination Date, without prejudice to the repayment obligation in Clause 6.8 (*Revaluation of Letters of Credit*), on such Termination Date each such Letter of Credit shall be repaid unless, in the case of a Letter of Credit with an Expiry Date falling after such Termination Date:

- (a) the relevant Issuing Bank agrees that such Letter of Credit shall continue as between that Issuing Bank and the relevant Group Member on a bilateral basis and not as part of or under the Finance Documents; and
- (b) save for any rights and obligations against any other Finance Party under the Finance Documents arising prior to such Termination Date applicable to the relevant Initial Revolving Facility, no rights and obligations in respect of the Letter of Credit shall, as between the Finance Parties, continue, any cash cover or other collateral provided by any Lender in relation to such Letter of Credit shall be released on the Termination Date, and the Transaction Security shall not (following release thereof by the Security Agent) support any such Letter of Credit in respect of any claims that arise after such Termination Date and, in such circumstances, from the Termination Date paragraph (b) of Clause 7.3 (*Indemnities*) and Clause 7.4 (*Cash collateral by Non-Acceptable L/C Lender and Company's option to provide cash cover*) shall not apply to any such Letter of Credit or to any claim made or purported to be made under a Letter of Credit made after the Termination Date applicable to the relevant Initial Revolving Facility and, for the avoidance of doubt, the L/C Proportion of each Lender in

respect of that Letter of Credit shall be zero and it shall not prejudice any rights of the Agent and the Security Agent to immediately resign from the respective roles on the Termination Date.

## **7. LETTERS OF CREDIT**

### **7.1 Immediately payable**

If a Letter of Credit or any amount outstanding under a Letter of Credit is expressed to be immediately payable, the Borrower that requested (or on behalf of which the Company requested) the issue of that Letter of Credit shall repay or prepay that amount immediately.

### **7.2 Claims under a Letter of Credit**

- (a) Each Borrower irrevocably and unconditionally authorises the applicable Issuing Bank to pay any claim made or purported to be made under a Letter of Credit requested by it and which appears on its face to be in order (in this Clause 7, a *claim*).
- (b) Each Borrower shall within five Business Days of demand pay to the Agent for the applicable Issuing Bank an amount equal to the amount of any claim, or (provided that (i) the conditions set out in Clause 4.2 (*Further conditions precedent*) are complied with and (ii) no cash collateral has been provided in respect of that claim) may elect to have that claim converted into a Loan under the relevant Revolving Facility.
- (c) Each Borrower acknowledges that the Issuing Bank:
  - (i) is not obliged to carry out any investigation or seek any confirmation from any other person before paying a claim made or requested to be made under a Letter of Credit requested by it; and
  - (ii) deals in documents only and will not be concerned with the legality of a claim or any underlying transaction or any available set-off, counterclaim or other defence of any person.
- (d) The obligations of a Borrower under this Clause 7 will not be affected by:
  - (i) the sufficiency, accuracy or genuineness of any claim or any other document; or
  - (ii) any incapacity of, or limitation on the powers of, any person signing a claim or other document.

### **7.3 Indemnities**

- (a) Each Borrower shall within five Business Days of demand indemnify, to the maximum extent permitted under all applicable laws, the Issuing Bank against any cost, loss or liability incurred by the Issuing Bank (otherwise than by reason of the Issuing Bank's gross negligence or wilful misconduct) in acting as the Issuing Bank under any Letter of Credit requested by (or on behalf of) the relevant Borrower.



- (b) Each Lender shall (according to its L/C Proportion) within five Business Days of demand indemnify the Issuing Bank against any cost, loss or liability incurred by the Issuing Bank (otherwise than by reason of the Issuing Bank's gross negligence or wilful misconduct) in acting as the Issuing Bank under any Letter of Credit (unless the Issuing Bank has been reimbursed by an Obligor pursuant to a Finance Document).
- (c) The Borrower which requested a Letter of Credit shall within five Business Days of demand reimburse any Lender for any payment it makes to the Issuing Bank under this Clause 7.3 in respect of that Letter of Credit.
- (d) The obligations of each Lender or Borrower under this Clause 7.3 are continuing obligations and will extend to the ultimate balance of sums payable by that Lender or Borrower in respect of any Letter of Credit, regardless of any intermediate payment or discharge in whole or in part.
- (e) If a Borrower has provided cash cover in respect of a Lender's participation in a Letter of Credit, the Issuing Bank shall seek reimbursement from that cash cover before making a demand of that Lender under paragraph (b) above. Any recovery made by an Issuing Bank pursuant to that cash cover will reduce that Lender's liability under paragraph (b) above.
- (f) The obligations of any Lender or Borrower under this Clause 7.3 will not be affected by any act, omission, matter or thing which, but for this Clause 7.3, would reduce, release or prejudice any of its obligations under this Clause 7.3 (without limitation and whether or not known to it or any other person) including:
  - (i) any time, waiver or consent granted to, or composition with, any Obligor, the Parent, any beneficiary under a Letter of Credit or any other person;
  - (ii) the release of any other Obligor, the Parent or any other person under the terms of any composition or arrangement with any creditor or any Group Member;
  - (iii) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor, the Parent, any beneficiary under a Letter of Credit or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
  - (iv) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor, the Parent, any beneficiary under a Letter of Credit or any other person;
  - (v) any amendment (however fundamental) or replacement of a Finance Document, any Letter of Credit or any other document or security;
  - (vi) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document, any Letter of Credit or any other document or security; or
  - (vii) any insolvency or similar proceedings.

#### 7.4 Cash collateral by Non-Acceptable L/C Lender and Company's option to provide cash cover

- (a) If, at any time, a Lender under the Initial Revolving Facility is a Non-Acceptable L/C Lender, the Issuing Bank may, by notice to that Lender, request that Lender to pay and that Lender shall pay, on or prior to the date falling five Business Days after the request by the Issuing Bank, an amount equal to that Lender's L/C Proportion of:
- (i) the outstanding amount of a Letter of Credit; or
  - (ii) in the case of a proposed Letter of Credit, the amount of that proposed Letter of Credit,

and in the currency of that Letter of Credit to an interest-bearing account held in the name of that Lender with the Issuing Bank.

- (b) The Non-Acceptable L/C Lender to whom a request has been made in accordance with paragraph (a) above shall enter into a security document or other form of collateral arrangement over the account, in form and substance satisfactory to the Issuing Bank, as collateral for any amounts due and payable under this Agreement by that Lender to the Issuing Bank in respect of that Letter of Credit.
- (c) Subject to paragraph (f) below, withdrawals from such an account may only be made to pay the Issuing Bank amounts due and payable to it under this Agreement by the Non-Acceptable L/C Lender in respect of that Letter of Credit until no amount is or may be outstanding under that Letter of Credit.
- (d) Each Lender under the Initial Revolving Facility shall notify the Agent and the Company:
- (i) on the Signing Date or on any later date on which it becomes such a Lender in accordance with Clause 2.2 (*Increase – Cancelled Commitments*), Clause 2.3 (*Additional Facility*) or Clause 29 (*Changes to the Lenders*) whether it is a Non-Acceptable L/C Lender; and
  - (ii) as soon as practicable upon becoming aware of the same, that it has become a Non-Acceptable L/C Lender,

and an indication in Part II (*The Original Lenders*) of Schedule 1 (*The Original Parties*), in a Transfer Certificate, in an Assignment Agreement, in an Increase Confirmation - Cancelled Commitment to that effect will constitute a notice under paragraph (i) above to the Agent and, upon delivery in accordance with Clause 29.8 (*Copy of Transfer Certificate, Assignment Agreement, Increase Confirmation – Cancelled Commitments, Additional Facility Notice or Additional Facility Lender Accession Notice to Company*), to the Company.

- (e) Any notice received by the Agent pursuant to paragraph (d) above shall constitute notice to the Issuing Bank of that Lender's status and the Agent shall, upon receiving each such notice, promptly notify the Issuing Bank of that Lender's status as specified in that notice.
- (f) Notwithstanding paragraph (c) above, a Lender which has provided cash collateral in accordance with this Clause 7.4 may, by notice to the Issuing

Bank, request that an amount equal to the amount provided by it as collateral in respect of the relevant Letter of Credit (together with any accrued interest) be returned to it:

- (i) to the extent that such cash collateral has not been applied in satisfaction of any amount due and payable under this Agreement by that Lender to the Issuing Bank in respect of the relevant Letter of Credit;
- (ii) if:
  - (A) it ceases to be a Non-Acceptable L/C Lender;
  - (B) its obligations in respect of the relevant Letter of Credit are transferred to a New Lender in accordance with the terms of this Agreement; or
  - (C) an Increase Lender has agreed to undertake that Lender's obligations in respect of the relevant Letter of Credit in accordance with the terms of this Agreement; and
- (iii) if no amount is due and payable by that Lender in respect of a Letter of Credit,

and the Issuing Bank shall pay that amount to the Lender within five Business Days of that Lender's request (and shall cooperate with the Lender in order to procure that the relevant security or collateral arrangement is released and discharged).

- (g) To the extent that a Non-Acceptable L/C Lender fails to provide cash collateral (or notifies the Issuing Bank that it will not provide cash collateral) in accordance with this Clause 7.4 in respect of a proposed Letter of Credit, the Issuing Bank shall promptly notify the Company (with a copy to the Agent) and the Borrower of that proposed Letter of Credit may, at any time before the proposed Utilisation Date of that Letter of Credit, provide cash cover to an account with the Issuing Bank in an amount equal to that Lender's L/C Proportion of the amount of that proposed Letter of Credit.

## **7.5 Requirement for cash cover from Borrower**

If:

- (a) a Non-Acceptable L/C Lender fails to provide cash collateral (or notifies the Issuing Bank that it will not provide cash collateral) in accordance with Clause 7.4 (*Cash collateral by Non-Acceptable L/C Lender and Company's option to provide cash cover*) in respect of a Letter of Credit that has been issued;
- (b) the Issuing Bank notifies the Company (with a copy to the Agent) that it requires the Borrower of the relevant Letter of Credit to provide cash cover to an account with the Issuing Bank in an amount equal to that Lender's L/C Proportion of the outstanding amount of that Letter of Credit; and
- (c) that Borrower has not already provided such cash cover which is continuing to stand as collateral,

then that Borrower shall provide such cash cover within five Business Days of the notice referred to in paragraph (b) above.

#### **7.6 Regulation and consequences of cash cover provided by Company**

- (a) Any cash cover provided by a Borrower pursuant to Clause 7.4 (*Cash collateral by Non-Acceptable L/C Lender and Company's option to provide cash cover*) or Clause 7.5 (*Requirement for cash cover from Borrower*) may be funded out of an Initial Revolving Loan.
- (b) Notwithstanding paragraph (q) of Clause 1.2 (*Construction*), the relevant Borrower may request that an amount equal to the cash cover (together with any accrued interest) provided by it pursuant to Clause 7.4 (*Cash collateral by Non-Acceptable L/C Lender and Company's option to provide cash cover*) or Clause 7.5 (*Requirement for cash cover from Borrower*) be returned to it:
  - (i) to the extent that such cash cover has not been applied in satisfaction of any amount due and payable under this Agreement by that Borrower to the Issuing Bank in respect of a Letter of Credit;
  - (ii) if:
    - (A) the relevant Lender ceases to be a Non-Acceptable L/C Lender;
    - (B) the relevant Lender's obligations in respect of the relevant Letter of Credit are transferred to a New Lender in accordance with the terms of this Agreement; or
    - (C) an Increase Lender has agreed to undertake the relevant Lender's obligations in respect of the relevant Letter of Credit in accordance with the terms of this Agreement; and
  - (iii) if no amount is due and payable by the relevant Lender in respect of the relevant Letter of Credit,

and the Issuing Bank shall pay that amount to that Borrower within five Business Days of that Borrower's request.

- (c) To the extent that the Company has provided cash cover pursuant to Clause 7.4 (*Cash collateral by Non-Acceptable L/C Lender and Company's option to provide cash cover*) or Clause 7.5 (*Requirement for cash cover from Borrower*), the relevant Lender's L/C Proportion in respect of that Letter of Credit will remain (but that Lender's obligations in relation to that Letter of Credit may be satisfied in accordance with paragraph (q)(ii) of Clause 1.2 (*Construction*)). However the relevant Borrower's obligation to pay any Letter of Credit fee in relation to the relevant Letter of Credit to the Agent (for the account of that Lender) in accordance with paragraph (b) of Clause 17.4 (*Fees payable in respect of Letters of Credit*) will be reduced proportionately as from the date on which it provides that cash cover (and for so long as the relevant amount of cash cover continues to stand as collateral).
- (d) The relevant Issuing Bank shall promptly notify the Agent of the extent to which a Borrower provides cash cover pursuant to Clause 7.4 (*Cash collateral by Non-Acceptable L/C Lender and Company's option to provide cash cover*)

or Clause 7.5 (*Requirement for cash cover from Borrower*) and of any change in the amount of cash cover so provided.

#### **7.7 Rights of contribution**

No Obligor will be entitled to any right of contribution or indemnity from any Finance Party in respect of any payment it may make under this Clause 7.

### **8. OPTIONAL CURRENCIES**

#### **8.1 Selection of currency**

An Initial Revolving Facility Borrower or an Additional Facility Borrower (in each case, or the Company on its behalf) or the Company shall select the currency of an Initial Revolving Facility Utilisation or an Additional Facility Loan in a Utilisation Request.

#### **8.2 Unavailability of a currency**

If before the Specified Time at least 3 Business Days prior to the Quotation Day:

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

the Agent will give notice to the relevant Borrower to that effect by the Specified Time on that day. In this event, any Lender that gives notice pursuant to this Clause 8.2 will be required to participate in the Loan in US\$ (in an amount equal to that Lender's proportion of the Base Currency Amount or, in respect of a Rollover Loan, an amount equal to that Lender's proportion of the Base Currency Amount of the Rollover Loan that is due to be made) and its participation will be treated as a separate Loan denominated in the Base Currency during that Interest Period. This Clause 8.2 shall not apply to Loans requested to be made in EUR or GBP.

#### **8.3 Agent's calculations**

Each Lender's participation in a Loan will be determined in accordance with paragraph (b) of Clause 5.4 (*Lenders' participation*).

### **9. ANCILLARY FACILITIES**

#### **9.1 Type of Facility**

An Ancillary Facility may be by way of:

- (a) an overdraft facility or other current account facility;
- (b) a guarantee, bonding, documentary or stand-by letter of credit facility;
- (c) a short term loan facility;
- (d) a derivatives facility;

- (e) a foreign exchange facility;
- (f) a credit card or similar facility;
- (g) a bill payments facility; or
- (h) any other facility or accommodation required in connection with the business of the Group and which is agreed by the Company with an Ancillary Lender.

## **9.2 Availability**

- (a) If the Company and a Lender agree and except as otherwise provided in this Agreement, the Lender may provide all or part of its Initial Revolving Facility Commitment or its Additional Facility Commitment in respect of an Additional Revolving Facility as an Ancillary Facility.
- (b) An Ancillary Facility shall not be made available unless, not later than three Business Days prior to the Ancillary Commencement Date for an Ancillary Facility, the Agent has received from the Company:
  - (i) a notice in writing of the establishment of an Ancillary Facility and specifying:
    - (A) the proposed Borrower which may use the Ancillary Facility;
    - (B) the proposed Ancillary Commencement Date and expiry date of the Ancillary Facility;
    - (C) the proposed type of Ancillary Facility to be provided;
    - (D) the proposed Ancillary Lender;
    - (E) the proposed Ancillary Commitment, the maximum amount of the Ancillary Facility and, in the case of a Multi-account Overdraft, its Designated Gross Amount and its Designated Net Amount; and
    - (F) the proposed currency of the Ancillary Facility (if not denominated in the Base Currency);
  - (ii) if the Ancillary Facility is to be utilised in respect of one or more Rollover Bank Guarantees, the notice to be provided under subparagraph (i) above shall attach a list of such Rollover Bank Guarantees; and
  - (iii) any other information which the Agent may reasonably request in connection with the Ancillary Facility.
- (c) The Agent shall promptly notify the Ancillary Lender and the other Lenders of the establishment of an Ancillary Facility.
- (d) Subject to compliance with paragraph (b) above:
  - (i) the Lender concerned will become an Ancillary Lender; and
  - (ii) the Ancillary Facility will be available,

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

### **9.3 Terms of Ancillary Facilities**

- (a) Except as provided below, the terms of any Ancillary Facility will be those agreed by the Ancillary Lender and the Company.
- (b) Those terms:
  - (i) must be based upon normal commercial terms at that time (except as varied by this Agreement);
  - (ii) may allow only Borrowers (or any other Group Member or any of their Affiliates nominated pursuant to Clause 9.9 (*Affiliates of Borrowers*)) to use the Ancillary Facility;
  - (iii) may not allow the Ancillary Outstandings to exceed the Ancillary Commitment;
  - (iv) may not allow a Lender's Ancillary Commitment to exceed that Lender's Available Commitment relating to the Initial Revolving Facility or an Additional Revolving Facility (as applicable) (before taking into account the effect of the Ancillary Facility on that Available Commitment); and
  - (v) must require that the Ancillary Commitment is reduced to zero, and that all Ancillary Outstandings are repaid not later than the Termination Date applicable to the Initial Revolving Facility or the relevant Additional Revolving Facility (as applicable) (or such earlier date as the Initial Revolving Facility Commitment or Additional Facility Commitment (as applicable) of the relevant Ancillary Lender (or its Affiliate) is reduced to zero).
- (c) If there is any inconsistency between any term of an Ancillary Facility and any term of this Agreement, this Agreement shall prevail except for:
  - (i) Clause 38.3 (*Day count convention*) which shall not prevail for the purposes of calculating fees, interest or commission relating to an Ancillary Facility;
  - (ii) an Ancillary Facility comprising more than one account where the terms of the Ancillary Documents shall prevail to the extent required to permit the netting of balances on those accounts; and
  - (iii) where the relevant term of this Agreement would be contrary to, or inconsistent with, the law governing the relevant Ancillary Document, in which case that term of this Agreement shall not prevail.
- (d) Interest, commission and fees on Ancillary Facilities are dealt with in Clause 17.5 (*Interest, commission and fees on Ancillary Facilities*).

### **9.4 Repayment of Ancillary Facility**

- (a) An Ancillary Facility shall cease to be available on the Termination Date applicable to the Initial Revolving Facility or the relevant Additional

Revolving Facility (as applicable) or such earlier date on which its expiry date occurs or on which it is cancelled in accordance with the terms of this Agreement.

- (b) If an Ancillary Facility expires in accordance with its terms the Ancillary Commitment of the relevant Ancillary Lender shall be reduced to zero.
- (c) No Ancillary Lender may demand repayment or prepayment of any Ancillary Outstandings prior to the expiry date of the relevant Ancillary Facility unless:
  - (i) required to reduce the Permitted Gross Outstandings of a Multi-account Overdraft to or towards an amount equal to its Designated Net Amount;
  - (ii) the Total Initial Revolving Facility Commitments or the aggregate Additional Facility Commitments in respect of the relevant Additional Revolving Facility (as applicable) have been cancelled in full or all outstanding Utilisations under the Initial Revolving Facility (or the relevant Additional Revolving Facility (as applicable)) have become due and payable in accordance with the terms of this Agreement;
  - (iii) it becomes unlawful in any applicable jurisdiction for the Ancillary Lender to perform any of its obligations as contemplated by this Agreement or to fund, issue or maintain its participation in its Ancillary Facility (or it becomes unlawful for any Affiliate of the Ancillary Lender for the Ancillary Lender to do so); or
  - (iv) both:
    - (A) the Available Commitments relating to the Initial Revolving Facility or the relevant Additional Revolving Facility (as applicable); and
    - (B) the notice of the demand given by the Ancillary Lender,would not prevent the relevant Borrower funding the repayment of those Ancillary Outstandings in full by way of Initial Revolving Facility Utilisation or the relevant Additional Revolving Facility Utilisation (as applicable).
- (d) If an Initial Revolving Facility Utilisation or an Additional Revolving Facility Utilisation is made to repay Ancillary Outstandings in full, the relevant Ancillary Commitment shall be reduced to zero.

## **9.5 Limitation on Ancillary Outstandings**

Each Borrower shall procure that and each Ancillary Lender agrees that:

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



- (ii) the Gross Outstandings shall not exceed the Designated Gross Amount applicable to that Multi-account Overdraft.

## 9.6 Adjustment for Ancillary Facilities upon acceleration

- (a) In this Clause 9.6:
  - (i) **Additional Revolving Outstandings** means, in relation to a Lender, the aggregate of the equivalent in the Base Currency of:
    - (A) its participation in each Additional Revolving Facility Utilisation then outstanding (together with the aggregate amount of all accrued interest, fees and commission owed to it as a Lender under the Additional Revolving Facility); and
    - (B) if the Lender is also an Ancillary Lender, the Ancillary Outstandings in respect of Ancillary Facilities provided by that Ancillary Lender (or by its Affiliate) (together with the aggregate amount of all accrued interest, fees and commission owed to it (or to its Affiliate) as an Ancillary Lender in respect of the Ancillary Facility);
  - (ii) **Initial Revolving Outstandings** means, in relation to a Lender, the aggregate of the equivalent in the Base Currency of:
    - (A) its participation in each Initial Revolving Facility Utilisation then outstanding (together with the aggregate amount of all accrued interest, fees and commission owed to it as a Lender under the Initial Revolving Facility); and
    - (B) if the Lender is also an Ancillary Lender, the Ancillary Outstandings in respect of Ancillary Facilities provided by that Ancillary Lender (or by its Affiliate) (together with the aggregate amount of all accrued interest, fees and commission owed to it (or to its Affiliate) as an Ancillary Lender in respect of the Ancillary Facility);
  - (iii) **Total Additional Revolving Outstandings** means the aggregate of all Additional Revolving Outstandings; and
  - (iv) **Total Initial Revolving Outstandings** means the aggregate of all Initial Revolving Outstandings.
- (b) If a notice is served under Clause 28.16 (*Acceleration*) (other than a notice declaring Utilisations to be due on demand), each Lender and each Ancillary Lender shall (subject to paragraph (g) below) promptly adjust (by making or receiving (as the case may be) corresponding transfers of rights and obligations under the Finance Documents relating to Initial Revolving Outstandings or Additional Revolving Outstandings, as applicable) their claims in respect of amounts outstanding to them under the Initial Revolving Facility or Additional Revolving Facility (as applicable) and each Ancillary Facility to the extent necessary to ensure that after such transfers the Initial Revolving Outstandings or Additional Revolving Outstandings (as applicable) of each Lender bear the same proportion to the Total Initial Revolving Outstandings or Total Additional Revolving Outstandings (as applicable) as such Lender's Initial

Revolving Facility Commitment or Additional Facility Commitment (as applicable) bears to the Total Initial Revolving Facility Commitments or the Total Additional Facility Commitments (as applicable), each as at the date the notice is served under Clause 28.16 (*Acceleration*).

- (c) If an amount outstanding under an Ancillary Facility is a contingent liability and that contingent liability becomes an actual liability or is reduced to zero after the original adjustment is made under paragraph (b) above, then each Lender and Ancillary Lender will make a further adjustment (by making or receiving (as the case may be) corresponding transfers of rights and obligations under the Finance Documents relating to Initial Revolving Outstandings to the extent necessary) to put themselves in the position they would have been in had the original adjustment been determined by reference to the actual liability or, as the case may be, zero liability and not the contingent liability.
- (d) Any transfer of rights and obligations relating to Initial Revolving Outstandings or Additional Revolving Outstandings made pursuant to this Clause 9.6 shall be made for a purchase price in cash, payable at the time of transfer, in an amount equal to those Initial Revolving Outstandings or Additional Revolving Outstandings (as applicable).
- (e) Prior to the application of the provisions of paragraph (b) above, an Ancillary Lender that has provided a Multi-account Overdraft shall set-off any Available Credit Balance on any account comprised in that Multi-account Overdraft.
- (f) All calculations to be made pursuant to this Clause 9.6 shall be made by the Agent based upon information provided to it by the Lenders and Ancillary Lenders and the Agent's Spot Rate of Exchange.
- (g) This Clause 9.6 shall not oblige any Lender to accept the transfer of a claim relating to an amount outstanding under an Ancillary Facility which is not denominated (pursuant to the relevant Finance Document) in either the Base Currency, a currency which has been an Optional Currency for the purpose of any Initial Revolving Facility Utilisation or Additional Revolving Facility Utilisation or in another currency which is acceptable to that Lender.

## **9.7 Information**

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

## **9.8 Affiliates of Lenders as Ancillary Lenders**

- (a) Subject to the terms of this Agreement, an Affiliate of a Lender may become an Ancillary Lender. In such case, other than for the purpose of any clauses referring to Tax (including, but not limited to, Clause 18 (*Tax Gross-Up and Indemnities*) and Clause 21 (*Mitigation by the Lenders*)) to the extent such clauses expressly deal with Tax matters, Lender and its Affiliate shall be treated as a single Lender whose Initial Revolving Facility Commitment or Additional Facility Commitment in respect of the relevant Additional Revolving Facility is the amount set out opposite the relevant Lender's name in Part II (*The Original Lenders*) of Schedule 1 (*The Original Parties*) or in the

Additional Facility Notice relating to that Additional Facility and/or the amount of any Initial Revolving Facility Commitment or Additional Facility Commitment in respect of the relevant Additional Revolving Facility transferred to or assumed by that Lender under this Agreement, to the extent (in each case) not cancelled, reduced or transferred by it under this Agreement.

- (b) The Company shall specify any relevant Affiliate of a Lender in any notice delivered by the Company to the Agent pursuant to paragraph (b)(i) of Clause 9.2 (*Availability*).
- (c) If a Lender assigns all of its rights and benefits or transfers all of its rights and obligations to a New Lender, its Affiliate shall cease to have any obligations under this Agreement or any Ancillary Document.
- (d) Where this Agreement or any other Finance Document imposes an obligation on an Ancillary Lender and the relevant Ancillary Lender is an Affiliate of a Lender which is not a party to that document, the relevant Lender shall ensure that the obligation is performed by its Affiliate.

### **9.9 Affiliates of Borrowers**

- (a) Subject to the terms of this Agreement, an Affiliate of a Borrower may, with the approval of the relevant Lender become a borrower with respect to an Ancillary Facility.
- (b) The Company shall specify any relevant Affiliate of a Borrower in any notice delivered by the Company to the Agent pursuant to paragraph (b)(i) of Clause 9.2 (*Availability*).
- (c) If a Borrower ceases to be a Borrower under this Agreement in accordance with Clause 31.4 (*Resignation of an Obligor*), its Affiliate shall cease to have any rights under this Agreement or any Ancillary Document.
- (d) Where this Agreement or any other Finance Document imposes an obligation on a Borrower under an Ancillary Facility and the relevant Borrower is an Affiliate of a Borrower which is not a party to that document, the relevant Borrower shall ensure that the obligation is performed by its Affiliate.
- (e) Any reference in this Agreement or any other Finance Document to a Borrower being under no obligations (whether actual or contingent) as a Borrower under such Finance Document shall be construed to include a reference to any Affiliate of a Borrower being under no obligations under any Finance Document or Ancillary Document.

### **9.10 Commitment amounts**

Notwithstanding any other term of this Agreement, each Lender shall ensure that at all times its Initial Revolving Facility Commitment or its Additional Facility Commitment in respect of the relevant Additional Revolving Facility (as applicable) is not less than:

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

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

No amendment or waiver of a term of any Ancillary Facility shall require the consent of any Finance Party other than the relevant Ancillary Lender unless such amendment or waiver itself relates to or gives rise to a matter which would require an amendment of this Agreement (including, for the avoidance of doubt, this Clause 9). In such a case, Clause 41 (*Amendments and Waivers*) will apply.

**9.12 Existing LCs and ancillary facilities**

Upon delivery of a notice by the Company to the Agent pursuant to paragraph 9.2(b)(ii) of Clause 9.2 (*Availability*) stating that an Ancillary Facility will be utilised in part or in full in respect of one or more Rollover Bank Guarantees, such Rollover Bank Guarantee shall as from the Ancillary Commencement Date of that Ancillary Facility be treated as outstanding under the relevant Ancillary Facility for all purposes under the Revolving Facility.

**10. REPAYMENT**

**10.1 Repayment of Initial Term Facility Loans**

- (a) Subject to paragraph (b) below, the Original Borrower shall ensure that the Initial Term Facility Loans are repaid in instalments by repaying on each Initial Term Facility Repayment Date an aggregate amount in USD equal to the relevant percentage of the aggregate of (the **Relevant Amount**) the Initial Term Facility Loans outstanding as at the end of the Availability Period applicable to the Initial Term Facility which percentage is set out in the table below opposite such Initial Term Facility Repayment Date:

<b>Initial Term Facility Repayment Date</b>	<b>Initial Term Facility Repayment Instalment</b>
Date falling 36 Months after the Initial Utilisation Date	2.00%
Date falling 42 Months after the Initial Utilisation Date	3.00%
Date falling 48 Months after the Initial Utilisation Date	8.50%
Date falling 54 Months after the Initial Utilisation Date	11.50%
Termination Date in respect of the Initial Term Facility	75.00% (or, if different, the remaining outstanding balance)

- (b) Any repayment of the Initial Term Facility Loans under paragraph (a) above shall be applied pro rata to each Lender’s participation in any such Loans.

**10.2 Repayment of Initial Revolving Loans**

- (a) Each Initial Revolving Facility Borrower which has drawn an Initial Revolving Loan shall repay that Loan on the last day of its Interest Period.

- (b) Without prejudice to each Initial Revolving Facility Borrower's obligation under paragraph (a) above, if:
- (i) one or more Initial Revolving Loans are to be made available to an Initial Revolving Facility Borrower:
    - (A) on the same day that a maturing Initial Revolving Loan is due to be repaid by that Initial Revolving Facility Borrower;
    - (B) in the same currency as the maturing Initial Revolving Loan (unless it arose as a result of the operation of Clause 8.2 (*Unavailability of a currency*)); and
    - (C) in whole or in part for the purpose of refinancing the maturing Initial Revolving Loan; and
  - (ii) the proportion borne by each Lender's participation in the maturing Initial Revolving Loan to the amount of that maturing Initial Revolving Loan is the same as the proportion borne by that Lender's participation in the new Initial Revolving Loans to the aggregate amount of those new Initial Revolving Loans,

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

- (A) if the amount of the maturing Initial Revolving Loan exceeds the aggregate amount of the new Initial Revolving Loans:
  - (1) the relevant Initial Revolving Facility Borrower will only be required to make a payment under Clause 35.1 (*Payments to the Agent*) in an amount in the relevant currency equal to that excess; and
  - (2) each Lender's participation in the new Initial Revolving Loans shall be treated as having been made available and applied by the Initial Revolving Facility Borrower in or towards repayment of that Lender's participation in the maturing Initial Revolving Loan and that Lender will not be required to make a payment under Clause 35.1 (*Payments to the Agent*) in respect of its participation in the new Initial Revolving Loans; and
- (B) if the amount of the maturing Initial Revolving Loan is equal to or less than the aggregate amount of the new Initial Revolving Loans:
  - (1) the relevant Initial Revolving Facility Borrower will not be required to make a payment under Clause 35.1 (*Payments to the Agent*); and
  - (2) each Lender will be required to make a payment under Clause 35.1 (*Payments to the Agent*) in respect of its

participation in the new Initial Revolving Loans only to the extent that its participation in the new Initial Revolving Loans exceeds that Lender's participation in the maturing Initial Revolving Loan and the remainder of that Lender's participation in the new Initial Revolving Loans shall be treated as having been made available and applied by the Initial Revolving Facility Borrower in or towards repayment of that Lender's participation in the maturing Initial Revolving Loan.

- (c) Without prejudice to paragraphs (a) and (b) above, until the relevant Initial Revolving Facility Borrower notifies the Agent otherwise (which may be by delivery of a separate Utilisation Request) and subject to paragraph (a)(i) of Clause 4.2 (*Further conditions precedent*), each Initial Revolving Facility Borrower hereby makes the request (in place of delivering a separate Utilisation Request) that a Rollover Loan in an amount equal to a maturing Initial Revolving Loan shall be automatically utilised with the same length of Interest Period as that of such maturing Initial Revolving Loan on the last day of the Interest Period of such maturing Initial Revolving Loan. The foregoing request shall be deemed to be a Utilisation Request and shall be, unless expressly provided otherwise in this paragraph (c), subject to all other provisions in this Agreement applicable to a Utilisation Request.

### **10.3 Repayment of Additional Facility Loans**

The Borrower to which an Additional Facility Loan has been made shall repay that Additional Facility Loan in accordance with the terms of that Additional Facility Loan as set out in the Additional Facility Notice.

### **10.4 Effect of cancellation and prepayment**

- (a) If any Utilisation or any part thereof is prepaid in accordance with Clause 11.4 (*Voluntary prepayment*):
- (i) in the case of an Initial Term Facility Loan, the Company may apply such prepayment towards the reduction of the Initial Term Facility Repayment Instalment(s) for any Initial Term Facility Repayment Date(s) falling after that prepayment as it may choose in its sole discretion by notice in writing to the Agent (or, in the absence on such notification, pro rata in respect of the remaining Initial Term Facility Repayment Instalments), ***provided that*** the aggregate amount of such reduction(s) shall be equal to the amount of such Initial Term Facility Loans prepaid;
  - (ii) (in the case of an Initial Revolving Facility Utilisation) the Company may apply such prepayment towards prepaying any outstanding Initial Revolving Facility Utilisation(s) in such manner as it may choose in its sole discretion, ***provided that*** the aggregate amount of such reduction(s) shall be equal to the amount of such Initial Revolving Facility Utilisation(s) prepaid; and/or
  - (iii) (in the case of an Additional Facility Loan under any Additional Facility) the Company may apply such prepayment in such manner as specified in the Additional Facility Notice relating to such Additional

Facility.

- (b) If any Loan or any part thereof is repaid or prepaid in accordance with Clause 11.1 (*Illegality*) or 41.7 (*Cancellation and repayment of a Replaceable Lender (other than an Illegal Lender)*), then:
  - (i) in the case of an Initial Term Facility Loan, the amount of the Initial Term Facility Repayment Instalment for each Initial Term Facility Repayment Date falling due after that repayment or prepayment will reduce pro rata by the amount of such Loan so repaid or prepaid; and
  - (ii) (in the case of any Additional Facility Loan under any Additional Facility) repayment instalments falling due after that repayment or prepayment will reduce, unless otherwise specified in the Additional Facility Notice relating to such Additional Facility, pro rata by the amount of such Additional Facility Loan so repaid or prepaid.

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

### **11.1 Illegality**

If after the Signing Date it becomes unlawful in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or to fund, issue or maintain its participation in the Utilisations:

- (a) that Lender shall promptly notify the Agent upon becoming aware of that event and the Agent shall notify the Company as soon as reasonably practicable;
- (b) upon the Agent notifying the Company, the Available Commitment of that Lender in respect of each Facility will be immediately suspended to the extent necessary to comply with applicable law (and the Commitment of that Lender in respect of such Facility shall be reduced accordingly) **provided that** the Total Commitments may (at the Company's option) simultaneously with or subsequent to such cancellation be increased in accordance with Clause 2.2 (*Increase – Cancelled Commitments*); and
- (c) to the extent that Lender's participation has not been transferred pursuant to Clause 41.6 (*Conditions of replacement of a Replaceable Lender*), each Borrower shall repay that Lender's participation in the Utilisations made to that Borrower on the last day of the Interest Period relating to each Utilisation occurring after the Agent has notified the Company 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).

### **11.2 Illegality in relation to Issuing Bank**

If it becomes unlawful for an Issuing Bank to issue or leave outstanding any Letter of Credit then:

- (a) that Issuing Bank shall promptly notify the Agent upon becoming aware of that event;
- (b) upon the Agent notifying the Company, the Issuing Bank shall not be obliged to issue any Letter of Credit;

- (c) the Company shall use its best endeavours to procure the release of each Letter of Credit issued by that Issuing Bank and outstanding at such time on or before the date specified by the Issuing Bank in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law); and
- (d) unless any other Lender is or has become an Issuing Bank pursuant to the terms of this Agreement, the Initial Revolving Facility shall cease to be available for the issue of Letters of Credit.

### **11.3 Voluntary cancellation**

- (a) The Company may, if it gives the Agent not less than three Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, cancel:
  - (i) the whole or any part (being a minimum amount of US\$500,000 and in integral multiples of US\$100,000) of the Available Facility in respect of the Initial Term Facility. Any cancellation under this paragraph (a) shall reduce the Commitments of the Lenders under the Initial Term Facility rateably; and
  - (ii) the whole or any part (being a minimum amount of US\$500,000 and in integral multiples of US\$100,000) of the Available Facility in respect of the Initial Revolving Facility. Any cancellation under this paragraph (a) shall reduce the Commitments of the Lenders under the Initial Revolving Facility rateably.
- (b) Unless otherwise specified in the Additional Facility Notice in respect of such Additional Facility, the Company may cancel the whole or any part (being a minimum amount of US\$500,000 and integral multiples of US\$100,000) of the Available Facility in respect any Additional Facility. Any cancellation in this paragraph (b) shall reduce the Additional Facility Commitments of the relevant Additional Facility Lenders rateably.

### **11.4 Voluntary prepayment**

- (a) A Borrower in respect of an Initial Facility Loan may, if it or the Company gives the Agent not less than three Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay:
  - (i) the whole or any part of the outstanding Loan under the Initial Term Facility (but, if in part, being a minimum amount of US\$500,000 and in integral multiples of US\$100,000); and
  - (ii) the whole or any part of any outstanding Loan(s) under the Initial Revolving Facility (but, if in part, being a minimum amount of US\$500,000 and in integral multiples of US\$100,000).
- (b) A Borrower may not prepay the whole or any part of any outstanding Additional Facility to which it is a Borrower which ranks junior to the Initial Facilities unless the Most Recent Net Leverage (as adjusted on a pro forma basis taking into account any prepayment and repayment of the Initial Facilities and the incurrence of any other Financial Indebtedness, in each case, since the last date of the Most Recent Relevant Period and any prepayment or repayment of the Initial Facilities to be made simultaneously with the proposed



prepayment of a junior Additional Facility) is equal to or less than 3.85x.

- (c) Unless otherwise specified in the Additional Facility Notice in respect of such Additional Facility, the Borrower to which an Additional Facility Loan has been made may prepay the whole or any part (being a minimum amount of US\$500,000 and integral multiples of US\$100,000) of the Available Facility in respect any Additional Facility.

## **12. MANDATORY PREPAYMENT**

### **12.1 Exit Event**

If an Exit Event occurs:

- (a) the Company shall promptly notify the Agent upon becoming aware of that event; and
- (b) if a Lender so requires and notifies the Agent of its intention to be prepaid within 60 days of the Company notifying the Agent of that event (the *CoC Put Option Period*), the Agent shall, by not less than 30 days' notice to the Company, cancel the Commitments of that Lender in respect of each Facility and declare the participation of that Lender in all outstanding Utilisations in respect of each Facility and Ancillary Outstandings, together with accrued interest, and all other accrued amounts under the Finance Documents immediately due and payable, whereupon the Commitments of that Lender in respect of each Facility will be cancelled and all such outstanding amounts will become immediately due and payable,

*provided that*, for the avoidance of doubt, if a Lender has not notified the Agent in accordance with the provisions of paragraph (b) above by the end of the CoC Put Option Period in respect of that Exit Event, that Lender shall not be able to cancel its Commitments or require repayment of all or any part of its share of the Utilisations or Ancillary Outstandings and the prepayment of any other amount owing to it under the Finance Documents pursuant to paragraph (b) above.

### **12.2 Disposal Proceeds, Insurance Proceeds and Recovery Proceeds**

Subject to the paragraph 12 (*Adjustment of Mandatory Prepayments*) in Schedule 13 (*Hedging Provisions*), following the expiry of the Certain Funds Period, the Company shall ensure that the Borrowers (subject to Clause 12.5 (*Trapped Amounts*)) prepay the Utilisations and Ancillary Outstandings and cancel Available Commitments in amounts equal to the following amounts at the times contemplated by Clause 12.3 (*Application of mandatory prepayments*):

- (a) the amount of Recovery Proceeds;
- (b) the amount of Disposal Proceeds; and
- (c) the amount of Insurance Proceeds

### **12.3 Application of mandatory prepayments**

- (a) A prepayment of Utilisations or cancellation of Available Commitments made under Clause 12.2 (*Disposal Proceeds, Insurance Proceeds and Recovery*

*Proceeds*) shall be applied in the following order, in each case as contemplated in paragraphs (b) and (c) (inclusive) below:

- (i) *firstly*, in prepayment on a pro rata basis of the Initial Term Facility Loans and/or the Additional Facility Loans which are term loans, in each case, to be applied against the applicable repayment instalments in the manner designated by the Company (in its sole discretion);
  - (ii) *secondly*, in prepayment of Initial Revolving Facility Utilisations and Additional Revolving Facility Loans on a *pro rata* basis such that:
    - (A) outstanding Initial Revolving Loans and Additional Revolving Facility Loans shall be prepaid on a *pro rata* basis;
    - (B) outstanding Initial Revolving Loans and Additional Revolving Facility Loans shall be prepaid before outstanding Letters of Credit (which shall then be prepaid on a *pro rata* basis); and
    - (C) cancellation, in each case, of the corresponding Initial Revolving Facility Commitments and the Additional Facility Commitment in respect of the Additional Revolving Facility on a *pro rata* basis;
  - (iii) *thirdly*, in cancellation of Available Commitments under the Initial Revolving Facility and any Additional Revolving Facility on a *pro rata* basis (and the Available Commitments of the Lenders under the Initial Revolving Facility and any Additional Revolving Facility in the form of revolving loans will be cancelled rateably); and
  - (iv) *then*, in:
    - (A) repayment of the Ancillary Outstandings (and cancellation of corresponding Ancillary Commitments) and any amounts outstanding under any ancillary facility made available under an Additional Revolving Facility (the ***Additional RCF Ancillary Commitments***) on a *pro rata* basis;
    - (B) cancellation of Ancillary Commitments and Additional RCF Ancillary Commitments on a *pro rata* basis; and
    - (C) cancellation, in each case, of the corresponding Initial Revolving Facility Commitments and (to the extent applicable) the Additional Facility Commitment in respect of the Additional Revolving Facility on a pro rata basis.
- (b) Subject to paragraph (c) below, in the case of any prepayment of all or some of the Loan(s) relating to the amounts of Disposal Proceeds, Insurance Proceeds or Recovery Proceeds, the aggregate amount to be applied towards prepayment of the relevant Loan(s) shall be allocated among each of such Loan(s) in such manner contemplated in paragraph (a) above as at the expiry of all of the periods specified in the definition of ***Excluded Disposal Proceeds***, ***Excluded Insurance Proceeds*** or, as the case may be, ***Excluded Recovery Proceeds*** for reinvestment, replacement, repair, reinstatement, compensation or application (the ***Prepayment Determination Time*** relating to such

prepayment) and the portion of such amount to be so applied towards prepayment of any Loan shall be so applied on the last day of the current Interest Period relating to that Loan as at such Prepayment Determination Time, so that a proportion of any relevant Loan(s) equal to the portion of such amount designated for prepayment by the Company will be due and payable on the last day of such Interest Period (***Prepayment Date***) provided that, subject to Break Costs, the Company may (in its sole discretion), with 3 Business Days' prior notice, elect to make such prepayment earlier than the Prepayment Date (and such amount shall be allocated among each of such Loan(s) as at the Prepayment Determination Time).

- (c) If an Acceleration Event has occurred and is continuing, a proportion of each Loan equal to the amount so required to be paid to be applied to prepay that Loan on account of Disposal Proceeds, Insurance Proceeds or Recovery Proceeds (as determined in accordance with paragraphs (a) and (b) above), shall be immediately due and payable in lieu of the time(s) specified in paragraph (b) (unless the Majority Lenders agree otherwise), ***provided that*** such date on which such proportion of such Loan becomes so due and payable shall not in any event fall prior to (in the case of any prepayment on account of any Disposal Proceeds, Insurance Proceeds or Recovery Proceeds) the expiry of all of the periods specified in the definition of ***Excluded Disposal Proceeds, Excluded Insurance Proceeds*** or, as the case may be, ***Excluded Recovery Proceeds*** for reinvestment, replacement, repair, reinstatement, compensation or application.

#### **12.4 Excluded proceeds**

Where Excluded Disposal Proceeds, Excluded Insurance Proceeds and Excluded Recovery Proceeds include amounts which are intended to be used for a specific purpose within a specified period (as set out in the relevant definition of ***Excluded Disposal Proceeds, Excluded Insurance Proceeds*** or ***Excluded Recovery Proceeds***), the Company shall ensure that those amounts are used for that purpose.

#### **12.5 Trapped Amounts**

- (a) All mandatory prepayments to be made under Clause 12.2 (***Disposal Proceeds, Insurance Proceeds and Recovery Proceeds***) are subject to permissibility under local law (including, without limitation, financial assistance, corporate benefit restrictions on transfers of cash within the Group, availability of distributable reserves, capital maintenance, exchange control rules, permissibility of declaration of dividend or capital declaration and the fiduciary and statutory duties of the directors of the Group Members) and any contract that was not entered into solely for the purposes of limiting such prepayment, and to the extent that such prepayment or any application of any amount towards such prepayment is restricted pursuant to any applicable law (including, without limitation, financial assistance, corporate benefit restrictions on the transfers of cash within the Group, availability of distributable reserves, capital maintenance, exchange control rules, permissibility of declaration of dividend or capital declaration and the fiduciary and statutory duties of the directors of Group Members) and/or any contract that was not entered into solely for the purposes of limiting such prepayment, such prepayment shall not be required to be made.
- (b) Without prejudice to paragraph (a) above, there will be no requirement to make any prepayment referred to in paragraph (a) above where the aggregate of the

Taxes and other costs to the Group (excluding any leakage to minority shareholders in any Group Member) of making that prepayment or making funds available to another Group Member to enable such prepayment to be made (such Taxes and other cost amounts being *Leakages*), excluding any amounts in respect of withholding tax in relation to dividends or intra-group loan repayments made by any Group Member at the rate in force (after giving effect to any applicable exemption, reduction or relief) as at the Signing Date exceeds an amount equal to 5 per cent. of the amount to be applied towards such prepayment.

- (c) The Company shall, subject to paragraph (b) above, ensure that all Group Members will use reasonable endeavours to overcome any such restrictions or limitations and/or minimise any costs applicable to a mandatory prepayment of the Utilisation(s) under Clause 12.2 (*Disposal Proceeds, Insurance Proceeds and Recovery Proceeds*), **provided that** such endeavours would not themselves result in any illegality, breach of duty or result in any Group Member incurring any such cost or expense. In the case where the upstreaming or cross-streaming of cash is done by way of loan, the Leakages attributable to the making of such loan shall be calculated on the basis that the average life of such loan is equal to the remaining life of the Facilities.
- (d) If at any time those restrictions or limitations against any mandatory prepayment of the Utilisation(s) under Clause 12.2 (*Disposal Proceeds, Insurance Proceeds and Recovery Proceeds*) are removed or the cost to the Group for making (or making funds available to make) such prepayment cease to exceed the amount referred to in paragraph (b) above, the Company shall promptly upon becoming aware of the removal of such restrictions or limitations notify the Agent accordingly, and any portion of any Proceeds to which such restrictions or limitations applied and hence was not applied towards such mandatory prepayment (but would have been required to be applied towards such mandatory prepayment had such restrictions or limitations not applied) will be applied in prepayment of the Utilisation(s) on the last day of the Interest Period of the applicable Utilisation which ends not less than 10 Business Days after the date of such notification by the Company to the Agent of the removal of such restrictions or limitations (which notification the Company will provide promptly upon becoming aware of the removal of the relevant restrictions or limitations) **provided that** such portion of such Proceeds has not, in the intervening period, been used to prepay other facilities or loans.
- (e) To the extent that any of the mandatory prepayments referred to in Clause 12.2 (*Disposal Proceeds, Insurance Proceeds and Recovery Proceeds*) is not required to be made or is suspended in accordance with this Clause 12.5, any cash movements that are required between Group Members to facilitate such mandatory prepayment will also be subject to this Clause 12.5 and the requirement for such cash movements shall also not apply.
- (f) No Group Member shall be required to credit any Proceeds (or any amount on account of any Proceeds):
  - (i) which would, if not for the provisions of this Clause 12.5, be required to be applied towards prepayment of the Loan(s); or
  - (ii) which potentially may need to be applied in prepayment of the Loan(s) pursuant to Clause 12.2 (*Disposal Proceeds, Insurance Proceeds and*

*Recovery Proceeds*),

to any account pending reinvestment, replacement, repair, reinstatement, compensation, application or prepayment and all of such Proceeds shall be available to the relevant Group Member to be applied or committed or designated to be applied for any working capital or general corporate purpose.

### **13. RESTRICTIONS**

#### **13.1 Notices of cancellation or prepayment**

Any notice of cancellation, prepayment, authorisation or other election given by any Party under Clause 11 (*Illegality, Voluntary Prepayment and Cancellation*) shall:

- (a) (subject to the terms of Clause 11 (*Illegality, Voluntary Prepayment and Cancellation*)) be irrevocable, **provided that** (in the case of Clause 11.3 (*Voluntary cancellation*) or Clause 11.4 (*Voluntary prepayment*)) the Company (or the applicable Borrower) may revoke any notice of prepayment or cancellation (as the case may be) if the Company (or the applicable Borrower) shall have specified in such notice of prepayment or cancellation (as the case may be) that such notice is revocable (**provided further that** this shall be without prejudice to Clause 20.2 (*Other indemnities*)); and
- (b) unless a contrary indication appears in this Agreement, specify the date and/or dates or conditions upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.

#### **13.2 Interest and other amounts**

Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs (if any), without premium or penalty, **provided that** any mandatory prepayment made in accordance with Clause 12.2 (*Disposal Proceeds, Insurance Proceeds and Recovery Proceeds*) shall be deemed to include any applicable accrued interest, any associated hedge termination costs and Break Costs (if any), and the amount of the Loan(s) required to be so prepaid shall be reduced accordingly to allow for the amount of such reduction to be applied towards payment in full of any and all applicable accrued interest, hedge termination costs (relating to any termination of hedge arrangements in whole or in part in connection with such prepayment) and Break Costs (if any).

#### **13.3 No reborrowing of an Initial Term Facility**

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

#### **13.4 Prepayment in accordance with Agreement**

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

#### **13.5 No reinstatement of Commitments**

Subject to Clause 2.2 (*Increase – Cancelled Commitments*), no amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.

### **13.6 Agent's receipt of Notices**

If the Agent receives a notice under Clause 11 (*Illegality, Voluntary Prepayment and Cancellation*), it shall promptly forward a copy of that notice to the affected Lender.

### **13.7 Effect of repayment and prepayment on Commitments**

If all or part of a Lender's participation in a Utilisation under any Facility is repaid or prepaid and is not available for redrawing, an amount of the Commitment of that Lender in respect of that Facility (equal to the amount of its participation which is so repaid or prepaid) will be deemed to be cancelled on the date of such repayment or prepayment.

### **13.8 Application of prepayments**

Any prepayment of a Utilisation under a Facility (other than a prepayment pursuant to Clause 11.1 (*Illegality*), Clause 12.1 (*Exit Event*) or 41.7 (*Cancellation and repayment of a Replaceable Lender (other than an Illegal Lender)*)) shall be applied pro rata to each Lender's participation in that Utilisation under that Facility.

### **13.9 Reborrowing of Initial Revolving Facility**

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

## **14. INTEREST**

### **14.1 Calculation of interest**

- (a) The rate of interest on each Term Rate Loan for each Interest Period relating thereto is the percentage rate per annum which is the aggregate of the applicable:
  - (i) the applicable Margin; and
  - (ii) the relevant Term Reference Rate for such Initial Facility Loan and such Interest Period (which shall, in the case of each Initial Term Facility Loan, be Term SOFR).
- (b) The rate of interest on each Compounded Rate Loan for each day during each Interest Period relating thereto is the percentage rate per annum which is the aggregate of the applicable:
  - (i) the applicable Margin; and
  - (ii) the relevant Compounded Reference Rate for that day for that Compounded Rate Currency.
- (c) The rate of interest on each Additional Facility Loan under any Additional Facility shall be determined in accordance with the Additional Facility Notice relating to such Additional Facility.
- (d) If any day during an Interest Period for a Compounded Rate Loan for a Compounded Rate Currency is not an applicable RFR Banking Day in relation thereto, the rate of interest on that Compounded Rate Loan for that day will be

the rate applicable to the immediately preceding RFR Banking Day.

- (e) The Agent may rely without further enquiry on the latest Compliance Certificate or ESG Performance Certificate delivered to the Agent by the Company as to the applicable Margin for the relevant Interest Period for the purposes of this Clause 14.1 and any other calculation under this Agreement.

#### 14.2 Payment of interest

- (a) The Borrower to which an Initial Facility Loan has been made shall pay accrued interest on that Initial Facility Loan on the last day of each Interest Period relating thereto.
- (b) If the Annual Financial Statements and related Compliance Certificate received by the Agent show that a higher Margin should have applied during a certain period (the *Applicable Period* for the purposes of this paragraph (b)), the next payment(s) of interest falling due on each Initial Facility Loan shall be increased to the extent necessary to put the Agent and the Lenders (but only in respect of payments to the Lenders participating in that Initial Facility both during such Applicable Period and at the time at which such increase is actually made) in the position they would have been in had the appropriate rate of the Margin applied during such Applicable Period.
- (c) If the Annual Financial Statements and related Compliance Certificate received by the Agent show that a lower Margin should have applied during a certain period (the *Applicable Period* for the purposes of this paragraph (c)), the next payment(s) of interest falling due on each Initial Facility Loan (the *Next Interest Payment*) shall be reduced to the extent necessary to put the Company (but only in respect of payments to the Lenders participating in that Initial Facility both during such Applicable Period and at the time at which such reduction is actually made) in the position it would have been in had the appropriate rate of the Margin applied during such Applicable Period, *provided that* the Next Interest Payment shall not be reduced by an amount greater than the portion of the Next Interest Payment which is attributable to accrued Margin (*provided further that* the next payment(s) of interest due on the relevant Initial Facility Loan shall, subject (in each case) to the provisos in this paragraph (c), be reduced *pro tanto* until such time as the aggregate amount of such reductions equal the difference between the interest paid for such Applicable Period and the interest that would have been paid for such Applicable Period had the appropriate rate of the Margin applied during such Applicable Period).
- (d) Interest on each Additional Facility Loan under any Additional Facility shall be paid in accordance with the terms of the Additional Facility Notice relating to such Additional Facility.

#### 14.3 Default interest

- (a) Interest shall accrue on an Unpaid Sum owing by an Obligor 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 2 per cent. per annum higher than the rate which would have been payable if that Unpaid Sum had, during the period of non-payment, constituted the Initial Facility Loan (or, where such Unpaid Sum relates to an Additional Facility, an Additional Facility Loan) made under this Agreement in the currency of the Unpaid Sum for successive Interest

Periods, each of a duration selected by the Agent (acting reasonably). Any interest accruing under this Clause 14.3 shall be immediately payable by that Obligor on demand by the Agent.

- (b) If any Unpaid Sum consists of all or part of a Term Rate Loan and that Loan 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 Unpaid Sum 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 that Unpaid Sum during that first Interest Period shall be 2 per cent. per annum higher than the rate which would have applied if that Unpaid Sum had not become due.
- (c) Default interest (if unpaid) arising on an Unpaid Sum will be compounded with that Unpaid Sum at the end of each Interest Period applicable to that Unpaid Sum but will remain immediately due and payable.

#### **14.4 Notification of rates of interest**

- (a) The Agent shall promptly notify the Lenders and the relevant Borrower (or the Company) of the determination of a rate of interest relation to a Term Rate Loan under this Agreement.
- (b) The Agent shall promptly upon a Compounded Rate Interest Payment becoming determinable, notify:
  - (i) (such notification to be made no later than three applicable RFR Banking Days prior to the end of the relevant Interest Period to which that Compounded Rate Interest Payment relates) the Obligors' Agent and the relevant Borrower of amount of that Compounded Rate Interest Payment;
  - (ii) each relevant Lender of the proportion of that Compounded Rate Interest Payment which relates to that Lender's participation in the relevant Compounded Rate Loan; and.
  - (iii) the relevant Lenders, the Obligors' Agent and the relevant Borrower of each applicable rate of interest and the amount of interest for each day relating to the determination of that Compounded Rate Interest Payment (including a breakdown of such rate and amount of interest as between the Margin and the Compounded Reference Rate for such date and any other information that the Obligors' Agent may reasonably request in relation to the calculation of such rate and amount or the determination of that Compounded Rate Interest Payment), in each case taking into account the capabilities of any software which the Agent uses to provide such information.

### **15. INTEREST PERIODS**

#### **15.1 Selection of Interest Periods**

- (a) A Borrower (or the Company on behalf of a Borrower) may select an Interest Period for an Initial Facility Loan in the Utilisation Request or (if that Initial Facility Loan is an Initial Term Facility Loan and has already been borrowed)



in a Selection Notice.

- (b) Each Selection Notice for an Initial Facility Loan which is an Initial Term Facility Loan is irrevocable and must be delivered to the Agent by a Borrower (or the Company on behalf of a Borrower) not later than the Specified Time.
- (c) If a Borrower (or the Company) fails to deliver a Selection Notice to the Agent in accordance with paragraph (b) above in respect of an Interest Period for an Initial Term Facility Loan, that Interest Period will be 3 Months or, if the Loan is in an Other Currency, the period specified in respect of that currency in the Benchmark Schedule.
- (d) Subject to this Clause 15, a Borrower (or the Company) may select an Interest Period (for a Loan) of:
  - (i) 1, 3 or 6 Months (or, if the Loan is in an Other Currency, such period as specified in the Benchmark Schedule);
  - (ii) a duration so that the last day of that Interest Period is the same day as a Repayment Date or a date on which payment is required to be made under any Hedging Agreement (*provided that* such selection would not result in an Interest Period longer than 6 Months); or
  - (iii) any other period as selected by the Company and agreed with the Agent (acting on the instructions of all the Lenders in respect of the relevant Facility).
- (e) An Interest Period for an Initial Term Facility Loan shall not extend beyond an Initial Term Facility Repayment Date or the Termination Date, in each case in relation to the relevant Initial Term Facility. An Interest Period for an Initial Revolving Loan shall not extend beyond the Termination Date in relation to the Initial Revolving Facility.
- (f) The first Interest Period for each Initial Term Facility and for an Additional Facility which is a term facility shall start on the Initial Utilisation Date of the applicable Facility and, in the case where a Loan has already been made under such Initial Term Facility or Additional Facility which is a term facility, each subsequent Interest Period shall start on the last day of the preceding Interest Period relating to that Initial Term Facility Loan or Additional Facility Loan (as the case may be).
- (g) An Initial Revolving Loan has one Interest Period only.
- (h) Prior to the Syndication Date, Interest Periods in respect of an Initial Facility Loan shall be 1 Month (or such shorter duration as may be required by the Arranger to ensure that that Interest Period ends on a date on which rights and obligations of Lender(s) under this Agreement are to be novated or assigned to persons becoming Parties as a result of Syndication).
- (i) This Clause 15 shall apply to any Additional Facility *provided that* it may be varied, in relation to any Additional Facility Loans only, by the terms of the Additional Facility Notice delivered in respect of such Additional Facility and *provided further that* the initial Interest Period relating to any Additional Facility shall be specified in the Additional Facility Notice relating to that Additional Facility.

## 15.2 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) *provided that*, if (a) if the Loan is in a Compounded Rate Currency and there are rules specified as "Business Day Conventions" for that currency in the applicable Compounded Rate Terms for a Loan or Unpaid Sum, those rules shall apply to each Interest Period for that Loan or Unpaid Sum, and (b) the Loan is in an Other Currency and there are rules specified as "Business Day Conventions" for that currency in the Benchmark Schedule, those rules shall apply to each Interest Period for that Loan.

## 16. CHANGES TO THE CALCULATION OF INTEREST

### 16.1 Absence of quotations

Subject to Clause 16.2 (*Market disruption*), if a Reference Rate is to be determined by reference to the Reference Banks but a Reference Bank does not supply a quotation by the Specified Time on the Quotation Day, the applicable Reference Rate, shall be determined on the basis of the quotations of the remaining Reference Banks.

### 16.2 Market disruption

(a) If in relation to any Interest Period for a Term Rate Loan (other than a Term Rate Loan denominated in USD) a Market Disruption Event occurs and is continuing (which term, for the purposes of this Clause 16.2 in respect of a Market Disruption Event under paragraph (B) of the definition of *Market Disruption Event* only, shall mean for such time as the threshold for notification by Affected Lenders set out in paragraph (B) of the definition of *Market Disruption Event* is satisfied) in relation to any Term Rate Loan (other than any Term Rate Loan denominated in USD) for any Interest Period, then the rate of interest on each Affected Lender's share (but, in respect of a Market Disruption Event under paragraph (B) of the definition of *Market Disruption Event* only, only if such Affected Lender has delivered a notification pursuant to paragraph (B) of the definition of *Market Disruption Event*) of that Term Rate Loan for that Interest Period shall be the percentage rate per annum which is the sum of:

- (i) the applicable Margin; and
- (ii) the rate notified to the Agent by that Affected Lender as soon as practicable and in any event by close of business five Business Days prior to the date on which interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum the cost to that Lender of funding its participation in that Term Rate Loan from whatever source it may reasonably select,

but the rate of interest applicable to each other Lender's share of that Term Rate Loan (other than any Affected Lender to which the foregoing applies) for such Interest Period shall be determined in accordance with Clause 14.1 (*Calculation of interest*).

(b) In this Agreement:

- (i) *Affected Lender* means a Lender which is a commercial bank or other

financial institution that customarily obtains funds for lending in the Relevant Market, or (only in the event where the Reference Rate for the applicable Term Rate Loan (other than any Term Rate Loan denominated in USD) and the applicable Interest Period relating thereto cannot be determined) any Lender; and

- (ii) **Market Disruption Event** means, in relation to any Term Rate Loan (other than any Term Rate Loan denominated in USD) and any Interest Period relating thereto:
  - (A) at or about noon on the Quotation Day for the currency of such Term Rate Loan (other than any Term Rate Loan denominated in USD) and such Interest Period, the Screen Rate is not available for such Term Rate Loan and such Interest Period; or
  - (B) (where there is more than one Lender) before close of business in Hong Kong on the Business Day after the Quotation Day for the currency of such Term Rate Loan (other than any Term Rate Loan denominated in USD) and such Interest Period, the Agent receives notifications from an Affected Lender or Affected Lenders (whose aggregate participation(s) in such Term Rate Loan exceed 40 per cent. of such Term Rate Loan) that the cost to it or them of obtaining matching deposits in the Relevant Market would be in excess of the Reference Rate for such Term Rate Loan and such Interest Period), save that any such Affected Lender or Affected Lenders may elect at any time thereafter (and, in circumstances where the cost to an Affected Lender of obtaining matching deposits in the Relevant Market would no longer be in excess of the Reference Rate for such Term Rate Loan and such Interest Period, such Affected Lender must promptly elect) to cancel such notification and such threshold shall immediately be recalculated following such cancellation; or
  - (C) (where there is only one Lender and such Lender is an Affected Lender) the Lender notifies the Company that (1) the cost to it of obtaining matching deposits in the Relevant Market would be in excess of the Reference Rate (for such Term Rate Loan (other than any Term Rate Loan denominated in USD) and such Interest Period), (2) a similar event arises similarly with respect to its cost of funding of other similar facilities and that it is recovering or intending to recover such cost of funding from similar borrowers under such similar facilities, and (3) its funding cost is in excess of the Reference Rate (for such Term Rate Loan (other than any Term Rate Loan denominated in USD) and such Interest Period) primarily due to general market conditions affecting banks generally rather than solely as a result of credit related concerns specifically relating to that Lender or any of its Affiliate.
- (c) For the avoidance of doubt, this Clause 16.2 (*Market disruption*) shall not apply to any Term Rate Loan denominated in USD.

### **16.3 Alternative basis of interest or funding**

- (a) If the Agent receives notice from any Affected Lender pursuant to paragraph (b)(ii)(B) or (C) of Clause 16.2 (*Market disruption*), it shall promptly provide a copy of such notice to the Company.
- (b) The Agent shall promptly notify the Company if a Market Disruption Event arises under paragraph (b)(ii)(A) of Clause 16.2 (*Market disruption*).
- (c) If a Market Disruption Event occurs and is continuing in relation to any Term Rate Loan and any Interest Period relating thereto (which, for the purposes of this Clause 16.3 in respect of a Market Disruption Event under paragraph (B) of the definition of *Market Disruption Event* only, shall mean for such time as the threshold for notification by Affected Lenders set out in paragraph (B) of the definition of *Market Disruption Event* is satisfied) and the Agent or the Company so requires, the Agent and the Company shall enter into negotiations (for a period of not more than 20 Business Days) with a view to agreeing a substitute basis for determining the rate of interest for such Term Rate Loan for such Interest Period.
- (d) Any alternative basis agreed pursuant to paragraph (c) above shall, with the prior consent of all the Affected Lenders and the Company, be binding on all such Parties for such Term Rate Loan and such Interest Period.
- (e) Subject to paragraph (d), for the avoidance of doubt, where a Market Disruption Event is no longer continuing in relation to any Term Rate Loan and any Interest Period relating thereto, the rate of interest from the next Interest Period for such Term Rate Loan shall revert to the rate calculated in accordance with Clause 14 (*Interest*).

### **16.4 Break Costs**

- (a) Each Borrower shall, within five Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of any Term Rate Loan or an Unpaid Sum in respect of a Term Rate Loan being paid by that Borrower on a day other than the last day of an Interest Period for that Term Rate Loan or that Unpaid Sum (except in the case of any Additional Facility Loan or any Unpaid Sum attributable to any Additional Facility, (if and) as otherwise specified in the Additional Facility Notice relating to such Additional Facility).
- (b) Each Lender shall, as soon as reasonably practicable after a demand by the Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

## **17. FEES**

### **17.1 Upfront fee**

The Company shall (or shall procure that a Group Member will) pay to the Arranger (for their own account) an upfront fee in the amount and at the times agreed in a Fee Letter (the *Upfront Fee Letter*).

### **17.2 Agent and Security Agent fee**

The Company shall (or shall procure that a Group Member will) pay to the Agent and the Security Agent (for its own account) an agency fee in the amount and at the times agreed in a Fee Letter.

### **17.3 Fees payable**

No fees, costs or expenses are payable by any Group Member (other than any fees, costs and expenses payable in accordance with paragraph (b) of Clause 22.1 (*Transaction expenses*)) unless and until the Initial Utilisation Date occurs.

### **17.4 Fees payable in respect of Letters of Credit**

- (a) The Company shall (or shall procure that a Group Member will) pay to the applicable Issuing Bank a fronting fee at a per annum rate agreed with the applicable Issuing Bank on the outstanding amount which is counter-indemnified by the other Lenders of each Letter of Credit requested by it for the period from the issue of that Letter of Credit until its Expiry Date.
- (b) The Company shall (or shall procure that a Group Member will) pay to the Agent (for the account of each Lender) a Letter of Credit fee in the Base Currency (computed at the rate equal to the Margin applicable to an Initial Revolving Loan) on the outstanding amount of each Letter of Credit requested by it under the Initial Revolving Facility for the period from the issue of that Letter of Credit until its Expiry Date. This fee shall be distributed according to each Initial Revolving Facility Lender's L/C Proportion of that Letter of Credit.
- (c) The accrued fronting fee and Letter of Credit fee on a Letter of Credit shall be payable on the last day of each successive period of 3 Months (or such shorter period as shall end on the Expiry Date for that Letter of Credit) starting on the date of issue of that Letter of Credit. If the outstanding amount of a Letter of Credit is reduced, any fronting fee and Letter of Credit fee accrued in respect of the amount of that reduction shall be payable on the day that that reduction becomes effective.
- (d) If the Company or a Borrower provides cash cover in respect of any Letter of Credit:
  - (i) the fronting fee payable to the applicable Issuing Bank and the Letter of Credit fee payable for the account of each Lender shall continue to be payable until the expiry of the Letter of Credit; and
  - (ii) each Borrower shall be entitled to withdraw interest accrued on the cash cover to pay the fees described in paragraph (i) above.

### **17.5 Interest, commission and fees on Ancillary Facilities**

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

### **17.6 Commitment fee**

- (a) The Company shall (or shall procure that a Group Member will) pay to the Agent (for the account of each Lender):

- (i) a commitment fee in US\$ computed at the rate of 30 per cent. of the Opening Margin applicable to the Initial Term Facility on that Lender's Available Commitment under the Initial Term Facility for the period from (and including) the date falling 180 days after the Signing Date to (but excluding) the earlier to occur of (x) the last day of the Availability Period in respect of the Initial Term Facility and (y) the date on which the Initial Term Facility has been utilised in full or the Initial Term Facility has been cancelled in full; and
  - (ii) a commitment fee in US\$ computed at the rate of 30 per cent. of the applicable Margin on that Lender's Available Commitment under the Initial Revolving Facility for the period from (and including) the earlier to occur of the (x) the Completion Date and (y) date falling 180 days after the Signing Date to (and including) the last day of the Availability Period applicable to the Initial Revolving Facility.
- (b)
- (i) Any accrued commitment fee under paragraph (a)(i) is payable on the Initial Utilisation Date and, to the extent unpaid, on the last day of the Availability Period for the Initial Term Facility, and if cancelled in full, on the cancelled amount of the relevant Lender's Available Commitment in respect of the Initial Term Facility, at the time the cancellation is effective.
  - (ii) Any accrued commitment fee under paragraph (a)(ii) above is payable on the last day of each successive period of 3 Months which ends during the Availability Period for the Initial Revolving Facility (with the initial payment being due no earlier than 3 Months after the Initial Utilisation Date), on the last day of the Availability Period for the Initial Revolving Facility, and, if cancelled in full, on the cancelled amount of the relevant Lender's Available Commitment in respect of the Initial Revolving Facility, at the time the cancellation is effective.
- (c) No commitment fee is payable to the Agent (for the account of a Lender), or shall accrue by reference to any Available Commitment of any Lender, for any day on which that Lender is a Defaulting Lender.
  - (d) No commitment fee is payable unless the Initial Utilisation Date occurs.
  - (e) Commitment fee (if any) applicable to an Additional Facility shall be specified in the Additional Facility Notice relating to such Additional Facility.
  - (f) This Clause 17.6 constitutes the entire agreement between the Parties in relation to the obligations of the Company under the Finance Documents to pay any accrued commitment fee in relation to the Facilities and supersedes any previous agreement, whether express or implied, regarding any commitment fee.

## **18. TAX GROSS-UP AND INDEMNITIES**

### **18.1 Tax definitions**

***Borrower DTTP Filing*** mean a HMRC Form DTTP2 duly completed and filed by the relevant Borrower, which:

- (i) where it relates to a UK Treaty Lender that is an Original Lender, contains the HMRC DTTP Scheme reference number and jurisdiction of tax residence stated opposite that Lender's name in Part B of Schedule 1 (The Original Parties); or
- (ii) where it relates to a UK Treaty Lender that is not an Original Lender, contains the HMRC DTTP 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.

**Dutch Borrower** means a Borrower which is incorporated or established in the Netherlands.

**Dutch Qualifying Lender** means, in relation to a payment by or in respect of a Dutch Borrower under a Finance Document, a Lender which is beneficially entitled (in the case of a Dutch Treaty Lender, within the meaning of the relevant Dutch Treaty) to interest payable to that Lender in respect of an advance under a Finance Document and:

- (a) has its Facility Office in the Netherlands;
- (b) is a Dutch Treaty Lender; or
- (c) is a Lender to whom such payment of interest paid by a Dutch Borrower can be made without a Tax Deduction being imposed under the laws of the Netherlands (other than pursuant to a Dutch Treaty).

**Dutch Treaty Lender** means, in relation to a payment of interest by or in respect of a Dutch Borrower under a Finance Document, a Lender which:

- (a) is treated as a resident of a Dutch Treaty State for the purposes of the relevant Dutch Treaty and is entitled to the benefit of such Dutch Treaty;
- (b) does not carry on a business in the Netherlands 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 fulfilled in order to benefit from full exemption under the relevant Dutch Treaty and Dutch domestic law from Tax imposed by the Netherlands on interest payable to that Lender in respect of an advance under a Finance Document, subject to the completion of any necessary procedural formalities.

**Dutch Treaty State** means a jurisdiction having a double taxation agreement (a Dutch Treaty) in force with the Netherlands which makes provision for full exemption from Tax imposed by the Netherlands on interest.

**HMRC DTTP Scheme** means HMRC's Double Taxation Treaty Passport Scheme, as modified from time to time.

**HMRC Form DTTP2** means the HMRC form entitled "Double Taxation Treaty Passport – notification of loan from a passport holder" (or its online equivalent).

**New RCF Lender** means a Lender under the Initial Revolving Facility or any Additional Revolving Facility who, in either case, becomes a Lender to a UK Borrower under that Facility after the date on which a UK Borrower first accedes to that Facility.

**New RCF Treaty Lender** has the meaning given to that term in Clause 18.2(f).

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

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

**Tax Credit** means a credit against, relief or remission for, or refund 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 an additional payment made by an Obligor to a Finance Party under Clause 18.2 (*Tax gross-up*) or a payment under Clause 18.3 (*Tax indemnity*).

**UK Borrower** means a Borrower under the Initial Revolving Facility or an Additional Revolving Facility which is incorporated or established in the United Kingdom.

**UK Qualifying Lender** means, in relation to a payment by or in respect of a UK Borrower under a Finance Document, a Lender which is beneficially entitled (in the case of a UK Treaty Lender, within the meaning of the relevant UK Treaty) to interest payable to that Lender in respect of an advance under a Finance Document and is:

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



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

**UK Treaty Lender** means, in relation to a payment of interest by or in respect of a UK Borrower under a Finance Document, a Lender which:

- (a) is treated as a resident of a UK Treaty State for the purposes of the relevant UK Treaty and is entitled to the benefit of such UK Treaty;
- (b) does not carry on a business in the United Kingdom through a permanent establishment with which that Lender's participation in the Loans is effectively connected; and
- (c) fulfils all other conditions which must be fulfilled in order to benefit from full exemption under the relevant UK Treaty and UK domestic law from Tax imposed by the United Kingdom on interest payable to that Lender in respect of an advance under a Finance Document, subject to the completion of any necessary procedural formalities.

**UK Treaty State** means a jurisdiction having a double taxation agreement (a **UK Treaty**) in force with the United Kingdom which makes provision for full exemption from Tax imposed by the United Kingdom on interest.

**UK Non-Bank Lender** means a Lender which is not an Original Lender and which gives a Tax Confirmation in the documentation which it executes on becoming a Party as a Lender.

## 18.2 Tax gross-up

- (a) Subject to the other provisions of this Clause 18.2, all payments shall be made by each Obligor under each Finance Document without any Tax Deduction, unless a Tax Deduction is required by law, in which case the Obligor (in respect of which such Tax Deduction is required to be made) shall pay an additional amount to the relevant Finance Party to ensure that such Finance Party receives

an amount equal to what it would have received had no such Tax Deduction been made or required to be made.

- (b) The Obligors' Agent shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is a change in the rate or the basis of any Tax Deduction) notify the Agent accordingly. Similarly, a Lender or Issuing Bank shall promptly notify the Agent on becoming so aware in respect of a payment payable to that Lender or Issuing Bank. If the Agent receives such notification from a Lender or Issuing Bank, it shall promptly notify the Obligors' Agent and that Obligor.
- (c) If an Obligor is required to make a Tax Deduction, it 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.
- (d) Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Agent for the Finance Party entitled to the payment (to which such Tax Deduction relates) 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.

#### ***UK Tax Deductions***

- (e) A payment by a UK Borrower, or by a Guarantor in respect of an amount due from a UK Borrower, to a New RCF Lender shall not be increased under paragraph (a) of Clause 18.2 above by reason of a Tax Deduction on account of Tax imposed by the United Kingdom if, on the date 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 UK Qualifying Lender, but on that date that Lender is not or has ceased to be a UK Qualifying Lender, other than as a result of any Change in Law; or
  - (ii) the relevant Lender is a UK Qualifying Lender solely by virtue of paragraph (b) of the definition of "UK Qualifying Lender" and:
    - (A) an officer of HMRC has given (and not revoked) a direction (a "***Direction***") under section 931 of the ITA which relates to the payment and that Lender has received from the Obligor making the payment or from the Parent a certified copy of that Direction; and
    - (B) the payment could have been made to the Lender without any Tax Deduction if that Direction had not been made; or
  - (iii) the relevant Lender is a UK Treaty Lender and the Obligor making the payment is able to demonstrate that the payment could have been made to the Lender without a Tax Deduction had that Lender complied with its obligations under paragraph (f) below.
- (f) The provisions of this paragraph (f) shall only apply to any New RCF Lender which is a UK Treaty Lender (a ***New RCF Treaty Lender***):
  - (i) Subject to sub-paragraph (ii) below, a UK Treaty Lender and each

Obligor which makes a payment to which that UK Treaty Lender is entitled, shall cooperate in completing or assisting with the completion of any procedural formalities and the provision of such information as, in each case, is necessary for that Obligor to obtain authorisation to make that payment without a Tax Deduction on account of Tax imposed by the United Kingdom and maintain that authorisation where an authorisation expires or otherwise ceases to have effect, *provided that* where a Lender holds a passport under the HMRC DTTP Scheme and provides confirmation of its HMRC DTTP Scheme reference number and its jurisdiction of tax reference, that Lender shall be under no further obligation pursuant to this sub-paragraph (i) in relation to the relevant Obligor making a payment to that Lender.

- (ii) If a Lender has confirmed its HMRC DTTP Scheme reference number and its jurisdiction of tax residence in accordance with paragraph (f)(i) above and:
  - (A) a UK Borrower making a payment to that Lender has not made a Borrower DTTP Filing in respect of that Lender; or
  - (B) a UK Borrower making a payment to that Lender has made a Borrower DTTP Filing in respect of that Lender but:
    - (1) that Borrower DTTP Filing has been rejected by HMRC;
    - (2) that Lender's HMRC DTTP Scheme reference number has been withdrawn or expired;
    - (3) HMRC gave but subsequently withdrew authority for the UK Borrower to make payments to that Lender without a Tax Deduction or such authority has otherwise terminated or expired (or is due to otherwise terminate or expire within the next three months); or
    - (4) HMRC has not given the UK Borrower authority to make payments to that Lender without a Tax Deduction within sixty (60) days of the date of the Borrower DTTP Filing,

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

- (g) If a Lender has not confirmed its HMRC DTTP Scheme reference number and jurisdiction of tax residence in accordance with paragraph (f)(f)(i) above, no Obligor shall make a Borrower DTTP Filing or file any other form relating to the HMRC DTTP Scheme in respect of that Lender's Commitment(s) or its participation in any Loan unless the Lender otherwise agrees.
- (h) A UK 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.

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

***Dutch Tax Deductions***

- (j) If a Lender becomes aware that it is not, or ceases to be, a Dutch Qualifying Lender with respect to any jurisdiction relevant to such Lender, it shall promptly notify the Agent. If the Agent receives such notification from a Lender it shall promptly notify the Company. Without prejudice to the foregoing, each Lender shall promptly provide to the Agent (if requested by the Agent):

- (i) a written confirmation that it is or, as the case may be, is not, a Dutch Qualifying Lender with respect to such jurisdiction; and
- (ii) such documents and other evidence as the Agent may reasonably require to support any confirmation given pursuant to sub-paragraph (i) above,

until such time as a Lender has complied with any request pursuant to this paragraph (j), the Agent and each Obligor shall be entitled to treat such Lender as not being a Dutch Qualifying Lender with respect to such jurisdiction for all purposes under the Finance Documents.

- (k) A payment to any Finance Party under the Finance Documents by a Dutch Borrower or by a Guarantor in respect of an amount due from a Dutch Borrower shall not be increased under paragraph (a) of Clause 18.2 above by reason of a Tax Deduction imposed by the Netherlands if, on the date the payment falls due:

- (i) the Tax Deduction arises as a result of the Finance Party (other than merely as a party to this Agreement):
  - (A) being incorporated or, if different, being treated as resident for tax purposes;
  - (B) having its Facility Office; or
  - (C) carrying on a business through a permanent establishment and/or a permanent representative to which its interest in any Loan is attributable,

in the same jurisdiction as where the Company has its tax residence;

- (ii) such Finance Party has not complied with its obligations under paragraph (l) below;
- (iii) the payment could have been made to the relevant Lender without a Tax Deduction if the Lender had been a Dutch Qualifying Lender but on that date that Lender is not, or has ceased to be, a Dutch Qualifying Lender other than as a result of a Change in Law; or
- (iv) the Tax Deduction is otherwise in relation to a Tax described in sub-paragraphs (a)(i) to 18.3(a)(ii) (inclusive) of Clause 18.3 (*Tax indemnity*).

### ***Procedural Formalities***

(l) In respect of any Finance Party that is not a New RCF Treaty Lender, if an Obligor is or will be liable to account for a Tax Deduction in respect of any payment made or to be made to that Finance Party, such Finance Party shall from time to time (including after such Finance Party has ceased to be a party to this Agreement, to the extent relevant):

- (i) cooperate in completing or assisting with the completion of any procedural formalities and the provision of such documents or other information as the Company may reasonably request in writing and as may be reasonably necessary; and
- (ii) upon reasonable written request by the Company, take such other action as may reasonably be necessary,

in each case for the purposes of (1) eliminating, or otherwise reducing to the maximum extent permitted by law, such liability to account for a Tax Deduction pursuant to any applicable law, published practice of any relevant tax authority and/or double tax treaty, and (2) (if relevant) enabling the relevant Obligor to obtain and maintain any corresponding authorisation not to account for a Tax Deduction, or to account for a Tax Deduction at a reduced rate (as applicable), in respect of any payments made or to be made to that Finance Party.

(m) If:

(i) a Tax Deduction should have been made in respect of a payment made by or on account of an Obligor to a Lender, an Issuing Bank or the Agent under a Finance Document:

(ii) either:

(A) the relevant Obligor (or the Agent, if it is the applicable withholding agent) was unaware, and could not reasonably be expected to have been aware, that such Tax Deduction was required and as a result did not make the Tax Deduction or made a Tax Deduction at a reduced rate;

(B) in reliance on the notifications and confirmation provided pursuant to Clause 18.7 (*Lender status confirmation*), the relevant Obligor did not make such Tax Deduction or made a Tax Deduction at a reduced rate; or

(C) any Finance Party has not complied with its obligation under paragraph (b) of Clause 18.2 above and as a result the relevant Obligor did not make the Tax Deduction or made a Tax Deduction at a reduced rate; and

(iii) the applicable Obligor would not have been required to make an increased payment under paragraph (a) of Clause 18.2 above in respect of that Tax Deduction,

then the Lender that received the payment in respect of which the Tax Deduction should have been made or made at a higher rate undertakes to

promptly, upon a written request by the relevant Obligor, reimburse that Obligor for the amount of the Tax Deduction that should have been made (and any penalty, interest and expenses payable or incurred in connection with any failure to pay or any delay in paying any of the same, but only to the extent arising in respect of or as a result of the circumstances set out in sub-paragraphs (ii)(B) and (ii)(C) above).

### 18.3 Tax indemnity

- (a) Without prejudice to Clause 18.2 (*Tax gross-up*), if any Finance Party is required to make any payment of or on account of Tax on or in relation to any sum received or receivable under the Finance Documents (including any sum deemed for purposes of Tax to be received or receivable by such Finance Party, whether or not actually received or receivable) or if any liability in respect of any such payment is asserted, imposed, levied or assessed against any Finance Party, the Company shall, within five Business Days of demand of the Agent, promptly indemnify, to the maximum extent permitted under all applicable laws, the Finance Party which suffers a loss or liability as a result against such payment or liability, together with any interest, penalties, costs and expenses payable or incurred in connection therewith, ***provided that*** this Clause 18.3 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;
  - (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;
  - (C) under the laws of jurisdiction in which that Finance Party carries on a business through a permanent establishment and/or a permanent representative to which its interest in any Loan is attributable; or
  - (D) is Tax under the laws of the Netherlands which becomes payable as a result of such Finance Party having a substantial interest (*aanmerkelijk belang*) in a Dutch Borrower as laid down in the Netherlands Income Tax Act 2001 (*Wet inkomstenbelasting 2001*),  
  
if that Tax is imposed on or calculated by reference to the net income, profits or gains received or receivable by that Finance Party; or
- (ii) to the extent a loss, liability or cost:
- (A) is compensated for by an additional payment under Clause 18.2 (*Tax gross-up*);
  - (B) would have been compensated for under Clause 18.2 (*Tax gross-up*) or Clause 18.6 (*Stamp taxes*) or Clause 18.8 (*Indirect Tax*) (but was not or will not be so compensated

solely because of one of the exclusions in those Clauses applies or will apply);

- (C) is Tax suffered or incurred by the relevant Finance Party under the laws of the Netherlands and would not have been suffered or incurred if such Finance Party had been a Dutch Qualifying Lender in relation to the relevant Obligor at the relevant time, unless that Finance Party was not a Dutch Qualifying Lender at the relevant time as a result of any Change in Law;
- (D) relates to a FATCA Deduction required to be made by a Party; or
- (E) is attributable to any Bank Levy (or any payment attributable to a Bank Levy).

A Finance Party (other than the Agent or Security Agent, in each case, acting for itself and not for or on behalf of any other Finance Party) intending to make a claim under paragraph (a) above shall notify the Agent of the event giving rise to that claim within 270 days after the date on which that Finance Party becomes aware of it (after which that Finance Party shall not be entitled to claim any indemnification or payment under this Clause 18.3), whereupon the Agent shall promptly notify the Company thereof. If the Agent or the Security Agent intends to make a claim (for itself and not for or on behalf of any other Finance Party) under paragraph (a) above, it shall promptly notify the Company of the event giving rise to the claim.

- (b) A Finance Party shall, on receiving a payment from the Company under this Clause 18.3, notify the Agent.

#### **18.4 Tax credit**

- (a) If an Obligor makes a Tax Payment and the Finance Party (to which such Tax Payment relates) determines that in its sole discretion exercised in good faith:
  - (i) a Tax Credit is attributable either to an additional payment of which that Tax Payment forms part, or to that Tax Payment; and
  - (ii) that Finance Party has obtained, utilised and retained that Tax Credit (whether or not on a consolidated basis),

that Finance Party shall pay an amount to the relevant Obligor which that Finance Party determines will leave it (after that payment and net of all out-of-pocket expenses, including Taxes) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made (or in the case of a payment that is a Tax Payment by virtue of Clause 18.4(c), had the Tax Payment not been required to be withheld) by that Obligor.

- (b) Any Finance Party which receives a Tax Payment must use reasonable endeavours to obtain any Tax Credit referred to in paragraph (a) above to which it is entitled under any applicable law and/or double tax treaty.
- (c) For the purposes of this Clause 18.4, a Tax Payment shall include the amount of any payment received by a Finance Party that an Obligor paid to that Finance Party but which the Obligor was required by law to withhold on account of a

Tax Deduction and which Tax Deduction the Obligor has accounted for to the relevant tax authorities.

- (d) The provisions of this Clause 18.4 shall remain binding on each person which has received a Tax Payment notwithstanding that such person may have ceased to be a party to this Agreement, except that after such a person ceases to be a party to this Agreement their obligations under this Clause 18.4 shall only apply to the extent reasonably practicable.

### **18.5 QPP Lender Certificate**

Each Lender shall promptly, and in any event within 10 Business Days of becoming a Party to this Agreement, provide the Original Borrower with a completed QPP Certificate as set out in Schedule 23 (*Form of QPP Certificate*) if such Lender is able to provide such certificate.

### **18.6 Stamp taxes**

Each Obligor shall:

- (a) promptly on demand (or otherwise as required) pay all stamp duty, registration and other similar Taxes payable in respect of any Finance Document; and
- (b) within five Business Days of demand, pay to and indemnify, to the maximum extent permitted under all applicable laws, each Finance Party against any cost, loss or liability that Finance Party incurs in relation to all stamp duty, registration and other similar Taxes in respect of any Finance Document.

### **18.7 Lender status confirmation**

- (a) Each Lender which becomes a Party to this Agreement after the date of this Agreement shall indicate, in the Transfer Certificate, the Assignment Agreement, the Increase Confirmation, Cancelled Commitments or the Additional Facility Lender Accession Notice (as applicable) which it executes on becoming a Party, which of the following categories it falls into:
  - (i) in respect of a Dutch Borrower:
    - (A) not a Dutch Qualifying Lender;
    - (B) a Dutch Qualifying Lender (other than a Dutch Treaty Lender); or
    - (C) a Dutch Qualifying Lender by virtue of being a Dutch Treaty Lender (on the assumption that all procedural formalities have been completed).
  - (ii) in respect of a UK Borrower:
    - (A) not a UK Qualifying Lender;
    - (B) a UK Qualifying Lender (other than a UK Treaty Lender); or
    - (C) a UK Qualifying Lender by virtue of being a UK Treaty Lender (on the assumption that all procedural formalities have been completed).



- (b) Upon written request of the Obligors' Agent to an Original Lender (such request to be given no later than 15 Business Days before the first interest payment date), that Original Lender shall indicate to the Obligors' Agent and the Agent, before the first interest payment date, in which of the following categories it falls, in respect of each Borrower:
  - (i) in respect of a Dutch Borrower:
    - (A) not a Dutch Qualifying Lender;
    - (B) a Dutch Qualifying Lender (other than a Dutch Treaty Lender); or
    - (C) a Dutch Qualifying Lender by virtue of being a Dutch Treaty Lender (on the assumption that all procedural formalities have been completed).
  - (ii) in respect of a UK Borrower:
    - (A) not a UK Qualifying Lender;
    - (B) a UK Qualifying Lender (other than a UK Treaty Lender); or
    - (C) a UK Qualifying Lender by virtue of being a UK Treaty Lender (on the assumption that all procedural formalities have been completed).
- (c) If an Original Lender, a New Lender, an Increase Lender or an Additional Facility Lender fails to indicate its status in respect of a Borrower in accordance with paragraphs (a) or (b) above (as applicable) then such Original Lender, New Lender, Increase Lender or Additional Facility Lender shall be treated for the purposes of this Agreement (including by the relevant Obligor) as if it is not:
  - (i) a Dutch Qualifying Lender (in the case of a failure to indicate its status under paragraph (a)(i) above or paragraph (b)(i) above),
  - (ii) a UK Qualifying Lender (in the case of a failure to indicate its status under paragraph (a)(ii) above or paragraph (b)(ii) above),
- (d) until such time as it notifies the Agent and the Obligors' Agent which category applies. For the avoidance of doubt, a Transfer Certificate, the Assignment Agreement, the Increase Confirmation, Cancelled Commitments or the Additional Facility Lender Accession Notice (as applicable) shall not be invalidated by any failure of a Lender to comply with this Clause 18.7.

## **18.8 Indirect Tax**

- (a) All consideration expressed to be payable under a Finance Document by any Party to a Finance Party shall be deemed to be exclusive of any Indirect Tax. If any Indirect Tax is chargeable on any supply or payment made by any Finance Party to any Party in connection with a Finance Document, that Party shall pay to that Finance Party (in addition to and at the same time as paying the consideration for such supply) an amount equal to the amount of that Indirect Tax (provided that such Finance Party promptly provides an appropriate

invoice for Indirect Tax purposes to that Party in accordance with the laws applicable to that Indirect Tax). For the avoidance of doubt, this Clause 18.8 does not apply to the extent that the supply is subject to reverse charge of Indirect Tax such that the Party is liable for the Indirect Tax on the supply made by the Finance Party.

- (b) Where a Finance Document requires any Party to reimburse a Finance Party for any costs or expenses, that Party shall also at the same time pay and indemnify that Finance Party against all Indirect Tax incurred by the Finance Party in respect of such costs or expenses except to the extent that Finance Party reasonably determines that it is entitled to credit or repayment in respect of such Indirect Tax.
- (c) Where a Finance Party has an option available to it under applicable Indirect Tax laws whether or not to subject a supply or service to any Indirect Tax and it has no policy or consistent use as regards that option, it shall not subject such supply or service to Indirect Tax without the prior written consent of the recipient of such supply or service (such consent not to be unreasonably withheld).

## **18.9 FATCA information**

- (a) Subject to paragraph (c) below, each Party shall, within 10 Business Days of a reasonable request by another Party:
  - (i) confirm to that other Party whether it is: (A) a FATCA Exempt Party; or (B) not a FATCA Exempt Party; and
  - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; 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 such 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) 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 it is not a FATCA Exempt Party until the time as the Party in question provides the requested confirmation, forms, documentation or other information.

#### **18.10 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 that 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 (to which such FATCA Deduction relates) and, in addition, shall notify the Company and the Agent and the Agent shall notify the other Lenders.

### **19. INCREASED COSTS**

#### **19.1 Increased Costs**

- (a) Subject to Clause 19.3 (*Exceptions*), the Company shall, within five 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 or any of its Affiliates as a result of (i) any Change in Law, (ii) compliance with any law or regulation (including any law or regulation concerning capital adequacy, prudential limits, liquidity, reserve assets or Tax) that is made after the Signing Date or (iii) the implementation or application of or compliance with Basel III, Basel IV or CRD IV or any law that implements or applies Basel III, Basel IV or CRD IV.
- (b) In this Agreement:

**Basel II** means “International Convergence of Capital Measurement and Capital Standards, a Revised Framework” published by the Basel Committee on Banking Supervision in June 2004.

**Basel III** means:

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

amended, supplemented or restated; and

- (iii) any further guidance or standards published by the Basel Committee on Banking Supervision relating to Basel III.

**Basel IV** means any guidelines and standards published by the Basel Committee on Banking Supervision regarding capital requirements, leverage ratio and liquidity standards applicable to banks, following Basel III.

**CRD IV** means:

- (i) 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
- (ii) 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.

**Increased Costs** means:

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

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

## **19.2 Increased Cost claims**

- (a) A Finance Party intending to make a claim pursuant to Clause 19.1 (*Increased Costs*) shall notify the Agent of the event giving rise to that claim within 120 days of the date on which that Finance Party becomes aware of it, following which the Agent shall promptly notify the Company.
- (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.

## **19.3 Exceptions**

Clause 19.1 (*Increased Costs*) does not apply to the extent any Increased Cost:

- (a) is attributable to a Tax Deduction required by law to be made by an Obligor;
- (b) is attributable to a FATCA Deduction required to be made by a Party;
- (c) would have been compensated for under Clause 18.2 (*Tax gross-up*), Clause 18.6 (*Stamp taxes*) or Clause 18.8 (*Indirect Tax*) (but was not so compensated solely because of one of the exclusions in those Clauses applied);

- (d) attributable to a change (whether of basis, timing or otherwise) in the Tax on the overall net income of the Finance Party (or any Affiliate of it) or of the branch or office through which it participates in any Utilisation;
- (e) is attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law, regulation or treaty, or the terms of any Finance Document;
- (f) is attributable to the implementation or application of or compliance with Basel II or any other law or regulation existing on the Signing Date which implements Basel II (whether such implementation, application or compliance is by a government regulator, Finance Party or any of its Affiliates or otherwise) but excluding any Increased Costs attributable to the implementation or application of Basel III, Basel IV or CRD IV or any law or regulation which implements Basel III, Basel IV or CRD IV;
- (g) is attributable to compliance with the Dodd-Frank Wall Street Reform and Consumer Protection Act or any law or regulation existing on the Signing Date made under, or connected with, that Act (whether such implementation, application or compliance is by a government, regulator, Finance Party or any of its Affiliates or otherwise);
- (h) is not notified to the Agent by the Finance Party (that is claiming any indemnification or payment under this Clause 19 in respect of such Increased Cost) within 120 days of the date of such Finance Party becoming aware of the event giving rise to such Increased Costs in accordance with paragraph (a) of Clause 19.2 (*Increased Cost claims*); or
- (i) attributable to any Bank Levy (or any payment attributable to, or liability arising as a consequence of, a Bank Levy).

## 20. OTHER INDEMNITIES

### 20.1 Currency indemnity

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

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

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

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

- (c) If any amount received by a Finance Party (other than the Security Agent) is, when converted into the currency in which that amount is expressed to be due and payable under the relevant Finance Documents, in excess of the relevant Obligor's liability under the Finance Documents, that Finance Party must promptly pay to that Obligor an amount equal to that excess.

## 20.2 Other indemnities

- (a) The Company shall, within five Business Days of demand, indemnify, to the maximum extent permitted under all applicable laws, each Secured Party against any cost, loss or liability incurred by that Secured Party as a result of:
  - (i) the occurrence of any Event of Default;
  - (ii) a failure by an Obligor to pay or non-payment of any amount due under a Finance Document on its due date, including any cost, loss or liability arising as a result of Clause 34 (*Sharing among the Secured Parties*) or as a result of a revocation of a notice of prepayment or cancellation in accordance with Clause 13.1 (*Notices of cancellation or prepayment*);
  - (iii) funding, or making arrangements to fund, its participation in the Utilisation requested by a Borrower (or on its behalf) 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 (A) by reason of default or negligence by that Secured Party alone or (B) any cost, loss or liability attributable to a loss of Margin);
  - (iv) issuing or making arrangements to issue a Letter of Credit requested by the Company or a Borrower in a Utilisation Request but not issued 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 Secured Party alone); or
  - (v) the Utilisation (or part of the Utilisation) not being prepaid in accordance with a notice of prepayment given by the Company (whether due to revocation of that notice or otherwise).
- (b) The Company shall promptly indemnify, to the maximum extent permitted under all applicable laws, each Secured Party, each Affiliate of a Secured Party and each officer or employee of a Secured Party or its Affiliate against any cost, loss or liability incurred by that Secured Party or that Affiliate of a Secured Party (or officer or employee of that Secured Party or Affiliate) in connection with or arising out of the Acquisition or the funding of the Acquisition (including but not limited to those incurred in connection with any litigation, arbitration or administrative proceedings or regulatory enquiry concerning the Acquisition or the funding of the Acquisition), unless such cost, loss or liability is caused by the fraud, gross negligence or wilful misconduct of that Secured Party or that Affiliate of a Secured Party (or any employee or officer of that Secured Party or Affiliate). Any Affiliate of a Secured Party or any officer or employee of a Secured Party or its Affiliate may rely on this Clause 20.2, subject to Clause 1.4 (*Third party rights*) and the provisions of the Third Parties Ordinance.

## 20.3 Indemnity to the Agent

The Company shall promptly indemnify the Agent against any cost, loss or liability incurred by the Agent as a result of:

- (a) investigating any event which it reasonably believes is an Event of Default;
- (b) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
- (c) entering into or performing any foreign exchange contract for the purposes of paragraph (b) of Clause 35.10 (*Change of currency*); or
- (d) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement.

## **21. MITIGATION BY THE LENDERS**

### **21.1 Mitigation**

- (a) Each Finance Party shall, in consultation with the Company, take all reasonable steps to mitigate any circumstances which arise and which would result in any Facility ceasing to be available or any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 11.1 (*Illegality*) (or, in respect of the Issuing Bank, Clause 11.2 (*Illegality in relation to Issuing Bank*)), Clause 18 (*Tax Gross-Up and Indemnities*) or Clause 19 (*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 any Obligor or the Parent under the Finance Documents.

### **21.2 Limitation of liability**

- (a) The Company shall promptly indemnify, to the maximum extent permitted under all applicable laws, each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 21.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under Clause 21.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

## **22. COSTS AND EXPENSES**

### **22.1 Transaction expenses**

- (a) The Company shall within five Business Days of demand pay the Agent, the Issuing Bank, the Arranger and the Security Agent the amount of all costs and expenses (including legal fees (subject to agreed caps, if any)) properly incurred and documented by any of them (and, in the case of the Security Agent, by any Receiver or Delegate) in connection with the negotiation, preparation, printing, execution, Syndication and perfection of:
  - (i) this Agreement and any other documents referred to in this Agreement and the Transaction Security; and

- (ii) any other Finance Documents executed after the Signing Date.
- (b) In the event that the Initial Utilisation Date does not occur, the Company shall only be liable for the Finance Parties' legal advisor's fees and the Finance Parties' costs and expenses (including any legal fees and out of pocket costs in connection with Syndication) up to caps separately agreed between the Arranger and the Sponsor. No such legal fees or costs or expenses will be paid or reimbursed by the Company pursuant to this paragraph (b) until the Company and the Arranger determine (acting reasonably) that the Initial Utilisation Date is reasonably unlikely to occur.

## **22.2 Amendment and Other costs**

If:

- (a) any Obligor or the Parent requests an amendment, waiver or consent;
- (b) an amendment is required or expressly contemplated pursuant to Clause 2.3 (*Additional Facility*) or Clause 35.10 (*Change of currency*); or
- (c) an Event of Default has occurred,

the Company shall, within five Business Days of demand, reimburse each of the Agent and the Security Agent for the amount of all costs and expenses (including legal fees (subject to agreed caps, if any)) reasonably incurred and documented 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, complying with or implementing that request, requirement or occurrence (as the case may be).

## **22.3 Enforcement and preservation costs**

The Company shall, within five Business Days of demand, pay to the Arranger and each other Secured Party the amount of all costs and expenses (including legal fees but excluding the cost of any internal management time of the Agent or the Security Agent) incurred by that Secured Party 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 entering into a Finance Document or taking or holding the Transaction Security or enforcing those rights.

## **23. GUARANTEE AND INDEMNITY**

### **23.1 Guarantee and indemnity**

Subject to the limitations in this Clause 23, each Guarantor irrevocably and unconditionally jointly and severally:

- (a) guarantees to each Finance Party punctual performance by each other Obligor of all that Obligor's payment obligations under the Finance Documents;
- (b) undertakes with each Finance Party that whenever another Obligor does not pay any amount when due under or in connection with any Finance Document, that Guarantor shall immediately on demand pay that amount as if it were the principal obligor; and



- (c) agrees with each Finance Party that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Finance Party immediately on demand against any cost, loss or liability it incurs as a result of an Obligor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by a Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 23 if the amount claimed had been recoverable on the basis of a guarantee.

### **23.2 Continuing guarantee**

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

### **23.3 Reinstatement**

If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is made by a Finance Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration, judicial management or otherwise, without limitation, then the liability of each Guarantor under this Clause 23 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

### **23.4 Waiver of defences**

The obligations of each Guarantor under this Clause 23 will not be affected by an act, omission, matter or thing which, but for this Clause 23, would reduce, release or prejudice any of its obligations under this Clause 23 (without limitation and whether or not known to it or any Finance Party) including:

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

- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

### **23.5 Guarantor intent**

Without prejudice to the generality of Clause 23.4 (*Waiver of defences*), each Guarantor expressly confirms that it intends that this guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

### **23.6 Immediate recourse**

Each Guarantor waives any right it may have of first requiring any Finance Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under this Clause 23. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

### **23.7 Appropriations**

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

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Guarantor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from any Guarantor or on account of any Guarantor's liability under this Clause 23.

### **23.8 Deferral of Guarantors' rights**

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Agent otherwise directs, no Guarantor will exercise or otherwise enjoy the benefit of any right which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 23:

- (a) to be indemnified by an Obligor;
- (b) to claim any contribution from any other guarantor of any Obligor's obligations under the Finance Documents;

- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Finance Party;
- (d) to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which any Guarantor has given a guarantee, undertaking or indemnity under Clause 23.1 (*Guarantee and indemnity*);
- (e) to exercise any right of set-off against any Obligor; and/or
- (f) to claim or prove as a creditor of any Obligor in competition with any Finance Party.

If a Guarantor receives any benefit, payment or distribution in relation to any such right it shall hold that benefit, payment or distribution (or so much of it as may be necessary to enable all amounts which may be or become payable to the Finance Parties by the Obligors under or in connection with the Finance Documents to be paid in full) on trust for the Finance Parties, and shall promptly pay or transfer the same to the Agent or as the Agent may direct for application in accordance with Clause 35 (*Payment Mechanics*).

### **23.9 Additional security**

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

### **23.10 Guarantee limitations – general**

- (a) This guarantee does not apply to any liability to the extent that it would result in this guarantee constituting unlawful financial assistance within the meaning of sections 678 or 679 of the Companies Act 2006 (or equivalent provisions under the laws of any other jurisdiction in which that Guarantor is incorporated).
- (b) The guarantee of any Additional Guarantor is subject to any limitations relating to that Additional Guarantor on the amount guaranteed or to the extent of the recourse of the beneficiaries of the guarantee which is set out in the Accession Letter applicable to such Additional Guarantor and agreed with the Agent (acting reasonably and subject to the limitations on security and guarantees set out in Clause 27.27).

### **23.11 Guarantee limitations – US Guarantors**

- (a) In this Clause 23.11

*fraudulent transfer law* means any applicable United States bankruptcy and state fraudulent transfer and conveyance statute and any related case law;

*US Guarantor* means any Guarantor that is incorporated or organised under the laws of the United States or any State of the United States (including the District of Columbia) or that has a place of business or property in the United States; and

terms used in this Clause 23.11 are to be construed in accordance with the fraudulent transfer laws.

- (b) Each US Guarantor acknowledges that:
  - (i) it will receive valuable direct or indirect benefits as a result of the transactions financed by the Finance Documents;
  - (ii) those benefits will constitute reasonably equivalent value and fair consideration for the purpose of any fraudulent transfer law; and
  - (iii) each Finance Party has acted in good faith in connection with the guarantee given by that US Guarantor and the transactions contemplated by the Finance Documents.
- (c) Notwithstanding anything to the contrary included herein or in any other Finance Document, each Finance Party agrees that each US Guarantor's liability under this Clause 23.11 is limited, without the requirement of amendment or any other formality, to the maximum aggregate amount that would not render any obligation of, or transfer by, any US Guarantor under this Clause 23.11 subject to avoidance and turnover under any fraudulent transfer law.

### **23.12 Guarantee limitations and keepwell – other US laws**

- (a) Notwithstanding anything to the contrary contained in this Agreement or any other Finance Document, the obligations being guaranteed by any Guarantor (by express guarantee, grant of security, or otherwise) shall not include any Excluded Swap Obligations.
- (b) Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Obligor to honour all of its obligations under the guarantee provided pursuant to this Clause 23 in respect of Swap Obligations, and under any other guarantee or security provided pursuant to any other Finance Document in respect of Swap Obligations (provided, however, that each Qualified ECP Guarantor shall only be liable under this Clause 23.12 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Clause 23.12, or otherwise under the guarantee provided pursuant to this Clause 23, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, or otherwise, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Clause 23 shall remain in full force and effect until the obligations under the Finance Documents are discharged in full. Each Qualified ECP Guarantor intends that this paragraph (b) constitute, and this paragraph (b) shall be deemed to constitute, a “keepwell, support, or other agreement” for the benefit of each other Obligor for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

## **24. REPRESENTATIONS**

### **24.1 General**

- (a) Each Obligor makes the representations and warranties set out in this Clause 24 in relation to itself and, where relevant, its Subsidiaries and (on and from the Completion Date) the Target Group on the dates set out in Clause 24.26 (*Times when representations made*) to each Finance Party.

- (b) Subject to paragraph (c) below, the Parent makes each of the representations and warranties set out in this Clause 24 on the dates set out in Clause 24.26 (*Times when representations made*) to each Finance Party. Where the representations and warranties set out in this Clause 24 refer to the Parent or are stated by the Parent, such representation and warranty is made by the Parent in respect of itself only and, where applicable, its assets and the Finance Documents to which it is a party.
- (c) The Parent does not give the representations and warranties set out in paragraph (b) of Clause 24.6 (*Authorisations*), Clause 24.10 (*Information Package and Base Case Model*), 24.11 (*Accounts*), Clause 24.12 (*Disputes*), Clause 24.14 (*Environmental laws*), Clause 24.15 (*Taxation*), Clause 24.18 (*Legal and beneficial ownership*) (except in respect of any shares of the Company held by the Parent and any Parent Liabilities), Clause 24.20 (*Intellectual Property*), Clause 24.21 (*Pari passu ranking*) and Clause 24.24 (*Group Structure Chart*).

## **24.2 Status**

- (a) It and each of its Subsidiaries which is a Material Subsidiary or Material Subsidiary Holdco is duly incorporated, organised, registered or established (as applicable), and validly existing under the law of its jurisdiction or organisation.
- (b) It and each of its Subsidiaries which is a Material Subsidiary or Material Subsidiary Holdco, has the power (including, where relevant, acting through its general partner or other equivalent person) to own its assets and carry on its business in all material respects as it is now being conducted.

## **24.3 Binding obligations**

Subject to the Legal Reservations and the Perfection Requirements:

- (a) the obligations expressed to be assumed by it and each Material Subsidiary Holdco in each Finance 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 or a Material Subsidiary Holdco is a party creates the security interests which that Transaction Security Document purports to create and those security interests are valid and effective.

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

The execution, delivery and performance by it and each Material Subsidiary Holdco of, and the transactions contemplated by, the Finance Documents, in each case, to which it is a party do not:

- (a) subject to the Legal Reservations, conflict with any law or regulation applicable to it in any material respect;
- (b) conflict with its constitutional documents or the constitutional documents of any Material Subsidiary the shares or equity interests in which are subject to Transaction Security in any material respect; or

- (c) breach any agreement or instrument binding upon it or any of its Subsidiaries or any of its or its Subsidiaries' assets to an extent or in a manner which has or would have a Material Adverse Effect.

#### **24.5 Power and authority**

It and each Material Subsidiary Holdco has (or will have by the time of execution of the relevant Finance Document) the power to enter into, perform and deliver, and has taken (or will have taken prior to the time of execution) all necessary corporate actions to authorise its entry into, performance and delivery of, the Finance Documents to which it is or will be a party and the transactions contemplated by those Finance Documents.

#### **24.6 Authorisations**

- (a) Subject to the Legal Reservations and the Perfection Requirements, all Authorisations required:

- (i) to enable it and each Material Subsidiary Holdco lawfully to enter into, exercise its rights, comply with and perform its obligations in the Finance Documents to which it is a party; and
- (ii) to make the Finance Documents to which it or a Material Subsidiary Holdco is a party admissible in evidence in its Relevant Jurisdiction, other than court filings in the normal course of proceedings,

have been (or will by the required date be) obtained or effected and are (or will by the required date be) in full force and effect.

- (b) All Authorisations necessary for the conduct of the ordinary business of the Group Members have been obtained or effected (or will have been at the date required) are (or will be) in full force and effect where failure to obtain or effect those Authorisations has or would have a Material Adverse Effect.

#### **24.7 Governing law and enforcement**

- (a) Subject to the Legal Reservations, the choice of governing law of the Finance Documents as expressed in such Finance Document will be recognised and enforced in its (or if a Material Subsidiary Holdco is party to such Finance Document, such Material Subsidiary Holdco's) Relevant Jurisdictions.
- (b) Subject to the Legal Reservations and Perfection Requirements, any judgment obtained in relation to a Finance Document to which it or a Material Subsidiary Holdco is a party in the jurisdiction of the governing law of that Finance Document will be recognised and enforced in its (or if a Material Subsidiary Holdco is a party to such Finance Document, such Material Subsidiary Holdco's) Relevant Jurisdictions.

#### **24.8 Insolvency**

None of the circumstances described in Clause 28.6 (*Insolvency*) or Clause 28.7 (*Insolvency proceedings*), to its Knowledge, is continuing or applies in relation to it or any Material Subsidiary or Material Subsidiary Holdco, or any of its or their respective assets (in each case subject to the exceptions set out therein and excluding any actions, proceedings, steps or process which have been discharged, revoked or otherwise

lapsed).

#### **24.9 No default**

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

#### **24.10 Information Package and Base Case Model**

- (a) Save to the extent disclosed to the Arranger in writing and to the Company's Knowledge:
  - (i) any material factual information (other than information of a general economic nature) relating to the Group (including the Target Group) supplied by or on behalf of the Group and contained in the Information Package (taken as a whole) (the **Information**) was true and accurate in all material respects as at the date of the Information Memorandum and the Base Case Model or, if earlier, the date on which the information is expressed to be to be given;
  - (ii) no factual information was omitted from the Information Package where the omission results in the Information Package, taken as a whole, being misleading in any material respect in the context of the transaction contemplated by the Transaction Documents as a whole; and
  - (iii) no event or circumstance has occurred since the date of the Information Memorandum that results in the Information Package, taken as a whole, being untrue or inaccurate or misleading in any material respect in the context of the transaction as a whole.
- (b) Any financial projections or forecasts and the expressions of opinion or intention (to the extent attributable to the Group) provided by the Company (or on its behalf) and contained in the Base Case Model or the Information Memorandum were prepared on the basis of recent historical information and assumptions (or grounds for opinions) believed by the Company in good faith to be reasonable at the time of being prepared (it being understood that such financial projections or forecasts or expressions of opinion or intention are subject to significant uncertainties and contingencies many of which may be beyond the control of the Group and that no assurances can be given that such financial projections or forecasts or expressions of opinion or intention will be realised or accurate).
- (c) The Base Case Model has been prepared in accordance with applicable Accounting Principles consistent with those applied to the most recent financial statements of the Group (having regard to the fact that it was prepared

for investment purposes and to the extent appropriate for a model not necessarily subject to audit procedures).

#### **24.11 Accounts**

Save as otherwise disclosed to the Arranger or the Agent in writing:

- (a) The Annual Financial Statements most recently delivered pursuant to paragraph (a) of Clause 25.1 (*Financial statements*) were prepared on a basis consistent in all material respects with the applicable Accounting Principles and present a true and fair view of (as applicable) the consolidated financial position of the Target Group or the stand-alone financial position of the relevant Original Obligor, as at the date to which they were prepared and for the Financial Year then ended;
- (b) the Quarterly Financial Statements most recently delivered pursuant to paragraph (b) of Clause 25.1 (*Financial statements*) were prepared on a basis consistent in all material respects with the applicable Accounting Principles and fairly present the consolidated financial position of (as applicable) the Target Group or the stand-alone financial position of the relevant Original Obligor, as at the date to which they were prepared and for the Relevant Period then ended, in each case (i) save as set out therein or the notes thereto, (ii) having regard to the fact they are management accounts prepared for management purposes and not subject to audit procedures and (iii) to the extent applicable, subject to customary year-end adjustments.

#### **24.12 Disputes**

No litigation, arbitration or administrative, regulatory or criminal or other proceedings or investigations of, or before, any applicable court, arbitral body or agency are outstanding, pending or (to the Company's Knowledge) threatened against it or any of its Subsidiaries which are reasonably likely to be determined adversely to it and which, if so adversely determined, would have a Material Adverse Effect.

#### **24.13 Compliance with law**

It is (and each of its Subsidiaries is) in compliance with all applicable laws and regulations where failure to do so would have a Material Adverse Effect.

#### **24.14 Environmental laws**

- (a) It and each of its Subsidiaries is in compliance with all applicable Environmental Laws and regulations and has obtained all Environmental Permits necessary to conduct its business, in each case where failure to do so would have a Material Adverse Effect.
- (b) No Environmental Claim has been commenced or (to the Company's Knowledge) is threatened against it or any of its Subsidiaries where that claim is reasonably likely to be determined adversely to it or to such Subsidiary and which, if so adversely determined, would have a Material Adverse Effect.

#### **24.15 Taxation**

No claims are being asserted against it or any of its Subsidiaries with respect to Taxes which are reasonably likely to be adversely determined against it or such Subsidiary



and which, if so adversely determined, would have a Material Adverse Effect and all reports and returns on which such Taxes are required to be shown have been filed within any applicable time limits and all Taxes required to be paid have been paid within any applicable time limit (taking into account any extension or grace period and other than amounts for which adequate reserves have been maintained and amounts disputed reasonably in good faith in accordance with applicable procedures) save, in each case, to the extent that failure to do so would not have a Material Adverse Effect.

#### **24.16 Security, Financial Indebtedness and guarantees**

- (a) No Security or Quasi-Security exists over any of the assets of any Group Member or over the shares of the Company held by the Parent or the Parent Liabilities, in each case, other than Permitted Security or as permitted by this Agreement.
- (b) No Group Member has any Financial Indebtedness outstanding other than Permitted Financial Indebtedness or as permitted by this Agreement.

#### **24.17 Good title to assets**

It and each of its Subsidiaries have good, valid and marketable title to, or valid leases or licences of or are otherwise entitled to use, all assets necessary to carry on its business as presently conducted, in each case, to the extent that failure to do so would have a Material Adverse Effect.

#### **24.18 Legal and beneficial ownership**

Subject to the Legal Reservations and Perfection Requirements:

- (a) all the shares or ownership interests of the Company and any Parent Liabilities over which the Parent purports to grant Transaction Security;
- (b) all of the material assets of the Obligors and the Material Subsidiary Holdcos over which the Obligors or Material Subsidiary Holdcos purport to grant Transaction Security,

are or will be by the time such Transaction Security is granted, legally and beneficially owned by the Parent (or as the case may be the Obligors or Material Subsidiary Holdcos), free from any Security or Quasi Security (other than Permitted Security).

#### **24.19 Shares**

- (a) The shares in each Obligor or Material Subsidiary which are subject to any Transaction Security are fully paid and not subject to any pre-emption, option to purchase or similar rights, other than as may arise under applicable law.
- (b) There are no agreements in force which provide for the issue or allotment of, or grant any person the right to call for the issue or allotment of, any of the shares in the Company or any Obligor that are subject to the Transaction Security (including any option or right of pre-emption or conversion).
- (c) On and from the Initial Utilisation Date, the constitutional documents of the Company, do not restrict any transfer of its shares on enforcement of the Original Security Document listed in paragraph 1(a) of Part II (*Original Security Documents*) of Schedule 2 (*Conditions Precedent*).

#### **24.20 Intellectual Property**

- (a) The Intellectual Property required in order to conduct the business of the Group is legally and beneficially owned or licensed to a Group Member and all formal or procedural actions required to maintain such Intellectual Property have been taken, in each case, where failure to be or do so would have a Material Adverse Effect.
- (b) In carrying on its business it does not infringe any Intellectual Property of any third party in any respect which would have a Material Adverse Effect.

#### **24.21 Pari passu ranking**

- (a) Subject to the Legal Reservations and the applicable Perfection Requirements, the Transaction Security has, or will have once entered into, the ranking in priority which it is expressed to have in the Transaction Security Documents and it is not subject to any prior ranking or *pari passu* ranking Security except for obligations mandatorily preferred by law applying to companies generally or as otherwise permitted under the Finance Documents.
- (b) Without prejudice to paragraph (a) above, its payment obligations under the Finance Documents rank at least *pari passu* in right and priority of payment with all its other present and future unsecured and unsubordinated indebtedness, except for any indebtedness preferred by laws of general application.

#### **24.22 Holding Companies**

Before the Initial Utilisation Date it has not traded or incurred any material liabilities or commitments (actual or contingent, present or future) other than any Permitted Holding Company Activity.

#### **24.23 Anti-corruption, anti money-laundering, anti-terrorism financing laws and sanctions**

- (a) It and its Subsidiaries have conducted their businesses in compliance with applicable Anti-Corruption Laws, Anti-Money Laundering and Anti-Terrorism Financing Laws and Sanctions and have instituted and maintained policies and procedures reasonably designed to promote and achieve compliance with applicable Anti-Corruption Laws, Anti-Money Laundering and Anti-Terrorism Financing Laws and Sanctions.
- (b) Neither it nor the Parent nor any of their respective Subsidiaries or joint ventures, nor, to the knowledge of it or the Parent, any of their respective directors, officers or employees, agents or any person acting on any of their behalf:
  - (i) is a Restricted Person;
  - (ii) has been engaged in any transaction, activity or conduct that would reasonably be expected to result in it being designated as a Restricted Person;
  - (iii) is currently engaging in any transaction, activity or conduct that could result in a violation of applicable Sanctions; or

- (iv) has received notice of, or is otherwise aware of, any pending, threatened or contemplated claim, action, suit, proceedings or investigation by or before any court or governmental agency, authority or body or arbitrator involving it with respect to Sanctions, Anti-Corruption Laws and Anti-Money Laundering and Anti-Terrorism Financing Laws.
- (c) No Loan, use of proceeds or other transaction contemplated by this Agreement will directly or indirectly violate Anti-Corruption Laws, Anti-Money Laundering and Anti-Terrorism Financing Laws or Sanctions.
- (d) Neither it nor its Subsidiaries, nor to its Knowledge, any of its directors, officers, agents, employees or Affiliates is the target of Sanctions or is located or organised within a Sanctioned Countries or has engaged in any activity which would breach the applicable Anti-Corruption laws.
- (e) This Clause 24.23 shall not be interpreted or applied in relation to it, any Holding Company, the Parent, any member of the Group, any member of the Target Group or any Finance Party to the extent that the representations made pursuant to this Clause 24.23 would violate or expose such person or any of its directors, officers, agents or employees to any liability under any applicable anti-boycott or Blocking Law, regulation or statute that is in force from time to time (including, without limitation, in the European Union (and/or any of its member states) that are applicable to such entity (including without limitation EU Regulation (EC) 2271/96)).

#### **24.24 Group Structure Chart**

Assuming that the Completion Date has occurred, the Group Structure Chart delivered to the Agent pursuant to Part I (*Conditions Precedent to First Utilisation*) of Schedule 2 (*Conditions Precedent*) is, to the Company's Knowledge (allowing for any changes after the date on which the Group Structure Chart has been delivered which are not adverse to the interest of the Finance Parties under the Finance Documents (taken as a whole)), true, complete and accurate in recording the anticipated structure of the Group up to and including the Target as at the Completion Date, in all material respects.

#### **24.25 US Governmental Regulation**

- (a) None of the Obligors is engaged or will engage, principally or as one of its important activities, in the business of "buying" or "carrying" Margin Stock, or extending credit for the purpose of "buying" or "carrying" Margin Stock. No part of the proceeds of any Utilisation is being used for "buying" or "carrying" (in each case within the meaning of Regulation T, U or X) any Margin Stock or for any purpose which violates the provisions of the regulations of the Federal Reserve Board.
- (b) None of the Obligors is required to register as an "investment company" as defined in, or subject to regulation under, the United States Investment Company Act of 1940 (15 USC. §§ 80a-1 et seq.).
- (c) No ERISA Event has occurred, is continuing or is reasonably likely to occur, that could result in a Material Adverse Effect to an Obligor or any ERISA Affiliate.
- (d) Each Employee Benefit Plan which is intended to be qualified under Section

401(a) of the Code has been determined by the Internal Revenue Service that the form of such Employee Benefit Plan is qualified under Section 401(a) of the Code or is in the process of being submitted to the Internal Revenue Service for approval or will be so submitted during the applicable remedial amendment period, and, nothing has occurred since the date of such determination that would adversely affect such determination (or, in the case of an Employee Benefit Plan with no determination, nothing has occurred that would materially adversely affect such qualification).

#### **24.26 Times when representations made**

- (a) All the representations and warranties in this Clause 24 are made on the Signing Date and the Initial Utilisation Date, except that:
  - (i) the representations and warranties set out in Clause 24.10 (*Information Package and Base Case Model*) with respect to the Information Memorandum shall be made on the date the Information Memorandum is approved by the Company, on (x) each Utilisation Date prior to the Syndication Date (only if at such date the Information Memorandum has been previously approved by the Company) and (y) on the Syndication Date provided that the Agent has given the Company at least five Business Days' prior written notice of the Syndication Date and subject, in each case, to the right of the Company to make disclosures against those representations and warranties; and
  - (ii) the representations and warranties set out in Clause 24.11 (*Accounts*) will be made once only in respect of each set of financial statements delivered to the Agent and shall be made on the date such financial statements are delivered to the Agent.
- (b) The Repeating Representations are deemed to be made by each Obligor and Parent (if applicable) on the date of each Utilisation Request, on each Utilisation Date and on the first day of each Interest Period, and by any Additional Obligor on the date of its accession to the Finance Documents.
- (c) The representations and warranties at Clauses 24.17 (*Good title to assets*), 24.18 (*Legal and beneficial ownership*) and 24.19 (*Shares*) and paragraph (a) of Clause 24.21 (*Pari passu ranking*) are deemed to be made by each Obligor and/or Parent (as the case may be) on the day on which that Obligor or Parent (as the case may be) enters into a Transaction Security Document and only in respect of that Transaction Security Document and the assets or shares to which that Transaction Security Document relates.
- (d) Each representation or warranty deemed to be made after the Signing Date shall be deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made.

#### **24.27 Awareness and disclosure**

- (a) Any representation or warranty made by any Obligor or the Parent on or prior to the Completion Date in respect of any fact, matter, asset, liability (actual or contingent), obligation or claim of or relating to any member of the Target Group (including any information relating to any member of the Target Group in any Report or the Base Case Model) is qualified by the Knowledge of the Obligors or the Parent (which shall not include the knowledge or belief of any

member of the Target Group or its management).

- (b) The Parties acknowledge that projections and forecasts are subject to significant uncertainties and contingencies and no assurance can be given that such projections or forecasts will be realised.
- (c) The contents of the Reports, the Original Financial Statements, the Acquisition Documents and any information detailed in any public disclosure on or prior to the date of the Announcement and any other information provided to the Original Lenders or the Agent in writing prior to the date of this Agreement are, in each case, disclosed against and qualify the representations and warranties in this Clause 24.

## **25. INFORMATION UNDERTAKINGS**

The undertakings in this Clause 25 remain in force, unless otherwise indicated, from the Signing Date for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

### **25.1 Financial statements**

The Company shall supply (or procure the supply of) to the Agent in sufficient copies for all the Lenders:

- (a) as soon as they are available, but in any event within 120 days after the end of each of its Financial Years commencing with the first Financial Year ending on or after the First Test Date (or within 180 days after the end of its first Financial Year ending on or after the First Test Date) the:
  - (i) audited financial statements (on a stand-alone basis) of the Company for that Financial Year;
  - (ii) audited financial statements (on a stand-alone basis) of Topco for that Financial Year;
  - (iii) audited financial statements (on a stand-alone basis) of Midco for that Financial Year;
  - (iv) audited financial statements (on a stand-alone basis) of Bidco for that Financial Year; and
  - (v) audited consolidated financial statements of the Target Group for that Financial Year; and
- (b) as soon as they are available, but in any event within 75 days after the end of each of the first three Financial Quarters of each of its Financial Years ending on or after the First Test Date (or within 120 days after the end of the first three Financial Quarters ending on or after the First Test Date) the:
  - (i) unaudited financial statements (on a stand-alone basis) of the Company for that Financial Quarter;
  - (ii) unaudited financial statements (on a stand-alone basis) of Topco for that Financial Quarter;

- (iii) unaudited financial statements (on a stand-alone basis) of Midco for that Financial Quarter;
  - (iv) unaudited financial statements (on a stand-alone basis) of Bidco for that Financial Quarter; and
  - (v) unaudited consolidated financial statements of the Target Group for that Financial Quarter; and
- (c) to the extent Completion has occurred and they are not otherwise delivered above, for information purposes only, a copy of:
- (i) within 180 days after the end of each of that Financial Year, the audited consolidated financial statements of the Target Group for the Financial Year ended 31 December 2024; and
  - (ii) within 120 days after the end of each Financial Quarter ending after 31 December 2024 and before the First Test Date, the unaudited consolidated financial statements of the Target Group for that Financial Quarter,

*provided that* no Default or Event of Default shall occur if the Company does not deliver such financial statements when required under this paragraph (c).

## 25.2 Provision and contents of Compliance Certificate

- (a) The Company shall supply a Compliance Certificate to the Agent with each set of Relevant Financial Statements of the Company delivered pursuant to Clauses 25.1(a)(i) and (b)(i) (*Financial statements*) above.
- (b) Each Compliance Certificate shall, amongst other things, set out (in reasonable detail):
  - (i) computations as to compliance with Clause 26 (*Financial Covenants*) for any applicable Relevant Period but only to the extent such Relevant Period ends on a Test Date as at which such Relevant Financial Statements were prepared;
  - (ii) confirmation that (so far as the Company is aware) no actual Event of Default is continuing;
  - (iii) calculation of the Margin; and
  - (iv) in respect of each Compliance Certificate delivered together with the Annual Financial Statements of the Company only, a list of Material Subsidiaries (including, for the avoidance of doubt, Future Material Subsidiaries, if any) as at the date of such Compliance Certificate (each such Compliance Certificate, a *Guarantor Certificate*).
- (c) Each Compliance Certificate shall be signed by an Authorised Signatory.

## 25.3 Provision of ESG Performance Certificate

In respect of any Financial Year ending after the Initial Utilisation Date, the Obligors' Agent may (but is not obliged to) deliver to the Agent an ESG Performance Certificate

signed by the CEO or CFO of the Company within 120 days from the end of that Financial Year.

#### **25.4 Requirements as to financial statements**

- (a) Each set of Relevant Financial Statements shall:
  - (i) include a balance sheet, profit and loss account and cashflow statement;
  - (ii) (in the case of Annual Financial Statements only) be audited by the Auditors;
  - (iii) be certified by an Authorised Signatory as presenting a true and fair view, the Target Group's consolidated or (as applicable) the relevant Original Obligor's stand-alone financial condition as at the date at which, and the Target Group's or (as applicable) the relevant Original Obligor's stand-alone results of operations for the period for which, those financial statements were drawn up and, in the case of the Annual Financial Statements, shall be accompanied by any letter addressed to the management of the Target or the relevant Obligor by the Auditors and accompanying those Annual Financial Statements; and
  - (iv) be prepared using the Accounting Principles, accounting practices and financial reference periods consistent with those applied in the preparation of the Base Case Model as varied in accordance with paragraph (e) of Clause 26.3 (*Financial testing*) unless, in relation to any set of Relevant Financial Statements, the Company notifies the Agent that there has been a change in the Accounting Principles, accounting practices, or financial reference periods and, following such notification, the Company complies with the procedures and requirements set out in paragraphs (b) and (c) below (to the extent applicable).
- (b) If the Company notifies the Agent of a change in accordance with paragraph (a)(iv) above, the Company and the Agent (acting on the instructions of the Majority Lenders) shall enter into negotiations in good faith with a view to agreeing:
  - (i) whether or not that change might result in any material alteration in the commercial effect of the provisions of Clause 26 (*Financial Covenants*) (including the defined terms included therein); and
  - (ii) if so, any amendments to this Agreement which may be necessary to ensure that such change does not result in any material alteration in the commercial effect of those provisions,

and if any amendments are agreed they shall take effect and be binding on each of the Parties in accordance with their terms. For the avoidance of doubt, this paragraph (b) shall not apply to any change (or proposed change) by the Company to the reporting currency of any Relevant Financial Statements.

- (c) If no agreement on the subject matters referred to in paragraph (b)(i) or (b)(ii) above is reached within 30 days of the notification of that change (or any longer period agreed between the Company and the Agent (acting on the instructions

of the Majority Lenders)), the Company shall deliver to the Agent, together with the Relevant Financial Statements in relation to which that change has occurred (and each subsequent set of Relevant Financial Statements delivered under Clause 25.1 (*Financial statements*) unless the applicable amendments with respect to such change are agreed in accordance with paragraph (b) above) any reconciliation statements (audited, where applicable) necessary to enable calculations based on the Accounting Principles as they were before that change, and that change will be ignored for the purposes of the financial undertakings in Clause 26 (*Financial Covenants*). Any reference in this Agreement to any Relevant Financial Statements shall be construed as a reference to those Relevant Financial Statements as adjusted to reflect the basis upon which the Base Case Model was prepared.

- (d) Notwithstanding any other provision in this Clause 25, following an IPO, the Company may satisfy its reporting obligations hereunder (as regards time-periods, form and content) by delivering the financial reports of the Group that is delivered (including, where made available on any website) to the public shareholders, ***provided that***, to the extent such disclosure would not trigger any public disclosure requirements and subject at all times to any confidentiality, privilege, legal or regulatory restrictions on disclosure (including stock exchange or listing rules), the Group will continue to deliver Compliance Certificates, notice of defaults and any “*know your customer*” information.

#### **25.5 Information: miscellaneous**

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

- (a) at the same time as they are dispatched, copies of all documents required by law to be dispatched by the Company to its creditors generally (or any class of them in their capacity as creditors);
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration, administrative or regulatory proceedings (except for any frivolous or vexatious proceedings) which are current, threatened or pending against any Group Member, and which, if adversely determined, would reasonably be expected to have a Material Adverse Effect;
- (c) the details of any receipt of any Proceeds that are required to be applied in prepayment of any of the Facilities pursuant to Clause 12.2 (*Disposal Proceeds, Insurance Proceeds and Recovery Proceeds*);
- (d) promptly on request, such information as the Security Agent may reasonably require about the Charged Property and compliance of the Obligors and the Parent with the terms of any Transaction Security Documents; and
- (e) promptly on request, such further financial information regarding the Group, as the Agent (acting on the instructions of the Majority Lenders) may reasonably require (other than any budget, projections, forward-looking information, forecast or opinion or any additional financial statements),

***provided that*** the provision of such information to the Finance Parties is not restricted pursuant to confidentiality, privilege, legal or regulatory restrictions on disclosure.

#### **25.6 Year-end**



- (a) The Company shall procure that the end of each Financial Year of the Group (on a consolidated basis) falls on 31 December, unless any change is required for business or operational reasons.
- (b) If the Financial Year of the Group is changed such that it does not end on or about 31 December in each year, then:
  - (i) the Company shall promptly notify the Agent of such change;
  - (ii) on and from the date of notification by the Company to the Agent pursuant to paragraph (i) above:
    - (A) the definition of “Financial Year” shall be deemed to have been amended such that the words “31 December” shall be replaced with the date on which the new annual accounting period of the Group ends on or about (and each reference to Financial Year in the Finance Documents shall, from such point, be construed accordingly);
    - (B) the amount of each basket, permission, obligation or other provision of the Finance Documents which is calculated or determined by reference to a Financial Year of the Group (including but not limited to references to amounts utilised, incurred, received or spent “per Financial Year”, “in that Financial Year”, “during that Financial Year”, and/or “in a relevant Financial Year”) (each a **Relevant FY Basket**) shall be proportionately re-calculated for the then current and immediately following Financial Year to give effect to such change; and
    - (C) if, following the re-calculation made pursuant to paragraph (B) above, (taking into account any existing utilisation, incurrence, receipt or expense) the Group would (after taking into account any Unused Amount and any amount permitted to be carried forward or back pursuant to Clause 1.5 (*Baskets*)) have exceeded the limits prescribed in respect of any Relevant FY Basket, (the amount of such excess being the **Over Utilised Amount**), then:
      - (1) for the avoidance of doubt, no Default or Event of Default shall be deemed to have occurred by virtue of the breach of that Relevant FY Basket for the then current Financial Year; and
      - (2) the amount of such basket, permission, obligation or other provision in the then current Financial Year (as amended), or (if the Over Utilised Amount would already cause the relevant basket, permission, obligation or other provision, in that Financial Year to be exceeded), in the immediately following Financial Year, shall be reduced by an amount equal to the Over Utilised Amount;
  - (iii) the Agent (acting on the instructions of the Majority Lenders (acting reasonably and at the cost of the Company)) may, within 30 days of

receipt a notification by the Company to the Agent pursuant to paragraph (i) above, request adjustments to the relevant terms of any relevant Finance Documents (including, for the avoidance of doubt, to Clause 26 (*Financial Covenants*)) which, in its reasonable opinion, are of a mechanical, minor or technical nature in order to maintain a position equivalent to that which was in force immediately prior to the Company giving notification to the Agent pursuant to paragraph (i) above, and the Company shall enter into any amendment agreement (or equivalent documentation) reasonably requested by the Agent to give effect to such mechanical, minor or technical amendment. Any amendment entered into pursuant to this paragraph (iii) shall be deemed to have been effected in accordance with the relevant requirements of Clause 41 (*Amendments and Waivers*).

- (c) For the avoidance of doubt, any Group Member (other the Company, Topco, Midco or Bidco) may change its financial year end at any time.

#### **25.7 Notification of default**

- (a) Each Obligor shall notify the Agent of any Default that is continuing (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).
- (b) If the Agent (acting on the instructions of the Majority Lenders) has reasonable grounds to believe an Event of Default is continuing, promptly upon a request by the Agent, the Company shall supply to the Agent a certificate signed by a director of the Company certifying that (so far as it is aware) no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

#### **25.8 Know your customer checks**

- (a) Each Obligor and Parent shall promptly upon the reasonable request of the Agent, the Security Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender), the Security Agent (for itself) or any Lender (for itself or, in the case of any proposed assignment or transfer by a Lender of any of its rights and/or obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer (a ***Proposed Assignment or Transfer***), on behalf of any prospective assignee or transferee of that Lender) in order for the Agent, such Security Agent, such Lender or, in the case of any Proposed Assignment or Transfer, any prospective assignee or transferee of a 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 reasonable request of the Agent and/or the Security Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent or the Security Agent (for itself) in order for the Agent and/or the Security Agent to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

- (c) The Company shall, by not less than three Business Days' prior written notice to the Agent, notify the Agent (which shall promptly notify the Lenders) of its intention to request that any person becomes an Additional Obligor pursuant to Clause 31 (*Changes to the Obligors*).
- (d) Following the giving of any notice pursuant to paragraph (c) above, if the accession of any Proposed Additional Obligor as an Additional Obligor obliges the Agent, the Security Agent or any Lender to comply with "know your customer" or similar identification procedures or other similar procedures in circumstances where the necessary information is not already available to it, the Company shall promptly upon the request of the Agent, the Security Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender), the Security Agent or any Lender (for itself or on behalf of any prospective assignee or transferee of that Lender) in order for the Agent, such Security Agent or such Lender or any prospective assignee or transferee of a Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the accession of such Proposed Additional Obligor to this Agreement as an Additional Obligor.

## 25.9 Use of websites

- (a) Each Obligor and the Parent may satisfy its obligation under this Agreement to deliver any information in relation to those Lenders (the *Website Lenders*) who accept this method of communication by posting the information onto an electronic website designated by the Obligors' Agent and the Agent (the *Designated Website*) if:
  - (i) the Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;
  - (ii) both the Obligors' Agent and the Agent are aware of the address of and any relevant password specifications for the Designated Website; and
  - (iii) the information is in a format previously agreed between the Obligors' Agent and the Agent.

If any Lender (a *Paper Form Lender*) does not agree to the delivery of information electronically then the Agent shall notify the Obligors' Agent accordingly and the Obligors' Agent shall supply the information to the Agent (in sufficient copies for each Paper Form Lender) in paper form. In any event the Obligors' Agent shall supply the Agent with at least one copy in paper form of any information required to be provided by it.

- (b) The Agent shall supply each Website Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by the Obligors' Agent and the Agent.
- (c) The Obligors' Agent shall promptly upon becoming aware of its occurrence notify the Agent if:
  - (i) the Designated Website cannot be accessed due to technical failure;

- (ii) the password specifications for the Designated Website change;
- (iii) any new information which is required to be provided under this Agreement is posted onto the Designated Website;
- (iv) any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or
- (v) the Obligors' Agent becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.

If the Obligors' Agent notifies the Agent under paragraph (c)(i) or paragraph (c)(v) above, all information to be provided by the Obligors' Agent under this Agreement after the date of that notice shall be supplied in paper form unless and until the Agent and each Website Lender is satisfied that the circumstances giving rise to the notification are no longer continuing.

- (d) Any Website Lender may request, through the Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Obligors' Agent shall comply with any such request within 10 Business Days.

## 26. FINANCIAL COVENANTS

The undertakings in this Clause 26 remain in force from the Signing Date for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

### 26.1 Financial definitions

In this Agreement:

**Acquired Entity** means an entity the subject of a Permitted Business Acquisition (and for such purpose, where the subject of a Permitted Business Acquisition is a business, property or a material fixed asset, such business, property or a material fixed asset shall be deemed to constitute a separate legal entity and become a Group Member upon the date of closing of such Permitted Business Acquisition, and such separate legal entity shall be an **Acquired Entity**, and the definition of **Adjusted EBITDA** shall apply accordingly).

**Adjusted EBITDA** means, in respect of any Relevant Period, Group EBITDA for that Relevant Period as adjusted in accordance with paragraphs (b) to (d) of Clause 26.3 (*Financial testing*).

**Borrowings** means, at any time, the outstanding principal or capital amount of any Financial Indebtedness of the Group or any member or members of the Group but excluding:

- (a) any liabilities of the type referred to in paragraph (j) of the definition of **Financial Indebtedness**;
- (b) any liabilities in respect of any Parent Liabilities or any New Shareholder Injections;

- (c) any liabilities in respect of indebtedness owing between Group Members or any contingent liabilities that constitute Deferred Consideration (or, in the case of any Outstanding Consideration, any liabilities); and
- (d) any indebtedness under any lease which, under the Accounting Principles, would be treated as an operating lease.

**Business Disposal** means the disposal of a Group Member (such that such Group Member ceases to be a Group Member) or of the entire business of a Group Member.

**Capital Expenditure** means any expenditure or obligation in respect of expenditure which, in accordance with the Accounting Principles, is treated as capital expenditure (including the capital element of any expenditure or obligation incurred in connection with Capitalised Lease Obligations) but excluding any non-cash expenditure and only taking into account the actual cash payment made where assets are replaced and part of the purchase price is paid by way of part exchange.

**Capitalised Lease Obligations** means, with respect to any person, any rental obligation (including any hire purchase payment obligation) which, under the Accounting Principles would be required to be treated as a Finance Lease, but only to the extent of that treatment and excluding, for the avoidance of doubt, any cash expenditure arising from an operating lease or lease which, in accordance with the Accounting Principles, is treated as an operating lease.

**Disposed Entity** means an entity the subject of a Business Disposal (and for such purpose, where the subject of a Business Disposal is a property, business or material fixed asset, such property, business or material fixed asset shall be deemed to constitute a separate legal entity and cease to be a Group Member upon the date of closing of such Business Disposal, and such separate legal entity shall be a **Disposed Entity**, and the definition of **Adjusted EBITDA** shall apply accordingly).

**Exceptional Items** means items of an unusual one-off or non-recurring or extraordinary or exceptional nature which represent gains or losses (including but not limited to in terms of scope or of type or nature) including those arising on:

- (a) the restructuring or reorganisation of the activities of an entity and costs (including for the avoidance of doubt, all costs and expenses relating to the rationalisation, transformation, re-branding, start-up, reduction or elimination of product lines, asset or business, redundancy, rationalisation, relocation, retraining, severance and termination costs and expenses, compliance costs and expenses, closure, business interruption and make good costs, asset relocation costs not capitalised, consultants' and associated recruitment fees, legal and other professional fees, compensation to departing management and head count reduction, and asset write downs and temporary costs associated with associated transactional services and costs of new personal or other adjustments for sold businesses and creation or reversal of any related provisions) (collectively, **Restructuring Costs**) and reversals of any provisions for such Restructuring Costs;
- (b) disposals (including any gain or loss over or against book value arising in favour of or incurred by a Group Member), revaluations, write-downs or impairment of non-current assets;
- (c) disposals of assets associated with discontinued operations; and/or

- (d) actual or preparatory costs incurred in connection with any investment, acquisition, disposal, debt or equity issuance or financing or offering, litigation, claims, investigations or settlements (and in each case whether or not successful).

**Financial Quarter** means the period commencing on the day after one Quarter Date and ending on the next Quarter Date.

**Financial Year** means, subject to Clause 25.6 (*Year-end*), the annual accounting period of the Group ending on or about 31 December in each year.

**Group Cash and Cash Equivalent Investments** means, at any time, the aggregate of (without double counting):

- (a) the aggregate amount of Cash and Cash Equivalent Investments held by any Group Member at such time; and
- (b) the aggregate amount of cash collateral of Group Members securing or supporting Borrowings of Group Members at that time.

**Group Current Assets** means the aggregate (on a consolidated basis) gross value of inventory, trade and other receivables of each Group Member including sundry debtors (but excluding Cash and Cash Equivalent Investments) maturing within 12 months from the date of computation and including lease prepayments but excluding amounts in respect of:

- (a) receivables in relation to rebates for tax on profits;
- (b) Insurance Claims;
- (c) Exceptional Items and other non-operating items; and
- (d) (to the extent not otherwise excluded by consolidation) any accrued Interest owing to any Group Member.

**Group Current Liabilities** means the aggregate (on a consolidated basis) of all liabilities (including trade creditors, accruals, provisions, prepayments, unearned revenues and sundry creditors) of each Group Member falling due within 12 months from the date of computation but excluding amounts in respect of:

- (a) liabilities for Financial Indebtedness (including the costs of raising that Financial Indebtedness) and Group Interest Payable;
- (b) liabilities for tax on profits;
- (c) liabilities for Capital Expenditure; and
- (d) Exceptional Items and other non-operating items.

**Group EBITDA** means, for any Relevant Period, the consolidated operating profit of the Group for that Relevant Period (without double counting):

- (a) *before* deducting Group Interest Payable (for the purpose of this deduction only, including capitalised Interest and amortisation of arrangement, underwriting and participation fees and similar issue costs, agency fees, repayment and prepayment premiums, and fees or costs) and before taking into

account any gains or losses including foreign exchange gains or losses in respect of Financial Indebtedness in that Relevant Period;

- (b) *before* deducting any amount of Tax paid, payable or accruing for payment by any Group Member during that Relevant Period;
- (c) *after* adding back (to the extent otherwise deducted) any amount attributable to amortisation or impairment of intangible assets (including amortisation, impairment or write-down of any goodwill, intangible asset or equity investment arising on the Acquisition, any Permitted Acquisition or any Permitted Joint Venture Investment and of any Transaction Costs) and depreciation or impairment of tangible assets;
- (d) *after* adding back (to the extent otherwise deducted) any non-cash provision, charge, cost or expense in each case related to (i) any stock option incentive or management equity plan or (ii) any share, equity, phantom equity, warrant or option-based compensation of officers, directors or employees of Group Members accrued during that Relevant Period;
- (e) *excluding* any Exceptional Items;
- (f) *after* deducting the amount of profit of any Non-Group Entity to the extent that the amount of such profit exceeds the amount received or receivable in cash by Group Members through distributions by that Non-Group Entity (including any return from a Joint Venture (including by way of redemption of interest, repayment of, or payment of interest on, a loan, dividend or distribution and return of assets transferred) or similar return from any other Non-Group Entity) and after adding back, to the extent not already included in Group EBITDA, the amount received or receivable in cash by Group Members through distributions by Non-Group Entities (including any return from a Joint Venture (including by way of redemption of interest, repayment of, or payment of interest on, a loan, dividend or distribution and return of assets transferred) or similar return from other Non-Group Entity) during such Relevant Period to the extent it exceeds the amount of profit of such Non-Group Entities but, in each case, excluding any received amount in the nature of repayment of the principal amount of any loan or other Financial Indebtedness owed, or the return of principal on any share or other investment (save to the extent the amount received or receivable in cash exceeds the principal amount invested by Group Members in that Non-Group Entity);
- (g) *after* adding back (to the extent otherwise deducted) any loss, or after deducting (to the extent otherwise included) any gain, constituted by any mark-to-market or similar valuation adjustment implemented as a result of equity accounting with respect to any interest of any Group Member in any Non-Group Entity;
- (h) *before* taking into account any realised or unrealised gains or losses on any derivative instrument (other than realised gains or losses on any derivative instrument put in place as part of the Group's operational hedging and without, in each case, double counting with reference to the definition of **Group Net Cash Interest Costs**);
- (i) *before* taking into account any income or charge (including any deemed finance charge) attributable to a pension or post-employment benefit scheme other than the current service costs attributable to that scheme;

- (j) *after* adding back (but without double counting) Transaction Costs and any fee, commission, cost, charge or expense in each case related to any actual or attempted equity or debt offering or financing, investment (including any Joint Venture Investment), acquisition (including any Permitted Acquisition and any Permitted Joint Venture Investment), disposal or incurrence of Permitted Financial Indebtedness (whether or not, in each case, consummated) and any interest component of any operating lease;
- (k) *before* taking into account the amount of any loss and gain against book value arising on (i) a disposal or (ii) revaluation, of any asset during that Relevant Period;
- (l) *after* adding back (to the extent otherwise deducted) any Permitted Payments and any other fees permitted to be paid to the Sponsors or any agent or security agent (or person performing an analogous function) in respect of any Financial Indebtedness during that Relevant Period;
- (m) *after* deducting (to the extent otherwise included) any other non-cash gain, and *after* adding back (to the extent otherwise deducted) any other non-cash expense ***provided that***, to the extent that any non-cash expense is added back in the calculation of Group EBITDA for any Relevant Period and such expense becomes a cash expense of a Group Member or otherwise becomes payable in cash by a Group Member in any subsequent Relevant Period, such expense shall be deducted in the calculation of Group EBITDA for such subsequent Relevant Period;
- (n) *after* adding back (to the extent otherwise deducted) any expense in relation to amounts paid by any Group Member in respect of the purchase of shares (or rights in respect of shares) in Group Members from directors, officers or employees of the Group upon termination of the employment of such employees with the Group;
- (o) *after* adding (to the extent not otherwise included) any amounts that are paid or accrued in favour of any Group Member during that Relevant Period under loss of profit or business, key-man or interruption insurance (or any equivalent of the foregoing);
- (p) *before* taking into account any exchange rate gains or losses arising due to the retranslation of balance sheet items;
- (q) *after* adding back (to the extent otherwise deducted) any fees, costs or charges related to or incurred in connection with an employee or management equity plan, incentive scheme or similar arrangement or any compensation payments to management;
- (r) *excluding* pre-operating expenses (if expensed rather than capitalized under the Accounting Principles); and
- (s) *after* taking into account adjustments, exclusions and add-backs of the type identified in the Base Case Model.

***Group Interest Income*** means, for a Relevant Period, the amount of interest accrued (whether or not received) or due to Group Members during that Relevant Period and any interest payable to a Group Member during that Relevant Period, including any interest on any Cash or Cash Equivalent Investments (in each case on a consolidated



basis).

**Group Interest Payable** means, for a Relevant Period, the aggregate of Interest, commission and other recurrent financial expenses accrued (whether or not paid) in respect of any Borrowings of any Group Member during that period but excluding any Interest which is capitalised, pay-in-kind or rolled-up or otherwise not currently payable in cash (or which is paid in cash but could have been paid in kind or rolled-up at the option of the relevant Group Member), the amount of any discount amortised, any other non-cash Interest charges during that Relevant Period and calculated on the basis that:

- (a) the amount of Interest accrued will be increased by an amount equal to any amount payable by Group Members under interest rate hedging agreements in relation to that period, but for the avoidance of doubt does not include any unrealised gains or losses; and
- (b) the amount of Interest accrued will be reduced by an amount equal to any amount payable to Group Members under interest rate hedging agreements in relation to that period, but for the avoidance of doubt does not include any unrealised gains or losses.

**Group Net Cash Interest Costs** means, for any Relevant Period, the Group Interest Payable for that Relevant Period after deducting any Group Interest Income for that Relevant Period.

**Group Net Debt** means, at any time, the aggregate principal amount of all obligations of the Group Members for or in respect of Borrowings at that time (without double counting) but deducting (without double counting) Group Cash and Cash Equivalent Investments at that time, **provided that**, if such amount is less than zero, **Group Net Debt** shall be deemed to be zero.

**Group Working Capital** means, on any date, Group Current Assets less Group Current Liabilities.

**Interest** means interest and amounts in the nature of interest paid or payable (or, as the context may require, accrued or accruing) in respect of any Borrowings including:

- (a) the interest element of Finance Leases (but excluding payments in respect of any capital element);
- (b) discount and acceptance fees payable (or deducted) in respect of any Borrowings;
- (c) fees payable in connection with the issue or maintenance of any bond, letter of credit, guarantee or other assurance against financial loss which constitutes Borrowings and is issued by a third party on behalf of a Group Member;
- (d) repayment premiums payable or incurred; and
- (e) commitment, utilisation and non-utilisation fees payable or incurred in respect of Borrowings (but excluding commitment fees in relation to any of the Facilities to the extent included in Transaction Costs),

but excluding all arrangement, underwriting and participation fees and similar issue costs, agency fees, premia, fees and costs payable on repayment or prepayment of

Borrowings, Acquisition Costs, Transaction Costs, costs relating to any Permitted Acquisition and any amortisation of any such fees, costs or premia, any fronting arrangements, any capitalised interest or other non-cash return, any withholding tax (or gross up obligation) on interest received or paid, any amounts that are payable in respect of any Borrowings that are repaid or cease to exist (including by way of acquisition) in connection with the Acquisition or any other Permitted Acquisition (relating to any Future Acquisition Target that is not a Group Member prior to such Permitted Acquisition but that becomes a Group Member or becomes owned by a Group Member pursuant to such Permitted Acquisition), any realised or unrealised gains or losses on any financial instrument (other than any derivative instrument which is accounted for on a hedge accounting basis), and any interest cost or expected return on plan assets in relation to any pension or post-employment benefit scheme (including fees, costs or any deemed finance charges or notional interest in relation to pension liabilities).

**Interest Cover** means, in respect of any Relevant Period, the ratio of Adjusted EBITDA to Group Net Cash Interest Costs.

**Net Leverage** means, in respect of any Relevant Period, the ratio of Group Net Debt on the last day of that Relevant Period to Adjusted EBITDA in respect of that Relevant Period.

**New Equity** means the cash proceeds of fully paid ordinary or non-redeemable preference shares or ownership interests in the Company or fully paid redeemable shares or ownership interests in the Company with a redemption date at least six Months after the Termination Date, which are issued to the Parent for cash on or after the Completion Date to the extent the proceeds are not applied on the Initial Utilisation Date or applied towards repayment of Existing Indebtedness in accordance with the Funds Flow Statement.

**New Parent Liabilities** means Parent Liabilities arising on or after the Completion Date to the extent the proceeds are not applied on the Initial Utilisation Date or applied towards repayment of Existing Indebtedness in accordance with the Funds Flow Statement.

**New Shareholder Injections** means the aggregate amount of New Equity and/or New Parent Liabilities.

**Non-Group Entity** means any investment or entity (which is not itself a Group Member (including associates and Joint Ventures)) in which any Group Member has an ownership interest. For the avoidance of doubt, Non-Group Entity shall not include any Group Member (whether or not such Group Member is a wholly-owned Group Member).

**Quarter Date** means each of 31 March, 30 June, 30 September and 31 December.

**Relevant Period** means each period of four consecutive Financial Quarters ending on a Quarter Date.

**Restructuring Costs** has the meaning given to it in paragraph (a) of the definition of **Exceptional Items**.

**Test Date** means the First Test Date and each of 31 March, 30 June, 30 September and 31 December in each year thereafter.

## 26.2 Financial condition

The Company shall ensure that:

- (a) **Interest Cover:** Interest Cover in respect of any Relevant Period ending on or after the First Test Date shall not be less than 1.75:1.
- (b) **Net Leverage:** Net Leverage in respect of any Relevant Period ending on a Test Date that falls on or after the First Test Date and during the period specified in column 1 below shall not exceed, the ratio set out in column 2 of Table A below opposite that Test Date.

<b>Table A</b>	
<b>Column 1 Test Date</b>	<b>Column 2 Net Leverage</b>
First Test Date	7.00:1
Test Date that occurs immediately after the First Test Date	7.00:1
Test Date that occurs at the end of the second Financial Quarter after the First Test Date	7.00:1
Test Date that occurs at the end of the third Financial Quarter after the First Test Date	7.00:1
Test Date that occurs at the end of the fourth Financial Quarter after the First Test Date	6.75:1
Test Date that occurs at the end of the fifth Financial Quarter after the First Test Date	6.75:1
Test Date that occurs at the end of the sixth Financial Quarter after the First Test Date	6.75:1
Test Date that occurs at the end of the seventh Financial Quarter after the First Test Date	6.50:1
Test Date that occurs at the end of the eighth Financial Quarter after the First Test Date	6.50:1
Test Date that occurs at the end of the ninth Financial Quarter after the First Test Date	6.00:1
Test Date that occurs at the end of the tenth Financial Quarter after the First Test Date	6.00:1
Test Date that occurs at the end of the eleventh Financial Quarter after the First Test Date	5.50:1
Test Date that occurs at the end of the twelfth Financial Quarter after the First Test Date	5.50:1

<b>Table A</b>	
<b>Column 1 Test Date</b>	<b>Column 2 Net Leverage</b>
Test Date that occurs at the end of the thirteenth Financial Quarter after the First Test Date	5.00:1
Test Date that occurs at the end of the fourteenth Financial Quarter after the First Test Date	5.00:1
Test Date that occurs at the end of the fifteenth Financial Quarter after the First Test Date	5.00:1
Test Date that occurs at the end of the sixteenth Financial Quarter after the First Test Date and thereafter	5.00:1

### 26.3 Financial testing

- (a) Subject to paragraph (b) and (c) below, the financial covenants set out in paragraphs (a) and (b) of Clause 26.2 (*Financial condition*) shall be calculated in accordance with the Accounting Principles as used in the preparation of the Base Case Model, as varied in accordance with paragraph (g) of this Clause 26.3 and tested by reference to each set of Annual Financial Statements and each set of Quarterly Financial Statements and/or each relevant Compliance Certificate delivered with those financial statements.
- (b) When calculating (or projecting) financial covenants set out in Clause 26.2 (*Financial condition*) (and when calculating the Net Leverage, Group EBITDA and/or Interest Cover where relevant in any provisions in this Agreement), the Parties:
- (i) shall include in determining Group EBITDA for any period (including the portion thereof occurring prior to the relevant acquisition) the earnings before interest, tax, depreciation and amortisation (calculated on the same basis as Group EBITDA, *mutatis mutandis*) for the period of any Acquired Entity acquired (and not subsequently disposed of) by any Group Member during such period;
  - (ii) shall exclude in determining Group EBITDA for any period the earnings before interest, tax depreciation and amortisation (calculated on the same basis as Group EBITDA, *mutatis mutandis*) of any Disposed Entity sold, transferred or otherwise disposed of by any Group Member (as applicable) during such period (including the portion thereof occurring prior to such sale, transfer or disposition);
  - (iii) shall include in determining Group EBITDA, the Pro Forma Adjustment in respect of any Acquired Entity, Disposed Entity and any restructuring, reorganisation, rationalisation, cost-savings or other similar initiative (a **Group Initiative**) committed to be undertaken

during such period (without double counting);

- (iv) shall exclude any non-recurring costs and other expenses arising directly or indirectly as a consequence of acquiring an Acquired Entity, disposing of a Disposed Entity or a Group Initiative; and
- (v) shall include in determining Group Net Debt and Group Net Cash Interest Costs the pro forma effect of any incurrence, assumption or repayment of Financial Indebtedness (including any reduction in Group Net Debt from the proceeds of any asset sales) arising from any acquisition, entry into a joint venture, disposal or a Group Initiative,

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

- (c) Cost savings, operating expense reductions and synergies at full *run rate* related to mergers and other business combinations, acquisitions, divestitures, restructurings, cost savings initiatives and other similar initiatives consummated after the Completion Date that are reasonably identifiable and factually supportable and projected by the Company in good faith to result from actions that have been taken or with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Company) within 12 months after a merger or other business combination, acquisition, divestiture, restructuring, cost savings initiative or other initiative is consummated may be taken into account when calculating the items set out in this Clause 26.3 *provided that*:
  - (i) the aggregate amount added to Group EBITDA for any period shall not exceed 15 per cent. of Group EBITDA for such period (before giving pro forma effect to any such transaction but after giving effect to any pro forma addbacks identified in the Base Case Model); and
  - (ii) such amounts must be certified by the chief financial officer or chief executive officer of the Company if the aggregate amount of all such pro forma adjustments to Group EBITDA for any period exceeds 10 per cent. of Group EBITDA for such period (before giving pro forma effect to such transactions but after giving effect to any pro forma addbacks identified in the Base Case Model).
- (d) To the extent Net Leverage or any financial definition contained in this Clause 26 is used as the basis (in whole or part) for permitting any transaction or making any determination under this Agreement (including on a pro-forma basis) at any time after a Test Date, Group Net Debt shall be reduced to take into account any repayment of Financial Indebtedness made on or before the relevant date and shall be increased to take into account any incurrence or assumption of Financial Indebtedness made on or before the relevant date.
- (e) For each Relevant Period ending before the first anniversary of the Completion Date:
  - (i) for the purposes of calculating Group Net Cash Interest Costs for that Relevant Period, the actual Group Net Cash Interest Costs for any part of that Relevant Period which elapsed before the Completion Date shall be included (even though the Group had not incurred any Borrowings during the period prior to the Completion Date);

- (ii) it will be assumed that any Borrowings incurred on or after the Completion Date were outstanding on the first day of that Relevant Period and any Borrowings outstanding prior to the Completion Date but repaid or refinanced on or around the Completion Date shall be, in each case, ignored; and/or
  - (iii) for the purposes of calculation of Group EBITDA and Group Net Cash Interest Costs for that Relevant Period, the amount of Group EBITDA and Group Net Cash Interest Costs shall be an annualised amount calculated based on the amount of Group EBITDA and Group Net Cash Interest Costs incurred after the Completion Date.
- (f) If, on any Test Date or in relation to any Relevant Period ending on a Test Date, the Company fails to comply with a requirement of Clause 26.2 (*Financial condition*), but on a subsequent Test Date or in relation to a Relevant Period ending on a subsequent Test Date, the Company does comply with that requirement, any non-compliance with such requirement on such first-mentioned Test Date or in relation to such first-mentioned Relevant Period (and any resulting actual or potential Event of Default) shall be deemed to be waived and remedied for all purposes under the Finance Documents (and shall no longer constitute a Default) unless an Acceleration Event has occurred prior to such subsequent Test Date.
- (g) The headroom levels in respect of the financial undertakings in Clause 26.2 (*Financial condition*) have been calculated using assumptions in relation to the capital structure and debt at the Completion Date and reasonable assumptions in relation to the interest rate environment. The headroom levels shall be preserved if adjustments to the Base Case Model are agreed prior to the Completion Date and each Finance Party will agree to any amendment to a Finance Document necessary to reflect that preservation.
- (h) For the purpose of this Clause 26, no item shall be included or excluded or otherwise taken into account more than once in any calculation.

#### **26.4 Exchange rates**

- (a) For the purpose of this Clause 26, an amount outstanding or repayable on a particular day in a currency other than US\$ shall on that day be taken into account in US\$ equivalent at the rate of exchange that would have been used had an audited consolidated balance sheet of the Group been prepared as at that day in accordance with the Accounting Principles.
- (b) In respect of any Relevant Period, the exchanges rates used in the determination of Group EBITDA shall be the applicable exchange rates(s) for that Relevant Period as determined by the Company in accordance with the Accounting Principles.

#### **26.5 Cure rights**

- (a) If the requirements of any of the financial undertakings in paragraphs (a) and (b) of Clause 26.2 (*Financial condition*) are not met (or would but for this Clause 26.5 not be met) in respect of any Relevant Period (***Breach Period***), but cash proceeds are received by the Company from any New Shareholder Injection received by it (the ***Cure Amount***) within 30 Business Days following the date on which the relevant Compliance Certificate in respect of such Breach

Period is delivered pursuant to Clause 25.2 (*Provision and contents of Compliance Certificate*), then the financial undertakings in Clause 26.2 (*Financial condition*) will be tested or, as applicable, retested giving effect to the following adjustments:

- (i) for the purpose of calculating Net Leverage, the Cure Amount shall be used for pro forma reduction of the Group Net Debt as if such reduction had taken place on the first day of such Breach Period; and
- (ii) for the purpose of calculating Interest Cover, the Cure Amount shall be used for pro forma reduction of Group Net Cash Interest Costs as if the Initial Term Loans had been repaid by such Cure Amount on the first day of such Breach Period,

in each case, solely for the purposes of ascertaining compliance with the financial undertakings in Clause 26.2 (*Financial condition*) and not for any other purpose. If, after giving effect to the adjustments referred to above, the requirements of the financial undertakings in Clause 26.2 (*Financial condition*) in respect of that Breach Period are met, then such requirements shall be deemed to have been satisfied as at the original date of determination (and as at the Test Date on which such Breach Period ends) as though there had been no failure to comply and any Default or Event of Default occasioned thereby shall be deemed to have been remedied for all purposes under the Finance Documents.

- (b) Any Cure Amount received by the Company in accordance with this Clause 26.5 may exceed the amount required to rectify any breach or non-compliance with the financial undertakings in Clause 26.2 (*Financial condition*) in respect of any Relevant Period. Any Cure Amount received by the Company in accordance with this Clause 26.5 shall be applied in the voluntary prepayment of outstanding Loans in accordance with Clause 11.4 (*Voluntary prepayment*) no later than the final day of the Interest Period during which such Cure Amount is received by the Company.
- (c) A Cure Amount may only be applied for the purpose of effecting a cure of the financial undertakings in Clause 26.2 (*Financial condition*):
  - (i) a maximum of five times over the life of the Facilities; and
  - (ii) no more than once in any two consecutive Financial Quarters,

***provided that***, for the avoidance of doubt, the application of a Cure Amount towards the cure of more than one financial undertaking in Clause 26.2 (*Financial condition*) in relation to the same Relevant Period or the same Test Date shall be deemed to constitute a single application.

- (d) Any recalculation made under this Clause 26.5 will be solely for the purpose of curing a breach of the financial undertakings in Clause 26.2 (*Financial condition*) and not for any other purpose such as calculation of applicable Margin or for *pro forma* calculations of Leverage for the purposes of any Permitted Business Acquisition, Permitted Joint Venture or Permitted Payment.

## 27. GENERAL UNDERTAKINGS

The undertakings in this Clause 27 remain in force from the Signing Date for, unless otherwise indicated, so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

### **27.1 Authorisations**

Each Obligor and the Parent shall (and shall procure that each Security Provider) promptly obtain, comply with and do all that is necessary to maintain in full force and effect any material Authorisation required under any law or regulation of a Relevant Jurisdiction to:

- (a) enable it to execute and perform its obligations under the Finance Documents;
- (b) subject to the Legal Reservations and, in the case of the Transaction Security Documents, the Perfection Requirements, ensure the legality, validity, enforceability or admissibility in evidence of any Finance Document; and
- (c) to own property and carry on its business,

in each case where failure to do so has or would have a Material Adverse Effect.

### **27.2 Compliance with laws**

Each Obligor shall (and the Company shall ensure that each Group Member will) comply in all respects with all laws and regulations to which it may be subject, where failure to do so has a Material Adverse Effect.

### **27.3 Taxation**

- (a) Each Obligor and the Parent will (and the Company shall ensure that each Group Member will) pay and discharge all Taxes imposed by any agency of any state upon it or its assets within the time period allowed (taking into account any extension or grace period) without incurring penalties unless and to the extent that:
  - (i) such payment is being contested in good faith and the costs required to contest them have been disclosed in any financial statements of the Group and adequate reserves are being maintained in relation to such costs in accordance with the Accounting Principles; or
  - (ii) failure to pay those Taxes does not have or would not be reasonably expected to have a Material Adverse Effect.

### **27.4 Merger**

Neither the Obligors nor the Parent shall (and the Company shall ensure that no other Group Member will) enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction other than pursuant to a Permitted Acquisition, a Permitted Disposal, a Permitted Reorganisation or a Permitted Transaction.

### **27.5 Change of business**

The Company shall procure that no material change is made to the general nature of the business of the Group taken as a whole from that carried on by the Group at the Initial Utilisation Date (taking into account any acquisition, merger or disposal



permitted by the terms of this Agreement).

#### **27.6 Acquisitions**

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Company shall ensure that no other Group Member will):
  - (i) acquire a company or all or substantially all of any business or undertaking; or
  - (ii) incorporate a company.
- (b) Paragraph (a) above does not apply to an acquisition of a company or a business or the incorporation of a company which is a Permitted Joint Venture Investment, a Permitted Transaction or a Permitted Acquisition.

#### **27.7 Joint ventures**

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Company shall ensure that no Group Member will):
  - (i) enter into, invest in or acquire any shares, stocks, securities or other interest in any Joint Venture; or
  - (ii) transfer any assets to or lend to or guarantee or give an indemnity for or give Security for the obligations of a Joint Venture or maintain the solvency of or provide working capital to any Joint Venture.
- (b) Paragraph (a) above does not apply to any acquisition of any interest or investment in a Joint Venture or transfer of assets to a Joint Venture or loan made to or guarantee or indemnity or Security given in respect of the obligations of a Joint Venture if such transaction is a Permitted Acquisition, a Permitted Guarantee, Permitted Security, a Permitted Disposal, a Permitted Loan or a Permitted Joint Venture Investment.

#### **27.8 Holding Companies**

Neither the Company, Bidco, Midco, Topco or the Parent shall trade, carry on any business, own any assets or incur any liabilities except for a Permitted Holding Company Activity.

#### **27.9 Preservation of assets**

Each Obligor shall (and the Company shall ensure that each Group Member will) maintain in good working order and condition (ordinary wear and tear excepted) all of its assets necessary in the conduct of its general business, in each case, where failure to do so would have a Material Adverse Effect.

#### **27.10 Pari passu ranking**

Subject to the Legal Reservations, each Obligor and the Parent shall ensure that at all times any unsecured and unsubordinated claims of a Secured Party against it under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application.

### 27.11 Constitutional documents

- (a) No Obligor shall pass any resolution to amend its constitutional document where the same would be materially adverse to the interests of the Finance Parties under the Finance Documents (taken as a whole).
- (b) No Obligor shall amend, vary, novate or supplement the constitutional documents of any Group Member whose shares are subject to Transaction Security if to do so would:
  - (i) have a Material Adverse Effect; or
  - (ii) impose any additional restriction on the transfer of that Obligor's shares in such Group Member which are subject to the Transaction Security, which restriction would have a materially adverse impact on the interests of the Finance Parties under the Finance Documents (taken as a whole).

### 27.12 No encumbrance

- (a) In this Agreement, *Quasi-Security* means an arrangement or transaction described in paragraph (b)(ii) below.
- (b) Except as permitted under paragraph (iii) below:
  - (i) Neither the Parent nor any Obligor may (and the Company shall ensure that no other Group Member will) create or permit to subsist any Security over (in respect of the Parent) any of its assets which are subject to Transaction Security or (in respect of an Obligor or any other Group Member) any of its assets.
  - (ii) Neither the Parent nor any Obligor may (and the Company shall ensure that no other Group Member will):
    - (A) sell, transfer or otherwise dispose of (in respect of the Parent) any of its assets which are subject to Transaction Security or (in respect of the Company or any other Group Member) any of its assets on terms whereby they are or may be leased to or re-acquired by the Parent, the Company or any other Group Member (as the case may be);
    - (B) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts;
    - (C) enter into any arrangement or transaction under which the Parent or a Group Member will sell, transfer or otherwise dispose of any of its receivables on recourse terms;
    - (D) enter into any title retention arrangement;
    - (E) enter into any third party escrow or custody arrangements, non-disposal arrangements, blocking instructions or any arrangement having a similar effect in respect of (in the case of the Parent) any of its assets which are subject to Transaction

Security or (in the case of the Company or any other Group Member) any of its assets; or

- (F) enter into any other preferential arrangement having a similar effect,

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

- (iii) Paragraphs (i) and (ii) above do not apply to any Security or (as the case may be) Quasi-Security which is Permitted Security.

### **27.13 Disposals**

- (a) Except as permitted under paragraph (b) below, neither the Parent nor any Obligor shall (and the Company shall ensure that no other Group Member will) enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of (in respect of the Parent) any of its assets which are subject to Transaction Security or (in respect of an Obligor or any other Group Member) 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.

### **27.14 Arm's length basis**

- (a) Except as permitted by paragraph (b) below, no Obligor shall (and the Company shall ensure no Group Member will) enter into any material transaction with the Parent, any Sponsor or any Holding Company of the Parent except on arm's length terms or better (from the perspective of the Group Member).
- (b) The following transactions shall not be a breach of this Clause 27.14:
- (i) any Permitted Payment, Permitted Share Issue or Permitted Transaction;
  - (ii) transactions under or in connection with the Transaction Documents or any applicable shareholders' agreement;
  - (iii) loans to or guarantees of directors, management or employees of the Group Members or any corporate or other entity holding the interests of certain members of the management of the Group;
  - (iv) any transaction which is contractually committed at the Completion Date to the extent disclosed to the Arranger on or prior to the Completion Date;
  - (v) any payment of Acquisition Costs; and
  - (vi) any transaction in connection with any employee or management equity plan, incentive scheme or similar arrangement.

### **27.15 Loans or credit**

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Company shall ensure that no Group Member will) be a creditor in respect of any Financial Indebtedness.
- (b) Paragraph (a) above does not apply to:
  - (i) a Permitted Loan; or
  - (ii) a Permitted Treasury Transaction.

### **27.16 No guarantees or indemnities**

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Company shall ensure that no Group Member will) incur or allow to remain outstanding any guarantee in respect of indebtedness of any person.
- (b) Paragraph (a) above does not apply to a guarantee which is a Permitted Guarantee.

### **27.17 Dividends, share redemption and other restricted payments**

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Company will ensure that no other Group Member will) make a Restricted Payment.
- (b) Paragraph (a) above does not apply to a Permitted Payment or a Permitted Transaction.

### **27.18 Financial Indebtedness**

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Company shall ensure that no Group Member will) incur or allow to remain outstanding any Financial Indebtedness.
- (b) Paragraph (a) above does not apply to Financial Indebtedness which is Permitted Financial Indebtedness.

### **27.19 Share capital**

No Obligor shall (and the Company shall ensure no other Group Member will) issue any shares except pursuant to a Permitted Share Issue.

### **27.20 Access**

If an Event of Default is continuing, the Obligors shall permit the Agent and/or the Security Agent and/or their respective agents or delegates and/or accountants or other professional advisers and contractors of the Agent or the Security Agent access during normal business hours and on reasonable prior notice to inspect and take copies from the books, accounts and records of the Obligors, to view the premises of the Obligors and to meet and discuss matters with senior management and the Auditors, in each case to the extent the Agent or the Security Agent (in each case, acting reasonably) considers it necessary to investigate and plan any action in connection with the Event of Default referred to above, subject to any restrictions on disclosing, viewing or copying any information which is of a commercially sensitive, legally privileged or confidential

nature and *provided that* any information and copies obtained as a result of such access shall remain subject to the confidentiality obligations set out in this Agreement. If an Event of Default referred to above was continuing at the time such accountants or other professional advisers or contractors were appointed the costs of such persons shall be for the account of the Obligors, otherwise they shall be for the account of the Lenders.

#### **27.21 Treasury Transactions**

No Obligor shall (and the Company will procure that no other Group Member will) enter into or permit to subsist any Treasury Transaction, other than any Permitted Treasury Transaction.

#### **27.22 Bank accounts**

No Obligor shall open or maintain any bank account with a financial institution other than:

- (a) accounts which are (or will become) subject to Transaction Security;
- (b) accounts necessary to incur and administer any indebtedness contemplated by paragraph (j) of the definition of *Permitted Financial Indebtedness* or the definition of *Excluded Account*, or to implement any non-recourse factoring arrangements to the extent not expressly prohibited by this Agreement;
- (c) with the consent of the Agent (acting on the instructions of the Majority Lenders, each acting reasonably).

#### **27.23 Further assurance**

- (a) Subject to the limitations set out in Clause 27.27 (*Security and Guarantees*), each Obligor and Parent shall (and the Company shall procure that each Group Member will) 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 (but on no more onerous terms than any security over the same type of assets provided by the Obligors or the Parent) in favour of the Security Agent or its nominee(s):
  - (i) to perfect or protect 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; and
  - (ii) following the occurrence of an Acceleration Event which is continuing to facilitate the realisation of the assets which are, or are intended to be, the subject of the Transaction Security.
- (b) Subject to the limitations set out in Clause 27.27 (*Security and Guarantees*), each Obligor and Parent shall (and the Company shall procure that each Group Member will) take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation,

perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Finance Parties by or pursuant to the Finance Documents.

- (c) In relation to any provision of this Agreement which requires an Obligor or Parent to deliver a Transaction Security Document for the purposes of granting any Security for the benefit of the Finance Parties, the Security Agent agrees to execute, as soon as reasonably practicable, any such Transaction Security Document which is presented to it for execution.

#### **27.24 Anti-corruption, anti-money laundering, anti-terrorism and sanctions**

- (a) Neither any Obligor nor the Parent shall (and the Company shall procure that each of its Subsidiaries will not):
  - (i) engage in any transaction that violates any of the applicable prohibitions set forth in any Anti-Corruption Laws in any respect;
  - (ii) engage in any transaction that violates any of the applicable prohibitions set forth in any Anti-Money Laundering and Anti-Terrorism Financing Laws in any respect; or
  - (iii) engage in any transaction that violates any of the applicable prohibitions set forth under any Sanctions in any respect.
- (b) Neither any Obligor nor the Parent shall (and the Company shall procure that each of its Subsidiaries will not) and shall not authorise any other person to:
  - (i) directly or indirectly, use, lend, invest, make payments of, contribute or otherwise make available, all or any part of the proceeds of any of the Facilities or other transactions contemplated by this Agreement to fund any trade, business or other activities:
    - (A) involving or for the benefit of any Restricted Person or in any Sanctioned Country in breach of Sanctions;
    - (B) in any other manner that would result in any Lender being in breach of any Sanctions or (if and to the extent applicable to either of them) becoming a Restricted Person; or
    - (C) in a manner that will result in a violation of any Anti-Money Laundering and Anti-Terrorism Financing Law;
  - (ii) engage in any transaction, activity or conduct that would violate Sanctions;
  - (iii) directly or indirectly, use the proceeds of the Loans (or lend, contribute or otherwise make available such proceeds to any person) in furtherance of an offer, payment, promise to pay, or authorisation of the payment or giving of money, or anything else of value, to any person in violation of any Anti-Corruption Laws; or
  - (iv) use any revenue or benefit derived from any activity or dealing with a Restricted Person or in a Sanctioned Country in discharging any obligation due or owing to the Lenders.

- (c) Each Obligor and the Parent shall (and the Company shall procure that each of its Subsidiaries will):
  - (i) maintain policies and procedures designed to promote and achieve compliance with such applicable Anti-Corruption Laws, Anti-Money Laundering and Anti-Terrorism Financing Laws and Sanctions.
  - (ii) to the extent permitted by law as soon as reasonably practicable after becoming aware of them supply to the Agent reasonable details of any claim, action, suit, proceedings or investigation that is formally commenced against it with respect to Sanctions by any Sanctions Authority.
- (d) The Company shall ensure that no Restricted Person will have any property interest in any funds repaid or remitted by the Company in connection with any of the Facilities.
- (e) No Obligor nor the Parent nor any of their respective Subsidiaries, Affiliates, directors, officers, employees, agents or representatives acting on its behalf has taken or will take any action in furtherance of an offer, payment, promise to pay, or authorization or approval of the payment or giving of money, property, gifts or anything else of value, directly or indirectly, to any person to improperly influence official action by that person for the benefit of any Obligor or the Parent or their respective Subsidiaries or Affiliates, or to otherwise secure any improper advantage, in each case, in violation of applicable anti-corruption laws.
- (f) This Clause 27.24 shall not be interpreted or applied in relation to the Company, any Holding Company, the Parent, any Group Member, any member of the Target Group or any Finance Party to the extent that the undertakings made pursuant to this Clause 27.24 would violate or expose such person or any of its directors, officers, agents or employees to any liability under any applicable anti-boycott or Blocking Law, regulation or statute that is in force from time to time (including, without limitation, in the European Union (and/or any of its member states) that are applicable to such entity (including without limitation EU Regulation (EC) 2271/96)).

#### **27.25 Sponsor investments**

The Company shall ensure that no Investor or an Affiliate of an Investor (other than any Group Member) will invest in the Group (other than the Company) other than through the Company.

#### **27.26 Intellectual Property**

The Company shall procure that each Group Member will:

- (a) preserve and maintain the subsistence and validity of the Intellectual Property necessary for the business of the relevant Group Member (*Material IP*);
- (b) use commercially reasonable endeavours to prevent any infringement in any material respect of the Material IP;
- (c) make registrations and pay all registration fees and taxes necessary to maintain the Material IP in full force and effect and record its interest in the Material IP;

- (d) not use or permit the Material IP to be used in a way or take any step or omit to take any step in respect of the Material IP which is reasonably likely to materially and adversely affect the existence or value of the Material IP or imperil the right of any Group Member to use the Material IP; and
- (e) not discontinue the use of the Material IP,

where failure to do so, in the case of paragraphs (a), (b) and (c) above, or, in the case of paragraphs (d) and (e) above, such use, permission to use, step, omission or discontinuation, would have a Material Adverse Effect.

## 27.27 Security and Guarantees

- (a) Subject to the limitations set out in this Clause 27.27, the Company shall ensure that within 150 days of the Initial Utilisation Date, subject to (x) applicable legal or regulatory limitations (*provided that* such limitations are beyond the control of any Group Member and cannot be avoided or removed by taking commercially reasonable steps) and (y) (in respect of Transaction Security only) a cost/benefit analysis by the Company (acting reasonably) that the cost (including, for the avoidance of doubt, any costs relating to taxes, fees or duties of any kind) of granting such Transaction Security is not disproportionate to the value of such Transaction Security:
  - (i) each Group Member incorporated in a Security Jurisdiction which is a Material Subsidiary by reference to the Original Financial Statements (each such Material Subsidiary, an *Initial Material Subsidiary*) shall accede as an Additional Guarantor in accordance with Clause 31.3 (*Additional Guarantors*) *provided that* the amount guaranteed by such Initial Material Subsidiary may be limited to lower the cost of granting such guarantee;
  - (ii) each:
    - (A) Initial Material Subsidiary shall grant Transaction Security over:
      - (1) the material assets of that Initial Material Subsidiary (the Parties agree that the material assets to be subject to any Transaction Security shall (other than under any general floating charge or equivalent or unless otherwise agreed by the Agent and the Company) be limited to: (a) shares or other equivalent ownership interests owned by that Initial Material Subsidiary in Group Members which are incorporated in Security Jurisdictions whose entire issued share capital (or equivalent ownership interests) are owned by that Initial Material Subsidiary alone or with one or more wholly-owned Group Members which are incorporated in a Security Jurisdiction, (b) bank accounts, (c) intercompany receivables, (d) insurance policies (other than any Excluded Insurance Policies), and (e) Relevant Property); and
      - (2) receivables due to that Initial Material Subsidiary or arising under shareholder loans made by it to a Group



Member, **provided that**, in the case of any loans made to non-wholly owned Group Members, such security is not prohibited or restricted by any constitutional documents or shareholders' agreements binding on that Initial Material Subsidiary and/or Group Member, and subject to any requirement therein to obtain consent from any shareholder in such Group Member which is not itself a wholly-owned Group Member (including pursuant to any reserved matter requirements); and

- (B) Material Subsidiary Holdco in respect of an Initial Material Subsidiary whose entire issued share capital (or equivalent ownership interests) is owned by that Material Subsidiary Holdco alone or with one or more wholly-owned Group Members which are incorporated in a Security Jurisdiction shall (to the extent not otherwise granted pursuant to paragraph (ii)(A) above), provided such Initial Material Subsidiary is incorporated in a Security Jurisdiction, grant Transaction Security over the shares or other equivalent ownership interests it holds in such Material Subsidiary,

in each case, on terms which are no more onerous (from the perspective of the relevant security provider) than the equivalent Transaction Security provided by the Company listed in paragraph 2 of Part II (*Original Security Documents*) of Schedule 2 (*Conditions Precedent*) and where required, the amount secured by any Transaction Security Document granted by the relevant security provider may be limited to lower the cost of granting such Transaction Security; and

- (iii) all deliverables required to be delivered under the terms of the Transaction Security Documents specified in paragraph (ii) above are delivered within the relevant timelines specified in such Transaction Security Documents to the Agent, each in form and substance satisfactory to the Agent (acting reasonably).
- (b) Subject to the limitations set out in this Clause 27.27, the Company shall ensure that within 150 days of a Guarantor Certificate being delivered showing that a Group Member has become a Material Subsidiary (a **Future Material Subsidiary**), subject to (x) applicable legal or regulatory limitations (provided that such limitations are beyond the control of any Group Member and cannot be avoided or removed by taking commercially reasonable steps) and (y) a cost/benefit analysis by the Company (acting reasonably) that the cost (including, for the avoidance of doubt, any costs relating to taxes, fees or duties of any kind) of granting such Transaction Security or guarantee is not disproportionate to the value of such Transaction Security or guarantee:
    - (i) such Future Material Subsidiary shall, if it is (x) wholly-owned by a Group Member and (y) incorporated in a Security Jurisdiction, accede as an Additional Guarantor in accordance with Clause 31.3 (*Additional Guarantors*) **provided that** the amount guaranteed by such Future Material Subsidiary may be limited to lower the cost of granting such guarantee;

- (ii)

- (A) such Future Material Subsidiary shall, if it is (x) wholly-owned by a Group Member and (y) incorporated in a Security Jurisdiction, grant Transaction Security over:
- (1) the material assets of that Future Material Subsidiary (the Parties agree that the material assets to be subject to any Transaction Security shall (other than under any general floating charge or equivalent or unless otherwise agreed by the Agent and the Company) be limited to: (a) shares or other equivalent ownership interests owned by that Future Material Subsidiary in Group Members which are incorporated in Security Jurisdictions whose entire issued share capital (or equivalent ownership interests) are owned by that Future Material Subsidiary alone or with one or more wholly-owned Group Members which are incorporated in a Security Jurisdiction, (b) bank accounts, (c) intercompany receivables, (d) insurance policies (other than any Excluded Insurance Policies), and (e) Relevant Property); and
  - (2) receivables due to that Future Material Subsidiary arising under shareholder loans made by it to a Group Member, **provided that**, in the case of any loans made to non-wholly owned Group Members, such security is not prohibited or restricted by any constitutional documents or shareholders' agreements binding on that Initial Material Subsidiary and/or Group Member, and subject to any requirement therein to obtain consent from any shareholder in such Group Member which is not itself a wholly-owned Group Member (including pursuant to any reserved matter requirements); and
- (B) each Material Subsidiary Holdco in respect of a Future Material Subsidiary whose entire issued share capital (or equivalent ownership interests) is owned by that Material Subsidiary Holdco alone or with one or more wholly-owned Group Members which are incorporated in a Security Jurisdiction shall (to the extent not otherwise granted pursuant to paragraph (ii)(A) above), provided such Future Material Subsidiary is incorporated in a Security Jurisdiction, grant Transaction Security over the shares or other equivalent ownership interests it holds in such Material Subsidiary,

in each case, on terms which are no more onerous (from the perspective of the relevant security provider) than the equivalent Transaction Security provided by the Company listed in paragraph 2 of Part II (*Original Security Documents*) of Schedule 2 (*Conditions Precedent*) and where required, the amount secured by any Transaction Security Document granted by the relevant security provider may be limited to lower the cost of granting such Transaction Security; and

- (iii) all deliverables required to be delivered under the terms of the Transaction Security Documents specified in paragraph (ii) above are

delivered within the relevant timelines specified in such Transaction Security Documents to the Agent, each in form and substance satisfactory to the Agent (acting reasonably); and

- (iv) to the extent applicable, documents and other evidence equivalent to those listed in Part III (*Additional Obligor Conditions Precedent*) of Schedule 2 (*Conditions Precedent*) in relation to each applicable Security Provider and the Transaction Security Documents (as if references therein to the Additional Obligor were references to the applicable Security Provider, but excluding under this paragraph (iv) any Accession Letter) are delivered to the Agent, each in form and substance satisfactory to the Agent, acting reasonably, to the extent not otherwise provided under this Agreement.
- (c) Notwithstanding paragraphs (a) and (b) above, no Transaction Security shall be required to be granted by any Group Member over any contracts entered into with third parties on or prior to the Completion Date which by their terms prohibit (or require the consent of a third party for) the granting of Security over such contracts ***provided that*** (subject to the other limitations set out in this Clause 27.27) the relevant Transaction Security will in relation to that contract be an assignment of all amounts which the applicable Security Provider may receive, or has received, under that contract and will, to the extent not prohibited or otherwise restricted under that contract, be a charge over all other rights and benefits of the applicable Security Provider under that contract which are not effectively assigned under the relevant Transaction Security Document (or, in each case, such equivalent Security as may be applicable under relevant laws and regulations).
- (d) Notwithstanding paragraphs (a) and (b) above, no Transaction Security shall be required to be granted by any Group Member over any contracts entered into with third parties after the Completion Date which by their terms prohibit (or require the consent of a third party for) the granting of Security over such contracts ***provided that*** (subject to the other limitations set out in this Clause 27.27):
  - (i) with respect to any material contracts entered into after the Completion Date, the Company shall (and will procure that each Group Member shall) use reasonable endeavours for a period of 20 Business Days to obtain consent to the granting of such Transaction Security (***provided further that*** there will be no requirement to use such endeavours if to do so would cause any commercial issues or disrupt the normal operations of the Group and if the relevant Group Member has used its reasonable endeavours but has not been able to obtain such consent, its obligation to obtain such consent shall cease on the expiry of that 20 Business Day period);
  - (ii) the relevant Transaction Security will in relation to that contract be an assignment of all amounts which the applicable Security Provider may receive, or has received, under that contract and will, to the extent not prohibited or otherwise restricted under that contract, be a charge over all other rights and benefits of the applicable Security Provider under that contract which are not effectively assigned under the relevant Transaction Security Document (or, in each case, such equivalent Security as may be applicable under relevant laws and regulations); and

- (iii) such contracts or related arrangements were not entered into primarily so that such Transaction Security would be exempted pursuant to this paragraph (d).
- (e) Notwithstanding anything to the contrary in any Finance Document, no Transaction Security shall be required to be granted:
  - (i) any bank account(s) (including any cash in such account(s)) opened or maintained by any Group Member, from time to time, which is used for the purpose of securing or collateralising any obligations of Group Members in connection with:
    - (A) any Financial Indebtedness incurred under paragraph (j) of the definition of *Permitted Financial Indebtedness*; or
    - (B) any factoring, discounting, receivables financing or similar arrangements that do not constitute Financial Indebtedness in accordance with limb 1.1(d) of that definition,
 (any such bank account being an, *Excluded Account*);
  - (ii) in respect of any real estate, land or property which is not Relevant Property;
  - (iii) under any law other than an applicable law of a Security Jurisdiction, or in respect of any assets which are situated or located in (or in the case of shares, of any entity which is incorporated in) a jurisdiction which is not a Security Jurisdiction;
  - (iv) over any assets held by, or any shares or ownership interests in, any entity which is not wholly-owned by a Group Member incorporated in Security Jurisdiction;
  - (v) in respect of cash and cash equivalents (other than to the extent constituting proceeds of Transaction Security) or any deposit or securities accounts (including any accounts used primarily as payroll and other employee wage and benefit accounts, tax accounts, or any tax benefits, escrow or controlled accounts, fiduciary or trust accounts and any funds and other property held in or maintained in any such accounts, or zero-balance accounts, or any other accounts which contain, an amount less than US\$250,000 (or its equivalent) on an annualized average daily basis); or
  - (vi) if it would have (A) a material adverse effect on the ability of the relevant Group Member or Parent to conduct its operations and business in the ordinary course as otherwise permitted by the Finance Documents or (B) a material adverse tax consequence to any Obligors, any of their direct or indirect subsidiaries, or the Parent, *provided that* the relevant Group Member shall use reasonable endeavours (but without incurring material cost and without adverse impact on relationships with third parties) to overcome any such obstacle,

and *provided further that* (x) any Transaction Security in respect of Relevant Property and intellectual property shall be limited to security in a customary all assets security agreement (subject to the other limitations set out in this Clause

27.27), and, further, and (y) no Transaction Security in respect of Relevant Property shall be required if it would result in any stamp duty, notarisation, registration or other applicable fees, taxes, duties or charges being payable (other than de minimis costs related to the taking of customary perfection steps).

- (f) Notwithstanding anything to the contrary in any Finance Document, the granting or giving of any Transaction Security and guarantees under this Clause 27.27 (or otherwise in connection with the Finance Documents) shall be also subject to the limitations set out in Schedule 22 (*Security Limitations*).
- (g) Notwithstanding anything to the contrary in any Finance Document:
  - (i) no control agreements or arrangements (or similar) shall be required with respect to any assets requiring perfection through such agreements (including, without limitation, cash, deposit accounts or securities accounts); and
  - (ii) no Transaction Security shall become enforceable until the occurrence of an Acceleration Event. Until such time, the relevant security provider shall, inter alia, be (x) free to deal with its assets in the ordinary course of its business or operations (subject to the terms of the Finance Documents), (y) in the case of any shares, be entitled to exercise all voting (or similar) rights, and (y) entitled to receive and own all assets, distributions and other proceeds thereto without restriction or condition.
- (h) The Company shall ensure that the amount of cash standing to the credit of all Excluded Accounts shall not, at any time, exceed such amounts as is reasonably required to be deposited therein pursuant to the terms of the documents evidencing the relevant arrangements referred to in (e)(i) above.
- (i)
  - (i) Subject to the limitations set out in this Clause 27.27, the Company shall use reasonable efforts to procure that within 150 days of the Initial Utilisation Date, subject to applicable legal or regulatory limitations, the Guarantors (calculated on an unconsolidated basis and on the same basis as Group EBITDA but excluding intra-group items and investments in Subsidiaries) account for at least 80 per cent. of Group EBITDA (calculated on the basis that the EBITDA in respect of (x) any Group Member(s) incorporated or established in any non-Security Jurisdiction(s) and (y) any Group Member which cannot (or is not required to become) a Guarantor due to the applicable of any restriction or limitation referred to in this Clause 27.27, shall, in each case, be disregarded in both the numerator and denominator), as determined by the Company (the *Guarantor Coverage*).
  - (ii) The Company may satisfy Guarantor Coverage by acceding any Group Members selected by it (in its sole discretion). No Group Member which would not otherwise meet the requirements to become a Material Subsidiary shall be required to become a Guarantor for the purpose of satisfying Guarantor Coverage.
  - (iii) The Company shall not be required to take any steps under this

paragraph (i) if Guarantor Coverage is (or will be by the end of the 150-day period referred to above) satisfied as a result of a sufficient number of Initial Material Subsidiaries acceding as Guarantors pursuant to paragraph (a)(i) above. For avoidance of doubt, there shall be no Guarantor Coverage requirement following the earlier to occur of the date of which Guarantor Coverage is satisfied and the date falling 150 days of the Initial Utilisation Date.

- (iv) No Default or Event of Default shall occur as a result of the Company failing to satisfy Guarantor Coverage or performing any of its other obligations under this paragraph (i).

## 27.28 Conduct of Offer and/or Scheme

- (a) The Company and Bidco shall each comply in all material respects with the City Code (subject to any waiver or dispensation of any kind granted by, or as a result of any requirements of, any Relevant Regulator, any Applicable Securities Laws or any other relevant regulatory body or applicable law or regulation) relating to the Acquisition, in each case where non-compliance would be materially prejudicial to the interests of the Lenders under the Finance Documents (taken as a whole).
- (b) Neither the Company nor Bidco shall amend or waive any material term of any Scheme Circular or, as the case may be, Offer Document (in each case to the extent relating to the Acquisition and as compared to the position set out in the Announcement) in a manner or to the extent that would be materially prejudicial to the interests of the Lenders under the Finance Documents (taken as a whole), other than any amendment or waiver:
  - (i) made with the consent of the Majority Lenders (acting reasonably and such consent not to be unreasonably withheld, conditioned or delayed);
  - (ii) required or requested by any Relevant Regulator or determined by the Company in good faith as being necessary or desirable to comply with any requirement or request of any Relevant Regulator, any Applicable Securities Laws or any other relevant court or regulatory body or applicable law or regulation;
  - (iii) to change the price to be paid for the Target Shares or otherwise to be paid in connection with the Acquisition (or any amendment or waiver of any written agreement related thereto);
  - (iv) extending the period in which holders of Target Shares may accept the terms of the Scheme or, as the case may be, the Offer (including by reason of the adjournment of any meeting or court hearing);
  - (v) relating to a term or condition which the Company determines in good faith that it would not be entitled, in accordance with City Code, to invoke so as to cause the Acquisition not to proceed, to lapse or to be withdrawn;
  - (vi) of a condition, or a declaration that a condition is or has been satisfied, in each case as may be required to enable a Scheme to be approved or to become effective or, as the case may be, an Offer to become or be declared wholly unconditional (*provided that*, save as required by any

Relevant Regulator, any Applicable Securities Laws or any other relevant court or regulatory body or applicable law or regulation, nothing in this paragraph (vi) shall permit the Company or Bidco to declare, accept, treat as satisfied or waive any condition of a Scheme or an Offer where the Company or Bidco determines in good faith that the relevant condition is not actually satisfied or has not been complied with to the extent that doing so would be materially prejudicial to the interests of the Lenders taken as a whole under the Finance Documents);

- (vii) to facilitate the Acquisition being effected by way of an Offer instead of a Scheme or, as the case may be, by way of a Scheme instead of an Offer; or
  - (viii) contemplated or otherwise permitted by the terms of the Finance Documents.
- (c) Neither the Company nor Bidco shall take any action which would require it to make a mandatory offer for the Target Shares in accordance with Rule 9 of the City Code.
- (d) In the case of an Offer, where applicable and to the extent entitled to do so, each of the Company and Bidco shall use reasonable efforts to promptly give notices under Section 979 of the Companies Act 2006 in respect of the Target Shares.
- (e) Subject always to the Companies Act 2006, any Applicable Securities Laws, any other applicable law or regulation (including any applicable listing rules) and to the extent practicable, in the case of:
- (i) a Scheme, within 60 days of the date on which the Scheme has become effective; and
  - (ii) an Offer, within 90 days of the date upon which Bidco (directly or indirectly) owns Target Shares (excluding any shares held in treasury) in respect of, which, when aggregated with all other Target Shares owned directly or indirectly by Bidco, represent not less than 75 per cent. of the voting rights attributable to the capital of the Target (excluding any shares held in treasury),

where becoming entitled to do so, each of the Company and Bidco shall use reasonable endeavours to:

- (A) cause the cancellation of the Target's issued shares from admission to trading on the Alternative Investment Market (AIM) of the London Stock Exchange plc; and
  - (B) as soon as reasonably practicable thereafter, procure that the Target is re-registered as a private limited company.
- (f) The Company shall use commercially reasonable efforts to provide the Agent with such material information as it may reasonably request regarding the status of the Acquisition (in each case subject to any confidentiality, regulatory, legal or other restrictions relating to the disclosure or supply of such information).

- (g) For the avoidance of doubt, in the event that:
  - (i) Bidco has issued a Scheme Circular, nothing in this Clause 27.28 shall prevent the Company from subsequently proceeding with an Offer; and
  - (ii) Bidco has issued an Offer Document, nothing in this Clause 27.28 shall prevent the Company from subsequently proceeding with a Scheme.

### **27.29 Margin Regulations**

No part of the proceeds of any Utilisation will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for "buying" or "carrying" any Margin Stock or to extend credit to others for the purpose of "buying" or "carrying" any Margin Stock (in each case within the meaning of Regulation T, U or X) and neither making of any Utilisation nor the use of proceeds thereof will violate or be inconsistent with the provisions of the regulations of the Federal Reserve Board. For the purpose of this Clause 27.29, **Margin Stock** means "margin stock" as defined in Regulation U.

### **27.30 ERISA**

- (a) No ERISA Event occurs with respect to any Obligor or its ERISA Affiliates which would have a Material Adverse Effect.
- (b) Each Obligor must promptly upon becoming aware of it notify the Facility Agent of any ERISA Event relating to it or its ERISA Affiliates.

### **27.31 Outstanding Consideration**

- (a) If Net Leverage for the Most Recent Relevant Period (*pro forma* for the required Deferred Payment (as defined below) and taking into account any applicable adjustments under paragraphs 26.3(b) to 26.3(d) of Clause 26.3 (*Financial testing*)) is (or would as a result of the payment, be) greater than 3.75:1 at the time a payment is required to be made in relation to any Outstanding Consideration Liabilities (such payment being, a **Deferred Payment**), the Company shall, by no later than the date the Deferred Payment is required to be made, procure that the Parent, by way of a New Shareholder Injection(s), provides cash to the Company in an amount at least equal to the lower of (a) the amount required to ensure that, *pro forma* for such Deferred Payment, Net Leverage would not be greater than 3.75:1 immediately following such payment and (b) the amount required to make the relevant Deferred Payment. For the avoidance of doubt, prior to the First Test Date, for the purpose of this Clause 27.31 Net Leverage shall be tested by reference to the Original Financial Statements and taking into account any applicable adjustments under paragraphs 26.3(b) to 26.3(d) of Clause 26.3 (*Financial testing*). Any such New Shareholder Injection(s) shall not be counted for any other purpose such as calculation of applicable Margin or for *pro forma* calculations of Net Leverage for the purposes of any Permitted Business Acquisition, Permitted Joint Venture or Permitted Payment.

## **28. EVENTS OF DEFAULT**

Each of the events or circumstances set out in this Clause 28 is an Event of Default (save for Clause 28.16 (*Acceleration*) and Clause 28.17 (*Clean-up period*)).

### **28.1 Non-payment**

An Obligor or the Parent does not pay on the due date any amount payable pursuant to



a Finance Document at the place at and in the currency in which it is expressed to be payable unless:

- (a) in the case of principal or interest, payment is made with three Business Days of the due date if such failure to pay is caused by administrative or technical error or a Disruption Event; and
- (b) in the case of any other non-payment of an amount not constituting principal or interest, payment is made within five Business Days of the due date.

## **28.2 Financial covenants and Security and Guarantees**

- (a) Subject to Clause 26.5 (*Cure rights*), any requirement of Clause 26.2 (*Financial condition*) is not satisfied.
- (b) An Obligor or any other Security Provider does not comply with any of its obligations under paragraphs 27.27(a)(i), (a)(ii)(A), (b)(i) and (b)(ii)(A) of Clause 27.27 (*Security and Guarantees*).

## **28.3 Other obligations**

- (a) An Obligor, the Parent or a Security Provider does not comply with any provision of the Finance Documents (other than those referred to in Clause 28.1 (*Non-payment*) and Clause 28.2 (*Financial covenants and Security and Guarantees*)).
- (b) No Event of Default under paragraph (a) above will occur in respect of any failure to comply if that failure to comply is capable of remedy and is remedied within 20 Business Days of the earlier of (i) the Agent giving notice to the Company and (ii) the Company, the relevant Obligor or Parent becoming aware of such failure to comply.

## **28.4 Misrepresentation**

- (a) Any representation or statement made or deemed to be made by an Obligor, the Parent or any Security Provider in the Finance Documents or any other document delivered by or on behalf of any Obligor or the Parent under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect (save that, where such representation or statement is qualified by reference to materiality or *Material Adverse Effect*, in any respect) when made or deemed to be made.
- (b) No Event of Default under paragraph (a) above will occur in respect of any misrepresentation if that misrepresentation is capable of remedy and is remedied within 20 Business Days of the earlier of (i) the Agent giving notice to the Company and (ii) the Company, the relevant Obligor or the Parent becoming aware of such misrepresentation.

## **28.5 Cross default**

- (a) Any Financial Indebtedness of any Material Entity, the Parent or any Security Provider is not paid when due nor within any originally applicable grace period, or is validly declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).

- (b) Any creditor of any Material Entity, the Parent or any Security Provider becomes entitled to declare any Financial Indebtedness of any Material Entity, the Parent or any Security Provider due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) No Event of Default will occur under this Clause 28.5 in respect of any Financial Indebtedness:
  - (i) if that Financial Indebtedness is owing to any Group Member or constitutes Parent Liabilities;
  - (ii) if that Financial Indebtedness is supported by a standby letter of credit (including a Letter of Credit) or similar instrument (including any bank guarantee or letter of credit issued under an Ancillary Facility);
  - (iii) which has ceased to be due and payable or on demand or in respect of which the relevant creditor is no longer entitled to declare it due and payable;
  - (iv) if that Financial Indebtedness is in respect of any derivative transaction which is terminated as a result of an event of default (however described) with respect to any counterparty or a credit support provider for or specified entity of any counterparty rather than with respect to a Group Member; or
  - (v) if the aggregate amount of such Financial Indebtedness falling within paragraphs (a) and (b) (excluding any falling within paragraphs (c)(i) to (c)(iv)) is not in excess of US\$47,500,000 (or its equivalent).

## **28.6 Insolvency**

- (a) A Material Entity, the Parent or a Security Provider is unable or admits in writing inability to pay its debts as they fall due (excluding, for this purpose, insolvency solely as a result of the value of its balance sheet liabilities exceeding the value of its balance sheet assets).
- (b) A Material Entity, the Parent or a Security Provider (i) suspends or (ii) threatens in writing to suspend, making payments on its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (other than any Finance Party) with a view to a general rescheduling of its indebtedness.
- (c) A moratorium is declared in respect of any indebtedness of any Material Entity, the Parent or a Security Provider.

## **28.7 Insolvency proceedings**

- (a) Any corporate action, legal proceedings or other formal procedure or formal step (including filing of any application) is taken in relation to:
  - (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, any insolvency resolution process, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Material Entity, the Parent or any Security Provider;

- (ii) a composition, compromise, assignment or arrangement by any Material Entity, the Parent or any Security Provider with its creditors generally;
  - (iii) the appointment of a liquidator, insolvency resolution professional, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of any Material Entity, the Parent or any Security Provider or any of their respective material assets;
  - (iv) the filing of an involuntary proceeding in a court of competent jurisdiction in the United States seeking relief under US Bankruptcy Law in respect of any Material Entity and either such proceeding shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered or any Material Entity shall consent to the institution of, or fail to contest in a timely and appropriate manner, any such involuntary proceeding;
  - (v) the filing of a voluntary petition by any Material Entity under US Bankruptcy Law; or
  - (vi) any analogous proceedings in any jurisdiction.
- (b) Paragraph (a) above shall not apply to:
- (i) any corporate action, legal proceedings or other procedure which is frivolous or vexatious, or is being contested in good faith, or is discharged, stayed or dismissed within 20 Business Days of commencement; or
  - (ii) any action, proceedings, step or procedure which relates to or constitutes a Permitted Transaction.

## **28.8 Creditors' process**

Any:

- (a) expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of any Material Entity, the Parent or any Security Provider having an aggregate value of US\$47,500,000 (or its equivalent) or more; or
- (b) enforcement of any security over any assets of any Material Entity, the Parent or any Security Provider having an aggregate value of US\$47,500,000 (or its equivalent) or more,

unless such expropriation, attachment, sequestration, distress, execution, enforcement or process is being contested in good faith or is frivolous or vexatious, or is discharged, stayed or dismissed within 20 Business Days.

## **28.9 Unlawfulness and Invalidity**

- (a) It is or becomes unlawful for an Obligor, a Security Provider or the Parent or any other Group Member party to the Subordination Agreement to perform any of its obligations under the Finance Documents or any obligation of an Obligor, a Security Provider or the Parent under any Finance Documents are not (subject

to the Legal Reservations and the Perfection Requirements) or cease to be legal, valid, binding or enforceable which event or circumstance is materially adverse to the interests of the Lenders under the Finance Documents taken as a whole.

- (b) Any Transaction Security Document ceases to be in full force and effect or does not create any part of the Security that it is expressed to create, in each case in a manner which is materially adverse to the interests of the Lenders under the Finance Documents taken as a whole.
- (c) No Event of Default will occur under paragraph (a) above if such unlawfulness or invalidity is capable of remedy and is remedied within 20 Business Days of the earlier of:
  - (i) the Agent giving notice to the Company in relation to such unlawfulness, invalidity or ineffectiveness; and
  - (ii) the Company or the Parent becoming aware of such unlawfulness, invalidity or ineffectiveness.

#### **28.10 Cessation of business**

A Material Entity or the Parent suspends or ceases to carry on all of its business except as a result of a Permitted Disposal or a Permitted Transaction and such suspension or cessation has a Material Adverse Effect.

#### **28.11 Audit qualification**

The Auditors of the Group qualify its consolidated audited annual finance statements on the grounds that:

- (a) the information supplied to the relevant Auditors was unreliable or inadequate; or
- (b) they are unable to prepare the relevant financial statements on a going concern basis,

and, in either case, such qualification is materially adverse to the interests of the Finance Parties under the Finance Documents (taken as whole) (but excluding any qualification by reference to any possible future compliance with or breach of any Finance Documents), *provided that* an Event of Default will not occur under this Clause 28.11 if:

- (i) the relevant Auditors state that such qualification is of a minor or technical nature;
- (ii) the qualification relates to the non-adoption of acquisition accounting in respect of any Annual Financial Statements or is otherwise in terms, or as to issues which, in each case, could not reasonably be expected to be materially adverse to the interests of the Finance Parties under the Finance Documents (taken as whole); or
- (iii) where the circumstances giving rise to such qualification are capable of remedy and are remedied within 20 Business Days of the date of notification of the qualification by the auditors to any Group Member

*provided that* following any amendment to the Annual Financial Statements required in order to implement such remedy the Company remains in compliance with the requirements under Clause 26.2 (*Financial condition*) (and a new Compliance Certificate is delivered with the revised Annual Financial Statements demonstrating such compliance).

#### **28.12 Expropriation**

All or a substantial part of the shares in an Obligor or the assets of a Material Entity are subject to any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority which (after taking into consideration any compensation or payment received in respect thereof) has or would reasonably be expected to have a Material Adverse Effect.

#### **28.13 Repudiation and rescission of agreements**

The Obligors or the Parent or any other Group Member party to a Finance Document (a) rescinds or repudiates or (b) purports (in writing) to rescind or repudiate or evidences an intention (in writing) to rescind or repudiate, a Finance Document which is materially adverse to the interests of the Lenders under the Finance Documents (taken as a whole).

#### **28.14 Litigation**

Any litigation, arbitration or administrative, governmental or regulatory proceeding is commenced against any Group Member or its assets which are reasonably likely to be adversely determined against such Group Member and, if so adversely determined, would be reasonably expected to have a Material Adverse Effect.

#### **28.15 Material adverse change**

Any other event or circumstance occurs which has a Material Adverse Effect.

#### **28.16 Acceleration**

- (a) On and at any time after the occurrence of an Event of Default which is continuing (but subject to paragraph (b) of Clause 4.3 (*Utilisations during the Certain Funds Period*) and Clause 28.17 (*Clean-up period*)), other than an Event of Default that occurs under limbs 28.7(a)(iv) or 28.7(a)(v) of paragraph 28.7(a) of Clause 28.7 (*Insolvency proceedings*), the Agent shall if so directed by the Majority Lenders, by notice to the Company:
- (i) cancel the Total Commitments and/or Ancillary Commitments at which time they shall immediately be cancelled;
  - (ii) declare that all or part of the Utilisations, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, at which time they shall become immediately due and payable;
  - (iii) declare that all or part of the Utilisations be payable on demand, at which time they shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders;

- (iv) exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents;
  - (v) declare that cash cover in respect of each Letter of Credit is immediately due and payable at which time it shall become immediately due and payable;
  - (vi) declare that cash cover in respect of each Letter of Credit is payable on demand at which time it shall immediately become due and payable on demand by the Agent (acting on the instructions of the Majority Lenders);
  - (vii) declare all or any part of the amounts (or cash cover in relation to those amounts) outstanding under the Ancillary Facilities to be immediately due and payable, at which time they shall become immediately due and payable; and/or
  - (viii) declare that all or any part of the amounts (or cash cover in relation to those amounts) outstanding under the Ancillary Facilities be payable on demand, at which time they shall immediately become payable on demand by the Agent (acting on the instructions of the Majority Lenders).
- (b) If an Event of Default occurs under limbs 28.7(a)(iv) or 28.7(a)(v) of paragraph 28.7(a) of Clause 28.7 (*Insolvency proceedings*), (i) the Total Commitments and/or Ancillary Commitments shall immediately be cancelled, and (ii) all of the Utilisations, together with accrued interest and all other amounts accrued or outstanding under the Finance Documents, shall be immediately due and payable, in each case automatically and without any direction, notice, declaration, expiry of any grace period or other act.

### 28.17 Clean-up period

- (a) Notwithstanding any other provision of any Finance Document:
- (i) any breach of a Clean-Up Representation or a Clean-Up Undertaking; or
  - (ii) any Default or Event of Default constituting a Clean-Up Default,

will be deemed not to be a breach of representation or warranty, a breach of covenant or undertaking, a Default or an Event of Default (as the case may be) if:

- (A) it would have been (if it were not for this Clause 28.17) a breach of representation or warranty, a breach of a covenant or an undertaking, a Default or an Event of Default only by reason of circumstances relating exclusively to:
  - (1) any Target Group Member (or any obligation to procure or ensure in relation to a Target Group Member); or
  - (2) any Future Acquisition Target in respect of any Permitted Business Acquisition (or any acquisition falling within paragraph (b) of the definition of *Permitted Acquisition*) or any Subsidiary of or entity directly or indirectly owned by any such Future Acquisition Target (collectively *Future Clean-up*

*Entities*, and such Permitted Acquisition or acquisition being a *Future Clean-up Acquisition*), or any obligation to procure or ensure in relation to any of the Future Clean-up Entities;

- (B) it is capable of remedy and reasonable steps are being taken to remedy it;
- (C) the circumstances giving rise to it have not been procured by or approved by the Company or the Parent (with Knowledge of the relevant breach of representation, breach of covenant or undertaking, event or circumstance only, not being interpreted in any way as approval in circumstances where the Company or the Parent did not reasonably have the ability to control or prevent such breach, event or circumstance from occurring); and
- (D) it does not have a Material Adverse Effect.

If the relevant circumstances constituting such breach of representation or warranty, breach of covenant or undertaking, Default or Event of Default are continuing on or after the Clean-Up Date (in respect of (x) (in the case where such breach, Default or Event of Default relating to any Target Group Member) the Acquisition or (y) (in the case where such breach, Default or Event of Default relates to any of the Future Clean-up Entities) the Future Clean-up Acquisition relating to such Future Clean-up Entity), there shall be a breach of representation or warranty, breach of covenant or undertaking, Default or Event of Default, as the case may be, notwithstanding the above (and without prejudice to the rights and remedies of the Finance Parties).

- (b) If, on or before the applicable Clean-Up Date relating to the Acquisition or any Future Clean-up Acquisition, any event or circumstance has occurred with respect to any Target Group Member or, as the case may be, any of the Future Clean-up Entities relating to such Future Clean-up Acquisition, which event or circumstance would constitute a Clean-Up Default or a breach of a Clean-Up Representation or a Clean-Up Undertaking, the Company shall, promptly upon becoming aware of its occurrence or existence, notify the Agent of that Clean-Up Default or the breach of that Clean-Up Representation or Clean-Up Undertaking and the related event or circumstance (and the steps, if any, being taken to remedy it).

## **29. CHANGES TO THE LENDERS**

### **29.1 Transfers by the Lenders**

- (a) Subject to this Clause 29 and subject to Clause 30 (*Debt Purchase Transactions*), a Lender (the *Existing Lender*) may only enter into a Transfer with 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*).
- (b) Notwithstanding anything to the contrary in this Agreement, a Lender may enter into any Participations (other than Voting Participations) and the provisions of Clause 29.2 (*Conditions of Transfers*) shall not apply to such Participations.

### **29.2 Conditions of Transfers**

- (a) The prior written consent of the Company (such consent not to be unreasonably withheld or delayed and which shall be deemed to be given by the Company if the

Company has not refused to give consent to a request for consent within 10 Business Days of the Company receiving such request for consent in writing) is required for any Transfer other than:

- (i) a Transfer:
  - (A) made with at least five Business Days' prior notice to the Company; and
  - (B) to any person that is a Permitted Transferee and which, in respect of a Transfer (other than any Transfer described under paragraph (b) or (c) of the definition of **Debt Purchase Transaction**) under the Initial Revolving Facility or the Additional Revolving Facility to an Existing Lender's Affiliate, such Affiliate is of at least equivalent credit worthiness as the Existing Lender; or
- (ii) a Transfer made at any time an Event of Default is continuing,

**provided that**, prior to the end of the Certain Funds Period, it is acknowledged and agreed that it shall be reasonable for the Company to withhold its consent to any Transfer which the Company determines (acting reasonably) could result in all or any part of an Initial Facility not being available in accordance with the terms of this Agreement.

- (b) The consent of the Issuing Bank (acting reasonably) is required for a Transfer (other than any Transfer described under paragraph (b) or (c) of the definition of **Debt Purchase Transaction** or any Transfer to a Permitted Transferee) by an Existing Lender of any of its rights and/or obligations under the Initial Revolving Facility or an Additional Revolving Facility (as the case may be) in respect of which it is the Issuing Bank.
- (c) An Existing Lender may not Transfer or change its Facility Office if such Transfer or change would give rise to a requirement to prepay any Loan (or any part thereof) or cancel any Commitment (or any part thereof) pursuant to Clause 11.1 (*Illegality*) in relation to the New Lender or such Existing Lender acting through the new Facility Office based on circumstances existing at the time of such Transfer or change.
- (d) A Transfer of part of (instead of all of) an Existing Lender's participation in respect of a Facility to a New Lender must be in an amount such that, immediately after such Transfer:
  - (i) the amount of that Existing Lender's remaining participation (when aggregated with its Affiliates' and Related Funds' participation) in respect of Commitment and/or the Loan(s) in respect of that Facility is a minimum amount of US\$5,000,000; and
  - (ii) the amount of that New Lender's participation (when aggregated with its Affiliates' and Related Funds' participation) in respect of Commitment and/or the Loan(s) in respect of that Facility is a minimum amount of US\$5,000,000,

or such lesser amount with the prior written consent of the Company, **provided that** the requirements of this paragraph (d) shall not apply in respect of any Transfer that is made at a time when an Event of Default is continuing.

- (e) An Existing Lender shall, simultaneously with any transfer by it by way of assignment



of rights and/or obligations under this Agreement to a New Lender, assign to that New Lender a proportionate share of the rights held by it (in its capacity as Lender) under or in connection with the other Finance Documents.

- (f) An assignment by an Existing Lender to a New Lender will only be effective on:
  - (i) receipt by the Agent (whether in the applicable Assignment Agreement or otherwise) of written confirmation from such New Lender (in form and substance satisfactory to the Agent) that such New Lender will assume the same obligations to the other Finance Parties and the other Secured Parties as it would have been under if it was an Original Lender; and
  - (ii) the performance by the Agent and the Security Agent of all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to such assignment to such New Lender, the completion of which the Agent and the Security Agent shall promptly notify to such Existing Lender and such New Lender.
- (g) A transfer by an Existing Lender to a New Lender will only be effective if the procedure set out in Clause 29.5 (*Procedure for transfer*) is complied with in respect of such transfer.
- (h) If:
  - (i) an Existing Lender assigns or transfers any of its rights or obligations under the Finance Documents to a New Lender or a Lender changes its Facility Office; and
  - (ii) as a result of circumstances existing at the date such assignment, transfer or change occurs, an Obligor or the Parent would be obliged to make a payment to such New Lender or such Lender acting through its new Facility Office under Clause 18 (*Tax Gross-Up and Indemnities*) or Clause 19 (*Increased Costs*),

then such New Lender or such Lender acting through its new Facility Office is not entitled to receive any payment under that Clause in excess of the payment that Obligor or the Parent would have been required to pay to such Existing Lender or such Lender acting through its previous Facility Office under that Clause if that assignment, transfer or change had not occurred.

- (i) If an Existing Lender assigns or transfers any of its rights or obligations under the Finance Documents to a New Lender, such Existing Lender shall (unless agreed with such New Lender) bear its own fees, costs and expenses in connection with, or resulting from, such assignment or transfer (including any legal fees, taxes, notarial and security registration or perfection fees).
- (j) Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement (where so required by this Clause), confirms, for the avoidance of doubt, that each of the Agent and the Security 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 any Finance Document on or prior to the date on which the applicable transfer or assignment to such New Lender becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the applicable Existing Lender would have been had it remained a Lender.

- (k) If any assignment or transfer by a Lender of its rights and/or obligations under any Finance Document is executed and purported to have effect in breach of the provisions in any Finance Document, that assignment or transfer shall be void and deemed not to have occurred and the right to vote in respect of any of the Commitment and/or participation in any Loan the subject thereof shall remain with the Original Lender.
- (l) Notwithstanding any other provision in this Clause 29 (*Changes to the Lenders*), if prior to the end of the Certain Funds Period, an Existing Lender Transfers in accordance with this Clause 29 (*Changes to the Lenders*), such Existing Lender shall remain on risk and liable to fund any amount which any New Lender (or subsequent New Lender), following such Transfer is obliged to fund on any Utilisation Date, but has failed to fund on that date, as if such Transfer never occurred.
- (m) If any assignment or transfer by a Lender is of its rights and/or obligations in respect of an Additional Facility, the restrictions (if any) specified in the relevant Additional Facility Notice establishing such Additional Facility Commitments must also be complied with.

### **29.3 Assignment or transfer fee**

Unless the Agent otherwise agrees and excluding an assignment or transfer (i) to an Affiliate of a Lender, (ii) to a Related Fund of a Lender or (iii) made in connection with the Syndication, a New Lender shall, on the date the Transfer Certificate or the Assignment Agreement is delivered to the Agent in accordance with paragraph (a) of Clause 29.5 (*Procedure for transfer*) or paragraph (a) of Clause 29.6 (*Procedure for assignment*), pay to the Agent (for its own account) a fee of US\$5,000 at least five Business Days prior to the date on which the assignment or transfer becomes effective.

### **29.4 Limitation of responsibility of Existing Lenders**

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
  - (i) the legality, validity, effectiveness, adequacy or enforceability of the Transaction Documents, the Transaction Security or any other documents;
  - (ii) the financial condition of any Obligor, the Parent or any Group Member;
  - (iii) the performance and observance by any Obligor, the Parent or any other Group Member of its obligations under the Transaction Documents or any other documents; or
  - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Transaction Document or any other document,
 and any representations or warranties implied by law are excluded.
- (b) Each New Lender confirms to each Existing Lender, the other Finance Parties and the Secured Parties that it:
  - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor, the Parent and each Group Member and their related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by any Existing Lender or any other Finance Party

in connection with any Transaction Document or the Transaction Security; and

- (ii) will continue to make its own independent appraisal of the creditworthiness of each Obligor, the Parent and each Group Member and their 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 29; or
  - (ii) support any losses, directly or indirectly, incurred by such New Lender by reason of the non-performance by any Obligor or the Parent of its obligations under the Transaction Documents or otherwise.

## 29.5 Procedure for transfer

- (a) Subject to the conditions set out in Clause 29.2 (*Conditions of Transfers*), a transfer by an Existing Lender of its rights and obligations under this Agreement to a New Lender is effected in accordance with paragraph (c) below when the Existing Lender and the New Lender deliver to the Agent an otherwise duly completed Transfer Certificate (in triplicate) not less than five Business Days prior to the proposed Transfer Date and the Agent executes such Transfer Certificate. 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 an Existing Lender and a New Lender once it is satisfied that it and the Security Agent have complied with all necessary “know your customer” or similar checks under all applicable laws and regulations in relation to the transfer to such New Lender (the subject of such Transfer Certificate).
- (c) On the Transfer Date relating to a transfer by an Existing Lender of its rights and obligations under this Agreement to a New Lender (subject to Clause 29.2(l) (*Conditions of Transfers*)):
  - (i) to the extent that in the Transfer Certificate (in respect of that transfer) that Existing Lender seeks to transfer by novation its rights and obligations under this Agreement, each Obligor, the Parent and that Existing Lender shall be released from further obligations towards one another under this Agreement and their respective rights against one another under this Agreement shall be cancelled (being the ***Discharged Rights and Obligations***);
  - (ii) each Obligor and Parent and that 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 Obligors or the Parent (as applicable) and that New Lender have assumed and/or acquired the same in place of the Obligors or the Parent (as applicable) and that Existing Lender;
  - (iii) the Agent, the Arranger, the Security Agent, the New Lender, the other Lenders, the Issuing Bank, any relevant Ancillary Lender and the Hedge Counterparties shall acquire the same rights and assume the same obligations

between themselves as they would have acquired and assumed had that New Lender been an Original Lender with the rights, and/or obligations acquired or assumed by it as a result of that transfer and to that extent the Agent, the Arranger, the Security Agent, the Issuing Bank, any relevant Ancillary Lender and that Existing Lender shall each be released from further obligations to each other under the Finance Documents; and

- (iv) that New Lender shall become a Party as a **Lender**.
- (d) Notwithstanding anything to the contrary, but without prejudice to Clause 29.2 (*Conditions of Transfers*), a transfer may also be effected pursuant to the Syndication Agreement executed on terms which, inter alia, substantially reflect paragraph 29.6(c) above. Any transfer made pursuant to the Syndication Agreement shall, subject to that Clause 29.2, take effect in accordance with the terms thereof.

## 29.6 Procedure for assignment

- (a) Subject to the conditions set out in Clause 29.2 (*Conditions of Transfers*), an assignment by an Existing Lender of its rights under any Finance Document to a New Lender may be effected in accordance with paragraph (c) below when Existing Lender and the New Lender deliver to the Agent an otherwise duly completed Assignment Agreement (in triplicate) not less than five Business Days prior to the proposed Transfer Date and the Agent executes such Transfer Certificate. 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 an Existing Lender and a New Lender once it is satisfied that it and the Security Agent have complied with all necessary “know your customer” or similar checks under all applicable laws and regulations in relation to the assignment to such New Lender (the subject of such Assignment Agreement).
- (c) On the Transfer Date relating to any assignment by an Existing Lender of its rights under any Finance Document to a New Lender (subject to Clause 29.2(1) (*Conditions of Transfers*)):
  - (i) that Existing Lender will assign absolutely to that New Lender its rights under the Finance Documents and in respect of the Transaction Security expressed to be the subject of the assignment in the Assignment Agreement relating to such assignment;
  - (ii) that Existing Lender will be released from the obligations (the **Relevant Obligations**) expressed to be the subject of the release in such Assignment Agreement (and any corresponding obligations by which it is bound in respect of the Transaction Security); and
  - (iii) that New Lender shall become a Party as a Lender and will be bound by obligations equivalent to the Relevant Obligations.
- (d) A Lender may utilise procedures other than those set out in this Clause 29.6 to assign its rights under the Finance Documents (but not, without the consent of the relevant Obligor or Parent or unless in accordance with Clause 29.5 (*Procedure for transfer*), to obtain a release by that Obligor or Parent from the obligations owed to that Obligor

or Parent by such Lender nor the assumption of equivalent obligations by a New Lender) **provided that** they comply with the conditions set out in Clause 29.2 (*Conditions of Transfers*).

## **29.7 The Register**

- (a) The Agent, acting for this purpose as the non-fiduciary agent of the Company, the other Obligors and the Parent, shall maintain at its address referred to in Clause 37.2 (*Addresses*):
  - (i) each Transfer Certificate referred to in Clause 29.5 (*Procedure for transfer*), each Assignment Agreement referred to in Clause 29.6 (*Procedure for assignment*), each Increase Confirmation - Cancelled Commitments and each Additional Facility Notice delivered to and accepted by it; and
  - (ii) with respect to each Facility, a register for the recording of the names and addresses of the Lenders and the Commitment of, and principal amount owing to, each Lender from time to time (the **Register**) under such Facility, which may be kept in electronic form.
- (b) The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Obligors, the Parent, the Company, the Agent, the Security Agent and the Lenders shall treat each person whose name is recorded in the Register as a Lender hereunder for all purposes of this Agreement. The Agent shall provide the Company with a copy of the Register within five Business Days of request and the Security Agent with a copy of the Register promptly upon request.
- (c) Each party to this Agreement irrevocably authorises the Agent to make the relevant entry in the Register (and which the Agent shall do promptly) on its behalf for the purposes of this Clause 29.7 without any further consent of, or consultation with, such Party.
- (d) The Agent shall, upon request by an Existing Lender (as defined in Clause 29.1 (*Transfers by the Lenders*)) or a New Lender, confirm to that Existing Lender or New Lender whether a transfer or assignment from that Existing Lender or (as the case may be) to that New Lender has been recorded on the Register (including details of the Commitment of that Existing Lender or New Lender in each Facility).
- (e) The Register is intended to cause each Loan and other obligation hereunder to be in registered form within the meaning of Treasury Regulation Section 5f.103-1(c) and Section 1.163-5(b) of the proposed United States Treasury Regulations and within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code.

## **29.8 Copy of Transfer Certificate, Assignment Agreement, Increase Confirmation – Cancelled Commitments, Additional Facility Notice or Additional Facility Lender Accession Notice to Company**

The Agent shall, as soon as reasonably practicable after it has executed a Transfer Certificate, an Assignment Agreement, an Increase Confirmation – Cancelled Commitments, an Additional Facility Notice and an Additional Facility Lender Accession Notice send to the Company a copy of that Transfer Certificate, Assignment Agreement, Increase Confirmation – Cancelled Commitments, Additional Facility Notice or Additional Facility Lender Accession Notice.

## **29.9 Hedging provisions**

- (a) The provisions of Schedule 13 (*Hedging Provisions*) shall bind each Party.
- (b) A Hedge Counterparty may assign any of its rights or transfer any of its rights or obligations under this Agreement in accordance with Schedule 13 (*Hedging Provisions*).

#### **29.10 Security over Lenders' rights**

- (a) In addition to the other rights provided to Lenders under this Clause 29, each Lender may, without consulting with or obtaining consent from any Obligor or the Parent, 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:
  - (i) any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and
  - (ii) in the case of any Lender which is a fund, any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities,

except that no such charge, assignment or Security shall:

- (A) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or other Security for that Lender as a party to any of the Finance Documents; or
  - (B) require any payments to be made by the Obligors or the Parent or grant to any person any more extensive rights than those required to be made or granted to that Lender under the Finance Documents.
- (b) The limitations on assignments or transfers by a Lender set out in any Finance Document, in particular in this Clause 29 shall not apply to the creation of Security pursuant to paragraph (a)(i) above.
- (c) The limitations and provisions referred to in paragraph (b) above shall further not apply to any assignment or transfer of rights under the Finance Documents or of the securities issued by a special purpose vehicle, made by a federal reserve or central bank (including, for the avoidance of doubt, the European Central Bank) to a third party in connection with the enforcement of Security created pursuant to paragraph (a)(i) above.
- (d) Any Lender may disclose such Confidential Information as that Lender shall consider appropriate to a federal reserve or central bank (including, for the avoidance of doubt, the European Central Bank) to (or through) whom it creates Security pursuant to paragraph (a)(i) above, and any federal reserve or central bank (including, for the avoidance of doubt, the European Central Bank) may disclose such Confidential Information to a third party to whom it assigns or transfers (or may potentially assign or transfer) rights under the Finance Documents or the securities issued by the special purpose vehicle in connection with the enforcement of such Security.

### **30. DEBT PURCHASE TRANSACTIONS**

#### **30.1 Debt Purchase Transactions by Group Members**

The Parent and the Company shall not, and the Company shall procure that each other Group Member shall not (i) enter into any Debt Purchase Transaction or (ii) itself be (or beneficially own all or any majority of the share capital of a company that is) a Lender or a party to a Participation.

### 30.2 Debt Purchase Transactions by Sponsor Affiliates

- (a) For so long as a Sponsor Affiliate (A) beneficially owns a Commitment or (B) has entered into Participation relating to a Commitment and such Participation has not been terminated:
- (i) in ascertaining the Majority Lenders or whether the agreement of Lender(s) holding any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments or the Commitments has been obtained to approve any request for a consent, waiver, amendment or other vote under the Finance Documents, such Commitment shall be deemed to be zero, **provided that** such consent, waiver, amendment or other vote is not materially detrimental (in comparison to the other Lenders) to the rights and/or interests of that Sponsor Affiliate solely in its capacity as a Lender (and, for the avoidance of doubt, excluding its interests as a holder of equity in the Company (whether directly or indirectly)), and each Sponsor Affiliate upon becoming a Party expressly agrees and acknowledges that the operation of this Clause 30.2 shall not of itself be so detrimental to it in comparison to the other Lenders or otherwise; and
  - (ii) for the purposes of Clause 41.2 (*Exceptions*), such Sponsor Affiliate or the person with whom it has entered into such Participation shall be deemed not to be a Lender (unless, in the case of a person not being a Sponsor Affiliate, it is a Lender by virtue otherwise than by beneficially owning such Commitment to which (A) or (B) relates).
- (b) Each Lender shall promptly notify the Agent in writing if it knowingly enters into a Participation with a Sponsor Affiliate (a **Notifiable Debt Purchase Transaction**), such notification to be substantially in the form set out in Part I (*Form of Notice of entering into Notifiable Debt Purchase Transaction*) of Schedule 9 (*Forms of Notifiable Debt Purchase Transaction Notice*).
- (c) A Lender shall promptly notify the Agent if a Notifiable Debt Purchase Transaction to which it is a party:
- (i) is terminated; or
  - (ii) ceases to be with a Sponsor Affiliate,
- such notification to be substantially in the form set out in Part II (*Form of Notice of Termination of Notifiable Debt Purchase Transaction*) of Schedule 9 (*Forms of Notifiable Debt Purchase Transaction Notice*).
- (d) Each Sponsor Affiliate that is a Lender agrees that:
- (i) in relation to any meeting or conference call to which all the Lenders are invited to attend or participate, it shall not attend or participate in the same if so requested by the Agent (acting on the instructions of the Majority Lenders) or be entitled to receive the agenda or any minutes of the same;

- (ii) in its capacity as Lender, it shall not be entitled to receive any report or other document prepared at the behest of, or on the instructions of, the Agent or one or more of the Lenders; and
- (iii) to the extent that its Commitment, sub-participation or other agreement following a Debt Purchase Transaction would result in the subordination of claims of any other Lenders (not being a Group Member or a Sponsor) under the Facilities pursuant to any law regarding subordination of shareholder loans or otherwise materially prejudice the Transaction Security or any guarantee and indemnity provided pursuant to Clause 23 (*Guarantee and indemnity*) in any way, it shall not be a secured Finance Party under any Transaction Security Documents or any guarantee and indemnity provided pursuant to Clause 23 (*Guarantee and indemnity*) and no amount owing to it under any Finance Document will be secured by the Transaction Security Documents or any guarantee and indemnity provided pursuant to Clause 23 (*Guarantee and indemnity*),

in each case, unless the Agent otherwise agrees or where such Sponsor Affiliate's Commitment is not deemed to be zero pursuant to paragraph (a)(i) above.

### **31. CHANGES TO THE OBLIGORS**

#### **31.1 Assignment and Transfers by the Obligors**

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

#### **31.2 Additional Borrowers**

- (a) Subject to compliance with the provisions of Clause 25.8 (*Know your customer checks*), the Company may request that any of its Subsidiaries becomes a party hereto as a **Borrower** under the Initial Revolving Facility or an Additional Facility.
- (b) A Proposed Additional Borrower shall become a Borrower under the Initial Revolving Facility or an Additional Facility (as the case may be) if:
  - (i) it is incorporated or organised in The Netherlands, the United Kingdom or in a jurisdiction that is the same jurisdiction as an existing Borrower under any Facility or otherwise in a jurisdiction approved by all the Lenders under the Initial Revolving Facility or the Additional Facility (as the case may be);
  - (ii) the Company and such Proposed Additional Borrower deliver to the Agent a duly completed and executed Accession Letter;
  - (iii) subject to the limitations set out in Clause 27.27 (*Security and Guarantees*), the Subsidiary is (or becomes) a Guarantor on or prior to becoming a Borrower;
  - (iv) the Company confirms that no Default is continuing or would occur as a result of that Subsidiary becoming an Additional Borrower; and
  - (v) the Agent has received all of the documents and other evidence listed in Part III (*Additional Obligor Conditions Precedent*) of Schedule 2 (*Conditions Precedent*) in relation to that Proposed Additional Borrower, each in form and substance satisfactory to the Agent (acting reasonably).



- (c) The Agent shall notify the Company and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all (or, acting on the instructions of the Majority Lenders, waived all or any of) the documents and other evidence listed in Part III (*Additional Obligor Conditions Precedent*) of Schedule 2 (*Conditions Precedent*) in relation to any Proposed Additional Borrower. The Lenders authorise the Agent to give such notification and the Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

### **31.3 Additional Guarantors**

- (a) Subject to compliance with the provisions of Clause 25.8 (*Know your customer checks*), the Company may request that any of its Subsidiaries become a Guarantor.
- (b) A Group Member may become an Additional Guarantor in accordance with paragraph (a) above or shall become an Additional Guarantor in accordance with Clause 27.27 (*Security and Guarantees*) if:
  - (i) the Company and the proposed Additional Guarantor deliver to the Agent a duly completed and executed Accession Letter; and
  - (ii) the Agent has received all of the documents and other evidence listed in Part III (*Additional Obligor Conditions Precedent*) of Schedule 2 (*Conditions Precedent*) in relation to that Additional Guarantor, each in form and substance satisfactory to the Agent (acting reasonably).
- (c) The Agent shall notify the Company and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it, acting reasonably) all (or, acting on the instructions of the Majority Lenders, waived all or any of) the documents and other evidence listed in Part III (*Additional Obligor Conditions Precedent*) of Schedule 2 (*Conditions Precedent*) in relation to any proposed Additional Guarantor. The Lenders authorise the Agent to give such notification and the Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

### **31.4 Resignation of an Obligor**

- (a) The Company may request that an Obligor (other than the Company) ceases to be an Obligor by delivering to the Agent a Resignation Letter if:
  - (i) all Lenders have consented to the resignation of that Obligor;
  - (ii) such Obligor is being (or shares or equity interests in that Obligor are being), or the shares in any member of the Group which is a Holding Company of such Obligor are being, disposed of by way of a Permitted Disposal or a Permitted Transaction such that such Obligor ceases to be a Group Member, and the Company has confirmed that this is the case; or
  - (iii) such Obligor is the subject of a Permitted Transaction whereby it is being wound-up, liquidated or dissolved.
- (b) The Agent (acting on the instructions of all Lenders) shall accept a Resignation Letter and notify the Company and the Lenders of its acceptance if:
  - (i) no Event of Default is continuing or would result from the acceptance of the Resignation Letter;

- (ii) no payment is due from that Obligor under Clause 23 (*Guarantee and indemnity*); and
  - (iii) unless otherwise agreed with the Majority Lenders, such Obligor is not an Initial Material Subsidiary.
- (c) Upon notification by the Agent to the Company of its acceptance of the resignation of an Obligor, that company shall cease to be an Obligor and shall have no further rights or obligations under the Finance Documents as an Obligor.

### **31.5 Resignation on Disposal**

If a Guarantor (that is to resign as a Guarantor in accordance with paragraph (a)(ii) of Clause 31.4 (*Resignation of an Obligor*)) is or is proposed to be the subject of a Permitted Disposal or Permitted Transaction then:

- (a) the resignation of that Guarantor shall not become effective until the date of that Permitted Disposal or Permitted Transaction (as applicable); and
- (b) if that Permitted Disposal is not made or that Permitted Transaction does not occur, the Resignation Letter of that Guarantor shall have no effect and the obligations of the Guarantor under the Finance Documents shall continue in such force and effect as if that resignation had not been effected.

### **31.6 Accession of Target**

- (a) Subject to compliance with the provisions of Clause 25.8 (*Know your customer checks*), the Company may, at any time, request that Target becomes a party hereto as a Borrower under the Initial Revolving Facility and a Guarantor by delivering to the Agent:
  - (i) a duly completed and executed Accession Letter; and
  - (ii) all of the documents and other evidence listed in Part III (*Additional Obligor Conditions Precedent*) of Schedule 2 (*Conditions Precedent*) in relation to the Target, each in form and substance satisfactory to the Agent (acting reasonably).
- (b) The Agent shall notify the Company and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence under paragraph (a)(ii) above.

## **32. ROLE OF THE AGENT, THE ARRANGER, THE ISSUING BANK AND OTHERS**

### **32.1 Appointment of the Agent**

- (a) Each of the Arranger, the Issuing Bank and the Lenders appoints the Agent to act as its agent under and in connection with the Finance Documents.
- (b) Each of the Arranger, the Issuing Bank and the Lenders authorises the Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

## 32.2 Instructions

- (a) Subject to paragraphs (d), (e) and (f) below, the Agent shall:
  - (i) 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 that such right, power, authority or discretion is a matter that requires the consent or instructions of all of the Lenders;
    - (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 that the instructions from any other Finance Party or group of Finance Parties are required, from that Finance Party or group of Finance Parties) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Agent may refrain from acting unless and until it receives those instructions or that clarification.
- (c) Save in the case of decisions stipulated to be a matter for any other Finance Party or group of Finance Parties 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, without prejudice to paragraph (d) below) be binding on all Finance Parties save for the Security Agent.
- (d) Paragraph (a) above shall not apply:
  - (i) where a contrary indication appears in a Finance Document;
  - (ii) where a Finance Document requires the Agent to act in a specified manner or to take a specified action;
  - (iii) in respect of any provision which protects the Agent's own position in its personal capacity as opposed to its role of Agent for the relevant Finance Parties including, Clause 32.5 (*No fiduciary duties*) to Clause 32.10 (*Exclusion of liability*), and Clause 32.14 (*Confidentiality*) to Clause 32.19 (*Reliance and engagement letters*).
- (e) The Agent may refrain from acting in accordance with any instructions of any Finance Party or group of Finance Parties until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability which it may incur in complying with those instructions.
- (f) In the absence of instructions from the Majority Lenders (or, if appropriate, the applicable group of Finance Parties), the Agent may act (or refrain from acting) as it considers to be in the best interest of the Lenders.
- (g) The Agent is not authorised to act on behalf of a Finance Party (without first obtaining

that Finance Party's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (g) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Transaction Security Documents or enforcement of the Transaction Security or Transaction Security Documents.

- (h) The Agent shall act on the instructions of a Lender provided in connection with any split of its Commitment under Clause 41.4 (*Split Voting*) and shall not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with such instructions.

### **32.3 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 29.8 (*Copy of Transfer Certificate, Assignment Agreement, Increase Confirmation – Cancelled Commitments, Additional Facility Notice or Additional Facility Lender Accession Notice to Company*), paragraph (e) of Clause 7.4 (*Cash collateral by Non-Acceptable L/C Lender and Company's option to provide cash cover*) and paragraph (b) above shall not apply to any Fee Letter, Hedging Agreement, Transfer Certificate, Assignment Agreement, or Increase Confirmation – Cancelled Commitments.
- (d) The Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (e) If the Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (f) If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Agent, the Arranger or the Security Agent) under this Agreement, it shall promptly notify the other Finance Parties.
- (g) The Agent shall provide to the Company as soon as practicable following a request by the Company (but no more frequently than once per calendar month), a list (which may be in electronic form) setting out the names of the Lenders as at the date of that request, their respective Commitments, the address and fax number (and the department or officer, if any, for whose attention any communication is to be made) of each Lender for any communication to be made or document to be delivered under or in connection with the Finance Documents, the electronic mail address and/or any other information required to enable the sending and receipt of information by electronic mail or other electronic means to and by each Lender to whom any communication under or in connection with the Finance Documents may be made by that means and the account details of each Lender for any payment to be distributed by the Agent to that Lender under the Finance Documents.
- (h) 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).

### **32.4 Role of the Arranger**

Except as specifically provided in the Finance Documents, the Arranger has no obligations of any kind to any other Party under or in connection with any Finance Document.

### **32.5 No fiduciary duties**

- (a) Nothing in any Finance Document constitutes the Agent, the Issuing Bank or the Arranger as a trustee or fiduciary of any other person.
- (b) None of the Agent, the Issuing Bank, any Ancillary Lender or the Arranger shall be bound to account to any Finance Party for any sum or the profit element of any sum received by it for its own account.

### **32.6 Business with the Group**

The Agent, the Issuing Bank, each Ancillary Lender and the Arranger may accept deposits from, lend money to, and generally engage in any kind of banking or other business with, any Group Member.

### **32.7 Rights and discretions**

- (a) The Agent and the Issuing Bank may, without liability to any person and without further enquiry:
  - (i) rely on any representation, communication, notice or document (including any notice given by a Lender pursuant to paragraphs (b) or (c) of Clause 30.2 (*Debt Purchase Transactions by Sponsor Affiliates*)) believed by it to be genuine, correct and appropriately authorised;
  - (ii) assume that:
    - (A) any instructions received by it from the Majority Lenders, any Finance Parties or any group of Finance Parties are duly given in accordance with the terms of the Finance Documents; and
    - (B) unless it has received notice of revocation, 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, the Issuing Bank and the Arranger) that:
  - (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 28.1 (*Non-payment*));

- (ii) any right, power, authority or discretion vested in any Party or any group of Finance Parties has not been exercised;
- (iii) any notice or request made by the Company (other than a Utilisation Request or Selection Notice) is made on behalf of and with the consent and knowledge of all the Obligors and the Parent; and
- (iv) no Notifiable Debt Purchase Transaction:
  - (A) has been entered into;
  - (B) has been terminated; or
  - (C) has ceased to be with a Sponsor Affiliate.
- (c) The Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Agent (and so separate from any lawyers instructed by the Lenders) if the Agent in its reasonable opinion deems this to be desirable.
- (e) 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.
- (f) The Agent may act in relation to the Finance Documents through its officers, employees and agents and the Agent shall not:
  - (i) be liable for any error of judgment made by any such person; or
  - (ii) be bound to supervise, or be in any way responsible for, any loss incurred by reason of misconduct, omission or default on the part of any such person,

unless such error or such loss was directly caused by the Agent's or that officer's, employee's or agent's fraud, gross negligence or wilful misconduct.
- (g) Notwithstanding any other provision of any Finance Document to the contrary, none of the Agent, the Arranger or the Issuing Bank is obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (h) 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.
- (i) Without prejudice to the generality of paragraph (h) above, the Agent:
  - (i) may disclose; and
  - (ii) on the written request of the Company or the Majority Lenders shall, as soon as reasonably practicable, disclose,

the identity of a (A) a Replaceable Lender (for this purpose ignoring paragraph 1.1(b) of the definition of *Non-Consenting Lender* when assessing whether a Lender is a Non-Consenting Lender) and/or (B) any Lender that requests any information or makes any request of the Company and/or (C) has been approached for a consent or waiver and who has not yet voted, to the Company and to the other Finance Parties.

- (j) Notwithstanding any provision of any Finance Document to the contrary, the Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.
- (k) Without prejudice to Clause 41 (*Amendments and Waivers*) and unless otherwise specified:
  - (i) any reference within this Agreement or any other Finance Document to the Agent providing approval or consent or making a request, or to an item or a person or a course of action being acceptable to, satisfactory to, to the satisfaction of or approved by the Agent, are to be construed, as references to that Agent taking such action or refraining from acting on the instructions of the Majority Lenders or the Lenders, as the case may be;
  - (ii) any reference within this Agreement or any other Finance Document to:
    - (A) the Agent acting reasonably;
    - (B) a matter being in the reasonable opinion of the Agent;
    - (C) the Agent's approval or consent not being unreasonably withheld or delayed; or
    - (D) any document, report, confirmation or evidence being required to be reasonably satisfactory to the Agent,

are to be construed, unless otherwise specified in this Agreement or such other relevant Finance Document, as the Agent acting on the instructions of Majority Lenders or the Lenders, as the case may be, who are acting reasonably or, as the case may be, not unreasonably withholding or delaying their consent.

### **32.8 Responsibility for documentation**

None of the Agent, the Issuing Bank, any Ancillary Lender or the Arranger:

- (a) is responsible for the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Agent, the Arranger, the Issuing Bank, any Ancillary Lender, the Obligors, the Parent or any other person given in or in connection with any Finance Document or the Information Package or the transactions contemplated in the Finance Documents;
- (b) is responsible for 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 or in connection with any Finance Document or the Transaction Security; or

- (c) is responsible for 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.

### **32.9 No duty to monitor**

The Agent shall not be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Party of its obligations under any Finance Document; or
- (c) whether any other event specified in any Finance Document has occurred.

### **32.10 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 Agent, the Issuing Bank or any Ancillary Lender), none of the Agent, the Issuing Bank nor any Ancillary Lender will be liable (including for negligence or any other category of liability whatsoever) for:

- (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document or the Transaction Security, unless directly caused by its fraud, gross negligence or wilful misconduct;
- (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Finance Document, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document or the Transaction Security; or
- (iii) without prejudice to the generality of paragraphs (i) and (ii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
  - (A) any act, event or circumstance not reasonably within its control; or
  - (B) the general risks of investment in, or the holding of assets in, any jurisdiction,

including (in each case) 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, the Issuing Bank or an Ancillary Lender) (as applicable) may take any proceedings against any officer, employee or agent of the



Agent, the Issuing Bank or an Ancillary Lender in respect of any claim it might have against the Agent, the Issuing Bank or an Ancillary Lender (as the case may be) or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or any Transaction Document and any officer, employee or agent of the Agent, the Issuing Bank or an Ancillary Lender may rely on this Clause 32, subject to Clause 1.4 (*Third party rights*) and the provisions of the Third Parties Ordinance

- (c) The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Agent if the Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Agent or the Arranger to carry out:
  - (i) any “know your customer” or any check 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 Party or any Affiliate of a Finance Party, on behalf of any Finance Party and each Lender confirms to the Agent and the Arranger that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent or the Arranger.
- (e) Without prejudice to any provision of any Finance Document excluding or limiting the Agent’s liability, any liability of the Agent arising under or in connection with any Finance Document or the Transaction Security shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Agent or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Agent at any time which increase the amount of that loss. In no event shall the Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Agent has been advised of the possibility of such loss or damages. This provisions of this Clause shall survive the termination or expiry of this Agreement or the resignation or removal of the Agent.

### **32.11 Lenders’ indemnity to the Agent**

- (a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, within five Business Days of demand, against any cost, loss or liability incurred by the Agent (otherwise than by reason of the Agent’s fraud, gross negligence or wilful misconduct) in acting as agent under the Finance Documents (unless the Agent has been reimbursed by an Obligor or the Parent pursuant to a Finance Document in respect of such cost, loss or liability).
- (b) Subject to paragraph (c) below, the Company shall promptly on demand reimburse any Lender for any payment that Lender makes to the Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Agent to an Obligor or the Parent.

### 32.12 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 Company.
- (b) Alternatively, the Agent may resign by giving 30 days' notice to the Lenders and the Company, in which case the Majority Lenders (after consultation with the Company) 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 Company) 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 32 and any other term of this Agreement dealing with the rights or obligations of the Agent consistent with the then current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to the agency fee payable under this Agreement which are consistent with the successor Agent's normal fee rates and those amendments will bind the Parties.
- (e) The retiring Agent shall make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents. The cost incurred by the Agent under this paragraph (e) shall be for the account of (i) if the resignation of the Agent is voluntary or the retiring Agent is in breach of any of its obligations under the Finance Documents, the retiring Agent or (ii) in all other circumstances, the Company.
- (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 20.3 (*Indemnity to the Agent*) and this Clause 32 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (h) The Agent shall resign in accordance with 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 18.9 (*FATCA information*) and the Company 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 18.9 (*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 Company 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 Company 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 Company or that Lender, by notice to the Agent, requires it to resign.

### **32.13 Replacement of the Agent**

- (a) After consultation with the Company, the Majority Lenders may, by giving 30 days' notice to the Agent (or, at any time the Agent is an Impaired Agent, by giving any shorter notice determined by the Majority Lenders) replace the Agent by appointing a successor Agent.
- (b) The retiring Agent shall (at its own cost if it is an Impaired Agent and otherwise at the expense of the Lenders) make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- (c) The appointment of the successor Agent shall take effect on the date specified in the notice from the Majority Lenders to the retiring Agent. As from this date, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) above) but shall remain entitled to the benefit of Clause 20.3 (*Indemnity to the Agent*) and this Clause 32 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date).
- (d) Any successor Agent and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

### **32.14 Confidentiality**

- (a) In acting as agent for the Finance Parties, the Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by another division or department of the Agent, it may be treated as confidential to that division or department and the Agent shall not be deemed to have notice of it.
- (c) Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent nor the Arranger is 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.

### **32.15 Relationship with the Lenders and Issuing Bank**

- (a) 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) Each Lender and Issuing Bank shall supply the Agent with any information that the Security Agent may reasonably specify (through the Agent) as being necessary to enable the Security Agent to perform its functions as a Security Agent. Each Lender and Issuing Bank shall deal with the Security Agent exclusively through the Agent and shall not deal directly with the Security Agent.
- (c) 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 dispatched 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 37.6 (*Electronic communication*)) electronic mail address and/or any other information required to enable the sending and receipt of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address, department and officer by that Lender for the purposes of Clause 37.2 (*Addresses*) and paragraph (a)(ii) of Clause 37.6 (*Electronic communication*) and the Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.

### **32.16 Credit appraisal by the Lenders, the Issuing Bank and Ancillary Lenders**

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

- (a) the financial condition, status and nature of the Parent and each Group Member;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and 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 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 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;

- (d) the adequacy, accuracy and/or completeness of the Information Package and any other information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (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.

### **32.17 Agent's management time**

Any amount payable to the Agent under Clause 20.3 (*Indemnity to the Agent*), Clause 22 (*Costs and Expenses*) and Clause 32.11 (*Lenders' indemnity to the Agent*) shall, following an Event of Default which is continuing, include the cost of utilising the management time or other resources of the Agent and will be calculated on the basis of such reasonable daily or hourly rates as the Agent may notify to the Company and the other Finance Parties, and is in addition to any fee paid or payable to the Agent under Clause 17 (*Fees*).

### **32.18 Deduction from amounts payable by the Agent**

If any Party owes an amount to the Agent under the Finance Documents, the Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

### **32.19 Reliance and engagement letters**

Each Finance Party and Secured Party confirms that each of the Arranger, the Agent and the Security Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by the Arranger or Agent) the terms of any reliance letter or engagement letters relating to the Reports or any reports or letters provided by accountants or providers of due diligence reports in connection with the Finance Documents or the transactions contemplated in the Finance Documents and to bind it in respect of those Reports, reports or letters and to sign such letters on its behalf and further confirms that it accepts the terms and qualifications set out in such letters.

### **32.20 Reference Banks**

If a Reference Bank (or, if a Reference Bank is not a Lender, the Lender of which it is an Affiliate) ceases to be a Lender, the Agent shall (in consultation with the Obligors' Agent) appoint another Lender or an Affiliate of a Lender to replace that Reference Bank.

## **33. 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) except as contemplated by Clause 18.10 (*FATCA deduction*) or Clause 18.9 (*FATCA information*), oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

## **34. SHARING AMONG THE SECURED PARTIES**

### **34.1 Payments to Secured Parties**

- (a) Subject to paragraph (b) below, if a Secured Party (a ***Recovering Secured Party***) receives or recovers any amount from any Obligor or Parent other than in accordance with Clause 35 (*Payment Mechanics*) (a ***Recovered Amount***) and applies that amount to a payment due under the Finance Documents then:
  - (i) the Recovering Secured Party shall, within three Business Days, notify details of the receipt or recovery to the Agent;
  - (ii) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Secured Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause 35 (*Payment Mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
  - (iii) the Recovering Secured 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 Secured Party as its share of any payment to be made, in accordance with Clause 35.6 (*Partial payments*).
- (b) Paragraph (a) above shall not apply to any amount received or recovered by an Issuing Bank or an Ancillary Lender in respect of any cash cover provided for the benefit of that Issuing Bank or that Ancillary Lender.

### **34.2 Redistribution of payments**

The Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor or Parent (as applicable) and distribute it between the Secured Parties (other than the Recovering Secured Party) (the ***Sharing Secured Parties***) in accordance with Clause 35.6 (*Partial payments*) towards the obligations of that Obligor or Parent (as applicable) to the Sharing Secured Parties.

### **34.3 Recovering Secured Party's rights**

On a distribution by the Agent under Clause 34.2 (*Redistribution of payments*) of a payment received by a Recovering Secured Party from an Obligor or the Parent, as between the relevant Obligor or Parent (as applicable) and the Recovering Secured Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by that Obligor or Parent (as applicable).

### **34.4 Reversal of redistribution**

If any part of the Sharing Payment received or recovered by a Recovering Secured Party becomes repayable and is repaid by that Recovering Secured Party, then:

- (a) each Sharing Secured Party other than the Security Agent shall, upon request of the

Agent, pay to the Agent for the account of that Recovering Secured 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 Secured Party for its proportion of any interest on the Sharing Payment which that Recovering Secured Party is required to pay) (the **Redistributed Amount**); and

- (b) as between the relevant Obligor or Parent (as applicable) and each relevant Sharing Secured Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Obligor or Parent (as applicable).

### **34.5 Exceptions**

- (a) This Clause 34 shall not apply to the extent that the Recovering Secured Party would not, after making any payment pursuant to this Clause 34, have a valid and enforceable claim against the relevant Obligor or the Parent (as applicable).
- (b) A Recovering Secured Party is not obliged to share with any other Secured Party any amount which the Recovering Secured Party has received or recovered as a result of taking legal or arbitration proceedings if:
  - (i) it notified the other Secured Party of the legal or arbitration proceedings; and
  - (ii) the other Secured 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.

### **34.6 Contractual recognition of bail-in**

Notwithstanding any other term of any Finance Document or any other agreement, arrangement or understanding between the Parties, each Party acknowledges and accepts that any liability of any Party to any other Party under or in connection with the Finance Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) any Bail-In Action in relation to any such liability, including:
  - (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
  - (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
  - (iii) a cancellation of any such liability; and
- (b) a variation of any term of any Finance Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

### **34.7 Ancillary Lenders**

- (a) This Clause 34.7 shall not apply to any receipt or recovery by a Lender in its capacity as an Ancillary Lender at any time prior to service of notice under Clause 28.16 (*Acceleration*).

- (b) Following service of notice under Clause 28.16 (*Acceleration*), this Clause 34.7 shall apply to all receipts or recoveries by Ancillary Lenders except to the extent that the receipt or recovery represents a reduction of the Permitted Gross Outstandings of a Multi-account Overdraft to or towards an amount equal to its Designated Net Amount.

## **35. PAYMENT MECHANICS**

### **35.1 Payments to the Agent**

- (a) On each date on which an Obligor, the Parent or a Lender is required to make a payment under a Finance Document (excluding a payment under the terms of an Ancillary Document), that Obligor, the Parent 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 currency of such place and in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency with such bank as the Agent specifies.

### **35.2 Distributions by the Agent**

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 35.3 (*Distributions to the Company*) and Clause 35.4 (*Clawback*) 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 in the principal financial centre of the country of the currency of that payment.

### **35.3 Distributions to the Company**

The Agent may (with the consent of the Company referred to below or in accordance with Clause 36 (*Set-Off*)) apply any amount received by it for the Company in or towards payment (on the date and in the currency and funds of receipt) of any amount due from the Company under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

### **35.4 Clawback**

- (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) 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.

### **35.5 Impaired Agent**

- (a) If, at any time, the Agent becomes an Impaired Agent, a Party which is required to



make a payment under the Finance Documents to the Agent for the account of any person in accordance with Clause 35.1 (*Payments to the Agent*) may instead either pay that amount direct to such person or pay that amount to an interest-bearing account held with an Approved Bank within the meaning of paragraph (a) of the definition of **Approved Bank** and in relation to which no Insolvency Event has occurred and is continuing, in the name of the Party making that payment (the **Paying Party**) and designated as a trust account for the benefit of the Party or Parties beneficially entitled to that payment under the Finance Documents (the **Recipient Party** or **Recipient Parties**). In each case such payments must be made on the due date for payment under the Finance Documents.

- (b) All interest accrued on the amount standing to the credit of the trust account shall be for the benefit of the Recipient Party or the Recipient Parties pro rata to their respective entitlements.
- (c) A Party which has made a payment in accordance with this Clause 35.5 shall be discharged of the relevant obligation to make that payment under the Finance Documents and shall not take any credit risk with respect to the amounts standing to the credit of that trust account.
- (d) Promptly upon the appointment of a successor Agent in accordance with Clause 32.13 (*Replacement of the Agent*), each Paying Party shall (other than to the extent that that Paying Party has given an instruction pursuant to paragraph (e) below) give all requisite instructions to the bank with whom that trust account is held to transfer the amount of such payment (together with any accrued interest thereon) to the successor Agent for distribution to the relevant Recipient Party or Recipient Parties in accordance with Clause 35.2 (*Distributions by the Agent*).
- (e) A Paying Party that has made a payment to a trust account (on account of any amount payable by such Paying Party to a Receiving Party) shall, promptly upon request by that Recipient Party and to the extent:
  - (i) that it has not given an instruction pursuant to paragraph (d) above (with respect to such trust account); and
  - (ii) that it has been provided with the necessary information by that Recipient Party,

give all requisite instructions to the bank with whom that trust account is held to transfer such amount so paid into and held in such account (together with any accrued interest thereon) to that Recipient Party.

### **35.6 Partial payments**

- (a) If the Agent receives a payment for application against amounts due in respect of any Finance Documents from an Obligor or the Parent that is insufficient to discharge all the amounts then due and payable by that Obligor or the Parent under those Finance Documents, the Agent shall apply that payment towards the obligations of that Obligor or the Parent (as applicable) under those Finance Documents in the following order:
  - (i) *firstly*, in or towards payment pro rata of any unpaid fees, costs and expenses of the Agent and the Security Agent (including any Receiver or Delegate) under the Finance Documents;
  - (ii) *secondly*, in or towards payment pro rata of any unpaid fees, costs and expenses

of the Issuing Bank (if any) (other than any amount under Clause 7.2 (*Claims under a Letter of Credit*) or, to the extent relating to the reimbursement of a claim (as defined in Clause 7 (*Letters of Credit*)), Clause 7.3 (*Indemnities*));

- (iii) *thirdly*, in or towards payment pro rata of any accrued interest, fee or commission due but unpaid under the Finance Documents;
  - (iv) *fourthly*, in or towards payment pro rata of any principal due but unpaid under the Finance Documents and any amount due but unpaid under Clause 7.2 (*Claims under a Letter of Credit*) and Clause 7.3 (*Indemnities*); and
  - (v) *fifthly*, 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)(v) above.
- (c) Paragraphs (a) to (b) above will override any appropriation made by the Obligors or the Parent.

### **35.7 Set-off by the Obligors and the Parent**

All payments to be made by an Obligor or the Parent under the Finance Documents shall be calculated and be made, save to the extent contemplated in Clause 18 (*Tax Gross-Up and Indemnities*), without (and free and clear of any deduction for) set-off or counterclaim.

### **35.8 Business Days**

- (a) Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or Unpaid Sum pursuant to paragraph (a) above, interest is payable on such principal or Unpaid Sum at the rate payable on the original due date.

### **35.9 Currency of account**

- (a) Subject to paragraphs (b) to (e) below, US\$ is the currency of account and payment for any sum due from the Obligors or the Parent under any Finance Document.
- (b) A repayment of a Utilisation or Unpaid Sum or a part of a Utilisation or Unpaid Sum shall be made in the currency in which that Utilisation or Unpaid Sum is denominated pursuant to this Agreement on its due date.
- (c) Each payment of interest shall be made in the currency in which the sum in respect of which that interest is payable was denominated pursuant to this Agreement when that interest accrued.
- (d) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which such costs, expenses or Taxes are incurred.
- (e) Any amount expressed to be payable in a currency other than US\$ shall be paid in that other currency.

### **35.10 Change of currency**

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
  - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Agent (after consultation with the Company); 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 Company) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Market and otherwise to reflect that change in currency.

### **35.11 Disruption to payment systems etc.**

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

- (a) the Agent may, and shall if requested to do so by the Company, consult with the Company with a view to agreeing with the Company such changes to the operation or administration of any of the Facilities as the Agent may deem necessary in the circumstances;
- (b) the Agent shall not be obliged to consult with the Company 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 Company shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 41 (*Amendments and Waivers*);
- (e) the Agent shall not be liable for any damages, costs or losses whatsoever (including 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 35.11; and
- (f) the Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

### **35.12 Payments made in error**

- (a) In this Clause, *Erroneous Payment* means a payment of an amount by the Agent or the Security Agent to another Party which the Agent or the Security Agent (as applicable) determines (in its sole discretion) was made in error.

- (b) If the Agent or Security Agent pays an amount to another Party and the Agent or Security Agent (as applicable) notifies that Party that such payment was an Erroneous Payment then the Party to whom that amount was paid by the Agent shall on demand refund the same to the Agent or Security Agent.
- (c) Neither:
  - (i) the obligations of any Party to the Agent or Security Agent; nor
  - (ii) the remedies of the Agent or the Security Agent,

(whether arising under this Clause 35.12 or otherwise) which relate to an Erroneous Payment will be affected by any act, omission, matter or thing which, but for this paragraph (c), would reduce, release or prejudice any such obligation or remedy (whether or not known by the Agent, the Security Agent or any other Party).
- (d) All payments to be made by a Party to the Agent or the Security Agent (whether made pursuant to this Clause 35.12 or otherwise) which relate to an Erroneous Payment shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

### **36. SET-OFF**

- (a) While an Acceleration Event is continuing, a Finance Party may set off any matured obligation due from an Obligor or the Parent under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to that Obligor or Parent, regardless of the place of payment, booking branch or currency of either obligation. If such obligations are in different currencies, that Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of that set-off.
- (b) Any credit balances taken into account by an Ancillary Lender when operating a net limit in respect of any overdraft under an Ancillary Facility shall on enforcement of the Finance Documents be applied first in reduction of the overdraft provided under that Ancillary Facility in accordance with its terms.

### **37. NOTICES**

#### **37.1 Communications in writing**

Any communication to be made under or in connection with the Finance Documents by one Party to another Party shall be made in writing and, unless otherwise stated, may be made by fax or letter or as specified in Clause 37.8 (*Communication through Secure Website*).

#### **37.2 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 each Original Obligor or the Parent, that identified with its name below;
- (b) in the case of each Lender, the Issuing Bank, each Ancillary Lender or any other Obligor, that notified in writing to the Agent on or prior to the date on which it becomes a Party;

- (c) in the case of the Agent or the Security Agent, that identified with its name below; and
  - (d) in the case of an Arranger, that notified in writing to the Company,
- or any substitute address, fax number or department or officer as that 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.

### **37.3 Delivery**

- (a) Any communication or document made or delivered by one Party 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;
  - (ii) if it complies with Clause 37.8 (*Communication through Secure Website*); or
  - (iii) 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 37.2 (*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) Subject to Clause 37.5 (*Communication when Agent is Impaired Agent*) and unless otherwise specified, all notices from or to the Obligors and the Parent under or in connection with any Finance Document shall be sent through the Agent.
- (d) Any communication or document made or delivered to the Company in accordance with this Clause 37.3 will be deemed to have been made or delivered to each of the Obligors and the Parent.
- (e) Any communication or document which becomes effective, in accordance with paragraphs (a) to (d) above, after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

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

Promptly upon receipt of notification of an address or fax number or change of address or fax number pursuant to Clause 37.2 (*Addresses*) or changing its own address or fax number, the Agent shall notify the other Parties.

### **37.5 Communication when Agent is Impaired Agent**

If the Agent is an Impaired Agent, (a) the Parties may, instead of communicating with each other through the Agent, communicate with each other directly and (b) (while the Agent is an Impaired Agent) all the provisions of the Finance Documents which require communications to be made or notices to be given to or by the Agent shall be varied so that communications may be made and notices given to or by the relevant Parties directly. This provision shall not

operate after a replacement Agent has been appointed to replace such Impaired Agent.

### **37.6 Electronic communication**

- (a) Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means to the extent that these two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication and if those two Parties;
  - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
  - (ii) notify each other of any change to their address or any other such information supplied by them.
- (b) Any such electronic communication made between those two Parties will be effective only when actually received in readable form and in the case of any electronic communication made by a Party to the 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.
- (c) Any electronic communication which becomes effective, in accordance with paragraph (b) above, after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

### **37.7 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.

### **37.8 Communication through Secure Website**

- (a) The Agent may establish a secure website to which access is restricted to the Agent and the Lenders or the Obligors or both (and, where applicable, their respective financial and legal advisers).
- (b) After the Agent notifies the Lenders or the Company on behalf of the Obligors or both (as the case may be) of the establishment of the secure website, then any communication or document given or delivered by or to the Agent to or by Lenders or Obligors (as the case may be),
  - (i) may be given by means of the secure website in the manner specified by the Agent (or in the absence of such specification, as specified by the operator of the website); and

- (ii) unless otherwise agreed will be taken to be made or delivered upon satisfaction of the following:
  - (A) a communication or document being posted on that secure website;
  - (B) either:
    - (1) receipt by the Agent of an email from the relevant website confirming that the website has sent an email to the relevant Party's email addresses nominated under paragraph (d) notifying that a communication or document has been uploaded on the website; or
    - (2) the website containing or providing confirmation that the communication or document has been opened by the intended recipient; and
  - (C) compliance with any other requirements specified by the Agent under paragraph (c).
- (c) By notice to the Lenders or the Company on behalf of the Obligors or both (as the case may be) the Agent acting reasonably may from time to time specify and amend rules concerning the operation of the secure website in the manner in which communications or documents may be posted, and will be taken to have been made or delivered. Those rules or moments will bind the recipients of the notice and the Agent.
- (d) When it establishes the secure website, the Agent shall nominate to the website for each Party the email address given to it by the Party under this Clause 37. Subsequently, the nominated email address for each Party for that website will be the address nominated by that Party to the secure website or by the Agent (who will notify the Party accordingly). It is the responsibility of each Party to ensure that the email address nominated for it is up-to-date. The Agent is under no obligation to notify the secure website of any change in email address notified to it.
- (e) The Company logo may not be included in the secure website without the prior written consent of the Company.
- (f) Each of the other Parties agrees that the Agent is not liable for any liability, loss, damage, costs or expenses incurred or suffered by them as a result of their access or use of the secure website or inability to access or use the secure website except to the extent caused by its gross negligence or wilful misconduct.
- (g) The Agent undertakes to ensure that any secured website established by it pursuant to this Clause 37.8 remains secure.
- (h) For the avoidance of doubt (i) no Default or Event of Default (howsoever described) shall arise as a result of any failure by an Obligor or the Parent to comply with the rules of any website established pursuant to this Clause 37.8, and (ii) to the extent any document or notice is required to be given by any Obligor under any Finance Document, the Obligor shall be deemed to have satisfied any obligation to deliver such document or notice by posting it on such secured website.

## **38. CALCULATIONS AND CERTIFICATES**

### **38.1 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.

### **38.2 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.

### **38.3 Day count convention**

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days or, in any case where the practice in the Relevant Market differs (including in relation to an Optional Currency), in accordance with that market practice.

## **39. 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.

## **40. REMEDIES AND WAIVERS**

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

## **41. AMENDMENTS AND WAIVERS**

### **41.1 Required consents**

- (a) Subject to Clause 41.2 (*Exceptions*), any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Company and (in respect of any Transaction Security Documents to which it is a party) the Security Agent, 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 41.
- (c) Without prejudice to the generality of paragraphs (c), (d) and (e) of Clause 32.7 (*Rights and discretions*), the Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any Request under the Finance Documents.
- (d) Each Obligor and the Parent agrees to any such amendment or waiver permitted by this Clause 41 which is agreed to by the Company. This includes any amendment or waiver which would, but for this paragraph (d), require the consent of the Parent.



## 41.2 Exceptions

- (a) Subject to paragraphs (e), (f) and (g) below and Clause 41.3 (*Structural Adjustment*), an amendment, waiver of 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:
- (i) the definition of *Certain Funds Period, Change of Control, Majority Lenders, or Structural Adjustment* in Clause 1.1 (*Definitions*);
  - (ii) an extension to the date of payment of any amount under the Finance Documents (other than in relation to Clause 12 (*Mandatory Prepayment*));
  - (iii) Clause 12 (*Mandatory Prepayment*) (other than an amendment or waiver which has the effect of changing any notice period for prepayment);
  - (iv) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;
  - (v) a change in currency of payment of any amount under the Finance Documents;
  - (vi) an increase in any Commitment or the Total Commitments or an extension of any Availability Period;
  - (vii) a change to the Obligors or the Parent (other than in accordance with the terms of the Finance Documents);
  - (viii) any provision which expressly requires the consent of all the Lenders;
  - (ix) Clause 2.4 (*Finance Parties' rights and obligations*), Clause 4.3 (*Utilisations during the Certain Funds Period*), Clause 29 (*Changes to the Lenders*), Clause 34 (*Sharing among the Secured Parties*), this Clause 41, Clause 44 (*Governing Law*) or Clause 45.1 (*Jurisdiction of Hong Kong courts*);
  - (x) any requirement that a cancellation of Commitments reduces the Commitments of the Lenders rateably (other than in respect of any prepayment made to a Lender in accordance with the terms of any Finance Document);
  - (xi) (other than as expressly permitted by the provisions of any Finance Document) the nature or scope of the Transaction Security or the manner in which the proceeds of enforcement of the Transaction Security are distributed; or
  - (xii) any amendment to the order of priority or subordination under this Agreement or the Subordination Agreement,

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

- (b) Subject to paragraph (d) below, an amendment or waiver which relates to or has the effect of (A) (other than as expressly permitted by the provisions of any Finance Document) changing the provisions relating to the nature or scope of the Charged Property or any guarantee or (B) the release of any Transaction Security shall not be made without the prior consent of all of the Lenders, except for:
- (i) any release that is:
    - (A) conditional upon repayment or prepayment in full of the Facilities and

the payment of all other amounts then due and payable under the Finance Documents;

- (B) required to effect a Permitted Disposal or a Permitted Reorganisation; or
  - (C) coupled with a simultaneous re-granting and is required to implement or facilitate any Additional Facility or to implement a Structural Adjustment which, in each case, is intended to be (and which is permitted to be) secured by the Transaction Security and new security documents are entered into on substantially the same terms;
- (ii) any amendment or waiver which has the effect of increasing the assets which fall within the nature or scope of the Charged Property, which:
- (A) is required to give effect to the terms of the Additional Facility; and
  - (B) does not have an adverse impact on the interests of the Initial Facility Lenders under the Finance Documents,

in which circumstances, the Security Agent is authorised to release such guarantees, indemnities and/or Transaction Security, or grant such amendments or waivers, in each case without requiring any further approval from any Finance Party; and

- (c) An amendment or waiver that relates in any material respect to the rights or obligations of the Agent, the Arranger, the Issuing Bank, any Ancillary Lender or the Security Agent may not be effected without the consent of the Agent, the Arranger, the Issuing Bank, any Ancillary Lender or the Security Agent. An amendment or waiver which affects the order of priority and ranking in relation to a Hedge Counterparty may not be effected without the consent of that Hedge Counterparty.
- (d) Any amendment or waiver (other than an amendment or waiver to which Clause 41.3 (*Structural Adjustment*) applies or would, but for this paragraph (d), apply) which:
  - (i) relates only to the rights or obligations applicable to a particular Facility or class of Lender(s); and
  - (ii) would not reasonably be expected to materially and adversely affect the rights or interests of Lenders in respect of another Facility or class of Lender(s),

may be made in accordance with this Clause 41 but as if references in this Clause 41 to the specified proportion of Lenders (including, for the avoidance of doubt, all the Lenders) whose consent would, but for this paragraph (d), be required for that amendment or waiver were to that proportion of the Lenders participating in forming part of that particular Facility or class.

- (e) Subject to paragraph (b)(i)(C) above, no consent from any Lenders shall be required in connection with the permitted implementation of (and any related amendment as part of the implementation of) an Additional Facility pursuant to Clause 2.3 (*Additional Facility*).
- (f) No consent from any Lenders (other than the relevant Additional Facility Lenders) shall be required in connection with any amendment or waiver of a term of any Additional Facility other than:

- (i) any amendment or waiver of Clause 2.3 (*Additional Facility*); or
  - (ii) any amendment or waiver of a term of any Additional Facility which relates to or gives rise to a matter which would require an amendment of or under this Agreement (including, for the avoidance of doubt, under Clause 2.3 (*Additional Facility*)).
- (g) Any Lender may (with the prior consent of the Company) elect to:
- (i) waive all or part of its share of any prepayment to be made in accordance with Clause 11.4 (*Voluntary prepayment*), Clause 12.2 (*Disposal Proceeds, Insurance Proceeds and Recovery Proceeds*) or Clause 12.3 (*Application of mandatory prepayments*) (or any other amounts which have become due and payable to it under this Agreement) in which case, the waived amount will be applied in prepayment pro rata between the other Lenders participating in the Loan(s) (as the case may be) to be prepaid and/or retained by the Group and may be applied as the Company shall determine (in its sole discretion and including without limitation to make a Permitted Payment); or
  - (ii) extend the date for payment of any amount payable to it (including any date for repayment of its share of any Repayment Instalment (or any repayment instalment applicable to any Additional Facility) or any Loan, including upon maturity thereof), in each case without the consent of any other Lender.
- (h) The right of a Lender to any prepayment pursuant to Clause 12.1 (*Exit Event*) may only be waived with the consent of that Lender.
- (i) The Agent may agree with the Company at any time any amendment to or modification of a Finance Document which is minor or technical in nature or which is necessary to correct a manifest error.
- (j) Any determination by the Agent in relation to whether the documents and other evidence listed in or referred to in Schedule 2 (*Conditions Precedent*) and/or Clause 27.27 (*Security and Guarantees*) has been delivered to it in a satisfactory form and substance or in connection with the granting of guarantees, indemnities and/or Transaction Security shall be made on the instructions of the Majority Lenders (in each case acting reasonably) and the Agent's confirmation as to the satisfactory nature of such conditions, and the Majority Lenders' instruction of such satisfaction, will not be unreasonably withheld or delayed, and shall at all times be made subject to the terms of any confirmation given by the Arranger or referred to in any conditions precedent satisfaction letter issued by the Agent, which shall bind each Finance Party.

### 41.3 Structural Adjustment

If any amendment, waiver or consent is a Structural Adjustment and would otherwise require the prior consent of all the Lenders pursuant to Clause 41.2 (*Exceptions*) that amendment, waiver or consent may be made with the consent of the Company and:

- (a) each Lender that assumes a commitment or an increased commitment in the relevant additional tranche or facility or whose commitment is being increased, extended or redenominated or to whom any amount is due and payable which is being reduced, deferred or redenominated pursuant to such Structural Adjustment (as the case may be) (the **Participating Lender**); and
- (b) the Majority Lenders (for which purpose the existing Commitments of each

Participating Lender will be taken into account, together with the Commitments of the other Lenders).

#### 41.4 Split Voting

- (a) For the purposes of responding (or failing to respond) to a request for a consent, waiver, amendment of or in relation to any term of any Finance Document or any other vote of the Lenders under the terms of this Agreement, a Lender may split its Commitment into any number of portions and may respond (or fail to respond) or otherwise exercise its rights in respect of each such individual portion on a several basis.
- (b) If a Lender exercises its rights under paragraph (a) above in respect of any part of its Commitment, such Lender shall notify the Agent of the portions into which it has split its Commitment.

#### 41.5 Replaceable Lender

If at any time any Lender is or becomes a Replaceable Lender, then the Company may at any time (at the cost of the Company) whilst that Lender continues to be a Replaceable Lender:

- (a) on five Business Days' prior written notice to the Agent and such Replaceable Lender, replace such Replaceable Lender by requiring such Replaceable Lender to (and, to the extent permitted by law, such Replaceable Lender shall) transfer pursuant to Clause 29 (*Changes to the Lenders*) all (and not part only, other than in the case of a Non-Consenting Lender who has not provided its consent in respect of a portion of its Commitment only, in which case the Company shall only require such Non-Consenting Lender to transfer that portion of its Commitments only) of its rights and obligations under this Agreement to a Lender or another person selected by the Company (a **Replacement Lender**) and which confirms its willingness to assume and does assume the relevant obligations of such transferring Replaceable Lender (including the assumption of such relevant portion of the transferring Replaceable Lender's participation in the Facilities on the same basis as such transferring Replaceable Lender) for a purchase price in cash payable at the time of such transfer in an amount equal to (A) the outstanding principal amount of the relevant portion of such Replaceable Lender's participation in the outstanding Utilisation(s) (to be so transferred) and all accrued interest and/or Letter of Credit fees and/or Break Costs and other amounts payable in relation thereto in favour of such transferring Replaceable Lender under the Finance Documents (without any other premium or penalty) or (B) such lesser amount agreed between the Company, such Replaceable Lender and such Replacement Lender; or
- (b) (in the case of any Replaceable Lender other than an Illegal Lender) give the Agent notice of the cancellation of the Commitment(s) of that Replaceable Lender and its intention to procure the repayment of that Replaceable Lender's participation in the Utilisation(s) (a **Cancellation Notice**).

#### 41.6 Conditions of replacement of a Replaceable Lender

- (a) The replacement of a Replaceable Lender (or a relevant portion of its Commitments, as applicable) pursuant to paragraph (a) of Clause 41.5 (*Replaceable Lender*) shall be subject to the following conditions:
  - (i) the Company shall have no right to replace the Agent or the Security Agent;
  - (ii) neither the Agent nor such Replaceable Lender nor any other Finance Party

shall have any obligation to the Company to find a Replacement Lender;

- (iii) in no event shall such Lender replaced under this Clause 41.6 be required to pay or surrender to such Replacement Lender any of the fees received by such Lender pursuant to the Finance Documents; and
  - (iv) such Replaceable Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (a) of Clause 41.5 (*Replaceable Lender*) 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.
- (b) A Replaceable Lender shall perform the checks described in paragraph (a)(iv) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a) of 41.5 (*Replaceable Lender*) above and shall notify the Agent and the Company when it is satisfied that it has complied with those checks.

#### **41.7 Cancellation and repayment of a Replaceable Lender (other than an Illegal Lender)**

In the case where the Company gives a Cancellation Notice in respect of a Replacement Lender pursuant to paragraph (b) of Clause 41.5 (*Replaceable Lender*):

- (a) upon such Cancellation Notice becoming effective (as specified in such Cancellation Notice), the Commitment of that Replaceable Lender shall immediately be reduced to zero, ***provided that*** the Total Commitments may (at the Company’s option) be simultaneously with or subsequent to that cancellation be increased in accordance with Clause 2.2 (*Increase – Cancelled Commitments*); and
- (b) to the extent that such Replaceable Lender’s participation in a Utilisation has not been transferred pursuant to paragraph (a) of Clause 41.5 (*Replaceable Lender*), the Company shall, on the last day of the first Interest Period (relating to such Utilisation) which ends after the Company delivered such Cancellation Notice (or, if earlier, the date specified by the Company in that Cancellation Notice) repay that Replaceable Lender’s participation in such Utilisation together with all interest thereon and other amounts accrued under the Finance Documents in relation thereto (together with Break Costs and other amounts payable).

#### **41.8 Disenfranchisement of Conflicted Lenders, and Defaulting Lenders and treatment of Non-Responding Lenders**

- (a) In ascertaining the Majority Lenders or whether the agreement of Lender(s) holding any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments or the Commitments has been obtained to approve any Request, the Commitment of any Conflicted Lender, any Defaulting Lender and any portion of a Non-Responding Lender’s Commitments in respect of which it failed to respond will be deemed to be zero and its status as a Lender in respect of that portion ignored.
- (b) For the purposes of this Clause 41.8, the Agent may assume that the following Lenders are Conflicted Lenders or Defaulting Lenders:
  - (i) any Lender which has notified the Agent that it has become a Conflicted Lender or a Defaulting Lender; and
  - (ii) any Lender in relation to which it is aware that any of the events or circumstances referred to in paragraphs (a), (b) or (c) of the definition of

**Defaulting Lender** or paragraphs (a) or (b) of the definition of **Conflicted Lender** has occurred,

unless it has received notice to the contrary from the Lender concerned (together with any supporting evidence reasonably requested by the Agent) or the Agent is otherwise aware that such Lender has ceased to be a Conflicted Lender or a Defaulting Lender.

#### 41.9 Changes to reference rates

- (a) Subject to paragraph (d) below, any amendment, replacement or waiver proposed by the Company and delivered in writing to the Agent which relates to a change to:
- (i) the benchmark rate, base rate or reference rate (the **Benchmark Rate**) to apply in relation to a currency in place of the existing Benchmark Rate for such currency under an applicable Facility, or
  - (ii) the method of calculation of any Benchmark Rate, (in each case including any amendment, replacement or waiver to the definition of “*Term SOFR*”, “*Screen Rate*”, “*RFR*” or “*Interpolated Term SOFR*”, including an alternative or additional page, service or method for the determination thereof, or which relates to aligning any provision of a Finance Document to the use of that Benchmark Rate, including making appropriate adjustments to this Agreement for basis, duration, time and periodicity for determination of that Benchmark Rate for any Interest Period and making other consequential and/or incidental changes) (a **Benchmark Rate Change**), notified by the Company to the Agent, may and shall be made **provided that** (unless otherwise agreed between the Company and the Majority Lenders) either the Agent has made a Prevailing Market Determination or no Majority Lender Objection has occurred and is continuing in respect thereof.
- (b) If no Benchmark Rate Change for such currency has been made or implemented pursuant to paragraph (a) above and the Company or the Agent (acting on the instructions of the Majority Lenders) requests the making of a Benchmark Rate Change and notifies the Agent or the Company (as applicable) thereof, then the Company and the Agent (acting on the instructions of the Majority Lenders) shall enter into discussions in respect of a Benchmark Rate Change in accordance with the terms of paragraph (d) below; **provided that** if such Benchmark Rate Change cannot be agreed upon by the earlier of (x) the end of a consecutive period of thirty days and (y) the date which is five Business Days before the end of the current Interest Period, (or in the case of a new Utilisation, the date which is five Business Days before the date upon which the Utilisation Request will be served, as notified by the Company to the Agent), the Benchmark Rate applicable to any Lender's share of a Loan for each Interest Period which commences after the Trigger Date for the currency of such Loan and prior to (or during) the date on which a Benchmark Rate Change for that currency has been agreed shall (unless otherwise agreed by the Company and the Agent (acting on the instructions of the Majority Lenders participating in the applicable Facility)) be replaced by (in the case of Loans denominated in USD) the rate calculated pursuant to paragraph (c) of the definition of “*Term SOFR*” of Clause 1.1 (*Definitions*), or if such rate is unavailable (and in the case of Loans not denominated USD), the rate certified to the Agent by that Lender as soon as practicable (and in any event by the date falling two Business Days before the date on which interest is due to be paid in respect of the relevant Interest Period) to be that which expresses as a percentage rate per annum the cost to the relevant Lender of funding its participation in that Loan in the Relevant Market.

- (c) Notwithstanding the definitions of “*Term SOFR*”, “*Screen Rate*”, “*Screen Rate*”, “*RFR*” or “*Interpolated Term SOFR*” or any other term of any Finance Document, the Agent may from time to time (with the prior written consent of the Company) specify a Benchmark Rate Change for the purposes of the Finance Documents, and each Lender authorises the Agent to make such specification.
- (d) Notwithstanding the other provisions of this Clause 41.9, no Benchmark Rate Change or other amendments or waivers in connection therewith shall be made without the prior written consent of the Company (in its sole discretion) which:
  - (i) would result in an increase in the weighted average cost of the applicable Facility (whether by an increase in the Margin, fees or otherwise but taking into account, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of any Benchmark Rate Change to such applicable Facility (including any spread adjustment to reflect the differential between the weighted average Benchmark Rate before and after such Benchmark Rate Change)) to the Obligors;
  - (ii) are a change to the date on which Interest is to be paid;
  - (iii) would result in any Obligor being subject to more onerous obligations under the Finance Documents;
  - (iv) would result in any rights or benefits of any Obligor under the Finance Documents being lost or reduced;
  - (v) would result in any limitations on the number of voluntary prepayments or on the ability to select non-standard Interest Periods; or
  - (vi) would include a credit spread adjustment (or similar), payment of break costs or a fallback cost of funds for market disruption.
- (e) For the purposes of this Clause 41.9, ***Trigger Date*** in respect of Term SOFR, any applicable RFR or Screen Rate, or any other rate used to calculate any Benchmark Rate means the earliest of:
  - (i) the date upon which the administrator of Term SOFR, the applicable RFR or Screen Rate or such other rate publicly announces that it has ceased to provide Term SOFR, the applicable Screen Rate or such other rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide Term SOFR, the applicable RFR or Screen Rate or such other rate; or
  - (ii) the date upon which the supervisor of the administrator of Term SOFR, the applicable RFR or Screen Rate or other rate publicly announces that Term SOFR, the applicable RFR or Screen Rate or such other rate has been permanently or indefinitely discontinued.

## 42. CONFIDENTIALITY

### 42.1 Confidential Information

- (a) Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 42.2 (*Disclosure of Confidential Information*) and Clause 42.3 (*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.

- (b) To the extent that a Finance Party is incorporated in Taiwan, each Obligor confirms that, in respect of the personal data that an Obligor provides to a Finance Party incorporated in Taiwan, it has delivered the "Statement of Collection, Processing, Utilisation of Personal Data" (*Statement*) as may be required by a Finance Party incorporated in Taiwan, to its employees, directors, supervisors or other relevant staff (*Staff*), and has obtained such Staff's consents if required by Taiwan law. Each Obligor further undertakes that it will notify each Staff the matters relate to (i) the purpose of the collection, process or transmission of personal data, (ii) the types of the personal data being collected, processed or transmitted, (iii) the parameter of how their personal data being collected, processed or transmitted, including time period, areas, and persons who may use their personal data, and the Staff's rights under Article 3 of Taiwan Personal Information Protection Act, (iv) the sources of the personal data obtained by a Finance Party incorporated in Taiwan, and any other matters which shall be notified in accordance with Taiwan law. If the Statement is amended, each Obligor agrees that each Finance Party incorporated in Taiwan may provide each Obligor with a summary of the amendments in writing, text message, email, fax, electronic document, or in any other manner that adequately keeps each Obligor informed or enables each Obligor to be informed of the above. Each Obligor shall deliver the amended Statement to each of the relevant Staff and obtain their consents if required by Taiwan law.

#### **42.2 Disclosure of Confidential Information**

Any Finance Party and any of its officers may disclose:

- (a) to any of its Affiliates (including head offices, branches or representative offices) and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom such 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 of such Confidential Information is subject to professional obligations to maintain the confidentiality of such Confidential Information or is otherwise bound by requirements of confidentiality in relation to such Confidential Information;
- (b) to any person:
- (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Agent or Security Agent and, in each case, to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
  - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any Participation or any other transaction under which payments are to be made or may be made by reference to one or more Finance Documents, the Parent or one or more Obligors and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
  - (iii) appointed by any Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf;



- (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;
- (v) to whom information is required or requested to be disclosed by any court or tribunal 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 or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 29.10 (*Security over Lenders' rights*);
- (vii) 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;
- (viii) who is a Party;
- (ix) with the consent of the Company; or
- (x) who is a service provider of such Finance Party (other than those listed in paragraph (c) below),

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 such Confidential Information is to be given has entered into a Confidentiality Undertaking and such Confidentiality Undertaking has been duly executed by all parties to it and (unless an Event of Default has occurred and is continuing) delivered to the Company prior to the provision of any Confidential Information, except that there shall be no requirement for a Confidentiality Undertaking if the recipient of such Confidential Information is a professional adviser and is subject to professional obligations to maintain the confidentiality of such Confidential Information;
- (B) in relation to paragraph (b)(iv) above, the person to whom such Confidential Information is to be given has entered into a Confidentiality Undertaking and such Confidentiality Undertaking has been duly executed by all parties to it and (unless an Event of Default has occurred and is continuing) delivered to the Company prior to the provision of any Confidential Information, or is otherwise bound by requirements of confidentiality in relation to such Confidential Information it receives and is informed that some or all of such Confidential Information may be price-sensitive information;
- (C) in relation to paragraphs (b)(v), (b)(vi) and (b)(vii) above, the person to whom such 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

- (D) in relation to paragraph (b)(x) above, the person to whom such Confidential Information is to be given has entered into a Confidentiality Undertaking and such Confidentiality Undertaking has been duly executed by all parties to it and (unless an Event of Default is continuing) delivered to the Company prior to the provision on any Confidential Information, except that there shall be no requirement for a Confidentiality Undertaking if the relevant service provider is bound by requirements of confidentiality to that Lender or any of its Affiliates in relation to such Confidential Information,

*provided that* unless a Confidentiality Undertaking has been entered into between such Finance Party and the relevant potential New Lender to which such Finance Party is proposing to assign or transfer any or all of its rights and/or obligations under any Finance Document, that assignment or transfer to that potential New Lender shall not be effective;

- (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 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 such service provider to whom such 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 Company and that Finance Party;
- (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents, the Obligors and/or the Parent if such rating agency to whom such 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; and
- (e) to any insurer, re-insurer or insurance broker of that Finance Party or any Affiliate of that Finance Party if such insurer, re-insurer or insurance broker to whom such 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.

### **42.3 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, the Obligors and/or the Parent the following information:
  - (i) names of the Obligors and the Parent;
  - (ii) country of domicile of the Obligors and the Parent;
  - (iii) place of incorporation or formation, as applicable, of the Obligors and the Parent;
  - (iv) the Signing Date;

- (v) Clause 44 (*Governing Law*);
  - (vi) the names of the Agent and the Arranger;
  - (vii) date of each amendment and restatement of this Agreement;
  - (viii) amount of, and name of, the Facilities;
  - (ix) amount of Total Commitments;
  - (x) currency of the Facilities;
  - (xi) types of Facilities;
  - (xii) ranking of Facilities;
  - (xiii) Termination Dates (or final repayment dates);
  - (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 Company,
- 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, the Obligors and/or the Parent by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.
  - (c) Each of the Obligors and the Parent represents that none of the information set out in paragraphs (a)(i) to (xiii) above is, nor will at any time be, unpublished price-sensitive information.
  - (d) The Agent shall notify the Company and the other Finance Parties of:
    - (i) the name of any numbering service provider appointed by the Agent in respect of this Agreement, the Facilities, the Obligors and/or the Parent; and
    - (ii) the number or, as the case may be, numbers assigned to this Agreement, the Facilities, the Obligors and/or the Parent by such numbering service provider.

#### **42.4 Entire agreement**

This Clause 42 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, except to the extent that any terms of such previous agreement are required (or related to requirements) under the City Code, in which case such terms shall remain binding on the relevant Parties thereto during the Certain Funds Period, in accordance with the provisions thereof.

#### **42.5 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.

#### 42.6 Continuing obligations

The obligations in this Clause 42 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of 12 months from the earlier of:

- (a) the date on which all amounts payable by the Obligors and the Parent (if any) under or in connection with the Finance Documents have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) the date on which such Finance Party otherwise ceases to be a Finance Party.

#### 42.7 US QFC Contractual Stay Requirements

To the extent that the Finance Documents provide support, through a guarantee or otherwise, for any Hedging Agreement or any other agreement or instrument that is a QFC (such support, *QFC Credit Support* and each such QFC a *Supported QFC*), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the *US Special Resolution Regimes*) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Finance Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

- (a) In the event a Covered Entity that is party to a Supported QFC (each, a *Covered Party*) becomes subject to a proceeding under a US Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the US Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a US Special Resolution Regime, Default Rights under the Finance Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the US Special Resolution Regime if the Supported QFC and the Finance Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.
- (b) As used in this Clause, the following terms have the following meanings:

*BHC Act Affiliate* of a party means an *affiliate* (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

**Covered Entity** means any of the following:

- (i) a **covered entity** as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (ii) a **covered bank** as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (iii) a **covered FSI** as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

**Default Right** has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

**QFC** has the meaning assigned to the term **qualified financial contract** in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

#### **42.8 Bank Outsourcing**

To the extent that a Finance Party is incorporated in Taiwan, each Obligor hereby agrees that each Finance Party may, for the purpose contemplated under this Agreement and with the approval from the Financial Supervisory Commission in Taiwan (as applicable), engage a third party or third parties to process part or all of the Facility matters (including but not limited to collecting the debt under the Finance Documents) in accordance with the Regulations Governing the Internal Operating Systems and Procedures for the Outsourcing of Financial Institution Operation (金融機構作業委託他人處理內部作業制度及程序辦法) issued by the Financial Supervisory Commission in Taiwan. Each Obligor hereby consents that each Finance Party may outsource any part of its business operations to a third party or third parties.

#### **42.9 Recognition of the Hong Kong Financial Institutions Resolution Regime**

If any Finance Document is or becomes a “covered contract” (within the meaning of the Financial Institutions (Resolution) (Contractual Recognition of Suspension of Termination Rights – Banking Sector) Rules (Cap. 628C) of Hong Kong (the **Stay Rules**)), the Parties agree that, despite any other term or conditions of such Finance Document or any other agreement, arrangement or understanding, the Parties will be bound by a suspension of a “termination right” (within the meaning of the Stay Rules) in relation to such Finance Document imposed by the Hong Kong Monetary Authority under section 90(2) of the Financial Institutions (Resolution) Ordinance (Cap. 628) of Hong Kong.

#### **43. COUNTERPARTS**

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures and/or execution on such counterparts were on a single copy of that Finance Document. Facsimile, documents executed, scanned and transmitted electronically and electronic signatures, including those created or transmitted through a software platform or application, shall be deemed original signatures for purposes of this Agreement and all other related documents and all matters and agreements related thereto, with such facsimile, scanned and electronic signatures having the same legal effect as original signatures. The Parties agree that this Agreement or any other related document or any instrument, agreement or document necessary for the consummation of the transactions contemplated by this Agreement or the other related documents or related hereto or thereto (including, without limitation, addendums, amendments, notices, instructions, communications with respect to the delivery of securities or the wire transfer of funds or other communications) (**Executed Documentation**) may be accepted, executed or agreed to through the use of an electronic signature in accordance with

applicable laws, rules and regulations in effect from time to time applicable to the effectiveness and enforceability of electronic signatures. Any Executed Documentation accepted, executed or agreed to in conformity with such laws, rules and regulations will be binding on all parties hereto to the same extent as if it were physically executed and each party hereby consents to the use of any third party electronic signature capture service providers as may be reasonably chosen by a signatory hereto or thereto. When the Agent and/or Security Agent acts on any Executed Documentation sent by electronic transmission, the Agent and/or Security Agent will not be responsible or liable for any losses, costs or expenses arising directly or indirectly from its reliance upon and compliance with such Executed Documentation, notwithstanding that such Executed Documentation (a) may not be an authorized or authentic communication of the party involved or in the form such party sent or intended to send (whether due to fraud, distortion or otherwise) or (b) may conflict with, or be inconsistent with, a subsequent written instruction or communication; it being understood and agreed that the Agent and/or Security Agent shall conclusively presume that Executed Documentation that purports to have been sent by an authorized officer of a Person has been sent by an authorized officer of such Person. The party providing Executed Documentation through electronic transmission or otherwise with electronic signatures agrees to assume all risks arising out of such electronic methods, including, without limitation, the risk of the Agent and/or Security Agent acting on unauthorized instructions and the risk of interception and misuse by third parties.

#### **44. GOVERNING LAW**

This Agreement is governed by the laws of Hong Kong.

#### **45. ENFORCEMENT**

##### **45.1 Jurisdiction of Hong Kong courts**

- (a) The courts of Hong Kong 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) (a *Dispute*).
- (b) The Parties agree that the courts of Hong Kong are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This Clause 45.1 is for the benefit of the Finance Parties and Secured Parties only. As a result, no Finance Party or Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction (except in respect of proceedings brought against the Agent or the Security Agent). To the extent allowed by law, the Finance Parties and Secured Parties may take concurrent proceedings in any number of jurisdictions.

##### **45.2 Service of process**

- (a) Without prejudice to any other mode of service allowed under any relevant law, each of the Obligors and the Parent:
  - (i) irrevocably appoints The Law Debenture Corporation (H.K.) Limited as its agent for service of process in relation to any proceedings before the Hong Kong courts in connection with any Finance Document; and
  - (ii) agrees that failure by an agent for service of process to notify the Obligors or the Parent of the relevant process will not invalidate the proceedings concerned.

- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Company (on behalf of each Obligor) must promptly (and in any event within 10 days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may (acting on the instructions of the Majority Lenders) appoint another agent for this purpose.
- (c) The Parent and each Obligor expressly agree and consents to the provisions of this Clause 45 and Clause 44 (*Governing Law*).

#### **45.3 Waiver of trial by jury**

EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION IN CONNECTION WITH ANY FINANCE DOCUMENT OR ANY TRANSACTION CONTEMPLATED BY ANY FINANCE DOCUMENT. THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO TRIAL BY THE COURT.

#### **45.4 USA PATRIOT Act**

Each Finance Party that is subject to the USA PATRIOT Act and the Beneficial Ownership Regulation hereby notifies the Company that pursuant to the requirements of the USA PATRIOT Act and the Beneficial Ownership Regulation, it is required to obtain, verify and record information that identifies each Obligor, which information includes the name and address of each Obligor and other information that will allow such Finance Party, as applicable, to identify each Obligor in accordance with the USA PATRIOT Act and the Beneficial Ownership Regulation.

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

**Schedule 1**

**THE ORIGINAL PARTIES**

**Part I**

**The Original Guarantors**

<b>Original Guarantor</b>	<b>Registration number (or equivalent, if any)</b>	<b>Jurisdiction of incorporation / formation</b>
Houting B.V.	86503820	The Netherlands
Houting Topco UK Limited	15450782	England and Wales
Houting Midco Limited	15452346	England and Wales
Houting UK Limited	15452897	England and Wales



## Part II

### The Original Lenders

<b>Name of Original Term Facility Lender</b>	<b>Initial Term Facility Commitment (US\$)</b>
JPMorgan Chase Bank, N.A., acting through its Hong Kong branch	918,000,000
<b>Total</b>	<b>918,000,000</b>

<b>Name of Original Revolving Facility Lender</b>	<b>Initial Revolving Facility Commitment (US\$)</b>
JPMorgan Chase Bank, N.A., acting through its Hong Kong branch	225,000,000
<b>Total</b>	<b>225,000,000</b>

## Schedule 2

### CONDITIONS PRECEDENT

#### Part I

##### Conditions Precedent to First Utilisation

1. A copy of:
  - (a) this Agreement;
  - (b) the Subordination Agreement;
  - (c) the Fee Letters referred to in Clause 17.1 (*Upfront fee*) and Clause 17.2 (*Agent and Security Agent fee*); and
  - (d) each Original Security Document (together with all deliverables required to be delivered prior to the Initial Utilisation Date under the terms of such Original Security Documents),each executed by the Original Obligors and/or the Parent (as applicable).
2. A certificate of each Original Obligor and the Parent (signed by a director or an authorised officer):
  - (a) confirming that borrowing, guaranteeing or securing, as applicable, the aggregate Commitments would not cause any borrowing, guaranteeing, securing or similar limit binding on it to be exceeded;
  - (b) certifying that each copy document relating to it specified in this Part I of Schedule 2 is correct, complete and (to the extent executed) in full force and effect and has not been amended or superseded as at a date no earlier than the proposed Utilisation Date;
  - (c) attaching a copy of its certificate of incorporation, any certificate of incorporation on change of name (if any) and constitution (or equivalent documents), as applicable;
  - (d) if required by applicable law, attaching a copy of a resolution signed by all the holders of the issued shares in, or supervisory board of, an Original Obligor, approving the terms of, and the transactions contemplated by, the Finance Documents to which such Original Obligor is a party;
  - (e) attaching a copy (or extract) of the resolutions of its board of directors (or equivalent body) approving the terms of, and the transactions contemplated by the Finance Documents (to which it is a party) and resolving that it execute, deliver and perform (as applicable) such Finance Documents and authorising specified person(s) to execute such Finance Documents on its behalf and to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request and Selection Notice) to be signed and/or despatched by it under or in connection with such Finance Documents; and
  - (f) attaching or containing a specimen of the signature of each person authorised by the resolutions referred to in paragraph (d) above (where such person actually executes any such document).

3. In relation to the Acquisition:
  - (a) a copy of the final draft of the Announcement;
  - (b) if the Acquisition is effected by way of a Scheme:
    - (i) a copy of the Court Order; and
    - (ii) a copy of the Scheme Circular,  
  
in each case to be provided for information purposes only (and not required to be in form and substance satisfactory to the Agent (acting on the instructions of the Majority Lenders)); and
    - (iii) a certificate from an authorised signatory of Company confirming the occurrence of the Scheme Effective Date;
  - (c) if the Acquisition is effected by way of an Offer:
    - (i) a copy of the Offer Document (provided for information purposes only (and not required to be in form and substance satisfactory to the Agent (acting on the instructions of the Majority Lenders))); and
    - (ii) a certificate from an authorised signatory of Company confirming the occurrence of the Unconditional Date; and
  - (d) a certificate from an authorised signatory of the Company confirming that the Group has received (or will receive prior to, or simultaneously with, the funding of the Initial Term Facility on the Initial Utilisation Date) the Minimum Equity Investment, the aggregate amount of which is not less than 50 per cent. of the aggregate amount of (x) the Minimum Equity Investment and (y) the amounts to be drawn under the Initial Term Facility in connection with the Acquisition such that the aggregate amounts of (x) and (y) will be sufficient to pay the total purchase price in respect of the Acquisition (as determined by the Company).
4. A copy of the Base Case Model.
5. A copy of the Funds Flow Statement ***provided that*** the Funds Flow Statement shall not be disclosed to any person other than the Arranger, the Agent and their advisors (not any other Finance Party) and shall not be required to be in a form and substance satisfactory to the Agent (acting on the instructions of the Arranger).
6. A copy of each of the Reports ***provided that*** the Reports are delivered for information purposes only on a non-reliance basis (subject to each Finance Party entering into release and/or confidentiality letters if required by the provider of each Report) and ***provided further that*** this condition precedent will be satisfactory to the Agent if the final form of each Report delivered to the Agent is not different in respects that are materially adverse to the interests of the Lenders under the Finance Documents (taken as a whole) compared to the form of Report delivered by such Report provider to the Company or any of its Affiliates prior to the Signing Date or is approved by the Arranger (acting reasonably with such approval not to be unreasonably withheld or delayed).
7. A copy of each Closing Legal Opinion.
8. Evidence that any process agent referred to in Clause 45.2 (*Service of process*) or under any

other equivalent provision of the Finance Documents which have been executed on or prior to the Initial Utilisation Date has accepted its appointment as agent for service of process.

9. Evidence that each Finance Party (that is party hereto as at the Signing Date) has carried out and is satisfied with the results of all agreed “know your customer” checks or anti-money laundering requirements with respect to the Original Obligors and the Parent and which are required under applicable laws and internal policy requirements and which (in each case) have been notified to the Company by no later than ten Business Days prior to the Signing Date.
10. Unless otherwise included in one of the Reports and specified by (or on behalf of) the Company as being the group structure chart for the purposes of this Part I (*Conditions Precedent to First Utilisation*) of Schedule 2 (*Conditions Precedent*), a group structure chart showing the Group up to and including the Target assuming that the Completion Date has occurred and ***provided that*** such group structure chart shall not be required to be in a form and substance satisfactory to the Agent (acting on the instructions of the Majority Lenders).
11. A copy of the Original Financial Statements ***provided that*** this shall not be required to be in form and substance satisfactory to the Agent (acting on the instructions of the Majority Lenders).
12. If an Original Obligor (other than the Company) is required to comply with Part 21A of the Companies Act 2006, to the extent not available from public records at Companies House, a copy of the PSC Register of such person (***provided that***, for the avoidance of doubt, such PSC Register shall not be required to be in form and substance satisfactory to the Agent).

## Part II

### Original Security Documents

#### 1. Parent

- (a) A limited recourse Dutch law pledge agreement entered into by the Parent and the Security Agent in relation to the creation of security over all of the shares held by the Parent in the Company.
- (b) A limited recourse Dutch law pledge agreement entered into by the Parent and the Security Agent in relation to the creation of security over any shareholder loans or intercompany receivables due to the Parent from the Company.

For the avoidance of doubt, any of the security referred to above may be documented in one and the same document or otherwise combined in one or more documents, and in each case, subject to the limitations set out in Clause 27.27 (*Security and Guarantees*).

#### 2. Company

- (a) A Dutch law security agreement entered into by the Company and the Security Agent in relation to the creation of security over material assets of the Company (including any intra-group loans (or similar) made by the Company to Bidco) subject to the limitations set out in Clause 27.27 (*Security and Guarantees*).
- (b) An English law charge in relation to the creation of security over all of the shares held by the Company in Topco and intra-group loans made by the Company to Topco subject to the limitations set out in Clause 27.27 (*Security and Guarantees*).

#### 3. Topco, Midco and Bidco

An English law debenture entered into by each of Topco, Midco and Bidco in relation to the creation of security over their respective material assets (including, for the avoidance of doubt, in the case of Bidco, shares to be acquired in the Target) subject to the limitations set out in Clause 27.27 (*Security and Guarantees*).

## Part III

### Additional Obligor Conditions Precedent

1. An Accession Letter executed by the Additional Obligor and the Company.
2. A copy of the most recent constitutional documents of the Additional Obligor.
3. A copy of the statutory registers of the Additional Obligor (if applicable).
4. A copy of a resolution of the board of directors (or equivalent body) of the Additional Obligor:
  - (a) approving the terms of, and the transactions contemplated by, the Accession Letter and the Finance Documents (as applicable) and resolving that it execute, deliver and perform the Accession Letter and any other Finance Document to which it is party;
  - (b) authorising a specified person or persons to execute the Accession Letter and other Finance Documents (as applicable) on its behalf;
  - (c) authorising a specified person or persons, on its behalf, to sign and/or despatch all other documents and notices to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
  - (d) authorising the Company to act as its agent in connection with the Finance Documents.
5. A specimen of the signature of each person authorised by the resolution referred to in paragraph 4 above.
6. If required under applicable law or the constitutional documents of the Additional Obligor, a copy of a resolution signed by all or the applicable majority of the holders of the issued shares of the Additional Obligor, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Additional Obligor is a party.
7. A certificate of the Additional Obligor (signed by a director or other authorised signatory) confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on it to be exceeded.
8. A certificate of an authorised signatory of the Additional Guarantor certifying that each copy document listed in this Part III of Schedule 2 (*Conditions Precedent*) is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of the Accession Letter.
9. The following legal opinions, each addressed to the Agent, the Security Agent and the Lenders:
  - (a) a legal opinion of the legal advisers to the Lenders in Hong Kong, as to the laws of Hong Kong in the form distributed to the Lenders prior to signing the Accession Letter; and
  - (b) if the Additional Obligor is incorporated in a jurisdiction other than Hong Kong or is executing a Finance Document which is governed by a law other than the laws of Hong Kong, a legal opinion of the legal advisers to the Lenders (or, to the extent accepted market practice, the legal advisers to the Additional Obligor) in the jurisdiction of its incorporation or, as the case may be, the jurisdiction of the governing law of that Finance Document (the *Applicable Jurisdiction*) as to the law of the Applicable Jurisdiction and in the form distributed to the Lenders prior to signing the Accession

Letter.

10. If the proposed Additional Obligor is incorporated in a jurisdiction other than Hong Kong, evidence that the process agent specified in Clause 45.2 (*Service of process*), if not an Obligor, has accepted its appointment in relation to the proposed Additional Obligor, together with any other process agent letters required in connection with the Finance Documents to be entered into by the proposed Additional Obligor.
11. Any Transaction Security Documents which are required by (and subject to the limitations set out in) Clause 27.27 (*Security and Guarantees*), executed by the Additional Obligor or applicable Security Provider.
12. (If applicable) evidence that any applicable law relating to financial assistance or analogous process has (to the extent reasonable) been complied with by the proposed Additional Obligor.
13. If the Additional Obligor is incorporated in The Netherlands and if required under applicable law or the constitutional documents of the Additional Obligor, a copy of a resolution by the supervisory board of the Additional Obligor, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Additional Obligor is a party.
14. If the Additional Obligor is incorporated in The Netherlands:
  - (a) an unconditional positive works council advice of the works council of the Additional Obligor including the request for advice, or a conditional positive or negative works council advice regarding any of the transactions contemplated by the Finance Documents, which contains conditions which can reasonably be complied with;
  - (b) a confirmation that the works council of the Additional Obligor has irrevocably and unconditionally waived its right to render advice on any of the transactions contemplated by the Finance Documents;
  - (c) a negative works council advice, provided that (i) the applicable suspension period set out in the Dutch Works Councils Act (*Wet op de ondernemingsraden*) has lapsed without the relevant works council lodging an appeal with the Amsterdam Court of Appeal, (ii) the relevant works council has waived its right of appeal or has otherwise given its consent to proceed with the transactions contemplated by the Finance Documents (iii) the Amsterdam Court of Appeal has rendered a final decision dismissing the appeal made by the relevant works council or otherwise allowing the transactions contemplated by the Finance Documents to be proceeded with or the legal proceedings have otherwise been terminated; or
  - (d) a confirmation of the board of directors of the relevant Additional Obligor included in the board resolution that no works council has jurisdiction in respect of any of the transactions contemplated by the Finance Documents.
15. If the Additional Obligor is required to comply with Part 21A of the Companies Act 2006, to the extent not available from public records at Companies House, a copy of the PSC Register of the Target (provided that, for the avoidance of doubt, such PSC Register shall not be required to be in form and substance satisfactory to the Agent).
16. Evidence satisfactory to the Agent that each Lender has carried out and is satisfied with the results of all necessary “know your customer” or other similar checks in relation to the Additional Obligor, the Accession Letter, and the Finance Documents to which that Additional Obligor is or will be party to under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents, to the extent notified by the Agent (or by

a Lender) to Company at least five Business Days prior to the date the Accession Letter is signed.



### Schedule 3

## REQUESTS AND NOTICES

### Part I

#### Utilisation Request – Loans

From: [Company] / [Initial Revolving Facility Borrower]

To: [Agent] as Agent

Dated: [ ]

Dear Sirs

**[●] – Facilities agreement dated [●] 2024 (as amended and/or supplemented from time to time, the *Facilities Agreement*)**

1. We refer to the Facilities Agreement. This is a Utilisation Request. Terms defined in or construed for the purposes of the Facilities Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to borrow a Loan on the following terms:

Borrower:	[●]
Proposed Utilisation Date:	[●] (or, if that is not a Business Day, the next Business Day)
Currency of Loan:	[●]
Facility to be utilised:	[Initial Term Facility] / [Initial Revolving Facility] / [Additional Facility]
Amount: <sup>1</sup>	[●] or, if less, the Available Facility in respect of the [Initial Term Facility] / [Initial Revolving Facility] / [Additional Facility], [in accordance with the applicable Funds Flow Statement].
Interest Period:	[●] [ending on [●]]

3. We confirm that each condition specified in clause 4.2 (*Further conditions precedent*) [or, to the extent applicable, clause 4.3 (*Utilisations during the Certain Funds Period*)] of the Facilities Agreement (in relation to the proposed Loan) is satisfied on the date of this Utilisation Request and on the proposed Utilisation Date.

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<sup>1</sup> WARNING: Please seek Dutch legal advice (i) until the interpretation of the term "public" (as referred to in Article 4.1(1) of the Capital Requirements Regulation (EU/575/2013)) has been published by the competent authority, if the share of a Lender in any utilisation requested by a Dutch Borrower is less than EUR 100,000 (or the foreign currency equivalent thereof) and (ii) as soon as the interpretation of the term "public" has been published by the competent authority, if the Lender is considered to be part of the public on the basis of such interpretation.

4. [The proceeds of this Loan should be credited to *[account]*].
  5. [We authorise you to deduct from the proceeds of the Utilisation of the Initial [Term]/[Revolving] Facility any arrangement fee referred to in clause 17.1 (*Upfront fee*), any agency and security agency fees payable pursuant to clause 17.2 (*Agent and Security Agent fee*), and any costs and expenses payable pursuant to clause 22 (*Costs and Expenses*), in each case on or before the Initial Utilisation Date.]
- 5.1 This Utilisation Request is irrevocable.

Yours faithfully

.....

Authorised Signatory

[•]

## Part II

### Utilisation Request - Letter of Credit

From: [Initial Revolving Facility Borrower] / [Company]

To: [Agent] as Agent

Dated: [ ]

Dear Sirs

**[●] – Facilities Agreement dated [●] 2024 (as amended and/or supplemented from time to time, the *Facilities Agreement*)**

1. We refer to the Facilities Agreement. This is a Utilisation Request. Terms defined in or construed for the purposes of the Facilities Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to arrange for a Letter of Credit to be issued by the Issuing Bank specified below (which has agreed to do so) on the following terms:
  - (a) [Initial Revolving Facility Borrower]/[Company]: [ ]
  - (b) Issuing Bank: [ ]
  - (c) Proposed Utilisation Date: [ ] (or, if that is not a Business Day, the next Business Day)
  - (d) Facility to be utilised: [Initial Revolving Facility]
  - (e) Currency of Letter of Credit: [ ]
  - (f) Amount: [ ] or, if less, the Available Facility in relation to the Initial Revolving Facility
  - (g) Beneficiary: [ ]
  - (h) Term: [ ]
3. We confirm that each condition specified in paragraph (b) of clause 6.5 (*Issue of Letters of Credit*) is satisfied on the date of this Utilisation Request.
4. We attach a copy of the proposed Letter of Credit.
5. The purpose of this proposed Letter of Credit is [ ].
6. This Utilisation Request is irrevocable.
7. [Specific Delivery Instructions].

Yours faithfully

.....  
Authorised Signatory  
[●]

**Part III**

**Selection Notice**

To: [Agent] as Agent

Dated: [ ]

Dear Sirs

**[●] – Facilities agreement dated [●] 2024 (as amended and/or supplemented from time to time, the *Facilities Agreement*)**

1. We refer to the Facilities Agreement. This is a Selection Notice. Terms defined in or construed for the purposes of the Facilities Agreement have the same meaning in this Selection Notice unless given a different meaning in this Selection Notice.
2. We refer to the following [Initial Term Facility] / [Additional Term Facility] Loan with an Interest Period ending on [ ].
3. [We request that the next Interest Period for the above [Initial Term Facility] / [Additional Term Facility] Loan is [ ].]
4. This Selection Notice is irrevocable.

Yours faithfully

.....

Authorised Signatory

[●]

## Schedule 4

### FORM OF TRANSFER CERTIFICATE

To: [ ] as Agent

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

Dated: [ ]

**[●] – Facilities agreement dated [●] 2024 (as amended and/or supplemented from time to time, the *Facilities Agreement*)**

1. We refer to the Facilities Agreement (as defined in the Facilities Agreement). This agreement (the *Agreement*) shall take effect as a Transfer Certificate for the purpose of the Facilities Agreement. Terms defined in or construed for the purpose of the Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to clause 29.5 (*Procedure for transfer*) of the Facilities Agreement, subject to paragraph 29.2(1) of clause 29.2 (*Conditions of Transfers*) of the Facilities Agreement:
  - (a) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation all or part of the Existing Lender's Commitment(s), participation in Utilisations, and rights and obligations referred to in the Schedule in accordance with clause 29.5 (*Procedure for transfer*) of the Facilities Agreement.<sup>2</sup>
  - (b) The Existing Lender hereby absolutely assigns to the New Lender, with effect from the Transfer Date, a portion of the rights held by it (in its capacity as Lender) under or in connection with the Finance Documents (other than the Facilities Agreement) and in respect of the Transaction Security which (in each case) correspond with the rights and obligations under the Facilities Agreement transferred pursuant hereto, and the Existing Lender will be released (with effect from the Transfer Date) from any corresponding obligations by which it is bound in respect of the Transaction Security.
  - (c) The proposed Transfer Date is [ ].
  - (d) The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of clause 37.2 (*Addresses*) of the Facilities Agreement are set out in the Schedule.
3. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph 29.4(c) of clause 29.4 (*Limitation of responsibility of Existing Lenders*) of the Facilities Agreement.
4. The New Lender confirms that it is not a Sponsor Affiliate, a Defaulting Lender, a Conflicted Lender, a Non-Commercial Investor, the Parent or any Group Member.

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<sup>2</sup> WARNING: Please seek Dutch legal advice (i) until competent authority publishes its interpretation of the term "public" (as referred to in Article 4.1(1) of the Capital Requirements Regulation (EU/575/2013)), if any amount lent to a Dutch borrower is to be transferred which is less than EUR 100,000 (or its equivalent) and (ii) as soon as competent authority publishes its interpretation of the term "public", if the Lender is considered to be part of the public on the basis of such interpretation.

5. The New Lender confirms that it is:<sup>3</sup>
- (a) in respect of a Dutch Borrower:
    - (i) [not a Dutch Qualifying Lender;]
    - (ii) [a Dutch Qualifying Lender (other than a Dutch Treaty Lender); or]
    - (iii) [a Dutch Qualifying Lender by virtue of being a Dutch Treaty Lender (on the assumption that all procedural formalities have been completed).]
  - (b) in respect of a UK Borrower:
    - (i) [not a UK Qualifying Lender;]
    - (ii) [a UK Qualifying Lender (other than a UK Treaty Lender); or]
    - (iii) [a UK Qualifying Lender by virtue of being a UK Treaty Lender (on the assumption that all procedural formalities have been completed);]
6. [The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:
- (a) company resident in the United Kingdom for United Kingdom tax purposes;
  - (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>4</sup>
- 6.2 [The New Lender confirms that it holds a passport under the HMRC DTTP Scheme (reference number [•]) and is tax resident in [•], so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax, and requests that the Obligors' Agent notify each Borrower that it wishes the **HMRC DTTP Scheme** to apply to the Agreement.]<sup>5</sup>
7. This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on such counterparts were on a single copy of this Agreement.
8. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by the laws of Hong Kong and has been entered into on the date stated at the beginning

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<sup>3</sup> Delete as applicable. Each New Lender is required to confirm which of these three categories it falls within.

<sup>4</sup> Include if New Lender comes within paragraph (b) of the definition of UK Qualifying Lender.

<sup>5</sup> Include if New Lender holds a passport under the HMRC DTTP Scheme and wishes that scheme to apply to the Agreement.

of this Agreement.

**Note: The execution of this Transfer Certificate may not transfer a proportionate share of the Existing Lender's interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.**



**THE SCHEDULE**

Commitment(s)/participation in Loan(s)/rights and obligations to be transferred

*[insert relevant details]*

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

*[Existing Lender]*

*[New Lender]* By:

By: .....

.....

This Agreement is accepted as a Transfer Certificate for the purposes of the Facilities Agreement by the Agent, and the Transfer Date is confirmed as [ ].

*[Agent]*

By: .....

## Schedule 5

### FORM OF ASSIGNMENT AGREEMENT

To: [ ] as Agent and [ ] and [ ] as Company, for and on behalf of itself, each Obligor and the Parent

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

Dated: [ ]

**[●] – Facilities agreement dated [●] 2024 (as amended and/or supplemented from time to time, the *Facilities Agreement*)**

1. We refer to the Facilities Agreement (as defined in the Facilities Agreement). This is an Assignment Agreement. This agreement (the ***Agreement***) shall take effect as an Assignment Agreement for the purpose of the Facilities Agreement. Terms defined in or construed for the purposes of the Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to clause 29.6 (*Procedure for assignment*) of the Facilities Agreement, subject to paragraph 29.2(1) of clause 29.2 (*Conditions of Transfers*) of the Facilities Agreement:
  - (a) The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Facilities Agreement, the other Finance Documents and in respect of the Transaction Security which correspond to that portion of the Existing Lender's Commitment(s) and participation in the Utilisations under the Facilities Agreement as specified in the Schedule.<sup>6</sup>
  - (b) The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender's Commitment(s) and participation in the Utilisations under the Facilities 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>7</sup>
3. The proposed Transfer Date is [ ].
4. On the Transfer Date the New Lender becomes party to the Facilities Agreement as a Lender and becomes a Lender for the purposes of the other Finance Documents.
5. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of clause 37.2 (*Addresses*) of the Facilities Agreement are set out in the Schedule.

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<sup>6</sup> WARNING: Please seek Dutch legal advice (i) until competent authority publishes its interpretation of the term "public" (as referred to in Article 4.1(1) of the Capital Requirements Regulation (EU/575/2013)), if any amount lent to a Dutch borrower is to be assigned which is less than EUR 100,000 (or its equivalent) and (ii) as soon as competent authority publishes its interpretation of the term "public", if the Lender is considered to be part of the public on the basis of such interpretation.

<sup>7</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. This footnote is not intended to be included in the scheduled form of Assignment Agreement in the signed Facilities Agreement.

6. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph 29.4(c) of clause 29.4 (*Limitation of responsibility of Existing Lenders*) of the Facilities Agreement.
7. The New Lender confirms that it is not a Sponsor Affiliate, a Defaulting Lender, a Conflicted Lender, a Non-Commercial Investor, the Parent or any Group Member.
8. The New Lender confirms that it is:<sup>8</sup>
  - (a) in respect of a Dutch Borrower:
    - (i) [not a Dutch Qualifying Lender;]
    - (ii) [a Dutch Qualifying Lender (other than a Dutch Treaty Lender); or]
    - (iii) [a Dutch Qualifying Lender by virtue of being a Dutch Treaty Lender (on the assumption that all procedural formalities have been completed).]
  - (b) in respect of a UK Borrower:
    - (i) [not a UK Qualifying Lender;]
    - (ii) [a UK Qualifying Lender (other than a UK Treaty Lender); or]
    - (iii) [a UK Qualifying Lender by virtue of being a UK Treaty Lender (on the assumption that all procedural formalities have been completed);]
9. [The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:
  - (a) company resident in the United Kingdom for United Kingdom tax purposes;
  - (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>
10. [The New Lender confirms that it holds a passport under the HMRC DTTP Scheme (reference number [•]) and is tax resident in [•], so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax, and requests that the Obligors' Agent notify

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

<sup>9</sup> Include if New Lender comes within paragraph (b) of the definition of UK Qualifying Lender.

each Borrower that it wishes the **HMRC DTTP Scheme** to apply to the Agreement.]<sup>10</sup>

11. This Agreement acts as notice to the Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 29.8 (*Copy of Transfer Certificate, Assignment Agreement, Increase Confirmation – Cancelled Commitments, Additional Facility Notice or Additional Facility Lender Accession Notice to Company*) of the Facilities Agreement, to the Company (on behalf of itself, each other Obligor and the Parent) of the assignment referred to in this Agreement.
12. This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on such counterparts were on a single copy of this Agreement.
13. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by the laws of Hong Kong.
14. This Agreement has been entered into on the date stated at the beginning of this Agreement.

**Note: The execution of this Assignment Agreement may not transfer a proportionate share of the Existing Lender's interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.**

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<sup>10</sup> Include if New Lender holds a passport under the HMRC DTTP Scheme and wishes that scheme to apply to the Agreement.

**THE SCHEDULE**

**Commitment(s)/participation in Loan(s)/rights and obligations to be transferred by assignment, release and accession**

*[insert relevant details]*

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

[Existing Lender]

[New Lender]

By: .....

By: .....

This Agreement is accepted as an Assignment Agreement for the purposes of the Facilities Agreement by the Agent, and the Transfer Date is confirmed as [ ].

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

[Agent]

By: .....

**Schedule 6**

**FORM OF COMPLIANCE CERTIFICATE**

To: [ ] as Agent

From: [ ]

Dated: [ ]

Dear Sirs

**[●] – Facilities agreement dated [●] 2024 (as amended and/or supplemented from time to time, the *Facilities Agreement*)**

1. We refer to the Facilities Agreement. This is a Compliance Certificate. Terms defined in or construed for the purposes of the Facilities Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
2. We confirm that for the Relevant Period ending on [ ] (the *Specified Relevant Period*):
  - (a) Interest Cover is:[ ]; and
  - (b) the Net Leverage is [ ].
3. We confirm that the Net Leverage is [ ] / [ ] and therefore, the Margin should be [ ] per cent.
4. [We confirm that no Event of Default is continuing.]\*
5. [We confirm that the following companies constitute Material Subsidiaries for the purposes of the Facilities Agreement: [ ].] ^

Signed .....

Authorised Signatory

**Notes:**

^ Only required if delivered with an Annual Financial Statement.

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

## Schedule 7

### TIMETABLES

#### Part I

#### Loans

	Loans in USD	Loans in EUR	Loans in GBP	Loans in other currencies
The Company or a Borrower requests the Agent to approve a currency as an Optional Currency	-	-	-	U-4 11:00 a.m.
Agent notifies the Company if a currency is approved as an Optional Currency in accordance with Clause 4.4 <i>(Conditions relating to Optional Currencies)</i>	-	-	-	U-3 3:00 p.m.
Delivery of a duly completed Utilisation Request (Clause 5.1 <i>(Delivery of a Utilisation Request)</i> )	<i>Utilisations during Certain Funds Period:</i>  U-2 11:00 a.m.  <i>All other Utilisations:</i>  U-3 11:00 a.m.	U-3 11:00 a.m.	U-3 11:00 a.m.	U-3 11:00 a.m.
Delivery of a duly completed Selection Notice (Clause 15.1 <i>(Selection of Interest Periods)</i> )	U-2 11:00 a.m.	U-2 11:00 a.m.	U-2 11:00 a.m.	-
Agent determines (in relation to a Utilisation) the Base Currency Amount of the Loan, if required under Clause 5.4 <i>(Lenders' participation)</i> and notifies the Lenders of applicable Loan in accordance with	U-2 5:00 p.m.	U-2 5:00 p.m.	U-2 5:00 p.m.	U-2 5:00 p.m.

Clause 5.4 ( <i>Lenders' participation</i> )				
Agent receives a notification from a Lender under Clause 8.2 ( <i>Unavailability of a currency</i> )	-	-	-	Quotation Day as of 10:00 a.m.
Agent gives notice in accordance with Clause 8.2 ( <i>Unavailability of a currency</i> )	-			Quotation Day as of 5:50 p.m.
Reference Rate is fixed	Term SOFR: Quotation Day prior to 5:00 p.m. (New York time)	EURIBOR: Quotation Day prior to 5:00 p.m. (New York time)	-	-
Benchmark Rate is fixed for a Loan in an Other Currency	-	-	-	As specified as such in respect of that currency in a Benchmark Schedule

"U" = date of Utilisation or, if applicable, in the case where the applicable Loan that has already been made, the first day of the relevant Interest Period.

"U - X" = X Business Days prior to U.



## Part II

### Letters of Credit

### Letters of Credit

Delivery of a duly completed Utilisation Request (Clause 6.2 (*Delivery of a Utilisation Request for Letters of Credit*))

As agreed with Agent and relevant Issuing Bank

Agent determines (in relation to a Utilisation) the Base Currency Amount of the Letter of Credit if required under paragraph (d) of Clause 6.5 (*Issue of Letters of Credit*) and notifies the Issuing Bank and Lenders of the Letter of Credit in accordance with paragraph (d) of Clause 6.5 (*Issue of Letters of Credit*).

As agreed with Agent and relevant Issuing Bank

Delivery of duly completed Renewal Request (Clause 6.6 (*Renewal of a Letter of Credit*))

As agreed with Agent and relevant Issuing Bank

"U" = date of utilisation, or, if applicable, in the case of a Letter of Credit to be renewed in accordance with Clause 6.6 (*Renewal of a Letter of Credit*), the first day of the proposed term of the renewed Letter of Credit

"U-X" = X Business Days prior to U.

## Schedule 8

### FORM OF INCREASE CONFIRMATION – CANCELLED COMMITMENTS

To: [ ] as Agent and [●] as Company, for and on behalf of itself, each Obligor and the Parent

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

Dated:

**[●] – Facilities agreement dated [●] 2024 (as amended and/or supplemented from time to time, the *Facilities Agreement*)**

1. We refer to the Facilities Agreement. This agreement (the *Agreement*) shall take effect as an Increase Confirmation – Cancelled Commitments for the purpose of the Facilities Agreement. Terms defined in or construed for the purposes of the Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to clause 2.2 (*Increase – Cancelled Commitments*) of the Facilities Agreement.
3. The Increase Lender agrees to assume and will assume all of the obligations corresponding to the Commitment specified in the Schedule (the *Relevant Commitment*) as if it was an Original Lender under the Facilities Agreement.
4. The proposed date on which such assumption in relation to the Increase Lender and the Relevant Commitment is to take effect (the *Increase Date*) is [date].
5. On the Increase Date, the Increase Lender becomes party to the Facilities Agreement as a Lender, and becomes a Lender for the purposes of the each other Finance Document; and
6. The Facility Office and address, email, fax number and attention details for notices to the Increase Lender for the purposes of clause 37.2 (*Addresses*) of the Facilities Agreement are set out in the Schedule.
7. The Increase Lender expressly acknowledges the limitations on the Lenders' obligations referred to in paragraph 2.2(g) of clause 2.2 (*Increase – Cancelled Commitments*) of the Facilities Agreement.
8. The Increase Lender confirms that it is:<sup>11</sup>
  - (a) in respect of a Dutch Borrower:
    - (i) [not a Dutch Qualifying Lender;]
    - (ii) [a Dutch Qualifying Lender (other than a Dutch Treaty Lender); or]
    - (iii) [a Dutch Qualifying Lender by virtue of being a Dutch Treaty Lender (on the assumption that all procedural formalities have been completed).]
  - (b) in respect of a UK Borrower:
    - (i) [not a UK Qualifying Lender;]

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<sup>11</sup> Delete as applicable. Each Increase Lender is required to confirm which of these three categories it falls within.

- (ii) [a UK Qualifying Lender (other than a UK Treaty Lender); or]
  - (iii) [a UK Qualifying Lender by virtue of being a UK Treaty Lender (on the assumption that all procedural formalities have been completed);]
- 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) 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>12</sup>
- 10. [The Increase Lender confirms that it holds a passport under the HMRC DTTP Scheme (reference number [•]) and is tax resident in [•], so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax, and requests that the Obligor's Agent notify each Borrower that it wishes the *HMRC DTTP Scheme* to apply to the Agreement.]<sup>13</sup>
- 11. The Increase Lender confirms that it is not a Sponsor Affiliate.
- 12. This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on such counterparts were on a single copy of this Agreement.
- 13. This Agreement is governed by the laws of Hong Kong and has been entered into on the date stated at the beginning of this Agreement.

**Note: The execution of this Increase Confirmation – Cancelled Commitments 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>12</sup> Include if Increase Lender comes within paragraph (b) of the definition of UK Qualifying Lender.

<sup>13</sup> Include if Increase Lender holds a passport under the HMRC DTTP Scheme and wishes that scheme to apply to the Agreement.

## SCHEDULE

### **Relevant Commitment/rights and obligations to be assumed by the Increase Lender**

*[Insert relevant details (including the Facility to which the Relevant Commitment relates)] [Facility office address, email, fax number and attention details for notices and account details for payments]*

*[Increase Lender]*

By:

This Agreement is accepted as an Increase Confirmation – Cancelled Commitments for the purposes of the Facilities Agreement by the Agent, and the Increase Date is confirmed as *[date]*.

Agent

By:

**Schedule 9**

**FORMS OF NOTIFIABLE DEBT PURCHASE TRANSACTION NOTICE**

**Part I**

**Form of Notice of entering into Notifiable Debt Purchase Transaction**

To: [ ] as Agent

From: [*The Lender*]

Dated:

[●] – **Facilities agreement dated [●] 2024 (as amended and/or supplemented from time to time, the *Facilities Agreement*)**

1. We refer to paragraph 30.2(b) of clause 30.2 (*Debt Purchase Transactions by Sponsor Affiliates*) of the Facilities Agreement. Terms defined in or construed for the purposes of the Facilities Agreement have the same meaning in this notice unless given a different meaning in this notice.
2. We have entered into a Notifiable Debt Purchase Transaction.
3. The Notifiable Debt Purchase Transaction referred to in paragraph 2 above relates to the amount of our Commitment(s) as set out below.

<b>Commitment</b>	<b>Amount of our Commitment to which Notifiable Debt Purchase Transaction relates (US\$)</b>
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Commitment in respect of [ <i>insert amount (of that Commitment) to which the relevant Debt [identify Facility]</i> ]	<i>to which the relevant Debt Purchase Transaction applies</i>
---	--

[*Lender*]

By: .....

**Part II**

**Form of Notice of Termination of Notifiable Debt Purchase Transaction**

To: [ ] as Agent

From: *[The Lender]*

Dated:

**[●] – Facilities agreement dated [●] 2024 (as amended and/or supplemented from time to time, the *Facilities Agreement*)**

1. We refer to paragraph 30.2(c) of clause 30.2 (*Debt Purchase Transactions by Sponsor Affiliates*) of the Facilities Agreement. Terms defined in or construed for the purposes of the Facilities Agreement have the same meaning in this notice unless given a different meaning in this notice.
2. A Notifiable Debt Purchase Transaction which we entered into and which we notified you of in a notice dated [ ] has [terminated]/[ceased to be with a Sponsor Affiliate].
3. The Notifiable Debt Purchase Transaction referred to in paragraph 2 above relates to the amount of our Commitment(s) as set out below.

<b>Commitment</b>	<b>Amount of our Commitment to which Notifiable Debt Purchase Transaction relates (US\$)</b>
Commitment in respect of <i>[identify Facility]</i>	<i>[insert amount (of that Commitment) to which the relevant Debt Purchase Transaction applies]</i>

*[Lender]*

By: .....

## Schedule 10

### FORM OF CONFIDENTIALITY UNDERTAKING

[*Letterhead of seller*]

To: [name of potential purchaser]

Date: [●]

Company: [●]

Agent: [●]

Transaction: Acquisition by [ ] of shares in [ ] (the *Transaction*)

Dear Sirs

[●] – Facilities agreement dated [●] 2024 (as amended and/or supplemented from time to time, the *Facilities Agreement*)

We understand that you are considering acquiring an interest in the [*Facility*] under the Facilities Agreement in respect of the Transaction. In consideration of us agreeing to make available to you certain information, by your signature of a copy of this letter you agree as follows:

#### 1. Confidentiality Undertaking

You undertake:

- (a) to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by paragraph 2 below and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to your own confidential information;
- (b) to keep confidential and not disclose to anyone the fact that the Confidential Information has been made available or that discussions or negotiations are taking place or have taken place between us in connection with any Facility and/or the Transaction except as provided for by paragraph 2 below;
- (c) to use the Confidential Information only for the Permitted Purpose;
- (d) to use all reasonable endeavours to ensure that any person to whom you pass any Confidential Information (unless disclosed under paragraph 2(b) below) acknowledges and complies with the provisions of this letter as if that person were also a party to it and you undertake to be responsible for any breach of this agreement by such person; and
- (e) not to make enquiries of any member of the Group or any of their officers, directors, employees or professional advisers relating directly or indirectly to any Facility and/or the Transaction
- (f) until the Acquisition is completed to use the Confidential Information only for the

Permitted Purpose.

2. **Permitted Disclosure**

We agree that you may disclose Confidential Information:

- (a) to members of the Participant Group and their officers, directors, employees and professional advisers to the extent necessary for the Permitted Purpose and to any auditors of members of the Participant Group; and
- (b) where requested or required by any court of competent jurisdiction or any competent judicial, governmental, supervisory or regulatory body, (ii) where required by the rules of any stock exchange on which the shares or other securities of any member of the Participant Group are listed or (iii) where required by the laws or regulations of any country with jurisdiction over the affairs of any member of the Participant Group that has received Confidential Information under the terms of this letter.

3. **Notification of Disclosure**

You agree (to the extent permitted by law and except where disclosure is to be made to any supervisory or regulatory body during the normal course of its supervisory function over you) to inform us and the Company of the full circumstances of any disclosure under paragraph 2(b) upon or as soon as reasonably practicable after becoming aware that Confidential Information has been disclosed in breach of this letter.

4. **Return of Copies**

If we so request in writing, you shall return all Confidential Information supplied to you by us and destroy or permanently erase (to the extent technically practicable) all copies of Confidential Information made by you and use all reasonable endeavours to ensure that anyone to whom you have supplied any Confidential Information destroys or permanently erases (to the extent technically practicable) such Confidential Information and any copies made by them, in each case save to the extent that you or the recipients are required to retain any such Confidential Information by any applicable law, rule or regulation or by any competent judicial, governmental, supervisory or regulatory body or in accordance with internal policy or where the Confidential Information has been disclosed under paragraph 2(b) above.

5. **Continuing Obligations**

The obligations in this letter are continuing and, in particular, shall survive the termination of any discussions or negotiations between you and us. Notwithstanding the previous sentence, the obligations in this letter shall cease on the earlier of (a) the date you become a party to the [Facility] and (b) 12 months after you have returned all Confidential Information supplied to you by us and destroyed or permanently erased (to the extent technically practicable) all copies of Confidential Information made by you (other than any such Confidential Information or copies which have been disclosed under paragraph 2 above (other than paragraph 2(a)) or which, pursuant to paragraph 4 above, are not required to be returned or destroyed).

6. **No representation; consequences of breach, etc.**

You acknowledge and agree that:

- (a) neither we, nor any Group Member nor any of our or their respective officers, employees or advisers (each a *Relevant Person*) (i) make any representation or warranty, express or implied, as to, or assume any responsibility for, the accuracy,



reliability or completeness of any of the Confidential Information or any other information supplied by us or the assumptions on which it is based or (ii) shall be under any obligation to update or correct any inaccuracy in the Confidential Information or any other information supplied by us or be otherwise liable to you or any other person in respect of the Confidential Information or any such information; and

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

**7. Entire Agreement: no waiver, amendments, etc.**

Except as set out in paragraph 12, this letter sets out the full extent of your obligations of confidentiality owed to us in relation to the information the subject of this letter and supersedes any prior agreement or understanding (oral or in writing) relating to the information the subject of this letter. No failure or delay in exercising any right, power or privilege under this letter will operate as a waiver thereof nor will any single or partial exercise of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privileges under this letter. The terms of this letter and your obligations under this letter may only be amended or modified by written agreement between us.

**8. Inside Information**

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

**9. Nature of Undertakings**

The undertakings given by you under this letter are given to us and are also given for the benefit of the Obligors and each other Group Member.

**10. Third Party Rights**

- 10.1 Subject to this paragraph 10 and to paragraphs 6 and 9, a person who is not a party to this letter has no right under the Contracts (Rights of Third Parties) Ordinance (the *Third Parties Ordinance*) to enforce or to enjoy the benefit of any term of this letter.
- 10.2 The Relevant Persons may enjoy the benefit of the terms of paragraphs 6 and 9 subject to and in accordance with this paragraph 10 and the provisions of the Third Parties Ordinance.
- 10.3 Notwithstanding any provisions of this letter, the parties to this letter do not require the consent of any Relevant Person to rescind or vary this letter at any time.
- 10.4 The parties to this letter acknowledge and agree that the consent of the Company is required for any material amendment, waiver, variation, restatement or supplement of this letter.

**11. Governing law and jurisdiction**

- 11.1 This letter is governed by Hong Kong law.
- 11.2 The courts of Hong Kong have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Letter.

## 12. Definitions

In this letter (including the acknowledgement set out below) terms defined in the Facilities Agreement shall, unless the context otherwise requires, have the same meaning and:

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

- (a) is or becomes public information other than as a direct or indirect result of any breach by you of this letter; or
- (b) is identified in writing at the time of delivery as non-confidential by us or our advisers; or
- (c) is known by you before the date the information is disclosed to you by us or any of our affiliates or advisers or is lawfully obtained by you after that date, from a source which is, as far as you are aware, unconnected with the Group and which, in either case, as far as you are aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

**Group** means the Company and each of its holding companies and subsidiaries and each subsidiary of each of its holding companies (as each such term is defined in the Companies Act 2006);

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

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

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

Yours faithfully

.....

For and on behalf of

[*Seller*]

To: [*Seller*]

The Company and each other Group Member

We acknowledge and agree to the above:

.....

For and on behalf of

[*Potential Purchaser*]

## **Schedule 11**

### **APPROVED BANKS**

1. Allied Irish
2. AN Post
3. Atom Bank
4. Australia and New Zealand Bank
5. Bank Australia
6. Bank of America
7. Bank of Ireland
8. Bank of Melbourne
9. Bank of Montreal
10. Bank of Scotland
11. Bank of China (Europe)
12. Barclays Bank
13. BNP Paribas
14. BNYM
15. Capital One
16. Cathay United Bank Co., Ltd.
17. Chase Bank
18. Citibank
19. Clydesdale Bank
20. Commonwealth Bank of Australia
21. Crédit Agricole
22. Danske Bank / Northern Bank
23. DBS Bank Ltd.
24. Dell Bank
25. Deutsche Bank
26. EBS

27. Fifth Third
28. First Direct
29. Halifax
30. HSBC
31. ING
32. JP Morgan
33. KBC Bank Ireland
34. Lloyds
35. Macquarie Bank
36. Metro Bank
37. Morgan Stanley
38. National Australia Bank
39. Nationwide
40. Natixis
41. NatWest
42. Permanent TSB
43. PNC
44. Rabobank
45. Reserve Bank of Australia
46. Revolut
47. Santander / Banco Santander
48. Société Générale
49. Standard Chartered Bank
50. State Street
51. Suncorp
52. TD Bank
53. The Co-operative Bank
54. Truist

55. TSB Bank
56. Ulster Bank
57. UOB
58. Virgin Money
59. Wells Fargo
60. Westpac
61. Whitney Hancock

and any Affiliate of any of the foregoing.

## Schedule 12

### FORM OF HEDGING ACCESSION LETTER

To: [●] as Agent

Copy: [●] as Security Agent

From: [*Proposed Hedge Counterparty*]

Dated:

Dear Sirs

**[●] – Facilities agreement dated [●] 2024 (as amended and/or supplemented from time to time, the *Facilities Agreement*)**

1. We refer to the Facilities Agreement. This is a Hedging Accession Letter. Terms defined in the Facilities Agreement have the same meaning in this Hedging Accession Letter unless given a different meaning in this Hedging Accession Letter.
2. [*Proposed Hedge Counterparty*] agrees to become a Hedge Counterparty and to be bound by the terms of the Facilities Agreement as a Hedge Counterparty.
3. [*Proposed Hedge Counterparty*] confirms that it is a Lender or an Affiliate of a Lender.
4. [*Proposed Hedge Counterparty*'s] administrative details are as follows:

Address:

Fax No:

Attention:

5. [Details of the Hedging Agreement are as follows:

Date:

Parties: [*Proposed Hedge Counterparty*] and the Company

Terms: [*Insert brief summary of type of contract*].]

6. This Hedging Accession Letter and any non-contractual obligations arising out of or in connection with it are governed by [●] law.

[*Proposed Hedge Counterparty*]

This Hedging Accession Letter is accepted by the Agent.

[*Agent*]

## Schedule 13

### HEDGING PROVISIONS

#### 1. Definitions

In this Schedule:

**1992 ISDA Master Agreement** means the Master Agreement (Multicurrency - Cross Border) as published by the International Swaps and Derivatives Association, Inc.

**2002 ISDA Master Agreement** means the 2002 Master Agreement as published by the International Swaps and Derivatives Association, Inc.

**Automatic Early Termination** means the termination or close-out of any hedging transaction prior to the maturity of that hedging transaction which is brought about automatically by the terms of the relevant Hedging Agreement and without any party to the relevant Hedging Agreement taking any action to terminate that hedging transaction.

**Close-Out Netting** means:

- (a) in respect of a Hedging Agreement based on a 1992 ISDA Master Agreement, any step involved in determining the amount payable in respect of an Early Termination Date (as defined in the 1992 ISDA Master Agreement) under section 6(e) (*Payments on Early Termination*) of the 1992 ISDA Master Agreement before the application of any subsequent Set-off (as defined in the 1992 ISDA Master Agreement); and
- (b) in respect of a Hedging Agreement based on a 2002 ISDA Master Agreement, any step involved in determining an Early Termination Amount (as defined in the 2002 ISDA Master Agreement) under section 6(e) (*Payments on Early Termination*) of the 2002 ISDA Master Agreement,

in each case in respect of Hedging Liabilities only.

**Credit Related Close-Out** means any Permitted Hedge Close-Out which is not a Non-Credit Related Close-Out.

**Debtors** means the Parent and each Obligor.

**Distress Event** means any of:

- (a) an Acceleration Event; or
- (b) the enforcement of any Transaction Security.

**Enforcement Action** means:

- (a) the acceleration of any Hedging Liabilities or the making of any declaration that any Hedging Liabilities are prematurely due and payable;
- (b) the making of any declaration that any Hedging Liabilities are payable on demand;
- (c) the making of a demand in relation to a Hedging Liability that is payable on demand;
- (d) the exercise of any right to require the relevant Debtor to acquire any Hedging Liability;



- (e) the exercise of any right of set-off, account combination or payment netting against the relevant Debtor in respect of any Hedging Liabilities other than the exercise of any such right:
  - (i) as Close-Out Netting by a Hedge Counterparty;
  - (ii) as Payment Netting by a Hedge Counterparty;
  - (iii) as Inter-Hedging Agreement Netting by a Hedge Counterparty; or
  - (iv) which is otherwise expressly permitted under this Agreement to the extent that the exercise of that right gives effect to a Permitted Hedge Payment;
- (f) the suing for, commencing or joining of any legal or arbitration proceedings against the relevant Debtor to recover any Hedging Liabilities;
- (g) the premature termination or close-out of any hedging transaction under any Hedging Agreement (other than pursuant to a Permitted Automatic Early Termination);
- (h) the taking of any steps to enforce or require the enforcement of any Transaction Security (including the crystallisation of any floating charge forming part of the Transaction Security);
- (i) the entering into of any composition, compromise, assignment or arrangement with the relevant Debtor; or
- (j) the petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, administrator or similar officer) in relation to, the winding up, dissolution, administration or reorganisation of the relevant Debtor, or the relevant Debtor's assets or any suspension of payments or moratorium of any indebtedness of the relevant Debtor, or any analogous procedure or step in any jurisdiction,

except that the following shall not constitute Enforcement Action:

- (i) the taking of any action falling within paragraphs (f) or (j) above which is necessary (but only to the extent necessary) to preserve the validity, existence or priority of claims in respect of Hedging Liabilities, including the registration of such claims before any court or governmental authority and the bringing, supporting or joining of proceedings to prevent any loss of the right to bring, support or join proceedings by reason of applicable limitation periods; and
- (ii) bringing legal proceedings against any person solely for the purpose of:
- (iii) obtaining injunctive relief (or any analogous remedy outside [●]) to restrain any actual or putative breach of any Finance Document to which it is party;
- (iv) obtaining specific performance (other than specific performance of an obligation to make a payment) with no claim for damages;
- (v) requesting judicial interpretation of any provision of any Finance Document to which it is party with no claim for damages.

***Exchange Rate Hedge Excess*** means the amount by which the Total Exchange Rate Hedging

exceeds the Term Outstandings.

**Exchange Rate Hedging** means, in relation to a Hedge Counterparty at any time, the aggregate of the notional amounts (denominated in US\$) of any exchange rate hedging transactions which are, at that time, in effect under a Hedging Agreement to which that Hedge Counterparty and an Obligor are party.

**Exchange Rate Hedging Proportion** means, in relation to a Hedge Counterparty and that Hedge Counterparty's Exchange Rate Hedging, the proportion (expressed as a percentage) borne by that Hedge Counterparty's Exchange Rate Hedging to the Total Exchange Rate Hedging.

**Hedging Force Majeure** means:

- (a) in relation to a Hedging Agreement which is based on the 1992 ISDA Master Agreement:
  - (i) an Illegality or Tax Event or Tax Event Upon Merger (each as defined in the 1992 ISDA Master Agreement); or
  - (ii) an event similar in meaning and effect to a **Force Majeure Event** (as referred to in paragraph (b) below); or
- (b) in relation to a Hedging Agreement which is based on the 2002 ISDA Master Agreement, an Illegality or Tax Event, Tax Event Upon Merger or a Force Majeure Event (each as defined in the 2002 ISDA Master Agreement).

**Hedging Liabilities** means the Liabilities owed by any Debtor to the Hedge Counterparties under or in connection with the Hedging Agreements.

**Insolvency Event** means, in relation to the relevant Debtor, any corporate action, legal proceedings or other formal procedure or formal step (including filing of any application) is taken in relation to:

- (a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, any insolvency resolution process, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the relevant Debtor;
- (b) a composition, compromise, assignment or arrangement by the relevant Debtor with its creditors; or
- (c) the appointment of a liquidator, insolvency resolution professional, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the relevant Debtor or any of their respective material assets; or
- (d) any analogous proceedings in any jurisdiction,

excluding any corporate action, legal proceedings or other procedure which is frivolous or vexatious, or is being contested in good faith, and (in each case) is discharged, stayed or dismissed within 20 Business Days of commencement.

**Inter-Hedging Agreement Netting** means the exercise of any right of set-off, account combination, close-out netting or payment netting (whether arising out of a cross agreement netting agreement or otherwise) by a Hedge Counterparty against liabilities owed to an Obligor

by that Hedge Counterparty under a Hedging Agreement in respect of Hedging Liabilities owed to that Hedge Counterparty by that Obligor in respect of Hedging Liabilities only under another Hedging Agreement.

**Interest Rate Hedge Excess** means the amount by which the Total Interest Rate Hedging exceeds the Term Outstandings.

**Interest Rate Hedging** means, in relation to a Hedge Counterparty at any time, the aggregate of the notional amounts of any interest rate hedging transactions which are, at that time, in effect under a Hedging Agreement to which that Hedge Counterparty and an Obligor are party.

**Interest Rate Hedging Proportion** means, in relation to a Hedge Counterparty and that Hedge Counterparty's Interest Rate Hedging, the proportion (expressed as a percentage) borne by that Hedge Counterparty's Interest Rate Hedging to the Total Interest Rate Hedging.

**ISDA Master Agreement** means a 1992 ISDA Master Agreement or a 2002 ISDA Master Agreement.

**Liabilities Acquisition** means, in relation to a person and to any Liabilities, a transaction where that person:

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

the rights in respect of those Liabilities.

**Majority Senior Creditors** means, at any time, those Senior Creditors whose Senior Credit Participations at that time aggregate more than 50.10 per cent. of the total Senior Credit Participations at that time.

**Mandatory Prepayment** means a mandatory prepayment of any of the Senior Facility Liabilities pursuant to paragraph (c) of Clause 11.1 (*Illegality*) or Clause 12 (*Mandatory Prepayment*) (or otherwise made pursuant to any other provision requiring a mandatory prepayment).

**Non-Credit Related Close-Out** means a Permitted Hedge Close-Out described in any of paragraphs (a)(i), (a)(ii) or (a)(iii) of paragraph 3.9 (*Permitted Enforcement: Hedge Counterparties*).

**Payment** means, in respect of any Liabilities (or any other liabilities or obligations), a payment, prepayment, repayment, redemption, defeasance or discharge of those Liabilities (or other liabilities or obligations).

**Payment Netting** means netting under section 2(c) of the relevant ISDA Master Agreement in respect of Hedging Liabilities only.

**Permitted Automatic Early Termination** means an Automatic Early Termination of a hedging transaction under a Hedging Agreement, the provision of which is permitted under Clause 3.12 (*Terms of Hedging Agreements*).

**Permitted Hedge Close-Out** means, in relation to a hedging transaction under a Hedging

Agreement, a termination or close-out of that hedging transaction which is permitted pursuant to paragraph 3.9 (*Permitted Enforcement: Hedge Counterparties*).

***Permitted Hedge Payments*** means the Payments permitted by paragraph 3.3 (*Permitted Payments: Hedging Liabilities*).

***Senior Credit Participation*** means, in relation to a Lender or a Hedge Counterparty, the aggregate of:

- (a) its aggregate Commitments, if any;
- (b) in respect of any hedging transaction of that Hedge Counterparty under any Hedging Agreement that has, as of the date the calculation is made, been terminated or closed out in accordance with the terms of this Agreement, the amount, if any, payable to it under any Hedging Agreement in respect of that termination or close-out as of the date of termination or close-out (and before taking into account any interest accrued on that amount since the date of termination or close-out) to the extent that amount is unpaid (that amount to be certified by the relevant Hedge Counterparty and as calculated in accordance with the relevant Hedging Agreement); and
- (c) after the Senior Facilities Discharge Date only, in respect of any hedging transaction of that Hedge Counterparty under any Hedging Agreement that has, as of the date the calculation is made, not been terminated or closed out, the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction, if the time and date on which the calculation is made was deemed to be 11:00 a.m. (London time) on an Early Termination Date (as defined in the relevant ISDA Master Agreement) for which the relevant Obligor is the Defaulting Party (as defined in the relevant ISDA Master Agreement), that amount to be certified by the relevant Hedge Counterparty and as calculated in accordance with the relevant Hedging Agreement.

***Senior Creditors*** means the Senior Facility Creditors and the Hedge Counterparties.

***Senior Facilities Discharge Date*** means the first date on which:

- (a) all Senior Facility Liabilities have been fully and finally discharged, whether or not as the result of an enforcement; and
- (b) the Senior Facility Creditors are under no further obligation to provide financial accommodation to the Obligors under any of the Finance Documents.

***Senior Facility Creditors*** means each Lender and the Arranger.

***Senior Facility Liabilities*** means the Liabilities owed by the Debtors to the Senior Facility Creditors under or in connection with the Finance Documents.

***Term Outstandings*** means, at any time, the aggregate of the principal amount of the Loans then outstanding under the Facilities.

***Total Exchange Rate Hedging*** means, at any time, the aggregate of each Hedge Counterparty's Exchange Rate Hedging at that time.

***Total Interest Rate Hedging*** means, at any time, the aggregate of each Hedge Counterparty's Interest Rate Hedging at that time.

## 2. **Ranking and priority**

- (a) Each of the Parties agrees that the Liabilities owed by the Debtors to the Senior Creditors shall rank in right and priority of payment *pari passu* and without any preference between the Senior Facility Liabilities and the Hedging Liabilities.
- (b) Each of the Parties agrees that the Transaction Security shall rank and secure the Senior Facility Liabilities and the Hedging Liabilities *pari passu* and without any preference between them.

### 3. Hedge Counterparties and Hedging Liabilities

#### 3.1 Identity of Hedge Counterparties

No entity providing hedging arrangements to an Obligor shall be entitled to share in any of the Transaction Security unless that entity is or becomes a Party as a Hedge Counterparty (and for the avoidance of doubt, such entity shall remain a Hedge Counterparty notwithstanding that (if applicable) such entity (or an Affiliate of that entity) ceases to be a Lender in accordance with this Agreement and such entity shall not terminate or close-out of any Interest Rate Hedging or any other hedging transaction as a result of that entity ceasing (or an Affiliate of that entity ceasing) to be a Lender).

#### 3.2 Restriction on Payment: Hedging Liabilities

The Company shall not, and shall procure that no other Group Member will, make any Payment of the Hedging Liabilities at any time unless:

- (a) that Payment is permitted under paragraph 3.3 (*Permitted Payments: Hedging Liabilities*); or
- (b) the taking or receipt of that Payment is permitted under sub-paragraph (c) of paragraph 3.9 (*Permitted Enforcement: Hedge Counterparties*)

#### 3.3 Permitted Payments: Hedging Liabilities

(a) Subject to paragraph (b) below, an Obligor may make Payments to any Hedge Counterparty in respect of the Hedging Liabilities then due to that Hedge Counterparty under any Hedging Agreement in accordance with the terms of that Hedging Agreement:

- (i) if the Payment is a scheduled Payment arising under the relevant Hedging Agreement;
- (ii) to the extent that the Obligor's obligation to make the Payment arises as a result of the operation of:
  - (A) any of sections 2(d) (*Deduction or Withholding for Tax*), 2(e) (*Default Interest; Other Amounts*), 8(a) (*Payment in the Contractual Currency*), 8(b) (*Judgments*) and 11 (*Expenses*) of the 1992 ISDA Master Agreement (if the Hedging Agreement is based on a 1992 ISDA Master Agreement); or
  - (B) any of sections 2(d) (*Deduction or Withholding for Tax*), 8(a) (*Payment in the Contractual Currency*), 8(b) (*Judgments*), 9(h)(i) (*Prior to Early Termination*) and 11 (*Expenses*) of the 2002 ISDA Master Agreement (if the Hedging Agreement is based on a 2002 ISDA Master Agreement);

- (iii) to the extent that the Obligor's obligation to make the Payment arises from a Non-Credit Related Close-Out;
  - (iv) to the extent that:
    - (A) the Obligor's obligation to make the Payment arises from:
      - (1) a Credit Related Close-Out in relation to that Hedging Agreement; or
      - (2) a Permitted Automatic Early Termination under that Hedging Agreement which arises as a result of an event relating to a Debtor; and
    - (B) no Default is continuing at the time of that Payment or would result from that Payment; or
  - (v) to the extent that no Default is continuing or would result from that Payment and the Obligor's obligation to make the Payment arises as a result of a close-out or termination arising as a result of:
    - (A) section 5(a)(vii) (*Bankruptcy*) of the 1992 ISDA Master Agreement (if the relevant Hedging Agreement is based on a 1992 ISDA Master Agreement) and the Event of Default (as defined in the relevant Hedging Agreement) has occurred with respect to the relevant Hedge Counterparty;
    - (B) section 5(a)(vii) (*Bankruptcy*) of the 2002 ISDA Master Agreement (if the relevant Hedging Agreement is based on a 2002 ISDA Master Agreement) and the Event of Default (as defined in the relevant Hedging Agreement) has occurred with respect to the relevant Hedge Counterparty; or
    - (C) the Obligor terminating or closing-out the relevant Hedging Agreement as a result of a Hedging Force Majeure and the Termination Event (as defined in the relevant Hedging Agreement) has occurred with respect to the relevant Hedge Counterparty; or
  - (vi) if the Majority Senior Creditors give prior consent to the Payment being made.
- (b) No Payment may be made to a Hedge Counterparty under paragraph (a) above if any scheduled Payment due from that Hedge Counterparty to the relevant Obligor under a Hedging Agreement to which they are both party is due and unpaid unless the prior consent of the Majority Senior Creditors is obtained.
  - (c) Failure by the relevant Obligor to make a Payment to a Hedge Counterparty which results solely from the operation of paragraph (b) above shall, without prejudice to paragraph 3.4 (*Payment obligations continue*), not result in a default (however described) in respect of the Obligor under that Hedging Agreement.

### 3.4 **Payment obligations continue**

An Obligor shall not be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Finance Document by the operation of paragraphs 3.2 (*Restriction on Payment: Hedging Liabilities*) and 3.3 (*Permitted Payments:*

*Hedging Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of those paragraphs.

### 3.5 **No acquisition of Hedging Liabilities**

The Debtors shall not, and shall procure that no other Group Member will:

- (a) enter into any Liabilities Acquisition; or
- (b) beneficially own all or any part of the share capital of a company that is party to a Liabilities Acquisition,

in respect of any of the Hedging Liabilities unless the prior consent of the Majority Senior Creditors is obtained.

### 3.6 **Amendments and Waivers: Hedging Agreements**

- (a) Subject to paragraph (b) below, the Hedge Counterparties may not, at any time, amend or waive any term of the Hedging Agreements.
- (b) A Hedge Counterparty and the relevant Obligor may amend or waive any term of a Hedging Agreement in accordance with the terms of that Hedging Agreement if that amendment or waiver does not breach another term of this Agreement.

### 3.7 **Security: Hedge Counterparties**

The Hedge Counterparties may not take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss from the Parent or any Group Member in respect of the Hedging Liabilities other than:

- (a) the Transaction Security;
- (b) the guarantee provided under Clause 23 (*Guarantee and indemnity*) of this Agreement; and
- (c) the indemnities contained in the ISDA Master Agreements.

### 3.8 **Restriction on Enforcement: Hedge Counterparties**

Subject to paragraph 3.9 (*Permitted Enforcement: Hedge Counterparties*) and paragraph 3.10 (*Required Enforcement: Hedge Counterparties*) and without prejudice to each Hedge Counterparty's rights under paragraphs 7.1 (*Enforcement Instructions*) and 7.2 (*Manner of enforcement*), the Hedge Counterparties shall not take any Enforcement Action in respect of any of the Hedging Liabilities or any of the hedging transactions under any of the Hedging Agreements at any time.

### 3.9 **Permitted Enforcement: Hedge Counterparties**

- (a) To the extent it is able to do so under the relevant Hedging Agreement, a Hedge Counterparty may terminate or close-out in whole or in part any hedging transaction under that Hedging Agreement prior to its stated maturity:

*Non-Credit Related Close-Outs*

- (i) if a Hedging Force Majeure has occurred in respect of that Hedging Agreement;

- (ii) if a Tax Event has occurred under section 5(b)(iii) of that Hedging Agreement;
- (iii) to the extent necessary to comply with sub-paragraph 3.13(c) of paragraph 3.13 (*Total Interest Rate Hedging and Total Exchange Rate Hedging*) and paragraph 12 (*Adjustment of Mandatory Prepayments*);

*Credit Related Close-Outs*

- (i) if a Distress Event has occurred;
  - (ii) if an Event of Default has occurred under Clause 28.6 (*Insolvency*) or Clause 28.7 (*Insolvency proceedings*) in relation to the Obligor;
  - (iii) if the Majority Senior Creditors give prior consent to that termination or close-out being made; or
  - (iv) on or immediately following a refinancing (or repayment) and cancellation in full of the Senior Facility Liabilities.
- (b) If the relevant Obligor has defaulted on any Payment due under a Hedging Agreement (after allowing any applicable notice or grace periods) and the default has continued unwaived for more than 21 days after notice of that default has been given to the Agent pursuant to paragraph 8 (*Notification of prescribed events*) of this Schedule, the relevant Hedge Counterparty:
- (i) may, to the extent it is able to do so under the relevant Hedging Agreement, terminate or close-out in whole or in part any hedging transaction under that Hedging Agreement; and
  - (ii) until such time as the Agent or the Security Agent has given notice to that Hedge Counterparty that the Transaction Security is being enforced (or that any formal steps are being taken to enforce the Transaction Security), shall be entitled to exercise any right it might otherwise have to sue for, commence or join legal or arbitration proceedings against any Debtor to recover any Hedging Liabilities due under that Hedging Agreement.
- (c) After the occurrence of an Insolvency Event in relation to the relevant Obligor, each Hedge Counterparty shall be entitled to exercise any right it may otherwise have in respect of the Obligor to:
- (i) prematurely close-out or terminate any Hedging Liabilities of the Obligor;
  - (ii) make a demand under any guarantee, indemnity or other assurance against loss given by the Obligor in respect of any Hedging Liabilities;
  - (iii) exercise any right of set-off or take or receive any Payment in respect of any Hedging Liabilities of the Obligor; or
  - (iv) claim and prove in any insolvency process of the Obligor for the Hedging Liabilities owing to it.

**3.10 Required Enforcement: Hedge Counterparties**

- (a) Subject to paragraph (b) below, a Hedge Counterparty shall promptly terminate or close-out in full any hedging transaction under all or any of the Hedging Agreements



to which it is party prior to their stated maturity, following:

- (i) the occurrence of an Acceleration Event and delivery to it of a notice from the Agent that that Acceleration Event has occurred; and
  - (ii) delivery to it of a subsequent notice from the Agent (acting on the instructions of the Majority Senior Creditors) instructing it to do so.
- (b) Paragraph (a) above shall not apply to the extent that that Acceleration Event occurred as a result of an arrangement made between the relevant Obligor and any Senior Creditor with the purpose of bringing about that Acceleration Event.
- (c) If a Hedge Counterparty is entitled to terminate or close-out any hedging transaction under sub-paragraph (b) of paragraph 3.9 (*Permitted Enforcement: Hedge Counterparties*) (or would have been able to if that Hedge Counterparty had given the notice referred to in that paragraph) but has not terminated or closed out each such hedging transaction, that Hedge Counterparty shall promptly terminate or close-out in full each such hedging transaction following a request to do so by the Agent (acting on the instructions of the Majority Senior Creditors).

### 3.11 Treatment of Payments due to Obligors on termination of hedging transactions

- (a) If, on termination of any hedging transaction under any Hedging Agreement occurring after a Distress Event, a settlement amount or other amount (following the application of any Close-Out Netting, Payment Netting or Inter-Hedging Agreement Netting in respect of that Hedging Agreement) falls due from a Hedge Counterparty to the Obligor then that amount shall be paid by that Hedge Counterparty to the Agent, treated as the proceeds of enforcement of the Transaction Security and applied in accordance with the terms of this Agreement.
- (b) The payment of that amount by the Hedge Counterparty to the Agent in accordance with paragraph (a) above shall discharge the Hedge Counterparty's obligation to pay that amount to that Obligor.

### 3.12 Terms of Hedging Agreements

The Hedge Counterparties (to the extent party to the Hedging Agreement in question) and each applicable Obligor shall ensure that, at all times:

- (a) each Hedging Agreement documents only hedging arrangements entered into for the purpose of hedging the types of liabilities described in the definition of **Hedging Agreement** and that no other hedging arrangements are carried out under or pursuant to a Hedging Agreement;
- (b) each Hedging Agreement is based on an ISDA Master Agreement;
- (c) in the event of a termination of the hedging transaction entered into under a Hedging Agreement, whether as a result of a Termination Event or an Event of Default, each as defined in the relevant Hedging Agreement (in the case of a Hedging Agreement which is based on an ISDA Master Agreement) that Hedging Agreement will:
  - (i) if it is based on a 1992 ISDA Master Agreement, provide for payments under the **Second Method** and will make no material amendment to section 6(e) (*Payments on Early Termination*) of the ISDA Master Agreement; or

- (ii) if it is based on a 2002 ISDA Master Agreement, make no material amendment to section 6(e) (*Payments on Early Termination*) of the ISDA Master Agreement;
- (d) each Hedging Agreement will not provide for Automatic Early Termination other than to the extent that:
  - (i) the provision of Automatic Early Termination is consistent with practice in the relevant derivatives market, taking into account the legal status and jurisdiction of incorporation of the parties to that Hedging Agreement; and
  - (ii) that Automatic Early Termination is:
    - (A) as provided for in section 6(a) (*Right to Terminate following Event of Default*) of the 1992 ISDA Master Agreement (if the Hedging Agreement is based on a 1992 ISDA Master Agreement); or
    - (B) as provided for in section 6(a) (*Right to Terminate following Event of Default*) of the 2002 ISDA Master Agreement (if the Hedging Agreement is based on a 2002 ISDA Master Agreement);
- (e) each Hedging Agreement will provide that the relevant Hedge Counterparty will be entitled to designate an Early Termination Date (as defined in the relevant ISDA Master Agreement) or otherwise be able to terminate each transaction under such Hedging Agreement if so required pursuant to paragraph 3.10 (*Required Enforcement: Hedge Counterparties*); and
- (f) each Hedging Agreement will permit the relevant Hedge Counterparty and the Obligor to take such action as may be necessary to comply with paragraph 3.13 (*Total Interest Rate Hedging and Total Exchange Rate Hedging*) and paragraph 12 (*Adjustment of Mandatory Prepayments*).

### 3.13 **Total Interest Rate Hedging and Total Exchange Rate Hedging**

- (a) The Company shall procure that at all times:
  - (i) the Total Interest Rate Hedging does not exceed the Term Outstandings; and
  - (ii) the Total Exchange Rate Hedging does not exceed the Term Outstandings.
- (b) Subject to paragraph (a) above, if:
  - (i) the Total Interest Rate Hedging is less than the Term Outstandings, the Company (or relevant Obligor) may (but shall be under no obligation to) enter into additional hedging arrangements to increase the Total Interest Rate Hedging; or
  - (ii) the Total Exchange Rate Hedging is less than the Term Outstandings, the Company (or relevant Obligor) may (but shall be under no obligation to) enter into additional hedging arrangements to increase the Total Exchange Rate Hedging.
- (c) If any reduction in the Term Outstandings results in:
  - (i) an Interest Rate Hedge Excess then, on the same day as that reduction becomes

effective in accordance with the terms of this Agreement, the Company (or relevant Obligor) shall reduce each Hedge Counterparty's Interest Rate Hedging by that Hedge Counterparty's Interest Rate Hedging Proportion of that Interest Rate Hedge Excess by terminating or closing out any relevant hedging transaction(s) in full or in part, as may be necessary; and

- (ii) an Exchange Rate Hedge Excess then, on the same day as that reduction becomes effective in accordance with the terms of this Agreement, the Company (or relevant Obligor) shall reduce each Hedge Counterparty's Exchange Rate Hedging by that Hedge Counterparty's Exchange Rate Hedging Proportion of that Exchange Rate Hedge Excess by terminating or closing out any relevant hedging transaction(s) in full or in part, as may be necessary.
- (d) The Company (or relevant Obligor) shall pay to that Hedge Counterparty (in accordance with the relevant Hedging Agreement) an amount equal to the sum of all payments (if any) that become due from the Company to a Hedge Counterparty under the relevant Hedging Agreement(s) as a result of any action described in paragraph (c) above.
- (e) Each Hedge Counterparty shall co-operate in any process described in paragraph (d) above and shall pay (in accordance with the relevant Hedging Agreement(s)) any amount that becomes due from it under the relevant Hedging Agreement(s) to the Company (or relevant Obligor) as a result of any action described in paragraph (c) above.

#### 4. **Effect of Insolvency Event**

##### 4.1 **Distributions**

- (a) After the occurrence of an Insolvency Event in relation to the relevant Debtor, any Hedge Counterparty entitled to receive a distribution out of the assets of the relevant Debtor in respect of Liabilities owed to that Hedge Counterparty shall, to the extent it is able to do so, direct the person responsible for the distribution of the assets of the relevant Debtor to make that distribution to the Agent (or to such other person as the Agent shall direct) until the Liabilities owing to the Secured Parties have been paid in full.
- (b) The Agent shall apply distributions made to it under paragraph (a) above in the order set out in paragraph 4 (*Application of Proceeds*) of Schedule 14 (*Security Agency Provisions*).

##### 4.2 **Set-Off**

- (a) Subject to paragraph (b) below, to the extent that the relevant Debtor's Liabilities are discharged by way of set-off (mandatory or otherwise) after the occurrence of an Insolvency Event in relation to the relevant Debtor, any Hedge Counterparty which benefited from that set-off shall pay an amount equal to the amount of the Liabilities owed to it which are discharged by that set-off to the Agent for application in the order set out in paragraph 4 (*Application of Proceeds*) of Schedule 14 (*Security Agency Provisions*).
- (b) Paragraph (a) above shall not apply to:
  - (i) any Close-Out Netting by a Hedge Counterparty;

- (ii) any Payment Netting by a Hedge Counterparty; and
- (iii) any Inter-Hedging Agreement Netting by a Hedge Counterparty.

#### 4.3 **Filing of claims**

After the occurrence of an Insolvency Event in relation to the relevant Debtor, each Hedge Counterparty irrevocably authorises the Security Agent, on its behalf, to:

- (a) take any Enforcement Action (in accordance with the terms of this Agreement) against the relevant Debtor;
- (b) demand, sue, prove and give receipt for any or all of the relevant Debtor's Liabilities;
- (c) collect and receive all distributions on, or on account of, any or all of the relevant Debtor's Liabilities; and
- (d) file claims, take proceedings and do all other things the Security Agent considers reasonably necessary to recover the relevant Debtor's Liabilities.

#### 4.4 **Further assurance – Insolvency Event**

Each Hedge Counterparty will:

- (a) do all things that the Security Agent requests in order to give effect to this paragraph 4; and
- (b) if the Security Agent is not entitled to take any of the actions contemplated by this paragraph 4 or if the Security Agent requests that a Hedge Counterparty take that action, undertake that action itself in accordance with the instructions of the Security Agent or grant a power of attorney to the Security Agent (on such terms as the Security Agent may reasonably require) to enable the Security Agent to take such action.

#### 4.5 **Security Agent instructions**

For the purposes of paragraph 4.1 (*Distributions*), paragraph 4.3 (*Filing of claims*) and paragraph 4.4 (*Further assurance – Insolvency Event*) the Security Agent shall act:

- (a) on the instructions of the group of Senior Creditors entitled, at that time, to give instructions under paragraph 7.1 (*Enforcement Instructions*) or 7.2 (*Manner of enforcement*); or
- (b) in the absence of any such instructions, as it considers in its discretion to be appropriate.

### 5. **Turnover of Receipts**

#### 5.1 **Turnover by the Hedge Counterparties**

Subject to paragraph 5.2 (*Exclusions*) and to 5.3 (*Permitted assurance and receipts*), if at any time prior to the Senior Facilities Discharge Date, any Hedge Counterparty receives or recovers:

- (a) any Payment or distribution of, or on account of or in relation to, any of the Liabilities which is neither:
  - (i) a Permitted Hedge Payment; nor

- (ii) made in accordance with paragraph 4 (*Application of Proceeds*) of Schedule 14 (*Security Agency Provisions*);
- (b) other than where sub-paragraph (a) of Clause 4.2 (*Set-Off*) applies, any amount by way of set-off in respect of any of the Liabilities owed to it which does not give effect to a Permitted Hedge Payment;
- (c) notwithstanding subparagraphs (a) and (b) above, and other than where sub-paragraph (a) of paragraph 4.2 (*Set-Off*) applies, any amount:
  - (i) on account of, or in relation to, any of the Liabilities:
    - (A) after the occurrence of a Distress Event; or
    - (B) as a result of any other litigation or proceedings against a Group Member (other than after the occurrence of an Insolvency Event in respect of the Company or the Parent); or
  - (ii) by way of set-off in respect of any of the Liabilities owed to it after the occurrence of a Distress Event,
 

other than, in each case, any amount received or recovered in accordance with paragraph 4 (*Application of Proceeds*) of Schedule 14 (*Security Agency Provisions*);
- (d) the proceeds of any enforcement of any Transaction Security except in accordance with paragraph 4 (*Application of Proceeds*) of Schedule 14 (*Security Agency Provisions*); or
- (e) other than where paragraph (a) of Clause 4.2 (*Set-Off*) applies, any distribution or Payment of, or on account of or in relation to, any of the Liabilities owed by any Group Member which is not in accordance with paragraph 4 (*Application of Proceeds*) of Schedule 14 (*Security Agency Provisions*) and which is made as a result of, or after, the occurrence of an Insolvency Event in respect of the Company,

that Hedge Counterparty will:

- (i) in relation to receipts and recoveries not received or recovered by way of set-off:
  - (A) hold an amount of that receipt or recovery on trust for the Security Agent and promptly pay or distribute that amount to the Security Agent for application in accordance with the terms of this Agreement; and
  - (B) promptly pay or distribute an amount that receipt or recovery to the Security Agent for application in accordance with the terms of this Agreement; and
- (ii) in relation to receipts and recoveries received or recovered by way of set-off, promptly pay an amount equal to that receipt or recovery to the Security Agent for application in accordance with the terms of this Agreement.

## 5.2 Exclusions

Paragraph 5.1 (*Turnover by the Hedge Counterparties*) shall not apply to any receipt or

recovery by way of

- (a) Close-Out Netting by a Hedge Counterparty;
- (b) Payment Netting by a Hedge Counterparty; or
- (c) Inter-Hedging Agreement Netting by a Hedge Counterparty.

### 5.3 Permitted assurance and receipts

Nothing in this Schedule shall restrict the ability of any Hedge Counterparty to:

- (a) arrange with any person which is not the Parent or a Group Member any assurance against loss in respect of, or reduction of its credit exposure to, a Debtor (including assurance by way of credit based derivative or sub-participation); or
- (b) make any assignment or transfer permitted by paragraph 10 (*Assignments and transfers by Hedge Counterparties*) of this Schedule,

which:

- (i) is permitted by this Agreement; and
- (ii) is not in breach of paragraph 3.5 (*No acquisition of Hedging Liabilities*),

and that Hedge Counterparty shall not be obliged to account to any other Party for any sum received by it as a result of that action.

### 5.4 Saving provision

If, for any reason, any of the trusts expressed to be created in this paragraph 5 should fail or be unenforceable, the affected Hedge Counterparty will promptly pay or distribute an amount equal to that receipt or recovery, net of the costs directly attributable to achieving that receipt or recovery, to the Security Agent for application in accordance with the terms of this Agreement.

## 6. Redistribution

### 6.1 Recovering Creditor's rights

- (a) Any amount paid or distributed by a Hedge Counterparty (a **Recovering Creditor**) to the Security Agent under paragraph 4 (*Effect of Insolvency Event*) or paragraph 5 (*Turnover of Receipts*) shall be treated as having been paid or distributed by the relevant Debtor and shall be applied by the Security Agent in accordance with sub-paragraph 4 (*Application of Proceeds*) of Schedule 14 (*Security Agency Provisions*).
- (b) On an application by the Security Agent pursuant to paragraph 4 (*Application of Proceeds*) of Schedule 14 (*Security Agency Provisions*) of a Payment or distribution received by a Recovering Creditor from a Debtor, as between the relevant Debtor and the Recovering Creditor an amount equal to the amount received or recovered by the Recovering Creditor and paid or distributed to the Security Agent by the Recovering Creditor (the **Shared Amount**) will be treated as not having been paid or distributed by that Debtor.

### 6.2 Reversal of redistribution

- (a) If any part of the Shared Amount received or recovered by a Recovering Creditor becomes repayable or returnable to a Debtor and is repaid or returnable by that Recovering Creditor to that Debtor, then:
  - (i) each Party that received any part of that Shared Amount pursuant to an application by the Security Agent of that Shared Amount under paragraph 6.1 (*Recovering Creditor's rights*) (a **Sharing Party**) shall, upon request of the Security Agent, pay or distribute to the Security Agent for the account of that Recovering Creditor an amount equal to the appropriate part of its share of the Shared Amount (together with an amount as is necessary to reimburse that Recovering Creditor for its proportion of any interest on the Shared Amount which that Recovering Creditor is required to pay) (the **Redistributed Amount**); and
  - (ii) as between the relevant Debtor, each Recovering Creditor and each relevant Sharing Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid or distributed by that Debtor.
- (b) The Security Agent shall not be obliged to pay or distribute any Redistributed Amount to a Recovering Creditor under paragraph (a)(i) above until it has been able to establish to its satisfaction that it has actually received that Redistributed Amount from the relevant Sharing Party.

## 7. Enforcement of Transaction Security

### 7.1 Enforcement Instructions

- (a) The Security Agent may refrain from enforcing the Transaction Security unless instructed otherwise by the Majority Senior Creditors.
- (b) Subject to the Transaction Security having become enforceable in accordance with its terms, the Majority Senior Creditors may give or refrain from giving instructions to the Security Agent to enforce or refrain from enforcing the Transaction Security as they see fit.
- (c) The Security Agent is entitled to rely on and comply with instructions given in accordance with this paragraph 7.1.

### 7.2 Manner of enforcement

If the Transaction Security is being enforced pursuant to paragraph 7.1 (*Enforcement Instructions*), the Security Agent shall enforce the Transaction Security in such manner (including, without limitation, the selection of any administrator (or any analogous officer in any jurisdiction) of any Debtor to be appointed by the Security Agent) as the Majority Senior Creditors shall instruct.

### 7.3 Waiver of rights

To the extent permitted under applicable law and subject to paragraph 7.1 (*Enforcement Instructions*), paragraph 7.2 (*Manner of enforcement*) and paragraph 4 (*Application of Proceeds*) of Schedule 14 (*Security Agency Provisions*), each of the Secured Parties and the Debtors waives all rights it may otherwise have to require that the Transaction Security be enforced in any particular order or manner or at any particular time or that any amount received or recovered from any person, or by virtue of the enforcement of any of the Transaction Security or of any other security interest, which is capable of being applied in or towards discharge of

any of the Liabilities is so applied.

#### 7.4 **Enforcement through Security Agent only**

The Secured Parties shall not have any independent power to enforce, or have recourse to, any of the Transaction Security or to exercise any right, power, authority or discretion arising under the Transaction Security Documents except through the Security Agent.

#### 8. **Notification of prescribed events**

- (a) If an Event of Default or Default either occurs or ceases to be continuing the Agent shall, upon becoming aware of that occurrence or cessation, notify the Security Agent and each Hedge Counterparty.
- (b) If a Hedge Counterparty terminates or closes-out, in whole or in part, any hedging transaction under any Hedging Agreement under paragraph 3.9 (*Permitted Enforcement: Hedge Counterparties*) it shall notify the Security Agent and the Agent shall, upon receiving that notification, notify the each other Hedge Counterparty.

#### 9. **Accession of Hedge Counterparties**

- (a) No person entering into any transaction with the Company or any Obligor in connection with protection against or benefit from fluctuation in any rate or price will be entitled to share in any Security created by any Transaction Security Document in respect of any of the moneys, debts or liabilities arising under or in connection with that transaction or benefit from any provision of this Agreement unless and until the Agent (acting on the instructions of the Majority Lenders) has agreed in writing to that person becoming a Hedge Counterparty and to the transactions and the Hedging Agreements to be entered into by that person and that person has become a Hedge Counterparty in accordance with paragraph (b) below and:
  - (i) the Hedging Agreements relating to that transaction comply with paragraph 3.12 (*Terms of Hedging Agreements*); and
  - (ii) the transaction falls under paragraph (a) of the definition of *Permitted Treasury Transaction*.
- (b) Any person approved by the Agent in accordance with paragraph (a) above shall become a Hedge Counterparty if:
  - (i) that person delivers to the Agent and the Agent a duly completed and signed Hedging Accession Letter; and
  - (ii) the Agent executes such Hedging Accession Letter.
- (c) Each Party (other the relevant proposed Hedge Counterparty under paragraph (i) above) irrevocably authorises the Agent to execute on its behalf any Hedging Accession Letter which has been duly completed and signed on behalf of that proposed Hedge Counterparty.

#### 10. **Assignments and transfers by Hedge Counterparties**

- (a) No Hedge Counterparty may assign any of its rights or transfer any of its rights or obligations under this Agreement or any Hedging Agreement to any person:



- (i) except as permitted under the relevant Hedging Agreement; and
  - (ii) unless and until the proposed Hedge Counterparty accedes to this Agreement in accordance with paragraph 9 (*Accession of Hedge Counterparties*), save where it is already party to this Agreement as a Hedge Counterparty; and
  - (iii) unless such person is a Lender or an Affiliate of a Lender.
- (b) Each Party (other than the relevant transferee under paragraph (a) above) irrevocably authorises the Agent to execute on its behalf any Hedging Accession Letter which has been duly completed and signed on behalf of that transferee.

**11. Amendments and Waivers – Hedging provisions**

- (a) Clause 41 (*Amendments and Waivers*) is subject to the terms of this Schedule.
- (b) Any term of this Schedule may be amended or waived only with the consent of the Majority Senior Creditors and the Company and will be binding on all Parties.

**12. Adjustment of Mandatory Prepayments**

Subject to any terms under any Finance Document to the contrary, if the making of any Mandatory Prepayment (an *Original Mandatory Prepayment*) would directly or indirectly result in the notional amount of any outstanding Hedging Liabilities exceeding the Term Outstandings (following such Original Mandatory Prepayment), the Company (or relevant Obligor) may (upon written notice to the Agent and each relevant Hedge Counterparty) reduce the amount of such Mandatory Prepayment so that the aggregate of:

- (a) the reduced Mandatory Prepayment; and
- (b) the amount required to be applied in close-out of the relevant Hedging Liabilities to reduce the notional amount thereof to the outstanding principal amount of the Loans,

is equal to the amount of the Original Mandatory Prepayment and no Default or Event of Default shall arise to the extent that any mandatory prepayment is adjusted in accordance with this paragraph 12.

**13. Recourse**

No Hedge Counterparty shall have recourse to any person in respect of its Hedging Liabilities save for recourse to the Obligors and (but only under this Agreement and the other Finance Documents (other than the Hedging Documents)) the Parent.

**14. Consent to Security**

If the consent of a Hedge Counterparty is required by the Company (or relevant Obligor) to create Security over the Company's rights under a Hedging Agreement, that Hedge Counterparty is deemed to provide consent to the creation of such Security by acceding to this Agreement as a Hedge Counterparty.

## Schedule 14

### SECURITY AGENCY PROVISIONS

#### 1. Definitions

In this Schedule:

**Security Property** means:

- (a) the Transaction Security expressed to be granted in favour of the Security Agent as security agent for the Secured Parties and all proceeds of that Transaction Security;
- (b) all present and future liabilities and obligations at any time of any Obligor to the Security Agent under Paragraph 5.3 (*Parallel Debt*);
- (c) all obligations expressed to be undertaken by an Obligor to pay amounts in respect of the Liabilities to the Security Agent as security agent for the Secured Parties and secured by the Transaction Security together with all representations and warranties and undertakings expressed to be given by an Obligor or any other person in favour of the Security Agent as security agent for the Secured Parties; and
- (d) 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 security agent for the Secured Parties.

#### 2. Indemnity to the Security Agent

- (a) The Obligors shall promptly indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability incurred by any of them as a result of:
  - (i) any failure by an Obligor to comply with its obligations under Clause 22 (*Costs and Expenses*);
  - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
  - (iii) the taking, holding, protection or enforcement of the Transaction Security;
  - (iv) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent and each Receiver and Delegate by the Finance Documents or by law;
  - (v) any default by any Obligor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents;
  - (vi) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement; or
  - (vii) acting as Security Agent, Receiver or Delegate under the Finance Documents or which otherwise relates to any of the Security Property (otherwise, in each case, than by reason of the Security Agent's, Receiver's or Delegate's fraud, 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 paragraph 2 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.

### 3. **Role of the Security Agent**

#### 3.1 **Appointment of the Security Agent**

- (a) Each of the Arranger, the Hedge Counterparties, the Lenders, the Issuing Bank and the Agent appoint the Security Agent to act as security agent under and in connection with the Finance Documents.
- (b) Any reference in this Agreement to *security agent* means that the Security Agent is acting as security agent and security trustee, and the Security Agent declares that it holds the Security Property on trust as security trustee for the Secured Parties on the terms contained in this Agreement.
- (c) To the extent that the security trusts established by this Agreement are not effective to confer the benefit of any Transaction Security upon any Secured Party:
  - (i) the Security Agent shall act as security agent, and not as security trustee, for the relevant Secured Party in respect of that Transaction Security; and
  - (ii) paragraph (b) above shall not apply to that Transaction Security.
- (d) This paragraph 3 shall not affect or limit paragraph (c) of paragraph 5.3 (*Parallel Debt*) of this Schedule with respect to any Security Document.
- (e) Each of the Secured 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.
- (f) Each of the Secured Parties appoints the Security Agent to execute for and on behalf of Secured Parties any and all Finance Documents and any other agreements related to the Transaction Security Documents, including, without limitation, the release of the Transaction Security Documents.
- (g) The Security Agent has agreed to become a party to this Agreement only for the purpose of taking the benefit of contractual provisions expressed to be given in its favour, enabling better preservation and enforcement of its rights under this Agreement and the Transaction Security Documents and for administrative ease associated with matters where its consent is required. The Security Agent shall not assume any liabilities or obligations under this Agreement unless such obligation or liability is expressly assumed by the Security Agent in this Agreement. All the provisions of the Transaction Security Documents relating to the exercise by the Security Agent of its powers, trusts, authorities, duties, rights and discretions shall apply, mutatis mutandis, to the discharge by the Security Agent of its powers, trusts, authorities, duties, rights and discretions under this Agreement. In the event of any inconsistency between the terms of the Transaction Security Documents and this Agreement in relation to the exercise by the Security Agent of its powers, trusts, authorities, duties, rights and discretions, the terms of this Agreement shall prevail. The exercise or performance by the Security Agent of its rights, remedies or functions under this Agreement are subject in all respects to the terms of the Transaction Security Documents.

- (h) Nothing in this Agreement shall impose any obligation or liability on the Security Agent to assume or perform any of the obligations or liabilities of the other parties to this Agreement hereunder or render it liable for any breach thereof.

### 3.2 Enforcement through Security Agent only

The Secured Parties shall not have any independent power to enforce, or have recourse to, any of the Transaction Security or to exercise any right, power, authority or discretion arising under the Security Documents except through the Security Agent.

### 3.3 Instructions

- (a) Subject to paragraphs (d), (e) and (f) below, the Security Agent shall:
  - (i) unless or a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Security Agent, or as a holder of a Parallel Debt, in accordance with any instructions given to it by the Agent acting on the instructions of:
    - (A) all Lenders if the relevant Finance Document stipulates that such right, power, authority or discretion is a matter that requires the consent or instructions of all of the Lenders;
    - (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 Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Agent (acting on the directions of the Majority Lenders) (or, if the relevant Finance Document stipulates that the instructions from any other Secured Party or group of Secured Parties are required, from that Secured Party or group of Secured Parties) 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) Save in the case of decisions stipulated to be a matter for any other Secured Party or group of Secured Parties under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Security Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will, without prejudice to paragraph (d) below, be binding on all Secured Parties.
- (d) Paragraph (a) above shall not apply:
  - (i) where a contrary indication appears in a Finance Document;
  - (ii) where a Finance Document 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 relevant Secured Parties including, paragraph 3.6 (*No fiduciary duties*) to paragraph 3.11 (*Exclusion of liability*), paragraph 3.15 (*Confidentiality*) to paragraph 3.20 (*Custodians and nominees*) and paragraph 3.24 (*Acceptance of title*) to

paragraph 3.26 (*Trustee Ordinance*);

- (iv) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:
  - (A) paragraph 4.1 (*Order of application*);
  - (B) paragraph 4.2 (*Prospective liabilities*); and
  - (C) paragraph 4.5 (*Permitted Deductions*).
- (e) The Security Agent may refrain from acting in accordance with any instructions of any Secured Party or group of Secured Parties until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability which it may incur in complying with those instructions.
- (f) In the absence of instructions from the Majority Lenders (or, if appropriate, the applicable group of Secured Parties or the relevant Secured Party), the Security Agent may act (or refrain from acting) as it considers to be in the best interest of the Lenders.
- (g) The Security Agent is not authorised to act on behalf of a Secured Party (without first obtaining that Secured Party's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (g) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Transaction Security Documents or enforcement of the Transaction Security or Transaction Security Documents.
- (h) Each Lender and Issuing Bank shall deal with the Security Agent exclusively through the Agent and shall not deal directly with the Security Agent. The Security Agent may rely, without liability and without further enquiry, on any instruction that the Agent gives or purports to give on behalf of a Lender, any group of Lenders or the Issuing Bank pursuant to this paragraph 3.3.
- (i) The Security Agent shall act on the instructions of a Lender provided in connection with any split of its Commitment under Clause 41.4 (*Split Voting*) and shall not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with such instructions.
- (j) This paragraph 3.3 (*Permitted Payments: Hedging Liabilities*) is subject to the terms of paragraph 7 (*Enforcement of Transaction Security*) of Schedule 13 (*Hedging Provisions*).
- (k) The Security Agent may carry out what in its discretion it considers to be administrative acts, or acts which are incidental to any instruction, without any instructions (though not contrary to any such instruction), but so that no such instruction shall have any effect in relation to any administrative or incidental act performed prior to actual receipt of such instruction by the Security Agent.
- (l) Notwithstanding anything in any Finance Document to the contrary, the Security Agent shall not do, or be authorised or required to do, anything which might constitute a regulated activity for the purpose of Part 1 of Schedule 5 of the Securities and Futures Ordinance (the *SFO*), unless it is authorised under the SFO to do so.
- (m) The Security Agent shall have the discretion at any time:

- (i) to delegate any of the functions which fall to be performed by an authorised person under the SFO to any other agent or person which also has the necessary authorisations and licences; and
- (ii) to apply for authorisation under the SFO and perform any or all such functions itself if, in its absolute discretion, it considers it necessary or appropriate to do so.

### 3.4 **Duties of the Security Agent**

- (a) The Security Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) Subject to paragraph (c) below, the Security Agent shall promptly 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) Without prejudice to Clause 29.8 (*Copy of Transfer Certificate, Assignment Agreement, Increase Confirmation – Cancelled Commitments, Additional Facility Notice or Additional Facility Lender Accession Notice to Company*), paragraph (b) above shall not apply to any Fee Letter, Hedging Agreement, Transfer Certificate, Assignment Agreement, or Increase Confirmation – Cancelled Commitments.
- (d) The Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (e) If the Security 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) 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).

### 3.5 **Role of the Security Agent**

The Security Agent shall not be an agent of (except as expressly provided in any Finance Document) any Finance Party or any Obligor under or in connection with any Finance Document.

### 3.6 **No fiduciary duties**

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

### 3.7 **Business with the Group**

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

### 3.8 **Rights and discretions**

- (a) The Security Agent may, without liability to any person and without further enquiry:
- (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 Agent (acting on the instructions of the Majority Lenders, any Finance Parties or any group of Finance Parties, as the case may be) or any other Secured Party or group of Secured Parties are duly given in accordance with the terms of the Finance Documents; and
    - (B) unless it has received notice of revocation, 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 Security Agent may assume (unless it has received notice to the contrary in its capacity as security agent for the Secured Parties) that:
- (i) no Default has occurred;
  - (ii) any right, power, authority or discretion vested in any Party or any group of Finance Parties has not been exercised;
  - (iii) any notice or request made by the Company (other than a Utilisation Request or Selection Notice) is made on behalf of and with the consent and knowledge of all the Obligors and the Parent; and
  - (iv) no Notifiable Debt Purchase Transaction:
    - (A) has been entered into;
    - (B) has been terminated; or
    - (C) has ceased to be with a Sponsor Affiliate.
- (c) The Security Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Security Agent (and so separate from any lawyers instructed by the Lenders) if the Security Agent in its reasonable opinion deems this to be desirable.

- (e) 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 Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) The Security Agent may act in relation to the Finance Documents through its officers, employees and agents and the Security Agent shall not:
  - (i) be liable for any error of judgment made by any such person; or
  - (ii) be bound to supervise, or be in any way responsible for, any loss incurred by reason of misconduct, omission or default on the part of any such person,

unless such error or such loss was directly caused by the Security Agent's or that officer's, employee's or agent's fraud, gross negligence or wilful misconduct.
- (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) Unless a Finance Document expressly provides otherwise, the Security Agent may disclose to any other Party any information it reasonably believes it has received as security agent under this Agreement.
- (i) 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.
- (j) Without prejudice to Clause 41 (*Amendments and Waivers*) and unless otherwise specified:
  - (i) any reference within this Agreement or any other Finance Document to the Security Agent providing approval or consent or making a request, or to an item or a person or a course of action being acceptable to, satisfactory to, to the satisfaction of or approved by the Security Agent, are to be construed, as references to the Security Agent taking such action or refraining from acting on the instructions of the Agent (acting in accordance with the instructions of the Majority Lenders or the Lenders, as the case may be); and
  - (ii) any reference within this Agreement or any other Finance Document to:
    - (A) the Security Agent acting reasonably;
    - (B) a matter being in the reasonable opinion of the Security Agent;
    - (C) the Security Agent's approval or consent not being unreasonably withheld or delayed; or
    - (D) any document, report, confirmation or evidence being required to be reasonably satisfactory to the Security Agent,



are to be construed, unless otherwise specified in this Agreement or such other relevant Finance Document, as the Security Agent acting on the instructions of the Agent (acting on the instructions of the Majority Lenders or the relevant group of Lenders, as the case may be, who are acting reasonably or, as the case may be, not unreasonably withholding or delaying their consent); and

- (iii) where the Security Agent is obliged to consult or negotiate under the terms of this Agreement or any other Finance Document, unless otherwise specified, the Agent (acting on the instructions of the Majority Lenders or the other relevant group of Lenders, as the case may be) must instruct the Security Agent to consult or negotiate in accordance with the terms of this Agreement or such other relevant Finance Document and the Security Agent must carry out that consultation or negotiation in accordance with the instructions it receives from the Agent in accordance with paragraph 3.3 above.

### **3.9 Responsibility for documentation**

The Security Agent is not:

- (a) responsible for the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Security Agent, the Agent, the Arranger, the Obligors, the Parent or any other person given in or in connection with any Finance Document or the Information Package or the transactions contemplated in the Finance Documents;
- (b) responsible for 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 or in connection with any Finance Document or the Transaction Security; or
- (c) responsible for 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.

### **3.10 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.

### **3.11 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 any Delegate), the Security Agent, any Receiver or any Delegate 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 fraud, 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, unless directly caused by its fraud, gross negligence or wilful misconduct; or
- (iii) any shortfall which arises on the enforcement or realisation of the Charged Property; or
- (iv) without prejudice to the generality of paragraphs (i) and (ii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
  - (A) any act, event or circumstance not reasonably within its control; or
  - (B) the general risks of investment in, or the holding of assets in, any jurisdiction,

including (in each case) 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 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 Transaction Document and any officer, employee or agent of the Security Agent, a Receiver or a Delegate may rely on this paragraph 3.11, subject to Clause 1.4 (*Third party rights*) and the provisions of the Third Parties Ordinance.
- (c) The Security 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 Security Agent if the Security 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 Security Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Security Agent to carry out:
  - (i) any “know your customer” or any check 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 Party or any Affiliate of a Finance Party,

on behalf of any Finance Party and each Finance Party 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.

- (e) Without prejudice to any provision of any Finance Document excluding or limiting the Security Agent's, a Receiver's or a Delegate's liability, any liability of the Security Agent, a Receiver or a Delegate arising under or in connection with any Finance Document or the Transaction Security shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Security Agent, Receiver or Delegate 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 at any time which increase the amount of that loss. In no event shall the Security Agent, 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 has been advised of the possibility of such loss or damages.

### **3.12 Lenders' indemnity to the Security Agent**

- (a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Security Agent, each Receiver and each Delegate, within five Business Days of demand, against any cost, loss or liability incurred by them (otherwise than by reason of the Security Agent's, that Receiver's or that Delegate's fraud, gross negligence or wilful misconduct) in acting as security agent, Receiver or Delegate under the Finance Documents (unless the Security Agent, that Receiver or that Delegate has been reimbursed by an Obligor or the Parent pursuant to a Finance Document in respect of such cost, loss or liability).
- (b) Subject to paragraph (c) below, the Company shall promptly on demand reimburse any Lender for any payment that Lender 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 Lender claims reimbursement relates to a liability of the Security Agent to an Obligor or the Parent.

### **3.13 Resignation of the Security Agent**

- (a) The Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the Secured Parties and the Company.
- (b) Alternatively, the Security Agent may resign by giving 30 days' notice to the Secured Parties and the Company, in which case the Majority Lenders (after consultation with the Company) may appoint a successor for the 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 Company) may appoint a successor Security Agent.
- (d) If the Security Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Security Agent is entitled to appoint a successor Security Agent under paragraph (c) above, the Security Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the

proposed successor Security Agent to become a party to this Agreement as Security Agent) agree with the proposed successor Security Agent amendments to this paragraph 3.13 and any other term of this Agreement dealing with the rights or obligations of the Security Agent consistent with the then current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to the security agency fee payable under this Agreement which are consistent with the successor Security Agent's normal fee rates and those amendments will bind the Parties.

- (e) The retiring Security Agent shall 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. The cost incurred by the Security Agent under this paragraph (e) shall be for the account of (i) if the resignation of the Security Agent is voluntary or the retiring Security Agent is in breach of any of its obligations under the Finance Documents, the retiring Security Agent or (ii) in all other circumstances, the Company.
- (f) The Security Agent's resignation notice shall only take effect upon:
  - (i) the appointment of a successor; and
  - (ii) the transfer of all of the Security Property to that successor.
- (g) 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 (e) above) but shall remain entitled to the benefit of paragraph 2 (*Indemnity to the Security Agent*) and this paragraph 3 (and any security agency 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 such successor had been an original Party.

### 3.14 Replacement of the Security Agent

- (a) After consultation with the Company, the Majority Lenders may, by giving 30 days' notice to the Security Agent replace the Security Agent by appointing a successor Security Agent.
- (b) The retiring Security Agent shall (at expense of the Lenders) 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.
- (c) The appointment of the successor Security Agent shall take effect on the date specified in the notice from the Majority Lenders to the retiring Security Agent. As from this date, the retiring Security Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) above) but shall remain entitled to the benefit of paragraph 2 (*Indemnity to the Security Agent*) and this paragraph 3 (and any agency fees for the account of the retiring Security Agent shall cease to accrue from (and shall be payable on) that date).
- (d) Any successor Security Agent and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

### 3.15 Confidentiality

- (a) In acting as security agent for the Secured Parties, the Security 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 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.

### 3.16 Credit appraisal by the Lenders

Without affecting the responsibility of the Company for information supplied by it or on its behalf in connection with any Finance Document, each Secured Party (other than the Agent) 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 Parent and each Group Member;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and 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;
- (d) the adequacy, accuracy and/or completeness of the Information Package and any other 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 the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (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,

and each Secured Party warrants to the Security Agent that it has not relied on and will not at any time rely on the Security Agent in respect of any of these matters.

### 3.17 Deduction from amounts payable by the Security Agent

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

any payment to that Party which the Security 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.

### 3.18 **Reliance and engagement letters**

Each Secured Party confirms that the Security Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by the Security Agent) the terms of any reliance letter or engagement letters relating to the Reports or any reports or letters provided by accountants or providers of due diligence reports in connection with the Finance Documents or the transactions contemplated in the Finance Documents and to bind it in respect of those Reports, reports or letters and to sign such letters on its behalf and further confirms that it accepts the terms and qualifications set out in such letters.

### 3.19 **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 any Obligor 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, monitor or maintain any of the Transaction Security (or the priority of any of the Transaction Security) under any law or to give notice to any person of the execution of any Finance Document or of the Transaction Security;
- (d) take, or to require any Obligor 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
- (e) require any further assurance in relation to any Security Document, and

shall not be responsible or liable for the validity, value, enforceability, sufficiency or existence of the Transaction Security or the Charged Property.

### 3.20 **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 Security Property as the Security Agent may determine, including for the purpose of depositing with a custodian this Agreement or any document relating to the Security Property 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.

### 3.21 **Insurance by the Security Agent**

The Security Agent shall not be obliged:

- (a) to insure any of the Charged Property;

- (b) to require any other person to maintain any insurance; or
- (c) 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.

### 3.22 **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) None of the Security Agent, any Receiver or any 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.

### 3.23 **Additional Security Agents**

- (a) The Security Agent may at any time appoint (and subsequently remove) any person to act as a separate trustee or security agent or as a co-trustee or co-security agent 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 Company and the Secured 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 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.

### 3.24 **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 any Obligor may have to any of the Charged Property and shall not be liable for, or bound to require any Obligor to remedy, any defect in its right or title.

### 3.25 **Winding up of security agent arrangements**

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

- (a) all of the Liabilities and all other 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 any Obligor pursuant to the Finance Documents,

then:

- (i) the security agent arrangements and the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse, representation or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Transaction Security Documents; and
- (ii) the Security Agent which has resigned pursuant to paragraph 3.13 (*Resignation of the Security Agent*) shall release, without recourse, representation or warranty, all of its rights under each Transaction Security Document.

### 3.26 **Trustee Ordinance**

Where there are inconsistencies between the Trustee Ordinance (Cap. 29) and the express provisions of any Transaction Security Document, the provisions of such Transaction Security Documents shall, to the extent allowed by law, prevail.

### 3.27 **Security Agent's management time and additional remuneration**

- (a) Any amount payable to the Security Agent by any Party under any indemnity or in respect of any costs and expenses incurred by it under the Finance Documents will include the cost of utilising its 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 relevant Party. This is in addition to any amounts in respect of fees or expenses paid or payable to it under any other terms of the Finance Documents.
- (b) Without prejudice to paragraph (a) above, in the event of:
  - (i) an Event of Default;
  - (ii) the Security Agent being requested by an Obligor or the Majority Lenders to undertake duties which the Security Agent and the Company 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 Company agreeing that it is otherwise appropriate in the circumstances,

the Company shall pay to the Security Agent any additional remuneration that may be agreed between the Security Agent and the Company or determined pursuant to paragraph (c) below.

- (c) If the Security Agent and the Company 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 a reputable financial institution or other expert (acting as an expert and



not as an arbitrator) selected by the Security Agent and approved by the Company (the costs of the nomination and of the investment bank being payable by the Company) and the determination of any investment bank shall be final and binding upon the Parties.

#### 4. **Application of Proceeds**

##### 4.1 **Order of application**

Subject to paragraph 4.2 (*Prospective liabilities*) and paragraph 4.7 (*Treatment of SFA Cash Cover and SFA Cash Collateral*), all amounts from time to time received or recovered by the Security Agent pursuant to the terms of any Finance Document or in connection with the realisation or enforcement of all or any part of the Transaction Security (for the purposes of this paragraph 4, the **Recoveries**) shall be held by the Security Agent for application at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law (and subject to the provisions of this paragraph 4), in the following order:

- (a) in discharging any sums owing to the Security Agent (other than pursuant to paragraph 5.3 (*Parallel Debt*) of this Schedule), any Receiver or any Delegate;
- (b) in payment of all costs, fees, expenses or similar amounts owing to the Agent or any costs and expenses incurred by any Secured Party in connection with any realisation or enforcement of the Transaction Security taken in accordance with the terms of this Agreement; and
- (c) in payment, pro rata to each Secured Party's share of the Liabilities then outstanding, to:
  - (i) each Hedge Counterparty; and
  - (ii) the Agent for the other Finance Parties for application in accordance with Clause 35.6 (*Partial payments*).
- (d) The Agent shall, if so directed by the Senior Majority Creditors, vary the order set out in paragraph (c) above.
- (e) Paragraphs (c) and (d) above will override any appropriation made by the Obligors or the Parent.

##### 4.2 **Prospective liabilities**

Following the exercise by the Agent or the Security Agent of its rights under Clause 28.16 (*Acceleration*) the Security Agent may, in its discretion, hold any amount of the Recoveries in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) for later application under paragraph 4.1 (*Order of application*) in respect of:

- (a) any sum to the Security Agent, any Receiver or any Delegate; and
- (b) any part of the Liabilities,

that the Security Agent reasonably considers, in each case, might become due or owing at any time in the future.

#### 4.3 **Accumulation of proceeds**

Prior to the application of the proceeds of the Recoveries in accordance with paragraph 4.1 (*Order of application*), the Security Agent may, in its discretion, hold all or part of those proceeds (but not in excess of the amounts due or to become due) in a suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) pending the application from time to time of those moneys in the Security Agent's discretion in accordance with the provisions of this paragraph 4.3.

#### 4.4 **Currency Conversion**

- (a) For the purpose of, or pending the discharge of, any of the Liabilities the Security Agent may convert any moneys received or recovered by the Security Agent from one currency to another, at a market rate of exchange.
- (b) The obligations of any Obligor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

#### 4.5 **Permitted Deductions**

The Security Agent shall be entitled, in its discretion:

- (a) to set aside by way of reserve amounts required to meet, and to make and pay, any deductions and withholdings (on account of taxes or otherwise) which it is or may be required by any applicable law to make from any distribution or payment made by it under this Agreement; and
- (b) to pay all Taxes which may be assessed against it in respect of any of the Charged Property, or as a consequence of performing its duties, or by virtue of its capacity as the Security Agent under any of the Finance Documents or otherwise (other than in connection with its remuneration for performing its duties under this Agreement).

For the avoidance of doubt the Security Agent is under no obligation to make any deductions and withholdings (on account of Taxes or otherwise) with respect to its application of the proceeds of enforcement and any such amounts paid pursuant to this paragraph 4.5 shall be reimbursed by the Company.

#### 4.6 **Good Discharge**

- (a) Any payment to be made in respect of the Liabilities by the Security Agent may be made to the Agent on behalf of the Finance Parties and any payment made in that way shall be a good discharge, to the extent of that payment, by the Security Agent.
- (b) The Security Agent is not under any obligation to make the payments to the Agent under paragraph (a) above in the same currency as that in which the obligations and liabilities owing to the relevant Finance Party are denominated.

#### 4.7 **Treatment of SFA Cash Cover and SFA Cash Collateral**

- (a) Nothing in this Agreement shall prevent any Issuing Bank or Ancillary Lender taking any enforcement action in respect of any SFA Cash Cover which has been provided for it in accordance with this Agreement.

- (b) To the extent that any SFA Cash Cover is not held with the Relevant Issuing Bank or Relevant Ancillary Lender, all amounts from time to time received or recovered in connection with the realisation or enforcement of that SFA Cash Cover shall be paid to the Security Agent and shall be held by the Security Agent on trust to apply them at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law, in the following order of priority:
  - (i) to the Relevant Issuing Bank or Relevant Ancillary Lender towards the discharge of the Liabilities for which that SFA Cash Cover was provided; and
  - (ii) the balance, if any, in accordance with paragraph 4.1 (*Order of application*) of this Schedule.
- (c) To the extent that any SFA Cash Cover is held with the Relevant Issuing Bank or Relevant Ancillary Lender, nothing in this Agreement shall prevent that Relevant Issuing Bank or Relevant Ancillary Lender receiving and retaining any amount in respect of that SFA Cash Cover.
- (d) Nothing in this Agreement shall prevent any Issuing Bank receiving and retaining any amount in respect of any SFA Cash Collateral provided for it in accordance with the terms of this Agreement.
- (e) For the purpose of this Agreement:
  - (i) **Relevant Ancillary Lender** means, in respect of any SFA Cash Cover, the Ancillary Lender (if any) for which that SFA Cash Cover is provided.
  - (ii) **Relevant Issuing Bank** means, in respect of any SFA Cash Cover, the Issuing Bank (if any) for which that SFA Cash Cover is provided.
  - (iii) **SFA Cash Collateral** means any cash collateral provided by a Lender to an Issuing Bank pursuant to clause 7.4 (*Cash collateral by Non-Acceptable L/C Lender and Company's option to provide cash cover*) of this Agreement.
  - (iv) **SFA Cash Cover** has the meaning given to the term **cash cover** in paragraph (q) of clause 1.2 (*Construction*) of this Agreement.

## 5. Payment mechanics

### 5.1 Clawback

- (a) Where a sum is to be paid to the Security Agent under the Finance Documents for another Party, the Security 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) If the Security Agent pays an amount to another Party and it proves to be the case that the Security 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 Security Agent shall on demand refund the same to the Security Agent together with interest on that amount from the date of payment to the date of receipt by the Security Agent, calculated by the Security Agent to reflect its cost of funds.

## 5.2 Payments to the Security Agent

Notwithstanding any other provision of any Finance Document, at any time after any Security created by or pursuant to any Security Document becomes enforceable, the Security Agent may require:

- (a) any Obligor to pay all sums due under any Finance Document; or
- (b) the Agent to pay all sums received or recovered from an Obligor under any Finance Document,

in each case as the Security Agent may direct for application in accordance with the terms of the Security Documents.

## 5.3 Parallel Debt

- (a) Each Obligor hereby irrevocably and unconditionally undertakes to pay to the Security Agent amounts equal to any amounts owing from time to time by that Obligor to any Secured Party under any Finance Document as and when those amounts are due (excluding its Parallel Debt).
- (b) Each Obligor and the Security Agent acknowledge that the obligations of each Obligor under paragraph (a) above are several and are separate and independent from, and shall not in any way limit or affect, the corresponding obligations of that Obligor to any Secured Party under any Finance Document (its *Corresponding Debt*) nor shall the amounts for which each Obligor is liable under paragraph (a) above (its *Parallel Debt*) be limited or affected in any way by its Corresponding Debt *provided that*:
  - (i) the Parallel Debt of each Obligor shall be decreased to the extent that its Corresponding Debt has been irrevocably paid or (in the case of guarantee obligations) discharged; and
  - (ii) the Corresponding Debt of each Obligor shall be decreased to the extent that its Parallel Debt has been irrevocably paid or (in the case of guarantee obligations) discharged; and
  - (iii) the amount of the Parallel Debt of an Obligor shall at all times be equal to the amount of its Corresponding Debt.
- (c) For the purpose of this paragraph 5.3, the Security Agent acts in its own name and not as a trustee, and its claims in respect of the Parallel Debt shall not be held on trust. The Security granted under the Finance Documents to the Security Agent to secure the Parallel Debt is granted to the Security Agent in its capacity as creditor of the Parallel Debt and shall not be held on trust.
- (d) Each Secured Party shall, at the request of the Security Agent:
  - (i) do anything required in connection with the enforcement of any Parallel Debt (including joining in any proceedings as co-claimant with the Security Agent); and
  - (ii) enforce its Corresponding Debt.
- (e) Each Obligor irrevocably and unconditionally waives any right it may have to require a Secured Party to join in any proceedings as co-claimant with the Security Agent in

respect of any Parallel Debt.

- (f) A defect affecting a Parallel Debt against an Obligor will not affect any Corresponding Debt and a defect affecting a Corresponding Debt against an Obligor will not affect any Parallel Debt.
- (g) If the Security Agent returns to any Obligor, whether in any kind of insolvency proceedings or otherwise, any recovery in respect of which it has made a payment to a Secured Party, that Secured Party must repay an amount equal to that recovery to the Security Agent.
- (h) All monies received or recovered by the Security Agent pursuant to this paragraph 5.3, and all amounts received or recovered by the Security Agent from or by the enforcement of any Security granted to secure the Parallel Debt, shall be applied in accordance with Clause 35.6 (*Partial payments*).
- (i) Without limiting or affecting the Security Agent's rights against the Obligors (whether under this paragraph 5.3 or under any other provision of the Finance Documents), each Obligor acknowledges that:
  - (i) nothing in this paragraph 5.3 shall impose any obligation on the Security Agent to advance any sum to any Obligor or otherwise under any Finance Document, except in its capacity as Lender; and
  - (ii) for the purpose of any vote taken under any Finance Document, the Security Agent shall not be regarded as having any participation or commitment other than those which it has in its capacity as a Lender.

## Schedule 15

### ADDITIONAL FACILITY

#### Part I

##### Form of Additional Facility Lender Accession Notice

To: [●] as Agent

From: [*Proposed Additional Facility Lender*]

Dated: [●]

Dear Sirs,

[●] –**Facilities agreement dated [●] 2024 (as amended and/or supplemented from time to time, the *Facilities Agreement*)**

1. We refer to the Facilities Agreement. This is an Additional Facility Lender Accession Notice for the purpose of the Facilities Agreement. Terms defined in the Facilities Agreement have the same meaning in this Accession Notice unless given a different meaning in this Accession Notice.
2. [*Name of Additional Facility Lender*] (the ***New Additional Facility Lender***) of [*address/registered office*] agrees to become an Additional Facility Lender and to be bound by the terms of the Facilities Agreement as a Lender under [*insert details of relevant Additional Facility*].
3. On the date the Additional Facility referred to above becomes effective in accordance with Clause 2.3 (*Additional Facility*) of the Facilities Agreement (the ***Effective Date***), the New Additional Facility Lender shall become party to the Facilities Agreement as a Lender.
4. The New Additional Facility Lender assumes all the rights and obligations of a Lender in relation to the Commitments under the Facilities Agreement specified in the schedule to this Additional Facility Lender Accession Notice (the ***Schedule***) in accordance with the terms of the Facilities Agreement.
5. The New Additional Facility Lender confirms that it is:<sup>14</sup>
  - (a) in respect of a Dutch Borrower:
    - (i) [not a Dutch Qualifying Lender;]
    - (ii) [a Dutch Qualifying Lender (other than a Dutch Treaty Lender); or]
    - (iii) [a Dutch Qualifying Lender by virtue of being a Dutch Treaty Lender (on the assumption that all procedural formalities have been completed).]
  - (b) in respect of a UK Borrower:
    - (i) [not a UK Qualifying Lender;]

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<sup>14</sup> Delete as applicable. Each New Additional Facility Lender is required to confirm which of these three categories it falls within.

- (ii) [a UK Qualifying Lender (other than a UK Treaty Lender); or]
  - (iii) [a UK Qualifying Lender by virtue of being a UK Treaty Lender (on the assumption that all procedural formalities have been completed);]
6. [The New Additional Facility Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:
- (a) company resident in the United Kingdom for United Kingdom tax purposes;
  - (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>15</sup>
7. [The New Additional Facility Lender confirms that it holds a passport under the HMRC DTTP Scheme (reference number [•]) and is tax resident in [•], so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax, and requests that the Obligors' Agent notify each Borrower that it wishes the **HMRC DTTP Scheme** to apply to the Agreement.]<sup>16</sup>
8. [New Additional Facility Lender]'s administrative details for the purposes of the Facilities Agreement are as follows:
- Address: [•]
- Fax No: [•]
- Attention: [•]
9. [insert any other relevant details (if any)]
10. It is intended that this document takes effect as a deed notwithstanding the fact that a party may only execute this document under hand.
11. This Additional Facility Lender Accession Notice has been executed and delivered as a deed on the date stated at the beginning of this Additional Facility Lender Accession Notice.
12. This Additional Facility Lender Accession Notice and any non-contractual obligations arising out of or in connection with it are governed by the laws of Hong Kong.

<sup>15</sup> Include if New Additional Facility Lender comes within paragraph (b) of the definition of UK Qualifying Lender.

<sup>16</sup> Include if New Additional Facility Lender holds a passport under the HMRC DTTP Scheme and wishes that scheme to apply to the Agreement.

*[Proposed Additional Facility Lender]*

By:

This Additional Facility Lender Accession Notice is accepted by the Agent.

*[Agent]*

By:



**THE SCHEDULE**

**COMMITMENT TO BE ASSUMED**

**Administrative details of the New Additional Facility Lender**

*[insert details of Facility Office, address for notices and payment details etc.]*

**EXECUTED as a DEED**

by [●]

**EXECUTED AS A DEED** by *[New Additional Facility Lender]*<sup>17</sup>

acting by [Name] \_\_\_\_\_

and

*[Name]* \_\_\_\_\_

acting under the authority of that company,

in the presence of:

Witness's signature: \_\_\_\_\_

Name: [●]

Address: [●]

The accession Effective Date is confirmed by the Agent as [●].

*[AGENT]*

By: \_\_\_\_\_

As Agent

and for and on behalf of each of the parties to the Facilities Agreement (other than the Company or the Obligors and the New Additional Facility Lender)

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<sup>17</sup> Execution approach to be reviewed at the time of signing to ensure it is appropriate for the relevant Acceding Lender.

## Part II

### Form of Additional Facility Notice for Additional Facility

From: [Company], [Borrower], [Additional Facility Lenders]

To: [●] as Agent

Dated:

Dear Sirs

**[●] –Facilities Agreement dated [●] 2024 (as amended and/or supplemented from time to time, the *Facilities Agreement*)**

1. We refer to the Facilities Agreement. This is an Additional Facility Notice in respect of an Additional Facility. Terms defined in the Facilities Agreement have the same meaning in this Additional Facility Notice unless given a different meaning in this Additional Facility Notice.

2. We wish to establish an Additional Facility on the following terms:

Borrower(s): [●]

Guarantor(s): [●]

Additional Facility Lenders (and allocated commitments): [●]

Aggregate amount of the commitments of the Additional Facility / Additional Facility Commitment: [●]

Currency: [●]

Purpose of Additional Facility: [●]

Interest rate and basis (if applicable) including Margin or margin ratchet: [●]

Terms relating to the payment of interest in respect of the Additional Facility: [●]

Commitment fee (if any) applicable to the Additional Facility: [●]

Additional Facility Commencement Date: [●]

Availability Period: [●]

Termination Date: [●]

Amortisation schedule (if any): [●]

Mandatory prepayment provisions (if any): [●]

Voluntary cancellation provisions: [●]

Voluntary prepayment provisions: [•]  
Consolidation and division of loans: [•]  
Applicability of Break Costs: [•]  
Conditions to drawdown: [•]  
Other: [•]]<sup>18</sup>

3. This Additional Facility Notice may be executed in any number of counterparts and this has the same effect as if signatures on such counterparts were on a single copy of this Additional Facility Notice.
4. This Additional Facility Notice and any non-contractual obligations arising out of or in connection with it are governed by the laws of Hong Kong.

Yours faithfully

[\_\_\_\_\_]

[*the Company*]

By:

Name:

Title:

[\_\_\_\_\_]

[*Borrower*].

By:

Name:

Title:

---

<sup>18</sup> Include any other applicable information requests or directions applicable to the Additional Facility or as required by Clause 2.3.

We confirm that we have agreed to provide the above-mentioned Additional Facility on the terms set out in this Additional Facility Notice and the Facilities Agreement:

Yours faithfully

[\_\_\_\_\_]

[*Additional Facility Lenders*]

By:

Name:

Title:

This Additional Facility Notice is accepted as an Additional Facility Notice for the purposes of the Facilities Agreement by the Agent and the Additional Facility Commencement Date in respect of the Additional Facility referred to in this Additional Facility Notice is confirmed as [●]:

Yours faithfully

[\_\_\_\_\_]

[*Agent*]

By:

Name:

Title:

By:

Name:

Title:

## Schedule 16

### FORM OF ACCESSION LETTER

To: [●] as Agent

From: [Subsidiary] and [Company]

Dated: .....

Dear Sirs

**[●] –Facilities Agreement dated [●] 2024 (as amended and/or supplemented from time to time, the *Facilities Agreement*)**

1. We refer to the Facilities Agreement. This is an Accession Letter. Terms defined in the Facilities Agreement have the same meaning in this Accession Letter unless given a different meaning in this Accession Letter.
2. [Subsidiary] agrees that it hereby becomes party to the Facilities Agreement as an Additional [Borrower]/[Guarantor] and to be bound by the terms of the Facilities Agreement and the other Finance Documents as an Additional [Borrower]/[Guarantor] pursuant to of the Facilities Agreement. [Subsidiary] is a company duly incorporated or organised under the laws of [name of relevant jurisdiction] and is a [type of entity] and registered number [●].
3. [Add any applicable guarantee limitation wording].
4. The Company confirms that no Default is continuing or would occur as a result of [Subsidiary] becoming an Additional [Borrower]/[Guarantor].
5. We hereby make the representations and warranties as set out in paragraph (b) of Clause 24.26 (*Times when representations made*) as of the date hereof, in so far as the same apply to the Additional [Borrower]/[Guarantor].
6. [Subsidiary's] administrative details are as follows:  
  
Address:  
  
Fax:  
  
Attention:
7. This Accession Letter and any non-contractual obligations arising out of or in connection with it are governed by [●] law.
8. **THIS ACCESSION LETTER** has been signed on behalf of the Agent, signed on behalf of the Company and executed as a deed by [Subsidiary] and is delivered on the date stated above.

[EXECUTED AS A DEED ]

By: [*Subsidiary* )

..... Director

..... Director/Secretary

**The Company**

[*Company*]

By: .....

Date:.....

**The Agent**

[*Agent*]

By: .....

Date:.....

Schedule 17

FORM OF RESIGNATION LETTER

To: [●] as Agent

From: [Resigning Obligor] and [Company]

Dated: .....

Dear Sirs

**[●] –Facilities Agreement dated [●] 2024 (as amended and/or supplemented from time to time, the *Facilities Agreement*)**

1. We refer to the Facilities Agreement. This is a Resignation Letter. Terms defined in the Facilities Agreement have the same meaning in this Resignation Letter unless given a different meaning in this Resignation Letter.
2. Pursuant to Clause 31.4 (*Resignation of an Obligor*), we request that [*resigning Obligor*] be released from its obligations as an Obligor under the Facilities and the other Finance Documents.
3. We confirm that:
  - (a) no Default is continuing or would result from the acceptance of this request; and
  - (b) no payments under any of the Finance Documents are due and payable in respect of [*resigning Obligor*]; and
  - (c) [*Insert any other conditions required by the Facilities Agreement*]
4. This Resignation Letter and any non-contractual obligations arising out of or in connection with it are governed by [●] law.

[●] [*Resigning Obligor*]

By: .....

By: .....

## Schedule 18

### ESG CONDITIONS

**ESG Trigger** means:

- (a) in respect of the first Financial Year ending after the Initial Utilisation Date, any metric described in the column headed “ESG Metric” in the table below (each an **ESG Metric**) meets or otherwise satisfies the target rate or ratio (as the case may be) set by the Company (in its sole discretion) in respect of the relevant ESG Metric, as notified by the Company to the Agent within 60 days of the Initial Utilisation Date; and
- (b) in respect of any Financial Year thereafter, an improvement in the rate or ratio of that ESG Metric from the immediately previous Financial Year (**provided that**, for the avoidance of doubt, to the extent the Company has added any new ESG metric(s) in accordance with row 6 in the table in this paragraph (b) below references to “any Financial Year thereafter” shall mean each Financial Year ending after the Financial Year in which any such metric is added), where **improvement** for these purposes means:
- (i) lower GHG Emissions;
  - (ii) a higher Gender Pay Equity Balance;
  - (iii) a higher Employee Satisfaction Score;
  - (iv) a higher Female Executives Score; and
  - (v) a lower Voluntary Attrition Rate.

	<b>ESG Metric</b>
<b>1.</b>	Total GHG emissions (excluding Scope 3 emissions), formulated on an absolute or intensity basis (the <b>GHG Emissions</b> ).
<b>2.</b>	The number of female employees as a percentage in the top 20 per cent. of total employees (the <b>Gender Pay Equity Balance</b> ).
<b>3.</b>	The employee satisfaction score, by reference to employee satisfaction surveys, eNPS, or equivalent measurements (the <b>Employee Satisfaction Score</b> ).
<b>4.</b>	The number of female executives and senior management as a percentage of total executives and senior management populations (the <b>Female Executives Percentage</b> ).
<b>5.</b>	The number of Group employees which resign in any calendar year divided by the average number of Group employees during that calendar year (the <b>Voluntary Attrition Rate</b> ).
<b>6.</b>	Any other ESG metric(s) as notified by the Company to the Agent.



## Schedule 19

### FORM OF ESG PERFORMANCE CERTIFICATE

To: [●] as Agent

From: [Obligors' Agent] and [●]

Dated: .....

Dear Sirs

**[●] – Facilities Agreement dated [●] 2024 (as amended and/or supplemented from time to time, the *Facilities Agreement*)**

1. We refer to the Facilities Agreement. This is an ESG Performance Certificate.
2. Terms defined in the Facilities Agreement have the same meaning when used in this ESG Performance Certificate unless given a different meaning in this ESG Performance Certificate.
3. We confirm that at the end of the Financial Year to which this ESG Performance Certificate relates:
  - (a) there [was][was not] an improvement in GHG Emissions, such that an ESG Trigger with respect to this ESG Metric [applies and has been achieved][does not apply and has not been achieved];
  - (b) there [was][was not] an improvement in the Gender Pay Equity Balance, such that an ESG Trigger with respect to this ESG Metric [applies and has been achieved][does not apply and has not been achieved]
  - (c) there [was][was not] an improvement in the Employee Satisfaction Score, such that an ESG Trigger with respect to this ESG Metric [applies and has been achieved][does not apply and has not been achieved];
  - (d) there [was][was not] an improvement in the Female Executives Score, such that an ESG Trigger with respect to this ESG Metric [applies and has been achieved][does not apply and has not been achieved];
  - (e) there [was][was not] an improvement in the Voluntary Attrition Rate, such that an ESG Trigger with respect to this ESG Metric [applies and has been achieved][does not apply and has not been achieved]; and
  - (f) [add any other metrics falling under row 6 of Schedule 18 (ESG Conditions)].
4. Therefore, the Initial Facility Loan Margin shall be [●] per cent. per annum.

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For and on behalf of

[Obligors' Agent]

## Schedule 20

### BENCHMARK SCHEDULE

To: [●] as Agent

From: [●] (the *Company*)

Dated: [●]

[●] – Facilities Agreement dated [●] 2024 (as amended and/or supplemented from time to time, the *Facilities Agreement*)

1. We refer to the Facilities Agreement. This agreement (the *Agreement*) shall take effect as a Benchmark Schedule for the purpose of the Facilities Agreement. Terms defined in or construed for the purposes of the Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to paragraph (c) of Clause 4.4 (*Conditions relating to Optional Currencies*) of the Facilities Agreement.
3. The Agent (acting on the instructions of all the Lenders participating in the Utilisation(s) denominated in such Other Currency) and the Company agree that the following terms shall apply to any Loan in the following Other Currency.

**CURRENCY:** [ ]

#### *Definitions*

**Benchmark Rate:** [ ]

**Business Day:** [ ]

**Business Day Conventions:** [ ]

**Quotation Day:** [ ]

**Relevant Market:** [ ]

**Screen Rate:** [ ]. If any such page is replaced or such service ceases to be available, such replacement page(s) or service displaying such rate as the Agent may select after consultation with the Company.

#### *Interest Periods*

**Length of Interest Period in absence of selection (paragraph (c) of Clause 15.1 (*Selection of Interest Periods*)):** [ ]

**Periods capable of selection as Interest Periods (paragraph (d) of Clause 15.1 (*Selection of Interest Periods*)):** [ ]

#### *Rate fixing timings*

**Time at which Benchmark Rate is fixed (Schedule 7 (*Timetables*)):** [ ]

Yours faithfully

By: .....

[Agent]

By: .....

[•]

## Schedule 21

### FORM OF LETTER OF CREDIT

To: [Beneficiary] (the **Beneficiary**)

Date

**Irrevocable Standby Letter of Credit no.** [ ]

At the request of [ ], [Issuing Bank] (the **Issuing Bank**) issues this irrevocable standby Letter of Credit (**Letter of Credit**) in your favour on the following terms and conditions:

#### 1. Definitions

In this Letter of Credit:

**Business Day** means a day (other than a Saturday or a Sunday) on which banks are open for general business in [●].\*

**Demand** means a demand for a payment under this Letter of Credit in the form of the schedule to this Letter of Credit.

**Expiry Date** means [ ].

**Total L/C Amount** means [ ].

#### 2. Issuing Bank's agreement

2.1 The Beneficiary may request a drawing or drawings under this Letter of Credit by giving to the Issuing Bank a duly completed Demand. A Demand must be received by the Issuing Bank by no later than [ ] p.m. ([●] time) on the Expiry Date.

2.2 Subject to the terms of this Letter of Credit, the Issuing Bank unconditionally and irrevocably undertakes to the Beneficiary that, within [10] Business Days of receipt by it of a Demand, it must pay to the Beneficiary the amount demanded in that Demand.

2.3 The Issuing Bank will not be obliged to make a payment under this Letter of Credit if as a result the aggregate of all payments made by it under this Letter of Credit would exceed the Total L/C Amount.

#### 3. Expiry

(a) The Issuing Bank will be released from its obligations under this Letter of Credit on the date (if any) notified by the Beneficiary to the Issuing Bank as the date upon which the obligations of the Issuing Bank under this Letter of Credit are released.

3.1 Unless previously released under paragraph (a) above, on [ ] p.m. ([●] time) on the Expiry Date the obligations of the Issuing Bank under this Letter of Credit will cease with no further liability on the part of the Issuing Bank except for any Demand validly presented under the Letter of Credit that remains unpaid.

3.2 When the Issuing Bank is no longer under any further obligations under this Letter of Credit, the Beneficiary must return the original of this Letter of Credit to the Issuing Bank.

4. **Payments**

All payments under this Letter of Credit shall be made in [ ] and for value on the due date to the account of the Beneficiary specified in the Demand.

5. **Delivery of Demand**

Each Demand shall be in writing, and, unless otherwise stated, may be made by letter, fax or telex and must be received in legible form by the Issuing Bank at its address and by the particular department or office (if any) as follows:

[ ]

6. **Assignment**

The Beneficiary's rights under this Letter of Credit may not be assigned or transferred.

7. **ISP 98**

Except to the extent it is inconsistent with the express terms of this Letter of Credit, this Letter of Credit is subject to the International Standby Practices (ISP 98), International Chamber of Commerce Publication No. 590.

8. **Governing Law**

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

9. **Jurisdiction**

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

Yours faithfully

[*Issuing Bank*]

By:

NOTES:

- \* This may need to be amended depending on the currency of payment under the Letter of Credit and/or the country of the Issuing Bank.

**SCHEDULE**  
**FORM OF DEMAND**

To: [ISSUING BANK]

[Date]

Dears Sirs

**Standby Letter of Credit no. [ ] issued in favour of [BENEFICIARY] (the *Letter of Credit*)**

We refer to the Letter of Credit. Terms defined in the Letter of Credit have the same meaning when used in this Demand.

1. **We certify that the sum of [ ] is due [and has remained unpaid for at least [ ] Business Days] [under [set out underlying contract or agreement]]. We therefore demand payment of the sum of [ ].**

2. **Payment should be made to the following account:**

Name:

Account Number:

Bank:

3. **The date of this Demand is not later than the Expiry Date.**

Yours faithfully

(Authorised Signatory)

(Authorised Signatory)

For

[BENEFICIARY]

## Schedule 22

### SECURITY LIMITATIONS

The guarantees and security to be provided in connection with the Facilities shall, subject to Clause 27.27 (*Security and Guarantees*), be subject to the following further limitations:

- (a) In relation to the terms of any security taken or guarantees given (as applicable) in connection with the Facilities none shall be required in respect of:
  - (i) any equity interests of any CFC or FSHCO in excess of 65% of the equity interests of such entities entitled to vote (within the meaning of Treasury Regulation Section 1.956-2(c)(2)) and 100% of each class of the equity interests not entitled to vote (within the meaning of Treasury Regulation Section 1.956-2(c)(2) provided, however, that this limitation (b) shall only apply in respect of an obligation of a Borrower that is a “United States person” within the meaning of Section 7701(a)(30) of the Code;
  - (ii) commercial tort claims;
  - (iii) any governmental licenses or state or local franchises, charters and authorisations, to the extent a security interest in any such license, franchise, charter or authorisation is prohibited or restricted by the US Uniform Commercial Code;
  - (iv) margin stock and equity interests in any person other than wholly-owned subsidiaries (but excluding immaterial subsidiaries and other excluded subsidiaries);
  - (v) parts, stock, moveable plant, equipment or receivables if it would require labelling, segregation or period listing or specification of such parts, stock moveable plant, equipment or receivables;
  - (vi) any lease, license or agreement or any property subject to a purchase money security interest or similar arrangement, to the extent that a grant of a security interest therein would violate or invalidate such lease, license or agreement or purchase money arrangement or create a right of termination in favor of any other party thereto after giving effect to the applicable anti-assignment provisions of the Uniform Commercial Code, other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under the Uniform Commercial Code notwithstanding such prohibition;
  - (vii) letter of credit rights, except to the extent constituting a supporting obligation for other Transaction Security as to which perfection of the security interest in such other Transaction Security may be accomplished by the filing of an “all assets” UCC financing statement (it being understood that no actions shall be required to perfect a security interest in letter of credit rights, other than the filing of such Uniform Commercial Code financing statement);
  - (viii) any intent-to-use trademark application prior to the filing of a “Statement of Use” or “Amendment to Allege Use” with respect thereto, to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark application under applicable US federal law; or
  - (ix) any Excluded Stock, Excluded Contracts and/or Excluded Equipment (each as defined below).

- (b) A Group Member shall not be required to become a Guarantor (or provide any other guarantee in respect of the Facilities):
- (i) where it is a direct or indirect subsidiary of a "controlled foreign corporation" within the meaning of Section 957(a) of the Code that has a "United States shareholder" (as defined in Section 951(b) of the Code) that is a member of the Group, and that is directly or indirectly owned (within the meaning of Section 958(a) of the Code) by such United States shareholder (a *CFC*) or any subsidiary thereof;
  - (ii) where all or substantially all of its assets consist of (A) the capital stock and/or indebtedness of one or more (x) foreign subsidiaries that are *CFCs* or (y) other subsidiaries described in paragraph (i) above or in this paragraph (and any other assets related thereto), or (B) cash and Cash Equivalent Investments (any subsidiary described in this paragraph (ii), being a *FSHCO*); or
  - (iii) where it is a not-for-profit subsidiary

provided, however, that this limitation (b) shall only apply in respect of an obligation of a Borrower that is a "United States person" within the meaning of Section 7701(a)(30) of the Code.

For the purpose of this Schedule 22:

**Excluded Stock** means: (i) any equity interest with respect to which, in the reasonable judgment of the Security Agent (acting on the instructions of the Agent acting on the instructions of the Majority Lenders) and the Company, the burden or cost or other consequences of pledging such equity interest under the Transaction Security Documents shall be excessive in view of the benefits to be obtained therefrom; (ii) in the case of any pledge of equity interest of any Subsidiary of any grantor of security interest under the relevant Transaction Security Document (the *Grantor*) which is a Foreign Subsidiary or *FSHCO*, any equity interest of any class of such Subsidiary in excess of 65% of the outstanding voting equity interest of such class (or 100% in the case of non-voting equity interest); (iii) any equity interest to the extent the pledge thereof would violate (A) any applicable law, (B) such person's organizational documents and/or (C) any contractual obligation to which any Grantor is a party or by which it or any of its property is bound existing on the date hereof or the date such Subsidiary becomes a Subsidiary (so long as such prohibition is not created in contemplation of such transaction) (including any legally effective requirement to obtain the consent or approval of, or a license from, any governmental authority or any other third party unless such consent, approval or license has been obtained (it being understood that the foregoing shall not be deemed to obligate the Company or any Subsidiary to obtain any such consent, approval or license) for so long as such prohibition or requirement is in effect); (iv) any equity interest of any Subsidiary to the extent such equity interest is subject to a Permitted Security securing Indebtedness permitted to be incurred pursuant to the Finance Documents to the extent (I) that a pledge thereof to secure the Obligations is prohibited by any applicable contractual requirement, (II) any contractual requirement prohibits such a pledge without the consent of any other party; provided that this clause (II) shall not apply if (x) such other party is a Grantor or a Subsidiary or (y) consent has been obtained to consummate such pledge (it being understood that the foregoing shall not be deemed to obligate the Company or any Subsidiary to obtain any such consent) and for so long as such contractual requirement or replacement or renewal thereof is in effect, or (III) a pledge thereof to secure the Obligations would give any other party (other than any Grantor or any Subsidiary) to any contract, agreement, instrument, or indenture governing such equity interest the right to terminate its obligations thereunder; (v) any equity interest of any Subsidiary to the extent that the pledge of such equity interest would result in materially adverse U.S. tax consequences to the Company or any Subsidiary as reasonably determined by the Company in consultation with the Security Agent, (vi) any Capital Stock that is margin stock and (vii) any



Capital Stock of any non-wholly-owned Subsidiary, any captive insurance subsidiary, any not-for-profit Subsidiary and any special purpose entity permitted to be formed under the Finance Documents; (viii) any interests in partnerships and joint ventures (or other minority interest investment) which cannot be pledged without the consent of one or more third parties other than any Grantor or any of its Subsidiaries; provided that Excluded Stock shall not include proceeds of the foregoing property to the extent otherwise constituting Collateral.

***Excluded Contracts*** means, at any date, any rights or interest of any Grantor under any charter, permit, franchise, authorization, lease, license or any provision of any security issued by such person or of any other agreement, instrument or other undertaking to which such person is a party or by which it or any of its property is bound (referred to solely for purposes of this definition as a ***Contract***), in each case, only to the extent and for so long as the grant of a security interest therein by such person (i) would violate, or would invalidate, such Contract, (ii) would give any party (other than a Grantor or a Subsidiary) to any such Contract the right to terminate its obligations thereunder or (iii) is permitted only with consent (other than solely the consent of a Grantor or a Subsidiary) and all necessary consents to such grant of a security interest have not been obtained from the other parties thereto, in each case to the extent the provision giving rise to such creation of a security interest was not entered into in contemplation hereof, in each case after giving effect to Sections 9-406, 9-407, 9-408 and 9-409 of the UCC regarding anti-assignments, as applicable.

***Excluded Equipment*** means, at any date, any equipment or other assets of any Grantor which is subject to, or secured by, capitalised lease obligations, purchase money obligations or similar obligations if and to the extent that a restriction in favour of a person who is not a Grantor contained in the agreements or documents granting or governing such capitalised lease obligations, purchase money obligations or similar obligations prohibits, or requires any consent or establishes any other conditions for or would result in the termination of such agreement or document because of an assignment thereof, or a grant of a security interest therein, by any Grantor.

**Schedule 23**

**FORM OF QPP CERTIFICATE**

To: [●] as Company

From: [*Name of Lender*]

Dated: .....

Dear Sirs

[●] – **Facilities Agreement dated [●] 2024 (as amended and/or supplemented from time to time, the *Facilities Agreement*)**

1. We refer to the Facilities Agreement. This is Qualifying Private Placement Certificate (a ***QPP Certificate***).
2. Terms defined in the Facilities Agreement have the same meaning in this QPP Certificate unless given a different meaning in this QPP Certificate.
3. We confirm that
  - (a) we are beneficially entitled to all interest payable to us as a Lender under the Loan;
  - (b) we are a resident of a qualifying territory; and
  - (c) we are beneficially entitled to the interest which is payable to us under the applicable Loan for genuine commercial reasons, and not as part of a tax advantage scheme.

These confirmations together form a creditor certificate;

4. In this QPP Certificate, the terms "resident", "qualifying territory", "scheme", "tax advantage scheme" and "creditor certificate" have the meaning given to them in the Qualifying Private Placement Regulations 2015 (2015 No. 2002).

The undersigned has executed and delivered this QPP Certificate as of the date first written above.

By:

\_\_\_\_\_

[*Name of Lender*]

## Schedule 24

### COMPOUNDED RATE TERMS

<b>CURRENCY:</b>	Sterling.
<b>Cost of Funds as a Fallback</b>	Cost of funds will not apply as a fallback.
<i>Definitions</i>	
<b>Break Costs:</b>	None.
<b>Additional Business Days:</b>	An RFR Banking Day.
<b>Business Day Conventions (definition of "Month"):</b>	<p>(a) If any period is expressed to accrue by reference to a Month or any number of Months then, in respect of the last Month of that period:</p> <ul style="list-style-type: none"><li>(i) subject to paragraph (ii) 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;</li><li>(ii) 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</li><li>(iii) 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.</li></ul> <p>(b) 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).</p>
<b>Central Bank Rate:</b>	The Bank of England's Bank Rate as published by the Bank of England from time to time.
<b>Central Bank Rate Adjustment:</b>	In relation to the Central Bank Rate prevailing at close business on any RFR Banking Day, the 20% trimmed arithmetic mean (calculated by the Agent) of the Central Bank Rate Spreads for the five most immediately preceding RFR Banking Days for which the SONIA is available.
<b>Central Bank Rate Spread:</b>	<p>In relation to any RFR Banking Day, the difference (expressed as a percentage rate per annum) calculated by the Agent of:</p> <p>(a) the RFR for that RFR Banking Day; and</p>

- (b) the Central Bank Rate prevailing at close of business on that RFR Banking Day.

**Credit Adjustment Spread:**

None.

**Daily Rate:**

The *Daily Rate* for any RFR Banking Day is:

- (a) the RFR for that RFR Banking Day; or
- (b) if the RFR is not available for that RFR Banking Day, the percentage rate per annum which is the aggregate of:
  - (i) the Central Bank Rate for that RFR Banking Day; and
  - (ii) the applicable Central Bank Rate Adjustment; or
- (c) if paragraph (b) above applies but the Central Bank Rate for that RFR Banking Day is not available, the percentage rate per annum which is the aggregate of:
  - (i) the most recent Central Bank Rate for a day which is no more than five RFR Banking Days before that RFR Banking Day; and
  - (ii) the applicable Central Bank Rate Adjustment,

rounded, in either case, to four decimal places and if, in either case, the rate is less than zero, the Daily Rate shall be deemed to be such that the Daily Rate is zero.

**Lookback Period:**

Five RFR Banking Days.

**Relevant Market:**

The sterling wholesale market.

**Reporting Day:**

The day which is the Lookback Period prior to the last day of the Interest Period or, if that day is not a Business Day, the immediately following Business Day.

**RFR:**

The SONIA (sterling overnight index average) reference rate displayed on the relevant screen of any authorised distributor of that reference rate.

**RFR Banking Day:**

A day (other than a Saturday or Sunday) on which banks are open for general business in London.

**Reporting Time:**

Close of business on the date falling 10 Business Days after the Reporting Day for the relevant Loan (or, if earlier, on the date falling 10 Business Days before the date on which interest is due to be paid in respect of the Interest Period for that Loan).

## Schedule 25

### DAILY NON-CUMULATIVE COMPOUNDED RFR RATE

The **Daily Non-Cumulative Compounded RFR Rate** for any RFR Banking Day  $i$  during an Interest Period for a Compounded Rate Loan is the percentage rate per annum (without rounding, to the extent reasonably practicable) calculated as set out below:

$$(UCCDR_i - UCCDR_{i-1}) \times \frac{dcc}{n_i}$$

where:

**$UCCDR_i$**  means the Unannualised Cumulative Compounded Daily Rate for that RFR Banking Day “ $i$ ”;

**$UCCDR_{i-1}$**  means, in relation to that RFR Banking Day “ $i$ ”, the Unannualised Cumulative Compounded Daily Rate for the immediately preceding RFR Banking Day (if any) during that Interest Period;

**$dcc$**  means 365 or, in any case where market practice in the Relevant Market is to use a different number for quoting the number of days in a year, that number; and

**$n_i$**  means the number of calendar days from, and including, that RFR Banking Day “ $i$ ” up to, but excluding, the following RFR Banking Day.

The **Unannualised Cumulative Compounded Daily Rate** for any RFR Banking Day (the **Cumulated RFR Banking Day**) during that Interest Period is (without rounding, to the extent reasonably practicable) calculated as set out below:

$$ACCDR \times \frac{tn_i}{dcc}$$

where:

**$ACCDR$**  means the Annualised Cumulative Compounded Daily Rate for that Cumulated RFR Banking Day;

**$tn_i$**  means the number of calendar days from, and including, the first day of the Cumulation Period to, but excluding, the RFR Banking Day which immediately follows the last day of the Cumulation Period;

**Cumulation Period** means the period from, and including, the first RFR Banking Day of that Interest Period to, and including, the Cumulated RFR Banking Day; and

**$dcc$**  has the meaning given to that term above.

The **Annualised Cumulative Compounded Daily Rate** for that Cumulated RFR Banking Day is the percentage rate per annum (rounded to four decimal places) calculated as set out below:

$$\left[ \prod_{i=1}^{d_0} \left( 1 + \frac{\text{DailyRate}_{i-LP} \times n_i}{dcc} \right) - 1 \right] \times \frac{dcc}{tn_i}$$

where:

***d0*** means the number of RFR Banking Days in the Cumulation Period; “Cumulation Period” has the meaning given to that term above;

***i*** means a series of whole numbers from one to  $d0$ , each representing the relevant RFR Banking Day in chronological order in the Cumulation Period;

***DailyRate<sub>i</sub>-LP*** means, for any RFR Banking Day “*i*” in the Cumulation Period, the Daily Rate for the RFR Banking Day which is the applicable Lookback Period prior to that RFR Banking Day “*i*”;

***ni*** means, for any RFR Banking Day “*i*” in the Cumulation Period, the number of calendar days from, and including, that RFR Banking Day “*i*” up to, but excluding, the following RFR Banking Day;

***dcc*** has the meaning given to that term above; and

***t<sub>ni</sub>*** has the meaning given to that term above.

## **Schedule 26**

### **SECURITY JURISDICTIONS**

1. Australia
2. Belgium
3. Bermuda
4. Brazil
5. British Virgin Islands
6. Canada
7. Cayman Islands
8. Denmark
9. Duchy of Luxemburg
10. England & Wales
11. Finland
12. France
13. Germany
14. Hong Kong
15. Italy
16. Japan
17. Malta
18. Mauritius
19. Mexico
20. New Zealand
21. Norway
22. Portugal
23. Republic of Ireland
24. Singapore
25. South Korea
26. Spain
27. Sweden
28. Switzerland
29. Taiwan
30. The Netherlands
31. United States

**SIGNATURES**

**The Parent**

**HOUTING HOLDING B.V.**

[Redacted signature area]

Name: [Redacted]

Title: [Redacted]

Address: [Redacted]

Email: [Redacted]

Attention: [Redacted]

Tel: [Redacted]



**The Company**

**HOUTING B.V.**



**Name:**

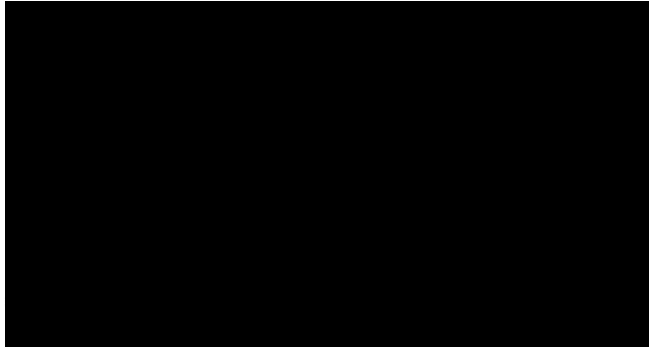
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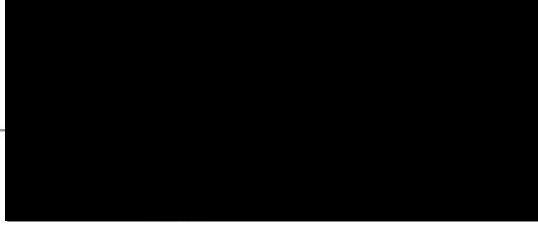
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**Tel:**



**Original Borrower**

**HOUTING B.V.**



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Email:

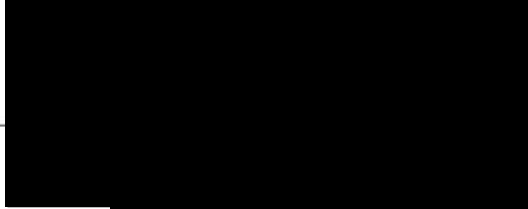
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**Original Guarantor**

**HOUTING B.V.**



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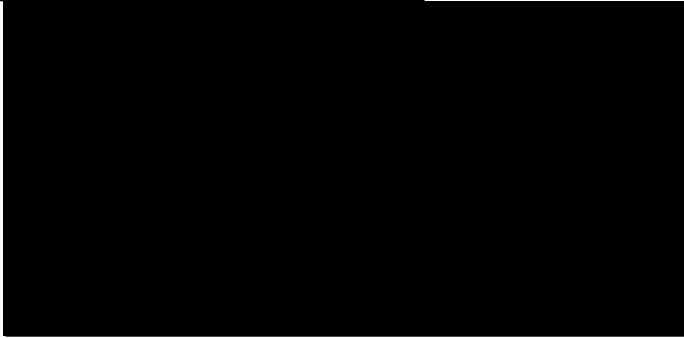
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**Original Guarantor**

**HOUTING TOPCO UK LIMITED**



Name:

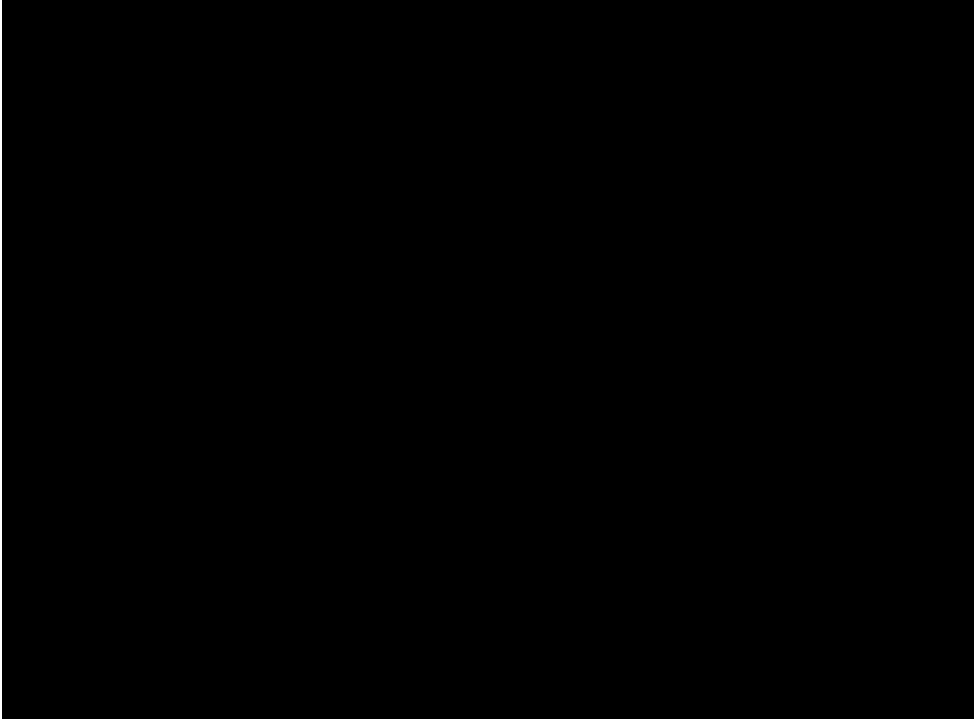
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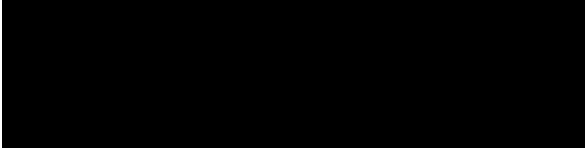
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**Original Guarantor**

**HOUTING MIDCO LIMITED**



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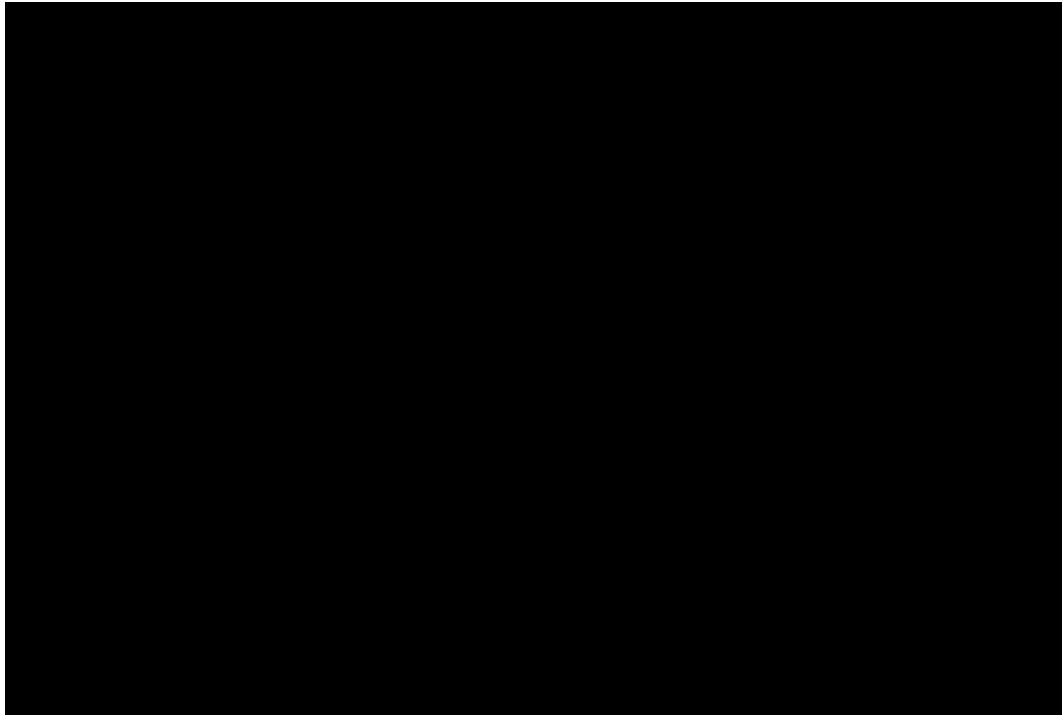
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**Original Guarantor**

**HOUTING UK LIMITED**



Name:

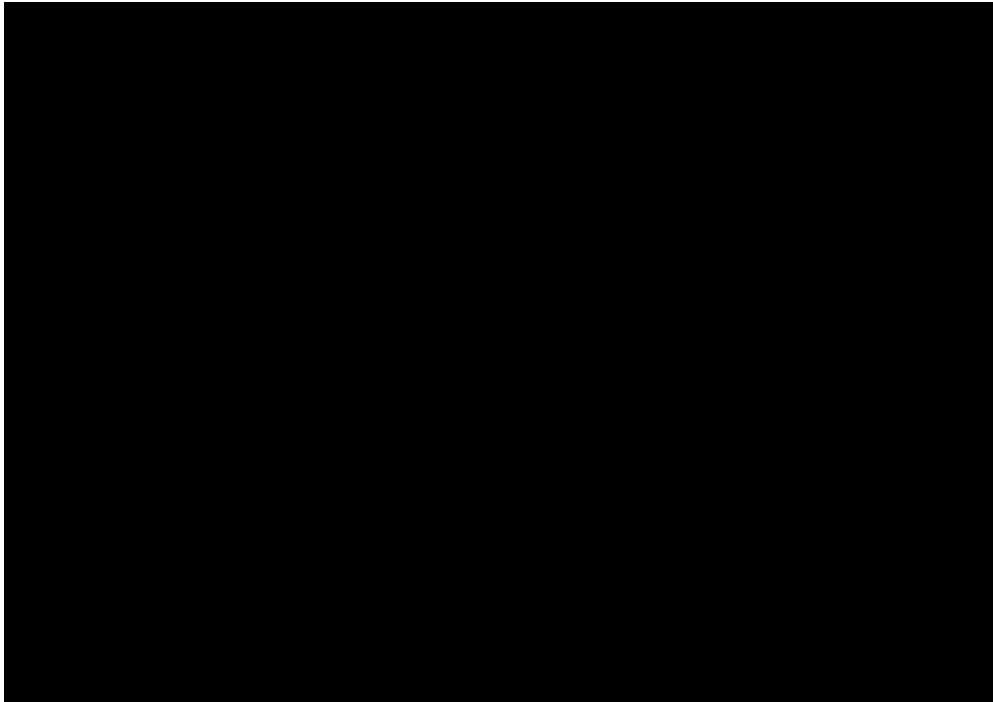
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Address:

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Tel.:



**Arranger**

**JPMORGAN CHASE BANK, N.A., ACTING THROUGH ITS HONG KONG BRANCH, A NATIONAL BANKING ASSOCIATION ORGANISED UNDER THE LAWS OF THE UNITED STATES OF AMERICA WITH LIMITED LIABILITY**

\_\_\_\_\_  \_\_\_\_\_

Address:

Attention:

Telephone:

Email:



**Original Term Facility Lender, and Original Revolving Facility Lender**

**JPMORGAN CHASE BANK, N.A., ACTING THROUGH ITS HONG KONG BRANCH, A  
NATIONAL BANKING ASSOCIATION ORGANISED UNDER THE LAWS OF THE UNITED  
STATES OF AMERICA WITH LIMITED LIABILITY**

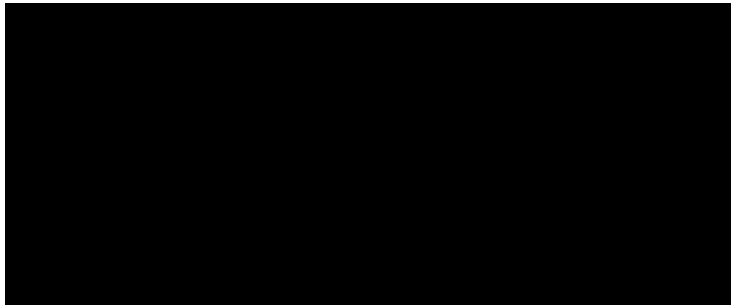
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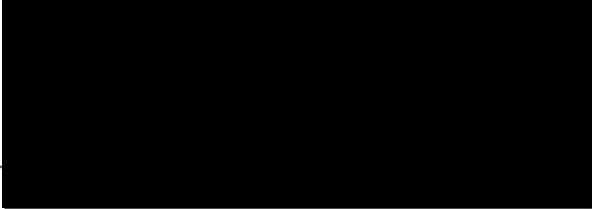
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**The Agent**

**JPMORGAN CHASE BANK, N.A., ACTING THROUGH ITS HONG KONG BRANCH, A  
NATIONAL BANKING ASSOCIATION ORGANISED UNDER THE LAWS OF THE UNITED  
STATES OF AMERICA WITH LIMITED LIABILITY**

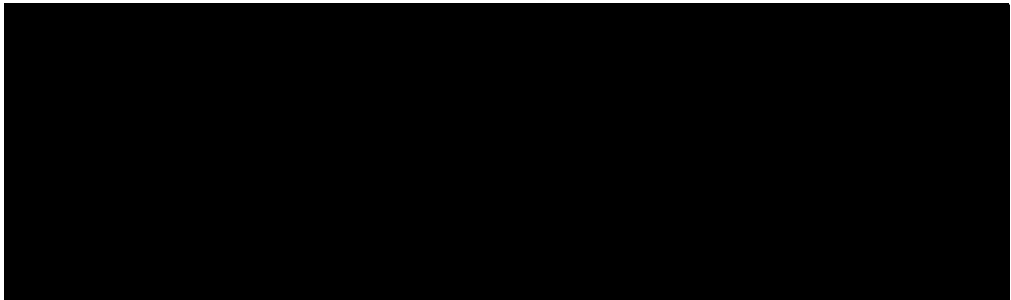
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Address:

Attention:

Telephone:

Email:



**The Security Agent**

Signed by for and on behalf of

**GLAS TRUST CORPORATION LIMITED**

\_\_\_\_\_



Address:

Attention:

Telephone:

Email:

