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**FACILITIES AGREEMENT**

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**BRIDGE LOAN FACILITIES AGREEMENT**

dated

**13 FEBRUARY 2023**

for

**UNIKMIND HOLDINGS LIMITED**

**Baker  
McKenzie.**

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## FACILITIES AGREEMENT

**This Agreement** is dated 13 February 2023.

### Between

- (1) **UNIKMIND HOLDINGS LIMITED**, a company registered in the Isle of Man with company number 016791V and having its registered office at Fort Anne, South Quay, Douglas, Isle of Man IM1 5PD as borrower (the "**Borrower**");
- (2) **THE FINANCIAL INSTITUTIONS** listed in Part I of Schedule 1 (*The Original Parties*) as lenders (the "**Original Lenders**"); and
- (3) **THE INVESTOR**.

**IT IS AGREED** as follows:

## SECTION 1 INTERPRETATION

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Agreement:

**"Acceptable Bank"** means:

- (a) a bank or financial institution which has a rating for its long-term unsecured and non credit-enhanced debt obligations of BBB- or higher by Standard & Poor's Rating Services or Fitch Ratings Ltd or Baa3 or higher by Moody's Investors Service Limited or a comparable rating from an internationally recognised credit rating agency; or
- (b) any other bank or financial institution approved by the Agent.

**"Acceptance Condition"** means, in relation to an Offer, a condition such that the Offer may not become or be declared unconditional until the Borrower has acquired or agreed to acquire a certain percentage or number of shares in Target.

**"Accordion Bridge Facility"** means the term loan facility made available under this Agreement as described in paragraph (a) of Clause 2.1 (*The Facilities*)

**"Accordion Bridge Facility Commitment"** means:

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

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

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

**"Accounting Principles"** means international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements, and with respect to any member of the Group incorporated in the United Kingdom, UK-adopted international accounting standards within the meaning of section 474(1) of the England and Wales Companies Act 2006 to the extent applicable to the relevant financial statements.

**"Acquisition"** means the acquisition of Target Shares or options related thereto by the Borrower (pursuant to a Scheme or Offer and/or Squeeze-Out and together with any irrevocables, open market purchases and/or any contribution, right or transfer, or otherwise (or any combination thereof)).

**"Acquisition Documents"** means the Scheme Documents or, as the case may be, the Offer Documentation and any Squeeze-Out Documents, any notices or other documents in connection with (including the implementation of) any de-listing of Target, any notices or other documents or agreements in connection with the same and/or any other document related to or referred to in the Acquisition Documents or entered into in connection with the Acquisition and designated as an Acquisition Document by the Borrower and the Agent (acting on the instructions of the Majority Lenders) (including as any such document is amended, replaced, revised, restated, supplemented or modified from time to time).

**"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"** means the Original Lender unless and until any entity becomes Party as Agent pursuant to Clause 26.1 (*Appointment of the Agent*).

**"Announcement"** means an Offer Announcement or a Scheme Announcement (including any subsequent announcement and any amendment, replacement, revision, restatement, supplement or modification from time to time).

**"Annual Financial Statements"** has the meaning given to that term in Clause 20 (*Information Undertakings*).

**"Anti-Corruption Laws"** means all laws, rules, and regulations of any jurisdiction applicable to members of the Group concerning or relating to bribery or corruption.

**"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.

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

**"Availability Period"** means, in relation to the Facilities, the period from and including the date of this Agreement to and including 11:59 p.m. (London time) on:

- (a) subject to paragraph (b) the last day of the Certain Funds Period; and
- (b) in relation to any Utilisation pursuant to paragraph (c) of Clause 3.1 (*Purpose*) only, the date falling three Business Days after the end of the Certain Funds Period.

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

- (a) the amount of its participation in any outstanding Loans under that Facility; and

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

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

**"Borrower Share Pledge"** means the Isle of Man law share pledge granted by the Investor over all of the issued share capital from time to time of the Borrower.

**"Borrower Shareholder Loans"** means any shareholder and related party loans to the Borrower from the Investor from time to time which are subordinated to the Facilities pursuant to the terms of the Intercreditor Agreement.

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

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

exceeds:

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

**"Business Day"** means a day (other than a Saturday or Sunday) on which banks are open for general business in London, the Isle of Man, Geneva and any day specified as such in Schedule 9 (*SOFR Rate Terms*).

**"Cash"** means, at any time, cash in hand or at bank and (in the latter case) credited to an account in the name of a member of the Group with an Acceptable Bank and to which a member of the Group is alone (or together with other members of the Group) beneficially entitled and for so long as:

- (a) that cash is repayable on demand;
- (b) repayment of that cash is not contingent on the prior discharge of any other indebtedness of any member of the Group or of any other person whatsoever or on the satisfaction of any other condition;
- (c) there is no Security over that cash except for Transaction Security or any Permitted Security constituted by a netting or set-off arrangement entered into by members of the Group in the ordinary course of their banking arrangements; and
- (d) the cash is freely and immediately available to be applied in repayment or prepayment of the Facilities.

**"Cash Bridge Facility"** means the term loan facility made available under the Agreement as described in paragraph (b) of Clause 2.1 (*The Facilities*)

**"Cash Bridge Facility Commitment"** means:

- (a) in relation to an Original Lender, the amount set opposite its name under the heading "Cash Bridge Facility Commitment" in Part I of Schedule 1 (*The Original Parties*) and

the amount of any other Cash Bridge Facility Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*); and

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

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

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

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

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

to the extent that investment can be turned into cash on not more than 30 days' notice; or

- (f) any other debt security approved by the Majority Lenders,

in each case, to which any member of the Group is alone (or together with other members of the Group) beneficially entitled at that time and which is not issued or guaranteed by any

member of the Group or subject to any Security (other than Security arising under the Transaction Security Documents).

**"Central Bank Rate"** means (a) 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 (b) if that target is not a single figure, the arithmetic mean of (i) the upper bound of that 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.

**"Central Bank Rate Adjustment"** has the meaning given to it in the SOFR Rate Terms.

**"Certain Funds Period"** means the period from and including the date of this Agreement and ending on the earliest date on which a Mandatory Cancellation Event occurs or exists (it being understood that the Certain Funds Period will not end on such date but immediately after the relevant Mandatory Cancellation Event occurs or first exists).

**"Certain Funds Purposes"** means (a) where the Acquisition proceeds by way of a Scheme: (i) payment (directly or indirectly) of the cash consideration payable by the Borrower to the holders of the Target Shares in consideration of such Target Shares being acquired by the Borrower; (ii) payment (directly or indirectly) of the cash consideration payable to holders of options to acquire Target Shares or to holders of warrants to subscribe for Target Shares pursuant to any proposal in respect of those options or warrants as required by the Takeover Code; (iii) payment (directly or indirectly) of the fees, costs and expenses in respect of the Acquisition (including any stamp duty) and (iv) any payment otherwise in connection with the Acquisition; or (b) where the Acquisition proceeds by way of an Offer: (i) payment (directly or indirectly) of the cash consideration payable by the Borrower to the holders of the Target Shares subject to the Offer in consideration of the acquisition of such Target Shares pursuant to the Offer; (ii) payment (directly or indirectly) of the cash consideration payable to the holders of Target Shares pursuant to the exercise by the Borrower of the Squeeze-Out (if applicable); (iii) payment (directly or indirectly) of the cash consideration payable to holders of options to acquire Target Shares pursuant to any proposal in respect of those options as required by the Takeover Code; (iv) payment (directly or indirectly) of the fees, costs and expenses in respect of the Acquisition (including any stamp duty) and (v) any payment otherwise in connection with the Acquisition.

**"Change of Control"** means:

- (a) the Borrower ceases to directly own at least 50.1% (fifty point 1 percent) of the issued share capital of the Target;
- (b) the Investor ceases to own directly 100.0% (one hundred percent) of the issued share capital of the Borrower; or
- (c) at any time after the date of this Agreement, the Borrower disposes of any of the issued share capital of the Target which it owns or acquires.

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

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

**"Commitment"** means an Accordion Bridge Facility Commitment or a Cash Bridge Facility Commitment.

**"Compounding Methodology Supplement"** means a document which:



- (a) is agreed in writing by the Borrower, the Agent (in its own capacity) and the Agent (acting on the instructions of Majority Lenders);
- (b) specifies a calculation methodology for the Daily Non-Cumulative Compounded SOFR or the Cumulative Compounded SOFR (as applicable); and
- (c) has been made available to the Borrower and each Finance Party.

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

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

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

- (i) information that:
  - (A) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 37 (*Confidential Information*); or
  - (B) is identified in writing at the time of delivery as non-confidential by any member of the Group or the Target or any of its advisers; or
  - (C) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group or the Target and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality; and
- (ii) any Funding Rate.

**"Confidentiality Undertaking"** means a confidentiality undertaking substantially in a recommended form of the LMA as set out in Schedule 6 (*LMA Form of Confidentiality Undertaking*) or in any other form agreed between the Borrower and the Agent.

**"Constitutional Documents"** means the articles of association of the Borrower.

**"Court"** means the High Court of the Isle of Man.

**"Court Meeting"** means the meeting or meetings of Target Shareholders (including any adjournment thereof) convened or to be convened at the direction of the Court for the purposes of considering and, if thought fit, approving the Scheme (if applicable).

**"Cumulative Compounded SOFR"** means, in relation to any Interest Period for a Loan, the percentage rate per annum determined by the Agent (or by any other Finance Party which agrees to determine that rate in place of the Agent) in accordance with the methodology set out in

Schedule 11 (*Cumulative Compounded SOFR (Without observation shift)*) or in any relevant Compounding Methodology Supplement.

**"Daily Non-Cumulative Compounded SOFR"** means, in relation to any SOFR Banking Day during an Interest Period for a Loan, the percentage rate per annum determined by the Agent (or by any other Finance Party which agrees to determine that rate in place of the Agent) in accordance with the methodology set out in Schedule 10 (*Daily Non-Cumulative Compounded SOFR (Without observation shift)*) or in any relevant Compounding Methodology Supplement.

**"Daily Rate"** means the rate specified as such in the SOFR Rate Terms.

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

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

any Commitment or amount outstanding under this Agreement.

**"Default"** means any event or circumstance specified in Clause 22 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

**"Defaulting Lender"** means any Lender:

- (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 of that Loan in accordance with Clause 5.4 (*Lenders' participation*);
- (b) which has otherwise rescinded or repudiated a Finance Document; or
- (c) with respect to which an Insolvency Event has occurred and is continuing,

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

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

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

**"Disposal"** shall have the meaning set out in paragraph (a) of Clause 21.8 (*Disposals*).

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

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facilities (or otherwise in order for the transactions contemplated

by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or

- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:
  - (i) from performing its payment obligations under the Finance Documents; or
  - (ii) from communicating with other Parties in accordance with the terms of the Finance Documents,

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

**"Drawn Debt Cap"** means an amount not exceeding an amount equal to the Total Commitments multiplied by the Ownership Percentage (expressed as a decimal number) on the proposed Utilisation Date for the relevant Loan.

**"Eligible Institution"** means any Lender or other bank, financial institution, trust, fund or other entity selected by the Borrower.

**"Event of Default"** means any event or circumstance specified as such in Clause 22 (*Events of Default*).

**"Excess Equity Contribution"** means an amount (if any) by which the Investor Equity Contribution that has been received by the Borrower exceeds the amount of Investor Equity Contribution required in order to satisfy the Pro Rata Equity Condition as at the end of the Certain Funds Period.

**"Facility"** means the Accordion Bridge Facility or the Cash Bridge Facility, as applicable.

**"Facility Office"** means:

- (a) in respect of a Lender, the office or offices notified by that Lender to the Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement; or
- (b) in respect of any other Finance Party, the office in the jurisdiction in which it is resident for tax purposes.

**"FATCA"** means:

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

**"FATCA Application Date"** means:

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

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

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

**"Fee Letter"** means:

- (a) any letter or letters dated on or about the date of this Agreement between the Original Lender and the Borrower (or the Agent and the Borrower or the Security Agent and the Borrower) setting out any of the fees referred to in Clause 13 (*Fees*); and
- (b) any agreement setting out fees payable to a Finance Party referred to in paragraph (h) of Clause 2.2 (*Increase*) or under any other Finance Document.

**"Finance Document"** means this Agreement, any Fee Letter, any Increase Confirmation, any SOFR Terms Supplement, any Compounding Methodology Supplement, any Transaction Security Document or any Utilisation Request and any other document designated as a "Finance Document" by the Agent and the Borrower.

**"Finance Lease"** means any lease or hire purchase contract, a liability which would, in accordance with the Accounting Principles, be treated as a balance sheet liability (other than a lease or hire purchase contract which would, in accordance with the Accounting Principles in force prior to 1 January 2019, have been treated as an operating lease).

**"Finance Party"** means the Agent, the Security Agent and each Lender.

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

- (a) moneys borrowed and debit balances at banks or other financial institutions;
- (b) any acceptance under any acceptance credit or bill discounting facility (or dematerialised equivalent);
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds (but not Trade Instruments), notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of Finance Leases;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any Treasury Transaction (and, when calculating the value of that Treasury Transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that Treasury Transaction, that amount) shall be taken into account);
- (g) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution in respect of (i) an underlying liability (but not, in any case, Trade

Instruments) of an entity which is not a member of the Group which liability would fall within one of the other paragraphs of this definition; or (ii) any liabilities of any member of the Group relating to any post-retirement benefit scheme;

- (h) any amount raised by the issue of shares which are redeemable (other than at the option of the issuer) before the latest applicable Maturity Date or are otherwise classified as borrowings under the Accounting Principles;
- (i) any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind entering into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question; or (ii) the agreement is in respect of the supply of assets or services and payment is due more than 120 days after the date of supply;
- (j) any amount raised under any other transaction (including any forward sale or purchase, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing or otherwise classified as borrowings under the Accounting Principles; and
- (k) the amount of any liability in respect of any guarantee for any of the items referred to in paragraphs (a) to (j) above.

**"Financial Quarter"** means the period commencing on the day after one Quarter Date and ending on the next Quarter Date.

**"Financial Year"** means the annual accounting period ending on or about 31 December in each year.

**"Funding Rate"** means any individual rate notified by a Lender to the Agent pursuant to of Clause 12.2 (*Cost of funds*).

**"General Meeting"** means the meeting of the holders of the Target Shares (or any adjournment thereof) to be convened in connection with the implementation of a Scheme (if applicable).

**"Group"** means, (x) prior to the first Utilisation Date, the Borrower, and (y) after the first Utilisation Date, the Borrower and the Subsidiaries of the Borrower for the time being (including the Target Group).

**"Group Structure Chart"** means one or more group structure charts showing the Borrower and its Subsidiaries delivered to the Original Lender prior to the Signing Date.

**"Holdco Facility"** means the facility provided to the Borrower under, and in accordance with the terms of, the Holdco Loan Agreement.

**"Holdco Loan"** means the loan provided by the Holdco Loan Original Lender to the Borrower pursuant to the Holdco Loan Agreement.

**"Holdco Loan Agreement"** means the loan agreement dated the Signing Date between the Borrower and the Holdco Loan Original Lender.

**"Holdco Loan Original Lender"** means HSBC Private Bank (Suisse) SA.

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

**"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) and (b) of the definition of "Defaulting Lender"; or
- (d) an Insolvency Event has occurred and is continuing with respect to the Agent;  
unless, in the case of paragraph (a) 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"** means a confirmation substantially in the form set out in Schedule 8 (*Form of Increase Confirmation*).

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

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

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

- (f) has exercised in respect of it one or more of the stabilisation powers pursuant to Part 1 of the Banking Act 2009 and/or has instituted against it a bank insolvency proceeding pursuant to Part 2 of the Banking Act 2009 or a bank administration proceeding pursuant to Part 3 of the Banking Act 2009;
- (g) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a solvent consolidation, amalgamation or merger);
- (h) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets (other than, for so long as it is required by law or regulation not to be publicly disclosed, any such appointment which is to be made, or is made, by a person or entity described in paragraph (d) above);
- (i) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter;
- (j) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (i) above; or
- (k) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

**"Interest Period"** means, in relation to a Loan, each period determined in accordance with Clause 11 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 10.3 (*Default interest*).

**"Intercreditor Agreement"** means the intercreditor agreement entered into on the date of this Agreement by, among others, the Original Lender, the Borrower, the Investor, the security agent named therein and the Holdco Loan Original Lender.

**"Investor"** means Teddy Sagi, an Israeli national and Cyprus resident and, during the Certain Funds Period only, in the event of death, incapacity or bankruptcy of the Investor, his estate and inheritors.

**"Investor Equity Contribution"** means, at any time, the aggregate amount of one or more contributions (in Cash or the proceeds of Borrower Shareholder Loans) by the Investor and actually received in Cash by the Borrower (including Cash deposited with the Borrower prior to the Announcement under an escrow agreement entered into with HSBC Bank plc as escrow agent in December 2022) to finance the Acquisition and costs and expenses in connection therewith. The Investor Equity Contribution shall include any contributions in Cash by the Investor to the Borrower from the date of the Announcement.

**"Investor Equity Contribution Cap"** means the USD equivalent of £100,000,000 (calculated using (i) the foreign exchange rate actually used by the Borrower to convert any Investor Equity Contribution from GBP to USD (or, (ii) if no foreign exchange rate was used, the GBP to USD foreign exchange rate on the relevant date, as determined in good faith by the Borrower acting reasonably and by reference to a recognised, publicly available foreign exchange rate provider), in the case of (i) or (ii), notified to the Original Lender).

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

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

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

**"Legal Reservations"** means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to, insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (b) the time barring of claims under the Limitation Acts, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of stamp duty may be void and defences of set-off or counterclaim;
- (c) similar principles, rights and defences under the laws of any Relevant Jurisdiction; and
- (d) any other matters which are set out as qualifications or reservations as to matters of law of general application in the Legal Opinions.

**"Lender"** means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party as a "Lender" in accordance with Clause 2.2 (*Increase*) or Clause 23 (*Changes to the Lenders*),

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

**"Limitation Acts"** means the Limitation Act 1980, Isle of Man Limitation Act 1984 (an Act of Tynwald) and the Foreign Limitation Periods Act 1984.

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

**"Loan"** means an Accordion Bridge Facility Loan or a Cash Bridge Facility Loan, as applicable.

**"Long-Stop Date"** means the date falling six months after the Signing Date (the **"Original Long-Stop Date"**) or: (a) where the Acquisition proceeds by way of Scheme, the date that is six weeks after the Original Long-Stop Date or (b) where the Acquisition proceeds by way of an Offer, the date that is eight weeks after the Original Long-Stop Date (or, in either case, such later date as may be agreed between the Borrower and the Lenders, each acting reasonably and in good faith).

**"Lookback Period"** means the number of days specified as such in the SOFR Rate Terms.

**"Major Default"** means with respect to the Borrower only (excluding: (x) any procurement obligations on the part of the Borrower with respect to any other member of the Group (including the Target Group); and (y) any failure to comply, breach or Default by or resulting from (in whole or in part) the actions of any other member of the Group), any circumstances constituting a Default under any of Clause 22.1 (*Non-payment*) in respect of the payment of principal or interest only, Clause 22.2 (*Other obligations*) insofar as it relates to a breach of a Major Undertaking, Clause 22.3 (*Misrepresentation*) insofar as it relates to a breach of any Major Representation, Clause 22.5 (*Insolvency*) provided that the words "one or more of its creditors" in paragraph (a)(iii) thereof shall be deemed to have been replaced with "its creditors"



generally" and excluding paragraph (b) thereof, Clause 22.6 (*Insolvency proceedings*) provided that "formal" is deemed to be included before "procedure" in paragraph (a), "any creditor" is deemed to be replaced with "the creditors" in (a)(ii) and "material" is deemed to be included before "assets" in (a)(iii) and excluding paragraph (a)(iv) thereof, Clause 22.7 (*Creditors' process*) provided that "£1,000,000" is deemed to be replaced with "£10,000,000" and Clause 22.8 (*Unlawfulness and invalidity*) provided that "material" is deemed to be included before "obligations" in paragraph (a).

**"Major Representation"** means a representation or warranty with respect to the Borrower only (excluding: (x) any procurement obligations on the part of the Borrower with respect to any other member of the Group (including the Target Group); and (y) any failure to comply, breach or Default by or resulting from (in whole or in part) the actions of any other member of the Group) under any of Clause 19.2 (*Status*) to Clause 19.6 (*Validity and admissibility in evidence*) inclusive provided that paragraph (c) of Clause 19.2 shall be deemed to include the following wording at the end of that paragraph "to the extent that the ownership of such assets or carrying on its business has a material effect on the ability of the Borrower to perform its material obligations under the Finance Documents".

**"Major Undertaking"** means an undertaking with respect to the Borrower only (excluding: (x) any procurement obligations on the part of the Borrower with respect to any other member of the Group (including the Target Group); and (y) any failure to comply, breach or Default by or resulting from (in whole or in part) the actions of any other member of the Group) under any of Clause 21.11 (*Negative Pledge*), Clause 21.5 (*Acquisitions*), Clause 21.12 (*Loans*), Clause 21.13 (*Distributions*), Clause 21.15 (*Financial Indebtedness*), Clause 21.6 (*Merger*), Clause 21.9 (*Holding Companies*), 21.8 (*Disposals*) and paragraphs (a), (d), (e), (f) or (g) of Clause 21.4 (*Scheme or Offer Undertakings*).

**"Majority Lenders"** means:

- (a) if in relation to the Accordion Bridge Facility only, a Lender or Lenders whose Commitments aggregate more than 66⅔ per cent. of the Total Accordion Bridge Facility Commitments (or, if the Total Accordion Bridge Facility Commitments have been reduced to zero, aggregated more than 66⅔ per cent. of the Total Accordion Bridge Facility Commitments immediately prior to that reduction) at that time;
- (b) if in relation to the Cash Bridge Facility only, a Lender or Lenders whose Commitments aggregate more than 66⅔ per cent. of the Total Cash Bridge Facility Commitments (or, if the Total Cash Bridge Facility Commitments have been reduced to zero, aggregated more than 66⅔ per cent. of the Total Cash Bridge Facility Commitments immediately prior to that reduction) at that time; or
- (c) if in relation to the Facilities together, a Lender or Lenders whose Commitments aggregate more than 66⅔ per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 66⅔ per cent. of the Total Commitments immediately prior to that reduction) at that time.

**"Mandatory Cancellation Event"** means the occurrence of any of the following conditions, dates or events:

- (a) where the Acquisition proceeds by way of a Scheme: (i) a Court Meeting is held to approve the Scheme at which a vote is held to approve the Scheme, but the Scheme is not so approved by the requisite majority of Target Shareholders at such Court Meeting; (ii) a General Meeting is held to pass the Scheme Resolutions at which a vote is held on the Scheme Resolutions, but the Scheme Resolutions are not passed by the requisite majority of the Target Shareholders at such General Meeting; (iii) applications for the

issuance of the Scheme Court Order are made to the Court but the Court refuses to grant the Scheme Court Order; (iv) the Scheme lapses or is withdrawn with the consent of the Panel or by order of the Court; (v) a certified Scheme Court Order is issued but not delivered to the Registrar within 7 days of its issuance; (vi) the date which is 14 days after the Scheme Effective Date (or, if later the date immediately following any extension of the period for settlement of consideration provided by the Panel pursuant to the Takeover Code); (vii) the date upon which all payments made or to be made for Certain Funds Purposes have been paid in full in cleared funds; or (viii) the Long-Stop Date, unless the Scheme Effective Date has occurred prior thereto, in which case, clause (vi) above shall apply,

unless, in respect of clause (iv) above, for the purpose of switching from a Scheme to an Offer, within 5 Business Days of such event the Borrower has notified the Agent it intends to issue, and then within 10 Business Days (or such later period as the Agent may agree in its sole discretion) after delivery of such notice does issue, an Offer Announcement (in which case no Mandatory Cancellation Event shall have occurred pursuant to clause (iv) above) and provided that the postponement or adjournment of any Court Meeting or General Meeting shall not constitute a Mandatory Cancellation Event if such Court Meeting or General Meeting is capable of being reconvened on a future date prior to the Long-Stop Date;

- (b) where the Acquisition proceeds by way of an Offer: (i) such Offer lapses, terminates or is withdrawn with the consent of the Panel unless, for the purpose of switching from an Offer to a Scheme, within 5 Business Days of such event the Borrower has notified the Agent it intends to issue, and then within 10 Business Days (or such later period as the Agent may agree acting on the instructions of all of the Lenders) after delivery of such notice does issue, a Scheme Announcement (in which case no Mandatory Cancellation Event shall have occurred); (ii) the date upon which all payments made or to be made for Certain Funds Purposes have been paid in full in cleared funds; (iii) 14 days after the Long-Stop Date; and (iv) the date falling 30 days after the date on which the offer closes for acceptances, unless the Borrower becomes entitled to initiate the compulsory acquisition procedure in section 160 of the Isle of Man Companies Act 2006, in which case the relevant date shall be the date falling eight weeks after the Borrower becomes entitled to initiate the compulsory acquisition procedure in accordance with section 160 of the Isle of Man Companies Act 2006;
- (c) if the first Announcement is not released by the date falling 10 Business Days after the date of this Agreement; and
- (d) the Commitments are utilised in full.

**"Margin"** means 300 (three hundred) basis points per annum from the Signing Date to the first Utilisation Date and, thereafter, as set out in the table below:

Months from the first Utilisation Date	Basis points per annum
0-2	300
3-4	375
5-6	425
7 or more	475

*provided* that (to the extent that an Accordion Bridge Facility Commitment has been drawn), until the date on which the Target Accordion Commitment Condition is satisfied, the Margin applicable to the Accordion Bridge Facility shall be 300 (three hundred) basis points per annum and, from and including the date on which the Target Accordion Commitment Condition is satisfied, the Margin applicable to the Accordion Bridge Facility shall be as set out in the table above.

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

- (a) the business, operations, property or financial condition of the Group taken as a whole; or
- (b) the ability of the Borrower or the Investor to perform their respective payment obligations under the Finance Documents; or
- (c) the validity or enforceability of, or the effectiveness or ranking of any Security granted or purporting to be granted pursuant to any of, the Finance Documents which is (i) prejudicial to the interests of the Lenders under the Finance Documents and (ii) (without duplication of any other remedy period) if capable of remedy, not remedied within 10 Business Days of the board of directors (or equivalent management body) of the Borrower becoming aware of the relevant event or circumstance or being given notice of the same by the Agent.

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

- (a) the Borrower;
- (b) the Target; and
- (c) any Subsidiary of the Target which is, or becomes, a "Material Company" under and as defined in the Target Facilities Agreement.

**"Maturity Date"** means the date falling one year after the date of this Agreement.

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

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

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

**"New Lender"** has the meaning given to that term in Clause 23 (*Changes to the Lenders*).

**"Offer"** means the takeover offer by the Borrower in accordance with the Takeover Code to acquire all of the Target Shares that are the subject of that takeover offer substantially on the terms of, and subject to the conditions set out in, the Offer Announcement.

**"Offer Announcement"** means the press announcement to be released by the Borrower (or on its behalf) pursuant to Rule 2.7 of the Takeover Code announcing a firm intention to make an offer for the Target which is to be implemented by way of an Offer or, as the case may be, a conversion from a Scheme to an Offer in accordance with Section 8 of Appendix 7 to the Takeover Code.

**"Offer Document"** means the offer document containing the Offer and published or provided (or to be published and provided) by or on behalf of the Borrower to shareholders of the Target or otherwise made available to such persons in the manner required by Rule 24.1 of the Takeover Code.

**"Offer Documentation"** means the Offer Announcement, the Offer Document and any other documents or agreements related to the Offer or referred to in the Offer Announcement or the Offer Document or entered into in connection with the Offer and designated as an Offer Documentation by the Borrower and the Agent (acting on the instructions of all of the Lenders) (including as any such documents are amended, replaced, revised, restated, supplemented or modified from time to time).

**"Offer Unconditional Date"** means the date the Offer has been declared, or has become, unconditional.

**"Original Financial Statements"** means the audited consolidated accounts of the Borrower for the year ended 31 December 2021.

**"Ownership Percentage"** means, at any time, the percentage ownership of the issued shares of the Target carrying voting rights then exercisable at a general meeting of the Target, owned by the Borrower (as a percentage of the total issued shares of the Target carrying voting rights then exercisable at a general meeting of the Target).

**"Ownership Threshold"** means, the Borrower owning, having acquired (or being bound to acquire as a result of shareholder acceptances pursuant to the Offer or Scheme following the Offer Unconditional Date or the Scheme Effective Date, as applicable) an Ownership Percentage of at least 75 per cent (on a fully-diluted basis).

**"Panel"** means the UK Panel on Takeovers and Mergers.

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

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

**"Permitted Disposal"** means a Disposal:

- (a) made in the ordinary course of trading (including any Disposal constituting a Permitted Holding Company Activity);
- (b) which is a Permitted Transaction; or
- (c) of assets (other than shares) where the higher of the market value and the consideration receivable does not (in aggregate with the higher of market value and consideration receivable all of such Disposals), exceed £1,000,000 prior to the Maturity Date.

**"Permitted Distribution"** means payment of a dividend or distribution where the aggregate amount of such distributions since the Signing Date does not exceed the amount of Excess Equity Contributions, provided that such distribution is made following the Certain Funds Period and within three Business Days after the end of the Certain Funds Period, provided further that such dividend or distribution results in the Pro Rata Equity Condition being satisfied.

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

- (a) arising under (x) the Finance Documents or (y) the Holdco Loan Agreement, *provided that* the Financial Indebtedness incurred under (y) shall be no greater than the outstanding commitments of the lenders under the Holdco Loan Agreement on the Signing Date;
- (b) arising under a foreign exchange transaction for spot or forward delivery entered into in connection with protection against fluctuation in currency rates where that foreign exchange exposure arises under the Facilities or the Holdco Facility, but not a foreign exchange transaction for investment or speculative purposes;
- (c) arising under a Permitted Guarantee (other than paragraph (b) of that definition);
- (d) permitted by the Agent (acting on the instructions of the Majority Lenders); or
- (e) arising under the Shareholder Loans, subject to the terms of the Intercreditor Agreement.

**"Permitted Guarantee"** means:

- (a) any guarantee arising under the Finance Documents or the Holdco Loan Agreement;
- (b) any guarantee permitted under the definition of Permitted Financial Indebtedness (other than paragraph (c) of that definition) or of Permitted Transactions;
- (c) any guarantee given or arising under legislation relating to tax or corporate law under which any member of the Group assumes general liability for the obligations of another member of the Group incorporated or tax resident in the same country; or
- (d) any guarantee permitted by the Agent (acting on the instructions of the Majority Lenders).

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

- (a) carrying on normal business as a holding company;
- (b) undertaking activities contemplated by the Acquisition or required for or contemplated in connection with the Acquisition or referred to in the definition of Permitted Borrower Distribution;
- (c) entering into any derivative transaction arising under a foreign exchange transaction for spot or forward delivery entered into in connection with protection against or fluctuation in currency rates where that foreign exchange exposure arises solely under (i) the Facilities or (ii) the Holdco Facility, but not a foreign exchange transaction for investment or speculative purposes;
- (d) activities necessary to maintain Tax status;
- (e) incurring liabilities for and making claims for (and the receipt of related proceeds), or in connection with, Taxes (including making or facilitating payments of VAT on behalf of itself and on behalf of any of its subsidiaries or holding companies with which it forms a group for VAT purposes);

- (f) the receipt of any Investor Equity Contribution or other equity contribution or Shareholder Loan from the Investor;
- (g) activities in connection with any litigation or court or other proceedings that are, in each case, being contested in good faith;
- (h) ownership of shares in its subsidiaries (in the case of the Borrower, limited to holding shares in the Target) and any liabilities incurred or payments made by a holding company in respect of its share capital and professional fees, employee costs, administration costs and Taxes in each case incurred in the ordinary course of its business as a holding company or consistent with past practice and permitted under this Agreement;
- (i) the ownership of cash balances or Cash Equivalent Investments;
- (j) incurring liabilities arising by operation of law;
- (k) carrying on business, incurring any liability or owning any asset solely to the extent necessary to maintain its corporate existence;
- (l) any activity constituting Permitted Security, a Permitted Loan or Permitted Financial Indebtedness; or
- (m) otherwise permitted by the Agent (acting on the instructions of the Majority Lenders).

**"Permitted Loan"** means any Financial Indebtedness or loan:

- (a) the purposes of which is to facilitate compliance by the Borrower of its payment obligations under this Agreement or the Holdco Loan Agreement; or
- (b) permitted by the Agent (acting on the instructions of the Majority Lenders).

**"Permitted Security"** means any Security or Quasi-Security:

- (a) granted pursuant to the Finance Documents or the Holdco Loan Agreement;
- (b) arising by operation of law in the ordinary course of business;
- (c) existing on the Signing Date (and details of which have been provided to the Agent prior to the Signing Date);
- (d) securing Financial Indebtedness permitted under paragraph (b) of the definition of Permitted Financial Indebtedness; or
- (e) permitted by the Agent (acting on the instructions of the Majority Lenders).

**"Permitted Transaction"** means:

- (a) any disposal required, Financial Indebtedness incurred, guarantee, indemnity or Security or Quasi-Security given, or other transaction arising, under the Finance Documents or the Holdco Loan Agreement (in its original form) and the transactions and payments in connection with the Acquisition;
- (b) transactions (other than:
  - (i) any sale, lease, license, transfer or other disposal; and
  - (ii) the granting or creation of Security or the incurring or permitting to subsist of Financial Indebtedness),

conducted in the ordinary course of trading on arm's length terms including spot and forward delivery foreign exchange contracts entered into in the ordinary course of business and not for investment or speculative purposes provided such contracts are not in respect of long-dated trades of more than 12 months tenor; or

- (c) any transactions permitted by the Agent (acting on the instructions of the Majority Lenders).

**"Pro Rata Equity Condition"** means, at any time, the requirement that the ratio of (i) the aggregate amount of Investor Equity Contribution which has been applied to finance the Acquisition and costs and expenses in connection therewith (the **"Applied Equity Contribution Amount"**) to (ii) the amount of outstanding Holdco Loans at that time, is equal to or greater than the Required Equity Ratio.

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

**"Quasi-Security"** has the meaning given to that term in Clause 21.11 (*Negative pledge*).

**"Quotation Day"** means, in relation to any period for which an interest rate is to be determined 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 will be determined by the Agent in accordance with market practice in the Relevant Market (and if quotations would normally be given on more than one day, the Quotation Day will be the last of those days)).

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

**"Registrar"** means the Isle of Man Registrar of Companies.

**"Relevant Jurisdiction"** means:

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

**"Relevant Market"** means the London interbank market or the market for overnight cash borrowing collateralised by US Government securities, as applicable.

**"Repeating Representations"** means each of the representations set out in Clause 19.2 (*Status*) to Clause 19.7 (*Governing law and enforcement*) (inclusive), Clause 19.11 (*No default*), paragraph (b) of Clause 19.12 (*No misleading information*), Clause 19.13 (*Financial Statements*), Clause 19.17 (*Ranking*) to Clause 19.23 (*Sanctions*) (inclusive).

**"Reporting Day"** means any day specified as such in the SOFR Rate Terms.

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

**"Required Equity Ratio"** means x:y, where "x" is an amount equal to the Investor Equity Contribution Cap and "y" is the amount of the "Total Commitments" under and as defined in

the Holdco Facility Agreement as at the date of this Agreement *plus* an amount equal to the Investor Equity Contribution Cap.

**"Sanctioned Country"** means:

- (a) from time to time, any country or other territory which is or whose government is subject to Sanctions, and shall include, as of the Signing Date, without limitation, Cuba, Iran, the Autonomous Republic of Crimea and the City of Sevastopol, North Korea and Syria (recognising that the list of countries subject to Sanctions may change over the term of this Agreement); or
- (b) with which any of the United Nations, the European Union, the United Kingdom, Switzerland or the United States of America does not maintain diplomatic relations.

**"Sanctioned Person"** means any person that is:

- (a) designated target of Sanctions or is otherwise subject of Sanctions, or owned or controlled (as such terms are defined by the relevant Sanctions Authority) directly or indirectly by one or more persons which is/are a designed target of Sanctions;
- (b) any person organized under the law of, having its registered office in, or resident or operating in a Sanctioned Country;
- (c) any person directly or indirectly owned or controlled by any such person or persons.

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

**"Sanctions Authority"** means:

- (a) the US government or any US agency;
- (b) the United Nations Security Council;
- (c) the EU;
- (d) the member states of the EU;
- (e) the United Kingdom;
- (f) Switzerland, and the governments and official institutions of any of the above; or
- (g) the Isle of Man Government.

**"Scheme"** means any scheme of arrangement which is or may be proposed by the Target to its shareholders under section 157 of the Isle of Man Companies Act 2006 pursuant to which the Target Shares shall be transferred to the Borrower, as such scheme may from time to time be amended, added to, revised, renewed or varied, including by the making available of any alternative consideration under such scheme, in each case, in accordance with this Agreement.

**"Scheme Announcement"** means a press announcement made by or on behalf of the Borrower and/or the Target pursuant to Rule 2.7 of the Takeover Code, announcing a firm intention to make an offer which is to be implemented by means of the Scheme or, as the case may be, a conversion from an Offer to a Scheme in accordance with Section 8 of Appendix 7 to the Takeover Code.



**"Scheme Circular"** means the circular (including any supplemental circular) issued or dispatched (or to be issued or dispatched) by the Target to shareholders of the Target setting out the resolutions and proposals for and the terms and conditions of the Scheme.

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

**"Scheme Documents"** means, if applicable, the Scheme Announcement, any Scheme Circular, the Scheme Court Order, and any other documents or agreements related to the Scheme or referred to in the Scheme Documents or entered into or published in connection with the Scheme and designated a Scheme Document by the Borrower and (to the extent such document is reasonably likely to materially adversely affect the interests of the Lenders (taken as a whole) under the Finance Documents) the Agent (acting reasonably) (including as any such documents are amended, replaced, revised, restated, supplemented or modified from time to time).

**"Scheme Effective Date"** means the date on which the Scheme Court Order is delivered to the Registrar in accordance with section 159 of the Isle of Man Companies Act 2006.

**"Scheme Resolutions"** means the resolutions to be set out in the Scheme Circular to be considered and, if thought fit, approved at the General Meeting.

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

**"Security Agent"** means any entity which has become Party as a Security Agent pursuant to Clause 27.1 (*Security Agent appointment*).

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

**"Shareholder Loan Assignment"** means the English law security agreement over the Shareholder Loans.

**"Shareholder Loans"** means the Borrower Shareholder Loans and the Target Shareholder Loans.

**"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 by the Federal Reserve Bank of New York (or any other person which takes over the publication of that rate) and displayed on the relevant screen of any authorised information service, subject to a minimum floor of zero per cent..

**"SOFR Banking Day"** means a day other than:

- (a) a Saturday or 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.

**"SOFR Rate"** means, in relation to any SOFR Banking Day during an Interest Period of a Loan, the percentage rate per annum which is the Daily Non-Cumulative Compounded SOFR for that SOFR Banking Day, subject to a minimum floor of zero per cent..

**"SOFR Rate Terms"** means, in relation to:

- (a) a Loan or an Unpaid Sum;
- (b) an Interest Period for that Loan or Unpaid Sum (or other period for the accrual of commission or fees); or
- (c) any term of this Agreement relating to the determination of a rate of interest in relation to that Loan or Unpaid Sum,

the terms set out in Schedule 9 (*SOFR Rate Terms*) or in any SOFR Terms Supplement.

**"SOFR Terms Supplement"** means a document which:

- (a) is agreed in writing by the Borrower, the Agent (in its own capacity) and the Agent (acting on the instructions of the Majority Lenders);
- (b) specifies the terms which are expressed in this Agreement to be determined by reference to SOFR Rate Terms; and
- (c) has been made available to the Borrower and each Finance Party.

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

**"Squeeze-Out"** means the compulsory acquisition procedures set out in section 160 of the Isle of Man Companies Act 2006 pursuant to which the Borrower may acquire any remaining Target Shares the subject of the Offer which have not been acquired pursuant to the Offer.

**"Squeeze-Out Documents"** means any documents, agreements or notices issued or entered into or to be issued or entered into in connection with any Squeeze-Out (including as any such document may be amended, replaced, revised, restated, supplemented or modified from time to time).

**"Structure Memorandum"** means the structure memorandum provided to the Original Lenders prior to the Signing Date, on a non-reliance basis.

**"Subsidiary"** means, in relation to any person, any entity which is controlled directly or indirectly by that person and any entity (whether or not so controlled) treated as a subsidiary in the latest financial statements of that person from time to time, and control for this purpose means the direct or indirect ownership of the majority of the voting share capital of such entity or the right or ability to direct management to comply with the type of material restrictions and obligations contemplated in this Agreement or to determine the composition of a majority of the board of directors (or like board) of such entity, in each case, whether by virtue of ownership of share capital, contract or otherwise.

**"Takeover Code"** means the UK City Code on Takeovers and Mergers, as administered by the Panel.

**"Target"** means Kape Technologies plc, a company incorporated in the Isle of Man with company number 011402V and having its registered office at Sovereign House, 4 Christian Road, Douglas, IM1 2SD.

**"Target Accordion Commitments"** means Accordion Commitments (under and as defined in the Target Facilities Agreement).

**"Target Accordion Commitment Condition"** means that Target Accordion Commitments in an aggregate amount of not less than \$75,000,000 have been made available to the Target.

**"Target Facilities Agreement"** means the facilities agreement entered into between, amongst others, the Target and certain lenders named therein as amended and restated by an amendment and restatement deed dated 31 October 2022, providing the Target Group with a term loan facility in an amount up to \$275,000,000 and a revolving credit facility in an amount up to \$150,000,000, in each case secured on assets of the Target Group, as the same may be amended from time to time.

**"Target Group"** means the Target and its Subsidiaries from time to time.

**"Target Shareholders"** means the registered holders of Target Shares at the relevant time.

**"Target Shareholder Loans"** means any shareholder or related party loans to the Target Group from the Borrower or the Investor from time to time which are subordinated to the Facility pursuant to the terms of the Intercreditor Agreement.

**"Target Share Pledge"** means the Isle of Man law share pledge between the Borrower and the Security Agent over the shares in the Target held by the Borrower from time to time.

**"Target Shares"** means the issued (or to be issued) ordinary shares of the Target and all warrants and options in respect of the share capital of the Target from time to time.

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

**"Total Commitments"** means the aggregate of the Total Accordion Bridge Facility Commitments and the Total Cash Bridge Facility Commitments.

**"Total Accordion Bridge Facility Commitments"** means the aggregate of the Total Accordion Bridge Facility Commitments, being \$75,000,000 at the date of this Agreement.

**"Total Cash Bridge Facility Commitments"** means the aggregate of the Total Cash Bridge Facility Commitments, being \$268,000,000 at the date of this Agreement.

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

**"Transaction Documents"** means the Finance Documents, the Acquisition Documents, and the Constitutional 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 the Borrower Share Pledge, the Target Share Pledge, the Shareholder Loan Assignment and the Intercreditor Agreement together with any other document entered into by the Borrower or the Investor creating or expressed to create any Security over all or any part of its assets in respect of the obligations of the Borrower or the Investor under any of the Finance Documents.

**"Transfer Certificate"** means a certificate substantially in the form set out in Schedule 4 (*Form of Transfer Certificate*) or any other form agreed between the Agent and the Borrower.

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

- (a) the proposed Transfer Date specified in the relevant Assignment Agreement or Transfer Certificate; and

- (b) the date on which the Agent executes the relevant Assignment Agreement or Transfer Certificate.

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

**"Unpaid Sum"** means any sum due and payable but unpaid by the Borrower or the Investor under the Finance Documents.

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

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

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

**"VAT"** means:

- (a) any value added tax imposed by the Value Added Tax Act 1994;
- (b) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112);
- (c) any tax imposed in compliance with the Isle of Man Value Added Tax Act 1996 (an Act of Tynwald); and
- (d) any other tax of a similar nature, whether imposed in the United Kingdom or a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraphs (a), (b) or (c) above, or imposed elsewhere, in each case, together with all penalties or interest thereon.

## 1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
  - (i) the **"Agent"**, any **"Finance Party"**, any **"Lender"**, any **"Borrower"**, the **"Investor"**, any **"Party"**, any **"Secured Party"**, the **"Security Agent"** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with the Finance Documents;
  - (ii) a document in **"agreed form"** is a document which is previously agreed in writing by or on behalf of the Borrower and the Agent or, if not so agreed, is in the form specified by the Agent (acting reasonably);
  - (iii) **"assets"** includes present and future properties, revenues and rights of every description;
  - (iv) a **"Finance Document"** or a **"Transaction Document"** or any other agreement or instrument is a reference to that Finance Document or Transaction Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
  - (v) a **"group of Lenders"** includes all the Lenders;

- (vi) **"guarantee"** means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
- (vii) **"indebtedness"** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (viii) a **"person"** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
- (ix) a **"regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
- (x) a provision of law is a reference to that provision as amended or re-enacted from time to time; and
- (xi) a time of day is a reference to London time.
- (b) A reference in this Agreement to a Central Bank Rate shall include any successor rate to, or replacement rate for, that rate.
- (c) Any SOFR Terms Supplement overrides anything in:
  - (i) Schedule 9 (*SOFR Rate Terms*); or
  - (ii) any earlier SOFR Terms Supplement.
- (d) A Compounding Methodology Supplement relating to the Daily Non-Cumulative Compounded SOFR or the Cumulative Compounded SOFR overrides anything relating to the Daily Non-Cumulative Compounded SOFR or the Cumulative Compounded SOFR (as applicable):
  - (i) in Schedule 10 (*Daily Non-Cumulative Compounded SOFR (Without observation shift)*) or Schedule 11 (*Cumulative Compounded SOFR (Without observation shift)*), as the case may be; or
  - (ii) any earlier Compounding Methodology Supplement.
- (e) 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.
- (f) Section, Clause and Schedule headings are for ease of reference only.
- (g) 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.
- (h) A Default, an Event of Default, a Major Default or an Insolvency Event is **"continuing"** if it has not been remedied or waived.

### 1.3 Currency symbols and definitions

- (a) "\$", "USD" and "dollars" denote the lawful currency of the United States of America.
- (b) "£", "GBP" and "pound sterling" denote the lawful currency of the United Kingdom.

### 1.4 Third party rights

- (a) Unless expressly provided to the contrary in a Finance Document a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce or 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 Exchange rate fluctuations and accruals

- (a) Unless a contrary indication appears, a basket or monetary limit expressed in dollars or pound sterling includes the equivalent of such basket or monetary limit in other currencies.
- (b) The Borrower (or the relevant member of the Group) shall be entitled to determine the currency equivalent of any amount on or by reference to the date of incurrence, commitment, transaction, calculation or determination (or in any manner contemplated by this Agreement) by reference to published market rates and no fluctuation in exchange rates subsequent to the first such determination of compliance will cause a breach of, or lessen capacity under, any basket or monetary limit.
- (c) No breach, misrepresentation, non-compliance, Default or Event of Default shall occur as a result of any redenomination of any amount with another currency or change in, or fluctuation in the exchange or translation rate of, any currency or currencies (or any currency-equivalent).

### 1.6 Calculations

- (a) Notwithstanding any other provision of this Agreement, but without prejudice to any other rights of the Borrower and the Group under the Finance Documents, in respect of any transaction, activity, event, test, calculation, determination or arrangement, the Borrower (or the relevant member of the Group) may test and calculate permissibility, availability and capacity under any covenant, basket, monetary limit, ratio, threshold, permission or exception and/or compliance with the terms of this Agreement or any Finance Document (and whether a Default or Event of Default has or will occur) as at the date of activity, consummation, closing or incurrence or as at the date of commitment, determination, establishment, classification, definitive agreement, entry into, designation or establishment (rather than the date of activity, consummation, closing or incurrence (as applicable)).

References to "incurrence" and "incur" may, at the option of the Borrower, be deemed to refer to "commitment" and references to "commitment" may, at the option of the Borrower, be deemed to refer to "incurrence" and "incur" and with relevant provisions interpreted and construed accordingly.

- (b) For the avoidance of doubt, if any item or amount is validly incurred or outstanding under or allocated to any particular basket, ratio, exception or permission (or similar), any refinancing, replacement, renewal or extension of such item or amount shall itself

be permitted to the extent that it would continue to comply with such basket, ratio, exception or permission.

### **1.7 No personal liability**

Where any natural person (other than the Investor) gives a certificate or other document or otherwise gives a representation or statement on behalf of any Party pursuant to any provision thereof and such certificate or other document, representation or statement proves to be incorrect, the individual shall incur no personal liability in consequence of such certificate, other document, representation or statement being incorrect save where such individual acted fraudulently in giving such certificate, other document, representation or statement (in which case any liability of such individual shall be determined in accordance with applicable law) and each such individual may rely on this Clause 1.7.

### **1.8 No investor recourse**

- (a) No Finance Party will have any recourse to any other person who is not a member of the Group (other than the Investor (pursuant to the Shareholder Loan Assignment and/or the Borrower Share Pledge only)) under, or in respect of any term of, any Finance Document, any statement by or information provided by any such person, or otherwise.
- (b) Notwithstanding anything to the contrary in this Agreement or any other Finance Document but subject to the provisions of this paragraph, the liabilities and obligations of the Investor under and in connection with this Agreement and the Finance Documents are limited to the Borrower Share Pledge and the Shareholder Loan Assignment, the rights and recourse of the Secured Parties to or against the Investor are limited to a right to enforce the Transaction Security granted pursuant to the terms of the Borrower Share Pledge and the Shareholder Loan Assignment (and all related rights under the terms of and as set out in, each of the Borrower Share Pledge and the Shareholder Loan Assignment) (and to receive the amounts recovered from the enforcement of such Transaction Security), and no Secured Party shall have any right or recourse to any assets of the Investor which are not subject to the Borrower Share Pledge or the Assignment Agreement. Nothing in this paragraph (b) shall prevent any action being taken (i) for an injunction, order for specific performance or similar order in relation to the obligations of the Investor under the Finance Documents or (ii) by the Agent or the Lenders following a breach by the Investor of any of the indemnities, representations or undertakings given by it under any of the Finance Documents which results in a Default or an Event of Default.

### **1.9 Transaction Security**

Notwithstanding anything to the contrary in any Finance Document, nothing in any Transaction Security Document shall prevent or restrict any transaction, activity, event or arrangement permitted by this Agreement and the terms of each Transaction Security Document shall be construed accordingly. In the event of any inconsistency between this Agreement and the terms of any Transaction Security Document, this Agreement shall prevail.

### **1.10 Non-wholly owned entities**

Any obligation in a Finance Document requiring the Borrower or a member of the Group (the "first person") to ensure or procure certain things in relation to any other person or that any other person does or does not do something shall be construed as only being an obligation on the first person to ensure or procure to the extent that it is not illegal on the first person or such other person to do so or in breach of applicable law, regulation, constitution or fiduciary duties.





## SECTION 2 THE FACILITIES

### 2. THE FACILITIES

#### 2.1 The Facilities

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

- (a) a US dollar term loan facility in an aggregate amount equal to the Total Accordion Bridge Facility Commitments; and
- (b) a US dollar term loan facility in an aggregate amount equal to the Total Cash Bridge Facility Commitments.

#### 2.2 Increase

- (a) The Borrower may by giving prior notice to the Agent by no later than the date falling five Business Days after the effective date of a cancellation of:
  - (i) the Available Commitments of a Defaulting Lender in accordance with Clause 7.6 (*Right of cancellation in relation to a Defaulting Lender*); or
  - (ii) the Commitments of a Lender in accordance with:
    - (A) Clause 7.1 (*Illegality*); or
    - (B) paragraph (a) of Clause 7.5 (*Right of cancellation and repayment in relation to a single Lender*),request that the Commitments relating to any Facility be increased (and the Commitments relating to that Facility shall be so increased) in an aggregate amount up to the amount of the Available Commitments or Commitments relating to that Facility so cancelled as follows:
    - (iii) the increased Commitments will be assumed by one or more Eligible Institutions (each an "**Increase Lender**") each of which confirms in writing (whether in the relevant Increase Confirmation or otherwise) its willingness to assume and does assume all the obligations of a Lender corresponding to that part of the increased Commitments which it is to assume, as if it had been an Original Lender in respect of those Commitments;
    - (iv) the Borrower and any Increase Lender shall assume obligations towards one another and/or acquire rights against one another as the Borrower and the Increase Lender would have assumed and/or acquired had the Increase Lender been an Original Lender in respect of that part of the increased Commitments which it is to assume;
    - (v) each Increase Lender shall become a Party as a "Lender" and any Increase Lender and each of the other Finance Parties shall assume obligations towards one another and acquire rights against one another as that Increase Lender and those Finance Parties would have assumed and/or acquired had the Increase Lender been an Original Lender in respect of that part of the increased Commitments which it is to assume;
    - (vi) the Commitments of the other Lenders shall continue in full force and effect; and

- (vii) any increase in the Commitments relating to a Facility shall, subject to the conditions set out in paragraph (d) below, take effect on the date specified by the Borrower in the notice referred to above or any later date on which the Agent executes an otherwise duly completed Increase Confirmation delivered to it by the relevant Increase Lender.
- (b) The Agent shall, subject to paragraph (c) below, as soon as reasonably practicable after receipt by it of a duly completed Increase Confirmation appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Increase Confirmation.
- (c) The Agent shall only be obliged to execute an Increase Confirmation delivered to it by an Increase Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assumption of the increased Commitments by that Increase Lender.
- (d) An increase in the Commitments will only be effective if the Increase Lender enters into the documentation required for it to accede as a party to the Intercreditor Agreement.
- (e) Each Increase Lender, by executing the Increase Confirmation, confirms (for the avoidance of doubt) that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the increase becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as it would have been had it been the Original Lender.
- (f) The Borrower shall promptly on demand pay the Agent and the Security Agent the amount of all costs and expenses (including legal fees subject to any agreed limits) reasonably incurred by either of them and, in the case of the Security Agent, by any Receiver or Delegate in connection with any increase in Commitments under this Clause 2.2.
- (g) The Increase Lender shall, on the date upon which the increase takes effect, pay to the Agent (for its own account) a fee in an amount equal to the fee which would be payable under Clause 23.4 (*Assignment or transfer fee*) if the increase was a transfer pursuant to Clause 23.6 (*Procedure for transfer*) and if the Increase Lender was a New Lender.
- (h) The Borrower may pay to the Increase Lender a fee in the amount and at the times agreed between the Borrower and the Increase Lender in a Fee Letter.
- (i) Neither the Agent nor any Lender shall have any obligation to find an Increase Lender and in no event shall any Lender whose Commitment is replaced by an Increase Lender be required to pay or surrender any of the fees received by such Lender pursuant to the Finance Documents.
- (j) Clause 23.5 (*Limitation of responsibility of Existing Lenders*) shall apply *mutatis mutandis* in this Clause 2.2 in relation to an Increase Lender as if references in that Clause to:
  - (i) an "**Existing Lender**" were references to all the Lenders immediately prior to the relevant increase;
  - (ii) the "**New Lender**" were references to that "**Increase Lender**"; and

- (iii) a "re-transfer" and "re-assignment" were references to respectively a "transfer" and "assignment".

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

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

## **2.4 Investor's Agent**

- (a) The Investor by its execution of this Agreement irrevocably appoints the Borrower (acting through one or more authorised signatories) to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:
- (i) the Borrower on its behalf to supply all information concerning itself contemplated by this Agreement to the Finance Parties and to give all notices and instructions (including, in the case of the Borrower, Utilisation Requests), to make such agreements and to effect the relevant amendments, supplements and variations capable of being given, made or effected by the Investor notwithstanding that they may affect the Investor, without further reference to or the consent of the Investor; and
- (ii) each Finance Party to give any notice, demand or other communication to the Investor pursuant to the Finance Documents to the Borrower,

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

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

### **3. PURPOSE**

#### **3.1 Purpose**

All amounts borrowed by the Borrower under the Facilities are to be applied in or towards (directly or indirectly):

- (a) financing the Acquisition consideration for the purchase of Target Shares pursuant to a Scheme or an Offer and/or Squeeze-Out (including any and all payments to the holders of Target Shares at any time in connection with the Acquisition and payments to Target option holders);
- (b) financing fees, costs, commissions, taxes, stamp duties, and expenses, and amounts payable under or in connection with the Finance Documents or in connection with the Acquisition; and
- (c) (after the end of the Certain Funds Period only) refinancing amounts of Excess Equity Contribution or a repayment of Holdco Loans (to the extent permitted under this Agreement).

#### **3.2 Monitoring**

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

### **4. CONDITIONS OF UTILISATION**

#### **4.1 Initial conditions precedent**

- (a) The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to any Loan if on or prior to the date of this Agreement, the Agent has received all of the documents and other evidence listed in Part A of Schedule 2 (*Initial Conditions precedent*) in form and substance satisfactory to the Agent (acting reasonably and in good faith). The Agent shall notify the Borrower and the Lenders promptly upon being so satisfied.
- (b) Other than to the extent that a Lender notifies the Agent in writing to the contrary before the Agent gives the notification described in paragraph (a) above, the Lenders authorise (but do not require) the Agent to give that notification. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.
- (c) The Agent and each other Finance Party confirms that on or prior to the date of this Agreement they have received and are satisfied with all of the documents and other evidence listed in Part A of Schedule 2 (*Initial Conditions precedent*), and the requirements of paragraph (a) above are irrevocably satisfied.

#### **4.2 Further Conditions Precedent**

- (a) The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to any Loan if:
  - (i) on or before the first Utilisation Date, the Agent has received all of the documents and other evidence listed in Part B of Schedule 2 (*Further Conditions precedent*) in form and substance satisfactory to the Agent (acting reasonably and in good faith) (save for any document or evidence that is specified therein to be provided for information purposes only and not required to be in a form and substance satisfactory to the Agent or any Finance Party)

(unless the Agent has, acting on the instructions of the Majority Lenders, expressly waived the requirement to deliver any condition precedent). The Agent shall notify the Borrower and the Lenders promptly upon being so satisfied; and

- (ii) in relation to a proposed Loan other than one to which Clause 4.4 (*Utilisations during the Certain Funds Period*) applies, if on the date of the Utilisation Request and on the proposed Utilisation Date:

- (A) no Default is continuing or would result from the proposed Utilisation; and

- (B) the Repeating Representations are true in all material respects (to the extent not otherwise qualified by materiality).

- (b) If the purpose of the drawdown is to refinance amounts of Excess Equity Contribution and/or Holdco Loans (to the extent not previously refinanced), the Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to any Loan if, on the date of the Utilisation Request and on the proposed Utilisation Date:

- (i) the Pro Rata Equity Condition (calculated *pro forma* for such use of proceeds and reducing the amount of (A) the Applied Equity Contribution Amount by the amount of the Equity Excess Equity Contribution being refinanced and (B) the amount of the Holdco Loans by the amount of such loans being refinanced) is met following any such refinancing;

- (ii) following (and *pro forma* for) the use of proceeds from such drawdown, the Ownership Threshold is met;

- (iii) all fees then due in relation to the Facilities have been paid in full; and

- (iv) the Certain Funds Period has ended and such drawdown is made within three Business Days after the end of the Certain Funds Period.

#### **4.3 Maximum number of Utilisations**

The Borrower may not deliver a Utilisation Request if as a result of the proposed Loan more than 10 (ten) Loans would be outstanding.

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

- (a) Subject to Clause 4.1 (*Initial conditions precedent*) and Clause 4.2 (*Further 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 Loan if, on the date of the Utilisation Request and on the proposed Utilisation Date:

- (i) no Change of Control under paragraphs (a) and (b) of the definition thereof has occurred;

- (ii) no Major Default has occurred and is continuing or would result from the proposed Loan;

- (iii) all the Major Representations are true or are true in all material respects (to the extent not otherwise qualified by materiality);

- (iv) in connection with Accordion Bridge Facility Loans only the Cash Bridge Facility is, or will be on the proposed Utilisation Date, fully drawn;

- (v) following (and *pro forma* for) the use of proceeds from such drawdown, each of the Ownership Threshold and the Pro Rata Equity Condition is met; and
  - (vi) no Illegality Event has occurred in respect of that Lender and in respect of which that Lender is entitled, and has exercised its rights, to cancel its Commitments under Clause 7.1 (*Illegality*) (provided that any such exercise of rights by any Lender under Clause 7.1 (*Illegality*) shall not in any way affect the obligations of any other Lender).
- (b) During the Certain Funds Period and save where it would otherwise not be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to a Loan in accordance with paragraph (a) above, none of the Finance Parties shall be entitled to:
- (i) cancel (or seek to cancel) any of its Commitments to the extent to do so would prevent or limit the making of a Loan;
  - (ii) rescind, terminate or cancel (or seek to rescind, terminate or cancel) this Agreement or the Facility or exercise any similar right or remedy 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 Loan;
  - (iii) refuse (or seek to refuse) to participate in the making of a Loan;
  - (iv) exercise (or seek to exercise) any right of set-off or counterclaim in respect of a Loan to the extent to do so would prevent or limit the making of a Loan;
  - (v) cancel, accelerate or cause (or seek to cancel, accelerate or cause) repayment or prepayment of any amounts owing under this Agreement or under any other Finance Document to the extent to do so would prevent or limit the making of a Loan; or
  - (vi) take (or seek to take) any other action or step, or to enforce or invoke (or seek to enforce or invoke) any other claim, right, benefit or remedy (including any which might be available as a matter of general law) or take any action that might (directly or indirectly) prevent, limit, frustrate, restrict, condition and/or delay the making, or reduce the principal amount, of any Loan,

**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.

## **SECTION 3 UTILISATION**

### **5. UTILISATION**

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

The Borrower may utilise a Facility by delivery to the Agent of a duly completed Utilisation Request not later than the Specified Time (or as otherwise agreed with the Lenders).

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

- (a) Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:
  - (i) it identifies the Facility to be utilised;
  - (ii) the proposed Utilisation Date is a Business Day within the Availability Period;
  - (iii) the currency and amount of the Loan comply with Clause 5.3 (*Currency and amount*); and
  - (iv) the proposed Interest Period complies with Clause 11 (*Interest Periods*); and
  - (v) the amount of the proposed Loan does not exceed the lower of (i) the Drawn Debt Cap and (ii) the Available Commitments under the relevant Facility, in each case on the proposed Utilisation Date.
- (b) Only one Loan may be requested in each Utilisation Request.
- (c) A Utilisation Request delivered prior to the Scheme Effective Date or Offer Unconditional Date shall be expressly conditional upon the occurrence of the Scheme Effective Date or Offer Unconditional Date (as applicable).

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

- (a) The currency of the proposed Loan must be US dollars.
- (b) The amount of the proposed Loan (in aggregate with any other Loan then outstanding or due to be drawn on or prior to the proposed Utilisation Date) must not exceed the lower of (i) the Drawn Debt Cap and (ii) the Available Commitments under the relevant Facility, in each case on the proposed Utilisation Date.

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

If the conditions set out in this Agreement have been met each Lender shall make its participation in each Loan available by the Utilisation Date through its Facility Office.

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

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

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

**6. REPAYMENT**

**6.1 Repayment of Loans**

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



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

### **7.1 Illegality**

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

- (a) that Lender shall promptly notify the Agent upon becoming aware of that event;
- (b) upon the Agent notifying the Borrower, each Available Commitment of that Lender will be immediately cancelled; and
- (c) the Borrower shall repay that Lender's participation in the Loans on the last day of the Interest Period for each Loan occurring after the Agent has notified the Borrower or, if earlier, the date specified by that Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law) and that Lender's corresponding Commitment(s) shall be immediately cancelled in the amount of the participations repaid.

### **7.2 Voluntary cancellation**

The Borrower may, if it gives the Agent not less than two Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, cancel the whole or any part (being a minimum amount of \$1,000,000) of the relevant Available Facility. Any cancellation under this Clause 7.2 shall reduce the Commitments of the Lenders rateably.

### **7.3 Automatic Cancellation**

If the Certain Funds Period expires the Available Commitment of each Lender shall be immediately cancelled.

### **7.4 Voluntary prepayment of Loans**

- (a) The Borrower may, if it gives the Agent not less than two Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of a Loan (but, if in part, being an amount that reduces that Loan by a minimum amount of \$2,000,000).
- (b) Any voluntary prepayment made pursuant to this clause 7.3 shall be subject to repayment of the accrued interest and Break Costs (if any).

### **7.5 Right of cancellation and repayment in relation to a single Lender**

- (a) If:
  - (i) any sum payable to any Lender by the Borrower is required to be increased under paragraph (c) of Clause 14.2 (*Tax gross-up*); or
  - (ii) any Lender claims indemnification from the Borrower under Clause 14.3 (*Tax indemnity*) or Clause 15.1 (*Increased Costs*),the Borrower may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Agent notice of cancellation of the Commitment(s) of that Lender and its intention to procure the repayment of that Lender's participation in the Loans.

- (b) On receipt of a notice referred to in paragraph (a) above in relation to a Lender, the Available Commitment(s) of that Lender shall be immediately reduced to zero.
- (c) On the last day of each Interest Period which ends after the Borrower has given notice under paragraph (a) above in relation to a Lender (or, if earlier, the date specified by the Borrower in that notice), the Borrower shall repay that Lender's participation in that Loan together with all interest and other amounts accrued under the Finance Documents and that Lender's corresponding Commitment(s) shall be immediately cancelled in the amount of the participations repaid (to the extent not already cancelled pursuant to paragraph (b) above).

## **7.6 Right of cancellation in relation to a Defaulting Lender**

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

## **8. MANDATORY PREPAYMENT AND CANCELLATION**

### **8.1 Mandatory Prepayment Events**

Upon the occurrence of:

- (a) a Change of Control; or
- (b) the sale of all or substantially all of the assets of the Borrower or the Target Group whether in a single transaction or a series of related transactions,

the Facilities will be immediately cancelled and shall immediately cease to be available for further utilisation and all Utilisations, accrued interest, Break Costs (if any) and other amounts under the Finance Documents, shall become due and payable within three Business Days.

### **8.2 Mandatory Partial Prepayment**

- (a) Subject to paragraph (c) below, the Borrower shall, as soon as reasonably practicable (and in any case within three Business Days) following receipt:
  - (i) first prepay outstanding Loans, accrued interest and Break Costs (if any); then
  - (ii) cancel Available Commitments,

in amounts equal to the net proceeds of any distributions (including by way of dividends and upstream payments by way of shareholder loan) received by the Borrower from the Target (any such amount received being a "**Distribution Proceeds Amount**").
- (b) Amounts prepaid in accordance with paragraph (a) above may, at the Borrower's sole discretion, be applied towards prepayment of amounts outstanding under either the Accordion Bridge Facility or the Cash Bridge Facility or any portion of each.
- (c) During the Certain Funds Period, the Borrower shall be required to prepay Loans in accordance with paragraph (a)(i) above, but there shall be no cancellation of Available Commitments, **provided that** the Borrower shall hold any amount equal to the

difference between the amount prepaid and the Distribution Proceeds Amount (the "**Distribution Held Amount**") in an account with the Original Lender which is secured in favour of the Lenders at any time. Immediately following the earlier of (a) any subsequent Utilisation Date and (b) the end of the Certain Funds Period, the Borrower shall apply the Distribution Held Amount in prepayment of outstanding Loans in accordance with paragraph (a) until there is no remaining Distribution Held Amount or the Total Commitments have been repaid in full.

## **9. RESTRICTIONS**

### **9.1 Notices of cancellation or prepayment**

Any notice of cancellation, prepayment, authorisation or other election given by any Party under Clause 7 (*Illegality, voluntary prepayment and cancellation*) shall (subject to the terms of those Clauses) be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.

### **9.2 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, without premium or penalty.

### **9.3 No reborrowing of Facilities**

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

### **9.4 Prepayment in accordance with Agreement**

The Borrower shall not repay or prepay all or any part of the Loans or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.

### **9.5 No reinstatement of Commitments**

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

### **9.6 Agent's receipt of notices**

If the Agent receives a notice under Clause 7 (*Illegality, voluntary prepayment and cancellation*), it shall promptly forward a copy of that notice or election to either the Borrower or the affected Lender, as appropriate.

### **9.7 Effect of repayment and prepayment on Commitments**

If all or part of any Lender's participation in a Loan under a Facility is repaid or prepaid an amount of that Lender's Commitment (equal to the amount of the participation which is repaid or prepaid) in respect of that Facility will be deemed to be cancelled on the date of repayment or prepayment.

### **9.8 Application of prepayments**

Any prepayment of a Loan (other than a prepayment pursuant to Clause 7.1 (*Illegality*) or Clause 7.5 (*Right of cancellation and repayment in relation to a single Lender*)) shall be applied pro rata to each Lender's participation in that Loan.

## **SECTION 5 COSTS OF UTILISATION**

### **10. INTEREST**

#### **10.1 Calculation of interest**

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

- (i) Margin; and
- (ii) the SOFR Rate for that day.

If any day during an Interest Period of a Loan is not a SOFR Banking Day, the rate of interest on that Loan for that day will be the rate of interest on that Loan for the immediately preceding SOFR Banking Day.

#### **10.2 Payment of interest**

The Borrower shall pay accrued interest on each Loan on the last day of each Interest Period (and, if the Interest Period is longer than six Months, on the dates falling at three Monthly intervals after the first day of the Interest Period).

#### **10.3 Default interest**

- (a) If the Borrower fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is one per cent. per annum higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount, for successive Interest Periods, each of a duration selected by the Agent (acting reasonably). Any interest accruing under this Clause 10.3 shall be immediately payable by the Borrower on demand by the Agent.
- (b) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

#### **10.4 Notification of rates of interest**

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

### **11. INTEREST PERIODS**

#### **11.1 Interest Periods**

- (a) Each Interest Period will be three Months.
- (b) An Interest Period for a Loan shall not extend beyond the Maturity Date.
- (c) Each Interest Period for a Loan shall start on the Utilisation Date or (if already made) on the last day of its preceding Interest Period.

## **11.2 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).

## **11.3 Consolidation and division of Loans**

If two or more Interest Periods relate to Loans and end on the same date, those Loans will be consolidated into, and treated as, a single Loan on the last day of the Interest Period.

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

## **12.1 Unavailability of SOFR or Central Bank Rate**

If there is no SOFR or Central Bank Rate for the purposes of calculating the Daily Non-Cumulative Compounded SOFR for any SOFR Banking Day during an Interest Period of a Loan, Clause 12.2 (*Cost of funds*) shall apply to that Interest Period for that Loan.

## **12.2 Cost of funds**

- (a) If this Clause 12.2 applies, the rate of interest on each Lender's share of the relevant Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:
  - (i) the Margin; and
  - (ii) the rate notified to the Agent by the Lender as soon as practicable and in any event within five Business Days after the Quotation Day (or, if earlier, on the date falling five Business Days before the date on which interest is due to be paid in respect of that Interest Period), to be that which expresses as a percentage rate per annum the cost to the relevant Lender of funding its participation in that Loan.
- (b) If this Clause 12.2 applies and the Agent or the Borrower so requires, the Agent and the Borrower shall enter into negotiations (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the rate of interest.
- (c) Any alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Borrower, be binding on all Parties.

## **12.3 Notification to Borrower**

If Clause 12.2 (*Cost of funds*) applies the Agent shall, as soon as is practicable, notify the Borrower.

## **12.4 Break Costs**

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

**13. FEES**

**13.1 Structuring fee**

The Borrower shall pay, or procure there is paid, to the Original Lender a structuring fee in the amount and at the time agreed in a Fee Letter.

**13.2 Duration, upfront and ticking fees**

The Borrower shall pay, or procure there is paid, to the Agent (for the account of the Lenders) duration, upfront and ticking fees in the amount and at the times agreed in a Fee Letter.

**13.3 Security Agent fee**

The Borrower shall pay, or procure there is paid, to the Security Agent (for its own account) a security agent fee in the amount and at the times agreed in a Fee Letter.

**SECTION 6**  
**ADDITIONAL PAYMENT OBLIGATIONS**

**14. TAX GROSS-UP AND INDEMNITIES**

**14.1 Definitions**

In this Agreement:

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

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

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

**"Tax Payment"** means either the increase in a payment made by the Borrower to a Finance Party under Clause 14.2 (*Tax gross-up*) or a payment under Clause 14.3 (*Tax indemnity*).

Unless a contrary indication appears, in this Clause 14 a reference to **"determines"** or **"determined"** means a determination made in the absolute discretion of the person making the determination.

**14.2 Tax gross-up**

- (a) The Borrower shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) The Borrower shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Agent accordingly. Similarly, a Lender shall notify the Agent on becoming so aware in respect of a payment payable to that Lender. If the Agent receives such notification from a Lender it shall notify the Borrower.
- (c) If a Tax Deduction is required by law to be made by the Borrower, the amount of the payment due from the Borrower shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) If the Borrower is required to make a Tax Deduction, the Borrower shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (e) Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower making that Tax Deduction shall deliver to the Agent for the Finance Party entitled to the payment 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.

**14.3 Tax indemnity**

- (a) The Borrower shall (within three Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party

determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.

- (b) Paragraph (a) above shall not apply:
  - (i) with respect to any Tax assessed on a Finance Party:
    - (A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or
    - (B) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,  
  
if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or
  - (ii) to the extent a loss, liability or cost:
    - (A) is compensated for by an increased payment under Clause 14.2 (*Tax gross-up*);
    - (B) is compensated for by payment under Clause 14.5 (*Stamp taxes*) below or would have been so compensated but for the application of the proviso contained in that Clause;
    - (C) is compensated by a payment under Clause 14.6 (*VAT*) below; or
    - (D) relates to a FATCA Deduction required to be made by a Party.
- (c) A Protected Party making, or intending to make a claim under paragraph (a) above shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Borrower.
- (d) A Protected Party shall, on receiving a payment from the Borrower under this Clause 14.3, notify the Agent.

#### **14.4 Tax Credit**

If the Borrower makes a Tax Payment and the relevant Finance Party determines that:

- (a) a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and
- (b) that Finance Party has obtained and utilised that Tax Credit,  
  
the Finance Party shall pay an amount to the Borrower which that Finance Party determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Borrower.

#### **14.5 Stamp taxes**

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



## 14.6 VAT

- (a) All amounts expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply or service for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply or service made by any Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).
- (b) If VAT is or becomes chargeable on any supply or service made by any Finance Party (the "**Supplier**") to any other Finance Party (the "**Recipient**") under a Finance Document, and any Party other than the Recipient (the "**Relevant Party**") is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply or service to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):
  - (i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
  - (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply or service but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- (c) Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (d) Any reference in this Clause 14.6 to any Party shall, at any time when such Party is treated as a member of a group or unity (or fiscal unity) for VAT purposes, include (where appropriate and unless the context otherwise requires) the person who is treated at that time as making the supply, or (as appropriate) receiving the supply, under the grouping rules (provided for in the Value Added Tax Act 1994, Article 11 of Council Directive 2006/112/EC as amended (or as implemented by the relevant member state of the European Union) or any other similar provision in any jurisdiction other than the United Kingdom or a member state of the European Union), so that a reference to a Party shall be construed as a reference to that Party or the relevant group or unity (or fiscal unity) of which that Party is a member for VAT purposes at the relevant time or relevant to the representative member (or head) of that group or unity (or fiscal unity) at that relevant time.

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

#### **14.7 FATCA information**

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

#### **14.8 FATCA Deduction**

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

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

## 15. INCREASED COSTS

### 15.1 Increased Costs

- (a) Subject to Clause 15.3 (*Exceptions*) the Borrower shall, within ten 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) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (ii) compliance with any law or regulation made after the date of this Agreement.
- (b) In this Agreement "**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, 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 funding or performing its obligations under any Finance Document.

### 15.2 Increased Cost claims

- (a) A Finance Party intending to make a claim pursuant to Clause 15.1 (*Increased Costs*) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Borrower.
- (b) Each Finance Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount of its Increased Costs.

### 15.3 Exceptions

- (a) Clause 15.1 (*Increased Costs*) does not apply to the extent any Increased Cost is:
  - (i) attributable to a Tax Deduction required by law to be made by the Borrower;
  - (ii) attributable to a FATCA Deduction required to be made by a Party;
  - (iii) compensated for by Clause 14.3 (*Tax indemnity*) (or would have been compensated for under Clause 14.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 14.3 (*Tax indemnity*) applied); or
  - (iv) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.
- (b) In this Clause 15.3 reference to a "**Tax Deduction**" has the same meaning given to the term in Clause 14.1 (*Definitions*).

## 16. OTHER INDEMNITIES

### 16.1 Currency indemnity

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

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

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

- (b) The Borrower and the Investor waive 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.

### 16.2 Other indemnities

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

- (i) the occurrence of any Event of Default;
- (ii) a failure by it or the Investor to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 29 (*Sharing among the Finance Parties*);
- (iii) funding, or making arrangements to fund, its participation in a Loan requested by the Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone); or
- (iv) a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower.

- (b) The Borrower shall promptly indemnify each Finance Party, each Affiliate of a Finance Party and each officer or employee of a Finance Party or its Affiliate, against any cost, loss or liability incurred by that Finance Party or its Affiliate (or officer or employee of that Finance Party or Affiliate) in connection with or arising out of the Acquisition or the funding of the Acquisition (including but not limited to those incurred in connection with any litigation, arbitration or administrative proceedings or regulatory enquiry concerning the Acquisition), unless such loss or liability is caused by the gross negligence or wilful misconduct of that Finance Party or its Affiliate (or employee or officer of a Finance Party or Affiliate). Any Affiliate or any officer or employee of a Finance Party or its Affiliate may rely on this Clause 16.2 subject to Clause 1.4 (*Third party rights*) and the provisions of the Third Parties Act.

### 16.3 Indemnity to the Agent

The Borrower shall within three Business Days of demand indemnify the Agent against:

- (a) any cost, loss or liability incurred by the Agent (acting reasonably) as a result of:
  - (i) investigating any event which it reasonably believes is a Default;
  - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
  - (iii) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement; and
- (b) any cost, loss or liability incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 30.11 (*Disruption to payment systems etc.*) notwithstanding the Agent's negligence or gross negligence but not including any claim based on the fraud of the Agent) in acting as Agent under the Finance Documents.

### 16.4 Indemnity to the Security Agent

- (a) The Borrower 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 the Borrower to comply with its obligations under Clause 18 (*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 the Borrower or the Investor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents; or
  - (vi) acting as Security Agent, Receiver or Delegate under the Finance Documents or which otherwise relates to any of the Charged Property (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).
- (b) The Borrower expressly acknowledges and agrees that the continuation of its indemnity obligations under this Clause 16.4 will not be prejudiced by any release or disposal under Clause 12 (*Distressed Disposals and Appropriation*) of the Intercreditor Agreement taking into account the operation of that clause.
- (c) The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 16.4 and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all moneys payable to it.

## **17. MITIGATION BY THE LENDERS**

### **17.1 Mitigation**

- (a) Each Finance Party shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any Facility ceasing to be available or any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (*Illegality*), Clause 14 (*Tax Gross-Up and Indemnities*) or Clause 15 (*Increased Costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of the Borrower under the Finance Documents.

### **17.2 Limitation of liability**

- (a) The Borrower shall within three Business Days of demand indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 17.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under Clause 17.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

## **18. COSTS AND EXPENSES**

### **18.1 Transaction expenses**

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

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

### **18.2 Amendment costs**

If:

- (a) the Borrower or the Investor requests an amendment, waiver or consent; or
- (b) an amendment is required pursuant to Clause 30.10 (*Change of currency*),

the Borrower shall, within three 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 any agreed limits) reasonably incurred by the Agent and the Security Agent (and, in the case of the Security Agent, by any Receiver or Delegate) in responding to, evaluating, negotiating or complying with that request or requirement.

### **18.3 Enforcement and preservation costs**

The Borrower shall, within three Business Days of demand, pay to each Finance Party the amount of all costs and expenses (including legal fees) incurred by it in connection with the

enforcement of or the preservation of any rights under any Finance Document and the Transaction Security and any proceedings instituted by or against the Security Agent as a consequence of taking or holding the Transaction Security or enforcing these rights.

**SECTION 7**  
**REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT**

**19. REPRESENTATIONS**

**19.1 General**

- (a) The Borrower makes the representations and warranties set out in this Clause 19 to each Finance Party on the date of this Agreement and the first Utilisation Date.
- (b) The Borrower makes the representations and warranties to each Finance Party in Clause 19.2 (*Status*) to Clause 19.6 (*Validity and admissibility in evidence*) (inclusive) on the date of this Agreement and on the first Utilisation Date, in each case with respect to itself only (and, for the avoidance of doubt, not with respect to any of their Subsidiaries or the Target Group) by reference to the facts and circumstances then existing.
- (c) The Investor makes the representations and warranties set out in Clause 19.3 (*Binding obligations*) to Clause 19.7 (*Governing law and enforcement*) (inclusive), Clause 19.9 (*No filing or stamp taxes*), and Clause 19.17 (*Ranking*) to Clause 19.19 (*Legal and beneficial ownership*) (inclusive) on the date of this Agreement and the first Utilisation Date.

**19.2 Status**

- (a) It is a company limited by shares, duly incorporated and validly existing under the laws of the Isle of Man.
- (b) It has the power to own its assets and carry on its business as it is being conducted.

**19.3 Binding obligations**

Subject to the Legal Reservations:

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

**19.4 Non-conflict with other obligations**

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

- (a) any law or regulation applicable to it;
- (b) its constitutional documents; or
- (c) any agreement or instrument binding upon it or any of its assets, or constitute a default or termination event (however described) under any such agreement or instrument, to an extent which has a Material Adverse Effect.



### **19.5 Power and authority**

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

### **19.6 Validity and admissibility in evidence**

Subject to the Legal Reservations, all Authorisations required or desirable:

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

have been obtained or effected and are in full force and effect except any Authorisation referred to in Clause 19.9 (*No filing or stamp taxes*), which Authorisation will be obtained or effected promptly following the first Utilisation Date and, in any event, within the time period prescribed by law in the Relevant Jurisdiction.

### **19.7 Governing law and enforcement**

- (a) The choice of governing law of the Finance Documents will be recognised and enforced in its Relevant Jurisdictions.
- (b) Any judgment obtained in relation to a Finance Document in the jurisdiction of the governing law of that Finance Document will be recognised and enforced in its Relevant Jurisdictions, subject to any applicable public policy, irrespective of the law chosen.

### **19.8 Insolvency**

No:

- (a) corporate action, legal proceeding or other procedure or step described in paragraph (a) of Clause 22.6 (*Insolvency proceedings*); or
- (b) creditors' process described in Clause 22.7 (*Creditors' process*),

has been taken or, to the knowledge of the Borrower, threatened in relation to it; and none of the circumstances described in Clause 22.5 (*Insolvency*) applies to it.

### **19.9 No filing or stamp taxes**

Under the laws of its Relevant Jurisdiction it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents, except the registration of particulars of the Target Share Pledge and Shareholder Loan Assignment at the Isle of Man Companies Registry under section 138 of the Isle of Man Companies Act, and payment of associated fees.

### **19.10 Deduction of Tax**

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

### **19.11 No default**

- (a) No Event of Default is continuing or is reasonably likely to result from the making of any Loan.
- (b) No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or any member of the Group to which its (or any member of the Group's) assets are subject which has or is reasonably likely to have a Material Adverse Effect.

### **19.12 No misleading information**

Save as disclosed in writing to the Agent prior to the date of this Agreement:

- (a) all material information provided to a Finance Party by or on behalf of the Borrower in connection with the Acquisition and/or the Target Group on or before the date of this Agreement and not superseded before that date is accurate and not misleading in any material respect and all projections provided to any Finance Party on or before the date of this Agreement have been prepared in good faith on the basis of assumptions which were reasonable at the time at which they were prepared and supplied; and
- (b) all other written information provided by any member of the Group (including its advisers) to a Finance Party was true, complete and accurate in all material respects as at the date it was provided and is not misleading in any respect.

### **19.13 Financial Statements**

To the best of the Borrower's knowledge and belief, the Original Financial Statements give a true and fair view (if audited) or fairly present (if unaudited) (as applicable) the matters with which they deal and the financial condition and state of affairs of the entities covered thereby as at the date they were prepared and the results and operations of the entities covered thereby for the period they cover.

### **19.14 No proceedings**

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

### **19.15 Anti-corruption law**

It has not engaged in any activity or conduct which would (or would reasonably be expected to) violate any applicable anti-corruption, anti-bribery or anti-money laundering laws in any Relevant Jurisdiction.

### **19.16 Security and Financial Indebtedness**

- (a) No Security or Quasi-Security exists over all or any of its present or future assets other than as permitted by this Agreement.
- (b) It does not have any Financial Indebtedness outstanding other than as permitted by this Agreement.

- (c) On the Signing Date, other than pursuant to the Transaction Security Documents, the Borrower has not granted security over the shares it currently holds in the Target.

#### **19.17 Ranking**

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

#### **19.18 Good title to assets**

It has a good, valid and marketable title to, or valid leases or licences of, and all appropriate Authorisations to use, the assets necessary to carry on its business as presently conducted.

#### **19.19 Legal and beneficial ownership**

Subject to the Legal Reservations and the terms of the Finance Documents, it is the sole legal and beneficial owner of the assets over which it purports to grant Security, except as otherwise contemplated or permitted by the Finance Documents.

#### **19.20 Centre of main interests and establishments**

For the purposes of Regulation (EU) 2015/848 of 20 May 2015 on insolvency proceedings (recast) (the "**Regulation**"), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in the Isle of Man.

#### **19.21 Anti-bribery, anti-corruption and anti-money laundering**

- (a) The Borrower and its directors and (to the best of its knowledge having made due and careful enquiry) its officers, agents, employees or Affiliates have conducted their business in compliance with applicable Anti-Corruption Laws.
- (b) Neither the Borrower, nor any directors or, to the best of their knowledge having made due and careful enquiry, any officers, agents, employees or Affiliates have engaged in any activity or conduct which would breach Anti-Money Laundering Laws in any jurisdiction where they apply.

#### **19.22 Anti-terrorism**

Each of the Borrower and the Investor:

- (a) has taken reasonable measures to ensure compliance with anti-terrorism laws to which they are subject; and
- (b) does not deal in any property or interest in property known by it to be blocked pursuant to any anti-terrorism law.

#### **19.23 Sanctions**

Neither the Borrower, the Investor, nor any director nor (to the best of its knowledge having made due and careful enquiry) any officer, agent, employee or Affiliate (after due and careful enquiry):

- (a) is a Sanctioned Person;
- (b) is a person who is otherwise the target of Sanctions such that the entry into, or performance, of this Agreement or any other Finance Document would be prohibited for a Lender or would cause such Lender to breach Sanctions;

- (c) is currently engaging in any transaction, activity or conduct that could result in a violation of Sanctions or which constitutes or would constitute any such violation by the Lender, any Affiliate of the Lender or the Borrower; or
- (d) is owned or controlled by (including, without limitation, by virtue of such person being a director or owning voting shares or interests), or acts, directly or indirectly, for or on behalf of, any Sanctioned Person or a foreign government that is the target of Sanctions such that the entry into, or performance under, this Agreement or any other Finance Document would be prohibited under Sanctions.

#### **19.24 Security**

The Borrower has not granted security over any of the shares that it currently holds in the Target (other than pursuant to the Security Documents).

#### **19.25 Times when representations made**

- (a) All the representations and warranties in this Clause 19 are made by the Borrower on the date of this Agreement.
- (b) The Repeating Representations are deemed to be made by the Borrower:
  - (i) on the date of each Utilisation Request;
  - (ii) on each Utilisation Date; and
  - (iii) on the first day of each Interest Period.
- (c) Each of the representations and warranties set out in Clause 19.3 (*Binding obligations*) to Clause 19.7 (*Governing law and enforcement*), Clause 19.17 (*Ranking*) to Clause 19.19 (*Legal and beneficial ownership*) are deemed to be made by the Investor:
  - (i) on the date of each Utilisation Request;
  - (ii) on each Utilisation Date; and
  - (iii) on the first day of each Interest Period.
- (d) Each representation or warranty deemed to be made after the date of this Agreement shall be deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made.

### **20. INFORMATION UNDERTAKINGS**

The undertakings in this Clause 20 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

In this Clause 20:

**"Annual Financial Statements"** means the financial statements for a Financial Year delivered pursuant to paragraph (a) of Clause 20.1 (*Financial statements*).

**"Quarterly Financial Statements"** means the financial statements delivered pursuant to paragraph (b) of Clause 20.1 (*Financial statements*).

#### **20.1 Financial statements**

The Borrower shall supply 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 Financial Year:
  - (i) the Borrower's audited standalone financial statements for that Financial Year; and
  - (ii) the Target Group's audited consolidated financial statements for that Financial Year,

*provided that*, if the Borrower subsequently prepares audited consolidated financial statements, it shall provide these and not be required to provide the financial statements required under sub-clauses (i) and (ii) above;
- (b) as soon as they are available, but in any event within 60 days after the end of each Financial Quarter:
  - (i) the Borrower's standalone management accounts for that Financial Quarter; and
  - (ii) the Target Group's consolidated management accounts for that Financial Quarter,

*provided that*, if the Borrower subsequently prepares consolidated management accounts, it shall provide these and not be required to provide the management accounts required under sub-clauses (i) and (ii) above.

## **20.2 Requirements as to financial statements**

- (a) The Borrower shall procure that each set of Annual Financial Statements and Quarterly Financial Statements includes a balance sheet, profit and loss account and cashflow statement.
- (b) Each set of financial statements delivered pursuant to Clause 20.1 (*Financial statements*):
  - (i) shall be certified by a director of the relevant entity as fairly presenting its financial condition and operations as at the date as at which those financial statements were drawn up;
  - (ii) shall be prepared in accordance with the Accounting Principles; and
  - (iii) shall be in form and substance substantially in the form of the Original Financial Statements provided to the Original Lender.

## **20.3 Information: miscellaneous**

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

- (a) at the same time as they are dispatched, copies of all documents dispatched by the Borrower to its creditors generally (or any class of them);
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group and which, if adversely determined, are reasonably likely to have a Material Adverse Effect;

- (c) promptly upon becoming aware of them, the details of any judgment or order of a court, arbitral body or agency which is made against any member of the Group and which is reasonably likely to have a Material Adverse Effect;
- (d) promptly upon becoming aware of the relevant claim, the details of any claim which is current, threatened or pending against any person in respect of the Acquisition Documents; and
- (e) promptly on request, such further information regarding the financial condition and business operations of the Group as the Agent may (acting on the instructions of the Majority Lenders) reasonably request.

#### **20.4 Notification of default**

- (a) The Borrower shall notify the Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.
- (b) The Borrower shall notify the Agent of any default under the Holdco Loan Agreement or the Target Facilities Agreement.
- (c) Promptly upon a request by the Agent, the Borrower shall supply to the Agent a certificate signed by two of its directors or senior officers on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

#### **20.5 "Know your customer" checks**

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

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

- (b) Each Lender shall promptly upon the request of the Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself) in order for the Agent to carry out and be satisfied it has complied with all

necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

## **20.6 DAC6**

- (a) In this Clause 20.6, "**DAC6**" means the Council Directive of 25 May 2018 (2018/822/EU) amending Directive 2011/16/EU.
- (b) The Borrower shall supply to the Agent (in sufficient copies for all the Lenders, if the Agent so requests):
  - (i) promptly upon the making of such analysis or the obtaining of such advice, any analysis made or advice obtained on whether any transaction contemplated by the Finance Documents or any transaction carried out (or to be carried out) in connection with any transaction contemplated by the Finance Documents contains a hallmark as set out in Annex IV of DAC6; and
  - (ii) promptly upon the making of such reporting and to the extent permitted by applicable law and regulation, any reporting made to any governmental or taxation authority by or on behalf of any member of the Group or by any adviser to such member of the Group in relation to DAC6 or any law or regulation which implements DAC6 and any unique identification number issued by any governmental or taxation authority to which any such report has been made (if available).

## **21. GENERAL UNDERTAKINGS**

The undertakings in this Clause 21 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

### **AUTHORISATIONS AND COMPLIANCE WITH LAWS**

#### **21.1 Authorisations**

The Borrower and the Investor shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply certified copies to the Agent on its request of,
  - any Authorisation required under any law or regulation of a Relevant Jurisdiction to:
    - (i) enable it to perform its obligations under the Finance Documents and the Acquisition Documents;
    - (ii) ensure the legality, validity, enforceability or admissibility in evidence of any Finance Document or Acquisition Document; and
    - (iii) carry on its business where failure to do so has or is reasonably likely to have a Material Adverse Effect.

#### **21.2 Compliance with laws**

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

### 21.3 Anti-corruption law

- (a) The Borrower and the Investor shall not directly or indirectly use the proceeds of the Facilities for any purpose which would breach the Bribery Act 2010, the United States Foreign Corrupt Practices Act of 1977, Bribery Act 2013 (an act of Tynwald) or other similar legislation in other jurisdictions, including Switzerland.
- (b) The Borrower and the Investor shall:
  - (i) conduct its businesses in compliance with applicable anti-corruption laws; and
  - (ii) maintain policies and procedures designed to promote and achieve compliance with such laws.

### SCHEME OR OFFER UNDERTAKINGS

### 21.4 Scheme or Offer Undertakings

- (a) The Borrower may make changes to the Announcement (including any Announcement or draft Announcement delivered on or prior to the Signing Date or pursuant to Clause 4.1 (*Initial conditions precedent*)) and/or issue one or more supplemental or replacement Announcements, provided that the Borrower may only make such changes and/or issue such supplemental or replacement Announcement (or amend, waive or supplement any Announcement previously made), if:
  - (i) it is in the form of the Announcement (or, as the case may be, draft Announcement) delivered or pursuant to Clause 4.1 (*Initial conditions precedent*); or
  - (ii) any changes, waivers, amendments, supplements or other variations or modifications:
    - (A) are not prejudicial the interests of the Lenders under the Finance Documents;
    - (B) are contemplated by the terms of the Finance Documents;
    - (C) are required by the Takeover Code, the Panel, the Court or any other applicable law, regulation or regulatory body;
    - (D) constitute a switch or other change from a Scheme to an Offer or from an Offer to a Scheme (subject to compliance with paragraph (c) below);
    - (E) is a change to the Acceptance Condition; or
    - (F) have been approved by the Agent (acting on the instructions of all Lenders (acting reasonably and in good faith)).
- (b) The Borrower shall:
  - (i) (if the Acquisition is to be effected by way of an Offer) despatch the Offer Document as soon as reasonably practicable and in any event within 28 days of the date of issuing the first Announcement or such later date as may be approved by the Takeover Panel; and
  - (ii) (if the Acquisition is to be effected by way of a Scheme) use reasonable endeavours to procure that the Scheme Circular is dispatched as soon as



practicable and in any event within 28 days of the date of issue of the Announcement or such later date as may be approved by the Panel.

- (c) If, and only if, the Ownership Threshold is satisfied, the Borrower shall take all reasonable steps within its power (to the extent it is legally able to do so, in accordance with applicable law and regulation, including having regard to the Takeover Code and to compliance with any orders of the Court or guidance or rulings of the Panel) to:
- (i) (if the Acquisition is to be effected by way of a Scheme) procure that the Target provides written confirmation to the London Stock Exchange of the preferred date of de-listing on the Business Day (which for the purposes of this Clause 21.4(c)(i) means a day that is both a Business Day and a day on which the London Stock Exchange plc is open for on exchange trading) immediately following the Scheme Effective Date;
  - (ii) (if the Acquisition is to be effected by way of an Offer) procure that the Target provides written confirmation to the London Stock Exchange of the preferred date of de-listing on the Business Day (which for the purposes of this Clause 21.4(c)(ii) means a day that is both a Business Day and a day on which the London Stock Exchange plc is open for on exchange trading) immediately following the date on which the Ownership Threshold is satisfied;
  - (iii) (if the Acquisition is to be effected by way of a Scheme) procure that the Target de-lists from AIM, a market of the London Stock Exchange within 21 Business Days (which for the purposes of this Clause 21.4(c)(iii) means a day that is both a Business Day and a day on which the London Stock Exchange plc is open for on exchange trading) after the Scheme Effective Date and, as soon as reasonably practicable following de-listing, adopts standard articles which do not restrict the payment of a distribution;
  - (iv) (if the Acquisition is to be effected by way of an Offer) procure that the Target de-lists from AIM, a market of the London Stock Exchange within 21 Business Days (which for the purposes of this Clause 21.4(c)(iv) means a day that is both a Business Day and a day on which the London Stock Exchange plc is open for on exchange trading) after the date on which the Ownership Threshold is satisfied and, as soon as reasonably practicable following de-listing, adopts standard articles which do not restrict the payment of a distribution and provide for the taking and enforcement of share security over Target;
  - (v) (if the Acquisition is to be effected by way of an Offer) give notice to all other remaining shareholders of the Target under section 160 of the Isle of Man Companies Act 2006 as soon as reasonably practicable, after the later of the Offer Unconditional Date and the date on which the Borrower has acquired or agreed to acquire at least 90 per cent. of the voting rights of the Target Shares the subject of the Offer (and, in any event, within eight weeks being the maximum time period prescribed for such actions), provided that such beneficial ownership of such shares are, at that time, sufficient to procure the reliance by the Borrower on section 160 of the Isle of Man Companies Act 2006 for the purposes contemplated in this paragraph.
- (d) The Borrower shall not take or permit to be taken any step as a result of which any increase in the amount of cash payable by it in respect of the Target Shares is required to be made or otherwise increase the cash consideration payable by it in respect of the Target Shares except to the extent such has been discussed and agreed by the Lenders

and the Holdco Facilities Original Lender (acting reasonably and in good faith), in relation to the funding contributions of all parties.

- (e) The Borrower will ensure that the terms of the Offer Document (or, if the Acquisition is to be effected by way of a Scheme, use reasonable endeavours to procure that the terms and conditions of the Scheme Circular) are substantially consistent with the terms of the relevant Announcement and will not amend or waive a material term or condition of the Scheme Circular or, as applicable, the Offer Document relating to the Acquisition and (if applicable) contained in the corresponding Announcement in a way which (when taken as a whole and having regard to the Acquisition as a whole) would be prejudicial to interests of the Lenders (taken as a whole) under the Finance Documents other than any change, modification, amendment or waiver (including any waiver of any condition):
  - (i) contemplated by the terms of the Finance Documents;
  - (ii) required by the Takeover Code, the Panel, the Court or any other applicable law, regulation or regulatory body;
  - (iii) which relates (and only to the extent that it so relates) to any term or condition(s) to the Acquisition which the Borrower reasonably believes that it would not be entitled, in accordance with Rule 13.5(a) of the Takeover Code, to invoke so as to cause the Acquisition not to proceed, to lapse or be withdrawn provided that the other conditions to the Acquisition have been, or will contemporaneously be, satisfied or waived;
  - (iv) constituting a switch or other change from a Scheme to an Offer or from an Offer to a Scheme (provided that (A) the Company has given reasonable prior written notice to the Agent of its intention to switch, and (B) no changes to the terms or conditions of the Acquisition are made, other than those that are either technically required to reflect the switch or otherwise permitted under this Clause 21.4;
  - (v) to the Acceptance Condition; or
  - (vi) which have been approved by the Agent (acting on the instructions of all Lenders (acting reasonably and in good faith)).
- (f) The Borrower shall comply in all respects with the Takeover Code and with any other applicable laws or regulations relating to the Acquisition (subject to any consent, waiver or dispensations granted by the Takeover Panel or any other applicable regulator or the requirements of the Court).
- (g) The Borrower shall not take any action (and procure, so far as they are able to do so, that no person, acting in concert with it or otherwise, takes any action) which would compel it to make an offer to shareholders in the Target under Rule 9 of the Takeover Code.
- (h) The Borrower shall (if the Acquisition is to be effected by way of a Scheme):
  - (i) keep the Agent reasonably informed as to the status and progress of the Scheme and promptly on request (and, in any event, within three Business Days) provide the Agent with details of the current level of proxies received in respect of the Scheme;

- (ii) notify the Agent promptly following it becoming aware that the Scheme Court Order has been issued;
  - (iii) promptly (and, in any event, within three Business Days) deliver to the Agent copies of all material documents, certificates or notices received or issued by it (or on its behalf) in relation to the Scheme and of all press releases and public announcements made by itself (or on its behalf with its permission) (a "**Public Announcement**"), or, to the extent that it receives copies thereof, by the Target in connection with the Scheme and any material documents or statements issued by the Takeover Panel, the Financial Conduct Authority, the Competition and Markets Authority, the European Commission or any other regulatory authority (including the courts) received by it in relation to the Scheme;
  - (iv) where any Public Announcement refers to the Agent or any other Finance Party or the Facility, not release or permit such Public Announcement to be released until the Agent has given its consent to such release (acting on instructions from the relevant Lender(s), provided that the relevant Lender(s) do not unreasonably withhold or delay their consent) provided further that no such consent will be required if such Public Announcement is required to be made to comply with requests of the Panel, the Takeover Code or any other relevant laws or regulation (in which case the Borrower, to the extent that it does not prejudice the Borrower's ability to comply with such requirement, shall notify the Agent as soon as practicable upon becoming aware of the requirement and the Borrower shall use all reasonable endeavours to consult with the Agent prior to releasing that Public Announcement); and
  - (v) if it becomes aware of a circumstance or event which is or could reasonably be construed to be covered by any condition of the Scheme which, if not waived, would entitle the Borrower (with the Takeover Panel's and/or the Court's consent, if needed) to lapse or withdraw the Scheme, promptly (and, in any event, within three Business Days) notify the Agent of such circumstance or event.
- (i) The Borrower shall (if the Acquisition is to be effected by way of a Scheme) within seven days of receipt, deliver (or procure the delivery of) the Scheme Court Order to the Registrar and obtain evidence of the same.
  - (j) The Borrower shall (if the Acquisition is to be effected by way of an Offer):
    - (i) keep the Agent reasonably informed of all matters which arise in connection with the Acquisition which affect or are likely to adversely affect the interests of the Lenders (or any of them) under the Finance Documents or in respect of which it is required to notify the Target Shareholders;
    - (ii) keep the Agent reasonably informed as to the status and progress of the Offer, the Squeeze-Out Procedures and any market purchases of Target Shares made;
    - (iii) promptly on request (and, in any event, within three Business Days), provide the Agent with details of the current level of acceptances of the Offer;
    - (iv) promptly (and, in any event, within three Business Days) deliver to the Agent copies of all material documents, certificates or notices received or issued by it (or on its behalf) in relation to the Offer and of all Public Announcements in connection with the Offer and any material documents or statements issued by

the Takeover Panel, the Financial Conduct Authority, the Competition and Markets Authority, the European Commission or any other regulatory authority (including the courts) received by it in relation to the Offer; and

- (v) where any Public Announcement refers to the Agent or any other Finance Party or the Facility, not release or permit such Public Announcement to be released until the Agent has given its consent to such release (acting on instructions from the relevant Lender(s), provided that the relevant Lender(s) do not withhold or delay their consent) provided further that no such consent will be required if such Public Announcement is required to be made to comply with the Takeover Code or any other relevant laws or regulation (in which case the Borrower shall, to the extent that it does not prejudice the Borrower's ability to comply with such requirement, notify the Agent as soon as practicable upon becoming aware of the requirement and the Borrower shall use all reasonable endeavours to consult with the Agent prior to releasing that Public Announcement).
- (k) The Borrower shall ensure that Offer Document or (if applicable) the Scheme Circular:
  - (i) contains (or when issued will contain) all the material terms relating to the Acquisition as at that date; and
  - (ii) is (or will be when issued) in compliance with the Takeover Code and any other applicable laws and regulations, other than in respect of any waiver or dispensation relating to such laws and regulations granted by the Takeover Panel or the Court, or to the extent that any such non-compliance could not reasonably be expected to be prejudicial to the interest of the Lenders taken as a whole.

## **21.5 Acquisitions**

The Borrower shall not:

- (a) acquire a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them); or
- (b) incorporate a company,

provided that this clause shall not prohibit the Acquisition or any transactions in connection with the Acquisition.

## **21.6 Merger**

The Borrower shall not enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction other than a Permitted Transaction.

## **21.7 Joint ventures**

- (a) The Borrower shall not:
  - (i) enter into, invest in or acquire (or agree to acquire) any shares, stocks, securities or other interest in any Joint Venture; or
  - (ii) transfer any assets or lend to or guarantee or give an indemnity for or give Security for the obligations of a Joint Venture or maintain the solvency of or provide working capital to any Joint Venture (or agree to do any of the foregoing).

## **21.8 Disposals**

- (a) Except as permitted by paragraph (b) below, the Borrower shall not enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset (a "**Disposal**").
- (b) Paragraph (a) above does not apply to any Permitted Disposal.

## **21.9 Holding Companies**

The Borrower shall not trade, carry on any business, own any assets or incur any liabilities except for Permitted Holding Company Activities.

## **21.10 No guarantees, indemnities**

- (a) Except as permitted under paragraph (b) below, the Borrower shall not incur or allow to remain outstanding any guarantee in respect of any obligation of any person.
- (b) Paragraph (a) does not apply to a guarantee which is:
  - (i) a Permitted Guarantee; or
  - (ii) a Permitted Transaction.

## **21.11 Negative pledge**

In this Clause 21.11, "**Quasi-Security**" means an arrangement or transaction described in paragraph (b) below.

Except as permitted under paragraph (c) below:

- (a) The Borrower shall not create or permit to subsist any Security over any of its assets.
- (b) The Borrower shall not:
  - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by the Borrower;
  - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
  - (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
  - (iv) enter into any other preferential arrangement having a similar effect, in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.
- (c) Paragraphs (a) and (b) above do not apply to any Security or (as the case may be) Quasi-Security, which is:
  - (i) Permitted Security; or
  - (ii) a Permitted Transaction;

### **21.12 Loans**

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

### **21.13 Distributions**

- (a) Except as permitted under paragraph (b) below, the Borrower shall not:
  - (i) declare, make or pay any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital);
  - (ii) repay or distribute any dividend or share premium reserve;
  - (iii) pay any management, advisory or other fee to or to the order of the Investor; or
  - (iv) redeem, repurchase, defease, retire or repay any of its share capital or resolve to do so.
- (v) Paragraph (a) above does not apply to a Permitted Distribution.

### **21.14 Target distribution**

- (a) Provided that the Ownership Threshold is met:
  - (i) the Borrower shall procure that the Target has taken all reasonable steps to make a cash distribution (via dividend, upstream loan or other means) in a sufficient amount to repay the Total Commitments (plus accrued interest and fees) in full within 15 Business Days following de-listing of the Target; and
  - (ii) the Borrower shall procure that the Target will not take (or fail to take) any actions that would (directly or indirectly) impact the ability to pay the distribution as set out in paragraph (i) above.
- (b) Prior to the first Utilisation Date, the Borrower shall take all actions within its control (by virtue of its existing shareholding in Target) to procure that the distribution is paid as set out in paragraph (i) above.
- (c) Any distribution by the Target to the Borrower shall be used first towards repayment of the Facilities (and may be applied towards repayment of the Accordion Bridge Facility or the Cash Bridge Facility (or split between them), at the Borrower's sole discretion).

### **21.15 Financial Indebtedness**

- (a) Except as permitted under paragraph (b) below, the Borrower shall not incur or allow to remain outstanding any Financial Indebtedness.
- (b) Paragraph (a) above does not apply to Financial Indebtedness which is:

- (i) Permitted Financial Indebtedness; or
- (ii) a Permitted Transaction.

## **MISCELLANEOUS**

### **21.16 Borrower Shares**

All share certificates representing shares in the Borrower which are the subject of Transaction Security shall remain in the Security Agent's custody.

### **21.17 Further assurance**

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

### **21.18 Sanctions**

- (a) The Borrower undertakes that it will not, directly or indirectly, use the proceeds of the Facility, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person, (i) to fund or facilitate any activities or business of or with or related to (or otherwise to make funds available to or for the benefit of) any person, or in any country or territory, that, at the time of such funding, is a Sanctioned Person or Sanctioned Country, or (ii) in any other manner that would result in a violation of Sanctions by any party to the Finance Documents, whether as underwriter, advisor, investor, lender or otherwise.
- (b) Each of the Borrower and the Investor shall ensure that (i) no person that is a Sanctioned Person will have any legal or beneficial interest in any funds repaid or remitted by the Borrower in connection with the Facility and (ii) it shall not use any revenue or benefit derived, directly or indirectly, from any activity or dealing with a Sanctioned Person or

in any other manner that would result in a violation of Sanctions by any party to the Finance Documents.

- (c) Each of the Borrower and the Investor shall implement and maintain appropriate safeguards designed to prevent any action that would be contrary to clause 21.21(d) and 21.21(f) below.
- (d) Each of the Borrower and the Investor shall promptly upon becoming aware of the same, supply to the Agent details of any claim, action, suit, proceedings or investigation against it with respect to Sanctions.
- (e) Each of the Borrower and the Investor undertakes that it will not directly or indirectly, engage in any transaction, activity or conduct that would violate Sanctions.
- (f) Each of the Borrower and the Investor undertakes to immediately notify the Lender of any fact arising to its knowledge which is likely to make inaccurate any of its representations with respect to Sanctions provided in this Agreement.
- (g) Each of the Borrower and the Investor agrees that it shall not fund all or part of any repayment or prepayment made under this contract out of proceeds derived from any transaction with any Sanctioned Person or any person located in any Sanctioned Country.

#### **21.19 Anti-bribery, anti-corruption and anti-money laundering laws**

- (a) The Borrower undertakes that it will not directly or indirectly use the proceeds of the Facility for any purpose which would breach the Bribery Act 2010, the United States Foreign Corrupt Practices Act of 1977 or other similar anti-corruption legislation in Switzerland, the Isle of Man and any other jurisdictions.
- (b) The Borrower and the Investor each undertakes that it will:
  - (i) conduct its businesses in compliance with applicable Anti-Corruption Laws or regulations and anti-money laundering laws or regulations; and
  - (ii) establish and subsequently maintain policies and procedures designed to promote and achieve compliance with such laws or regulations.

## **22. EVENTS OF DEFAULT**

Each of the events or circumstances set out in this Clause 22 is an Event of Default (save for Clause 22.12 (*Acceleration*)).

### **22.1 Non-payment**

The Borrower or the Investor do 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) its failure to pay is caused by:
  - (i) administrative or technical error; or
  - (ii) a Disruption Event; and



- (b) payment is made within two Business Days of its due date.

## **22.2 Other obligations**

- (a) The Borrower or (where applicable) the Investor does not comply with any provision of the Finance Documents (other than those referred to in Clause 22.1 (*Non-payment*)).
- (b) Other than with respect to the obligations included in paragraph (c) of Clause 21.4 (*Scheme or Offer Undertakings*) and Clause 21.14 (*Target distribution*), no Event of Default under paragraph (a) above will occur if the failure to comply or the circumstances giving rise to the failure to comply are capable of remedy and are remedied within ten Business Days of the earlier of (i) the Agent giving notice to the Borrower and (ii) the Borrower becoming aware of the failure to comply.
- (c) With respect to the obligations included in paragraph (c) of Clause 21.4 (*Scheme or Offer Undertakings*) and Clause 21.14 (*Target distribution*), no Event of Default under paragraph (a) above will occur if the failure to comply or the circumstances giving rise to the failure to comply are capable of remedy and are remedied within five Business Days of the earlier of (i) the Agent giving notice to the Borrower and (ii) the Borrower becoming aware of the failure to comply.

## **22.3 Misrepresentation**

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

## **22.4 Cross default**

- (a) Any Financial Indebtedness of a Material Company is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of a Material Company is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any commitment for any Financial Indebtedness of a Material Company is cancelled or suspended by a creditor of a Material Company as a result of an event of default (however described).
- (d) Any creditor of a Material Company becomes entitled to declare any Financial Indebtedness of a Material Company due and payable prior to its specified maturity as a result of an event of default (however described).
- (e) No Event of Default will occur under this Clause 22.4 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than £10,000,000 (or its equivalent in any other currency or currencies).

## **22.5 Insolvency**

- (a) A Material Company (other than solely by reason of a negative equity position or balance sheet liabilities exceeding balance sheet assets):
  - (i) is unable or admits inability to pay its debts as they fall due;
  - (ii) suspends or threatens to suspend making payments on any of its debts; or
  - (iii) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (excluding any Finance Party in its capacity as such) with a view to rescheduling any of its indebtedness.
- (b) The value of the assets of a Material Company is less than its liabilities (taking into account contingent and prospective liabilities and intra-group liabilities).
- (c) A moratorium is declared in respect of any indebtedness of a Material Company.

## **22.6 Insolvency proceedings**

- (a) Any corporate action, legal proceedings or other procedure or step is taken in relation to:
  - (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, receivership, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of a Material Company;
  - (ii) a composition, compromise, assignment or arrangement with any creditor of a Material Company;
  - (iii) the opening of any insolvency proceedings, the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory or interim manager or other similar officer in respect of a Material Company or any of its assets (whether temporary or otherwise); or
  - (iv) enforcement of any Security over any assets of a Material Company,or any analogous procedure or step is taken in any jurisdiction.
- (b) Paragraph (a) shall not apply to any:
  - (i) winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 21 days of commencement; or
  - (ii) action, procedure or step taken by or with the consent of any Finance Party.

## **22.7 Creditors' process**

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of a Material Company having an aggregate value in excess of £1,000,000 (or its equivalent in any other currency or currencies) and is not discharged within 15 days.

## **22.8 Unlawfulness and invalidity**

- (a) It is or becomes unlawful for the Borrower or the Investor to perform any of its obligations under the Finance Documents or any Transaction Security created or

expressed to be created or evidenced by the Transaction Security Documents ceases to be effective.

- (b) Any obligation or obligations of the Borrower or the Investor under any Finance Documents are not or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lenders under the Finance Documents.
- (c) Any Finance Document ceases to be in full force and effect or any Transaction Security or any subordination created under the Intercreditor Agreement ceases to be legal, valid, binding, enforceable or effective or is alleged by a party to it (other than a Finance Party) to be ineffective.

## **22.9 Repudiation and rescission of agreements**

- (a) The Borrower or the Investor rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document or any of the Transaction Security or evidences an intention to rescind or repudiate a Finance Document or any Transaction Security.
- (b) Any party to the Acquisition Documents rescinds or purports to rescind or repudiates or purports to repudiate any of those agreements or instruments in whole or in part where to do so has or is, in the reasonable opinion of the Majority Lenders, likely to have a material adverse effect on the interests of the Lenders under the Finance Documents.

## **22.10 Material adverse change**

Any event occurs which has a Material Adverse Effect.

## **22.11 Litigation**

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

## **22.12 Audit qualification**

The auditors qualify (excluding emphasis of matter) the Borrower's consolidated financial statements on the grounds that the business is not able to be carried on as a going concern or on the basis of material misstatement or materially inadequate disclosure or access as determined reasonably by the Lender.

## **22.13 Sanctions, anti-money laundering**

The Borrower breaches any representation in respect of Sanctions (including any breach of the anti-money laundering or anti-corruption representations and undertakings set out in set out in Clause 19.21 (*Anti-bribery, anti-corruption and anti-money laundering*), Clause 19.23 (*Sanctions*) or Clause 21.18 (*Sanctions*)), in any Finance Document.

## **22.14 Acceleration**

Subject to Clause 4.4 (*Utilisations during the Certain Funds Period*), on and at any time after the occurrence of an Event of Default which is continuing the Agent may, and shall if so directed by the Majority Lenders:

- (a) by notice to the Borrower:
  - (i) cancel the Available Commitment of each Lender at which time each such Available Commitment shall immediately be cancelled and the relevant Facility shall immediately cease to be available for further utilisation;
  - (ii) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, at which time they shall become immediately due and payable;
  - (iii) declare that all or part of the Loans be payable on demand, at which time they shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders; and/or
- (b) exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

## SECTION 8 CHANGES TO PARTIES

### 23. CHANGES TO THE LENDERS

#### 23.1 Assignments and transfers by the Lenders

Subject to this Clause 23 and to Clause 24 (*Restriction on Debt Purchase Transactions*), a Lender (the "**Existing Lender**") may:

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

under any Finance Document to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (the "**New Lender**").

For the avoidance of doubt, other than in accordance with this Clause 23, the Lenders may not grant any sub-participations or transfer any economic interest in the Facilities.

#### 23.2 Borrower consent

- (a) During the Certain Funds Period, the consent of the Borrower is required for an assignment or transfer by an Existing Lender, unless the assignment or transfer is (x) to another Existing Lender or to an Affiliate of the Original Lender provided that the Original Lender remains liable to fund amounts on the Utilisation Date or (y) made at a time when a Major Default is continuing.
- (b) After the Certain Funds Period, the consent of the Borrower is required for an assignment or transfer by an Existing Lender, unless the assignment or transfer is:
  - (i) to another Lender or an Affiliate of any Lender; or
  - (ii) made at a time when an Event of Default in respect of Clause 22.1 (*Non-payment*), Clause 22.5 (*Insolvency*), Clause 22.6 (*Insolvency proceedings*) or Clause 22.7 (*Creditors' process*) is continuing.
- (c) After the Certain Funds Period, the consent of the Borrower to an assignment or transfer must not be unreasonably withheld or delayed and it shall not be unreasonable for the Borrower to refuse consent where the assignment or transfer is to a Prohibited Lender or an Industrial Competitor. The Borrower will be deemed to have given its consent five Business Days after the Existing Lender has requested it unless consent is expressly refused by the Borrower within that time.
- (d) No assignment or transfer shall be permitted to a Prohibited Lender or an Industrial Competitor at any time.
- (e) For the purposes of this Clause:

"**Industrial Competitor**" means any entity that is itself or is an Affiliate or is acting on behalf of an industrial competitor, supplier or sub-contractor of the Borrower, the Investor or the Target Group (each such person, an "**Industrial Competitor**"). Notwithstanding the foregoing, the term "Industrial Competitor" shall not include (i) the Original Lender or any of its Affiliates or (ii) any deposit taking financial institution authorised by a financial services regulator to carry out the business of banking. A bank or other financial institution shall not be deemed to be an Industrial Competitor solely

by reason of it owning securities in, or engaging in underwriting activities in relation to, an Industrial Competitor by reason of ordinary course market making or underwriting activities.

**"Prohibited Lender"** means any person whose principal investment strategy is either (A) the purchase of loans or other debt securities with the intention of (or view to) owning the equity or taking control of a business (directly or indirectly) or (B) the investment in distressed debt (or a person that is acting on behalf of such person), in each case, other than (x) any deposit taking financial institution authorised by a financial services regulator to carry out the business of banking which holds a minimum rating equal to or better than BBB- or Baa3 (as applicable) according to at least two of Moody's Investors Services Limited, Standard and Poor's Ratings Services or Fitch Ratings Ltd and (y) any Original Lender or any of its Affiliates.

### 23.3 Other conditions of assignment or transfer

- (a) An assignment or transfer of part of a Lender's participation must be in an amount such that the Lender's remaining participation (when aggregated with its Affiliates' participation) in respect of Commitments or Loans made under the relevant Facility is in a minimum amount of \$5,000,000.
- (b) (Other than in the case of an assignment permitted by paragraph (b) of Clause 24.1 (*Permitted Debt Purchase Transactions*)), an assignment will only be effective on:
  - (i) receipt by the Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that the New Lender will assume the same obligations to the other Finance Parties and the other Secured Parties as it would have been under if it had been an Original Lender;
  - (ii) the New Lender entering into the documentation required for it to accede as a party to the Intercreditor Agreement; and
  - (iii) performance by the Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Agent shall promptly notify to the Existing Lender and the New Lender.
- (c) A transfer will only be effective if the New Lender enters into the documentation required for it to accede as a party to the Intercreditor Agreement and if the procedure set out in Clause 23.6 (*Procedure for transfer*) is complied with.
- (d) If:
  - (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
  - (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, the Borrower would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 15 (*Increased Costs*),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under that Clause to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred.

- (e) Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

#### **23.4 Assignment or transfer fee**

- (a) Subject to paragraph (b) below, the New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Agent (for its own account) a fee to be agreed with any Agent once appointed.
- (b) No fee is payable pursuant to paragraph (a) above if:
  - (i) the Agent agrees that no fee is payable; or
  - (ii) the assignment or transfer is made by an Existing Lender to an Affiliate of that Existing Lender.

#### **23.5 Limitation of responsibility of Existing Lenders**

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
  - (i) the legality, validity, effectiveness, adequacy or enforceability of the Transaction Documents, the Transaction Security or any other documents;
  - (ii) the financial condition of the Borrower;
  - (iii) the performance and observance by the Borrower of its obligations under the Transaction Documents or any other documents; or
  - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Transaction Document or any other document,and any representations or warranties implied by law are excluded.
- (b) Each New Lender confirms to the Existing Lender, the other Finance Parties and the Secured Parties that it:
  - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of the Borrower and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender 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 the Borrower and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.
- (c) Nothing in any Finance Document obliges an Existing Lender to:
  - (i) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 23; or

- (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by the Borrower of its obligations under the Transaction Documents or otherwise.

### 23.6 Procedure for transfer

- (a) Subject to the conditions set out in Clause 23.2 (*Borrower consent*) and Clause 23.3 (*Other conditions of assignment or transfer*) a transfer is effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate.
- (b) The Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.
- (c) Subject to paragraph (a) of Clause 23.2 (*Borrower consent*) and Clause 23.10 (*Pro rata interest settlement*), on the Transfer Date:
  - (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents and in respect of the Transaction Security each of the Borrower and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and in respect of the Transaction Security and their respective rights against one another under the Finance Documents and in respect of the Transaction Security shall be cancelled (being the "**Discharged Rights and Obligations**");
  - (ii) each of the Borrower and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as the Borrower or other member of the Group and the New Lender have assumed and/or acquired the same in place of the Borrower and the Existing Lender;
  - (iii) the Agent, the Security Agent, the New Lender and the other Lenders shall acquire the same rights and assume the same obligations between themselves and in respect of the Transaction Security as they would have acquired and assumed had the New Lender been an Original Lender with the rights, and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Agent, the Security Agent and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and
  - (iv) the New Lender shall become a Party as a "Lender".

### 23.7 Procedure for assignment

- (a) Subject to the conditions set out in Clause 23.2 (*Borrower consent*) and Clause 23.3 (*Other conditions of assignment or transfer*) an assignment may be effected in accordance with paragraph (b) below when the Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably



practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.

- (b) The Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.
- (c) Subject to paragraph (a) of Clause 23.2 (*Borrower consent*) and Clause 23.10 (*Pro rata interest settlement*), on the Transfer Date:
  - (i) the Existing Lender will assign absolutely to the New Lender its rights under the Finance Documents and in respect of the Transaction Security expressed to be the subject of the assignment in the Assignment Agreement;
  - (ii) the Existing Lender will be released from the obligations (the "**Relevant Obligations**") expressed to be the subject of the release in the Assignment Agreement (and any corresponding obligations by which it is bound in respect of the Transaction Security); and
  - (iii) the New Lender shall become a Party as a "Lender" and will be bound by obligations equivalent to the Relevant Obligations.
- (d) Lenders may utilise procedures other than those set out in this Clause 23.7 to assign their rights under the Finance Documents (but not, without the consent of the Borrower or unless in accordance with Clause 23.6 (*Procedure for transfer*), to obtain a release by the Borrower from the obligations owed to the Borrower by the Lenders nor the assumption of equivalent obligations by a New Lender) **provided that** they comply with the conditions set out in Clause 23.2 (*Borrower consent*) and Clause 23.3 (*Other conditions of assignment or transfer*).

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

The Agent shall, as soon as reasonably practicable after it has executed a Transfer Certificate, an Assignment Agreement or an Increase Confirmation, send to the Borrower a copy of that Transfer Certificate, Assignment Agreement or Increase Confirmation.

### **23.9 Security over Lenders' rights**

In addition to the other rights provided to Lenders under this Clause 23, each Lender may without consulting with or obtaining consent from the Borrower, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

- (a) any charge, assignment or other Security to secure obligations to a federal reserve, central bank or governmental authority; and
  - (b) any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities,
- except that no such charge, assignment or Security shall:

- (i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security for the Lender as a party to any of the Finance Documents; or
- (ii) require any payments to be made by the Borrower other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the relevant Lender under the Finance Documents.

### **23.10 Pro rata interest settlement**

- (a) If the Agent has notified the Lenders that it is able to distribute interest payments on a "pro rata basis" to Existing Lenders and New Lenders then (in respect of any transfer pursuant to Clause 23.6 (*Procedure for transfer*) or any assignment pursuant to Clause 23.7 (*Procedure for assignment*) the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period):
  - (i) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date ("**Accrued Amounts**") and shall become due and payable to the Existing Lender (without further interest accruing on them) on the last day of the current Interest Period (or, if the Interest Period is longer than six Months, on the next of the dates which falls at six Monthly intervals after the first day of that Interest Period); and
  - (ii) the rights assigned or transferred by the Existing Lender will not include the right to the Accrued Amounts so that, for the avoidance of doubt:
    - (A) when the Accrued Amounts become payable, those Accrued Amounts will be payable for the account of the Existing Lender; and
    - (B) the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 23.10, have been payable to it on that date, but after deduction of the Accrued Amounts.
- (b) In this Clause 23.10 references to "Interest Period" shall be construed to include a reference to any other period for accrual of fees.
- (c) An Existing Lender which retains the right to the Accrued Amounts pursuant to this Clause 23.10 but which does not have a Commitment shall be deemed not to be a Lender for the purposes of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve any request for a consent, waiver, amendment or other vote of Lenders under the Finance Documents.

## **24. RESTRICTION ON DEBT PURCHASE TRANSACTIONS**

### **24.1 Permitted Debt Purchase Transactions**

- (a) The Borrower shall not (i) enter into any Debt Purchase Transaction other than in accordance with the other provisions of this Clause 24 or (ii) beneficially own all or any part of the share capital of a company that is a Lender or a party to a Debt Purchase Transaction of the type referred to in paragraphs (b) or (c) of the definition of "Debt Purchase Transaction".
- (b) The Borrower may purchase by way of assignment, pursuant to Clause 23 (*Changes to the Lenders*), a participation in any Loan and any related Commitment where:

- (i) such purchase is made for a consideration of less than par;
- (ii) such purchase is made using one of the processes set out at paragraphs (c) and (d) below; and
- (iii) such purchase is made at a time when no Default is continuing.

(c)

- (i) A Debt Purchase Transaction referred to in paragraph (b) above may be entered into pursuant to a solicitation process (a "**Solicitation Process**") which is carried out as follows.
- (ii) Prior to 11.00 am on a given Business Day (the "**Solicitation Day**") the Borrower or a financial institution acting on its behalf (the "**Purchase Agent**") will approach at the same time each Lender which participates in the relevant Facility to enable them to offer to sell to the Borrower an amount of their participation in one or more Facilities. Any Lender wishing to make such an offer shall, by 11.00 am on the second Business Day following such Solicitation Day, communicate to the Purchase Agent details of the amount of its participations, and in which Facilities, it is offering to sell and the price at which it is offering to sell such participations. Any such offer shall be irrevocable until 11.00 am on the third Business Day following such Solicitation Day and shall be capable of acceptance by the Borrower on or before such time by communicating its acceptance in writing to the Purchase Agent or, if it is the Purchase Agent, the relevant Lenders. The Purchase Agent (if someone other than the Borrower) will communicate to the relevant Lenders which offers have been accepted by 12 noon on the third Business Day following such Solicitation Day. In any event by 5.00 pm on the fourth Business Day following such Solicitation Day, the Borrower shall notify the Agent of the amounts of the participations purchased through the relevant Solicitation Process, the identity of the Facilities to which they relate and the average price paid for the purchase of participations in each relevant Facility. The Agent shall promptly disclose such information to the Lenders.
- (iii) Any purchase of participations in the Facilities pursuant to a Solicitation Process shall be completed and settled on or before the fifth Business Day after the relevant Solicitation Day.
- (iv) In accepting any offers made pursuant to a Solicitation Process the Borrower shall be free to select which offers and in which amounts it accepts but on the basis that in relation to a participation in a particular Facility it accepts offers in inverse order of the price offered (with the offer or offers at the lowest price being accepted first) and that if in relation to participations in a particular Facility it receives two or more offers at the same price it shall only accept such offers on a *pro rata* basis.

(d)

- (i) A Debt Purchase Transaction referred to in paragraph (b) above may also be entered into pursuant to an open order process (an "**Open Order Process**") which is carried out as follows.
- (ii) The Borrower may by itself or through another Purchase Agent place an open order (an "**Open Order**") to purchase participations in one or more Facilities

up to a set aggregate amount at a set price by notifying at the same time all the Lenders participating in the relevant Facilities of the same. Any Lender wishing to sell pursuant to an Open Order will, by 11.00 am on any Business Day following the date on which the Open Order is placed but no earlier than the first Business Day, and no later than the fifth Business Day, following the date on which the Open Order is placed, communicate to the Purchase Agent details of the amount of its participations, and in which Facilities, it is offering to sell. Any such offer to sell shall be irrevocable until 11.00 am on the Business Day following the date of such offer from the Lender and shall be capable of acceptance by the Borrower on or before such time by it communicating such acceptance in writing to the relevant Lender.

- (iii) Any purchase of participations in the Facilities pursuant to an Open Order Process shall be completed and settled by the Borrower on or before the fourth Business Day after the date of the relevant offer by a Lender to sell under the relevant Open Order.
- (iv) If in respect of participations in a Facility the Purchase Agent receives on the same Business Day two or more offers at the set price such that the maximum amount of such Facility to which an Open Order relates would be exceeded, the Borrower shall only accept such offers on a *pro rata* basis.
- (v) The Borrower shall, by 5.00 pm on the sixth Business Day following the date on which an Open Order is placed, notify the Agent of the amounts of the participations purchased through such Open Order Process and the identity of the Facilities to which they relate. The Agent shall promptly disclose such information to the Lenders.
- (e) For the avoidance of doubt, there is no limit on the number of occasions a Solicitation Process or an Open Order Process may be implemented.
- (f) In relation to any Debt Purchase Transaction entered into pursuant to this Clause 24.1, notwithstanding any other term of this Agreement or the other Finance Documents:
  - (i) on completion of the relevant assignment pursuant to Clause 23 (*Changes to the Lenders*), the portions of the Loans to which it relates shall be extinguished;
  - (ii) such Debt Purchase Transaction and the related extinguishment referred to in paragraph (i) above shall not constitute a prepayment of the Facilities;
  - (iii) the Borrower shall be deemed to be an entity which fulfils the requirements of Clause 23.1 (*Assignments and transfers by the Lenders*) to be a New Lender;
  - (iv) no member of the Group shall be deemed to be in breach of Clause 21 (*General Undertakings*) solely by reason of such Debt Purchase Transaction;
  - (v) Clause 29 (*Sharing among the Finance Parties*) shall not be applicable to the consideration paid under such Debt Purchase Transaction; and
  - (vi) for the avoidance of doubt, any extinguishment of any part of the Loans shall not affect any amendment or waiver which prior to such extinguishment had been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement.

## **25. CHANGES TO THE BORROWER OR THE INVESTOR**

### **25.1 Assignment and transfers by the Borrower or the Investor**

Neither the Borrower nor the Investor may assign any of its rights or transfer any of their respective rights or obligations under the Finance Documents.

## **SECTION 9**

### **THE FINANCE PARTIES**

#### **26. ROLE OF THE AGENT**

##### **26.1 Appointment of the Agent**

- (a) Until such time as an Agent is appointed pursuant to this Clause 26.1, references throughout this Agreement to Agent will be deemed to be references to the Original Lender and the Original Lender will act only on behalf of itself and will not act as agent for any Party.
- (b) If there is intended to be more than one Lender under this Agreement then the Original Lender, in consultation with the Borrower, may appoint an Agent and each Lender shall appoint such agent to act as its agent under and in connection with the Finance Documents.
- (c) Each of the Lenders authorises the Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

##### **26.2 Instructions**

- (a) The Agent shall:
  - (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by:
    - (A) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision; and
    - (B) in all other cases, the Majority Lenders; and
  - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above.
- (b) The Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Lender or group of Lenders, from that Lender or group of Lenders) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
- (c) Save in the case of decisions stipulated to be a matter for any other Lender or group of Lenders under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties save for the Security Agent.
- (d) The Agent may refrain from acting in accordance with any instructions of any Lender or group of Lenders until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability which it may incur in complying with those instructions.

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

### **26.3 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 23.8 (*Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Borrower*), paragraph (b) above shall not apply to any Transfer Certificate, any Assignment Agreement or any Increase Confirmation.
- (d) Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (e) If the Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (f) If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Agent or the Security Agent) under this Agreement, it shall promptly notify the other Finance Parties.
- (g) The Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

### **26.4 No fiduciary duties**

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

### **26.5 Business with the Group**

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

### **26.6 Rights and discretions**

- (a) The Agent may:
  - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;

- (ii) assume that:
    - (A) any instructions received by it from the Majority Lenders, any Lenders or any group of Lenders are duly given in accordance with the terms of the Finance Documents; and
    - (B) unless it has received notice of revocation, that those instructions have not been revoked,
  - (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; and
  - (iv) rely on any statement made by a director, authorised signatory or employee of any person regarding matters which may reasonably be assumed to be within his knowledge or power to verify.
- (b) The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:
- (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 22.1 (*Non-payment*));
  - (ii) any right, power, authority or discretion vested in any Party or any group of Lenders has not been exercised; and
  - (iii) any notice or request made by the Borrower (other than a Utilisation Request) is made on behalf of and with the consent and knowledge of the Borrower.
- (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 necessary.
- (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 gross negligence or wilful misconduct.

- (g) Unless a Finance Document expressly provides otherwise the Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.
- (h) Without prejudice to the generality of paragraph (g) above, the Agent:
  - (i) may disclose; and
  - (ii) on the written request of the Borrower or the Majority Lenders shall, as soon as reasonably practicable, disclose,

the identity of a Defaulting Lender to the Borrower and to the other Finance Parties.

- (i) Notwithstanding any other provision of any Finance Document to the contrary, none of the Agent is obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (j) Notwithstanding any provision of any Finance Document to the contrary, the Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

## **26.7 Responsibility for documentation**

The Agent is not responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Agent or the Borrower or any other person in or in connection with any Finance Document or the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; or
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security; or
- (c) any determination as to whether any information provided or to be provided to any Finance Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

## **26.8 No duty to monitor**

The Agent shall not be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Party of its obligations under any Finance Document; or
- (c) whether any other event specified in any Finance Document has occurred.

## 26.9 Exclusion of liability

- (a) Without limiting paragraph (b) below and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Agent, the Agent will not be liable (including, without limitation, for negligence or any other category of liability whatsoever) for:
- (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document or the Transaction Security, unless directly caused by its gross negligence or wilful misconduct;
  - (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Finance Document, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document or the Transaction Security; or
  - (iii) without prejudice to the generality of paragraphs (i) and (ii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
    - (A) any act, event or circumstance not reasonably within its control; or
    - (B) the general risks of investment in, or the holding of assets in, any jurisdiction,including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.
- (b) No Party (other than the Agent) may take any proceedings against any officer, employee or agent of the Agent, in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or any Transaction Document and any officer, employee or agent of the Agent may rely on this paragraph (b) subject to Clause 1.4 (*Third party rights*) and the provisions of the Third Parties Act.
- (c) The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Agent if the Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Agent to carry out:
- (i) any "know your customer" or other checks in relation to any person; or
  - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Lender,

on behalf of any Lender and each Lender confirms to the Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent.

- (e) Without prejudice to any provision of any Finance Document excluding or limiting the Agent's liability, any liability of the Agent arising under or in connection with any Finance Document or the Transaction Security shall be limited to the amount of actual loss which has been 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.

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

- (a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, within three Business Days of demand, against any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 30.11 (*Disruption to payment systems etc.*), notwithstanding the Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) in acting as Agent under the Finance Documents (unless the Agent has been reimbursed by the Borrower pursuant to a Finance Document).
- (b) Subject to paragraph (c) below, the Borrower shall immediately 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 the Borrower.

#### **26.11 Resignation of the Agent**

- (a) The Agent may resign and appoint one of its Affiliates as successor by giving notice to the Lenders and the Borrower.
- (b) Alternatively the Agent may resign by giving 30 days' notice to the Lenders and the Borrower, in which case the Majority Lenders (after consultation with the Borrower) may appoint a successor Agent.
- (c) If the Majority Lenders have not appointed a successor Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Agent (after consultation with the Borrower) may appoint a successor Agent (acting through an office in the United Kingdom).
- (d) If the Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Agent is entitled to appoint a successor Agent under 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 26 consistent with then current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to the agency fee payable under this Agreement which are consistent with the successor Agent's normal fee rates and those amendments will bind the Parties.

- (e) The retiring Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- (f) The Agent's resignation notice shall only take effect upon the appointment of a successor.
- (g) Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (e) above) but shall remain entitled to the benefit of Clause 16.3 (*Indemnity to the Agent*) and this Clause 26 (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.

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 14.7 (*FATCA information*) and the Borrower or a Lender reasonably believes that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
- (ii) the information supplied by the Agent pursuant to Clause 14.7 (*FATCA information*) indicates that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
- (iii) the Agent notifies the Borrower and the Lenders that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

and (in each case) the Borrower or a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Agent were a FATCA Exempt Party, and the Borrower or that Lender, by notice to the Agent, requires it to resign.

## **26.12 Replacement of the Agent**

- (a) After consultation with the Borrower, the Majority Lenders may, by giving 30 days' notice to the Agent (or, at any time the Agent is an Impaired Agent, by giving any shorter notice determined by the Majority Lenders) replace the Agent by appointing a successor Agent (acting through an office in the United Kingdom).
- (b) The retiring Agent shall (at its own cost if it is an Impaired Agent and otherwise at the expense of the Lenders) make available to the successor Agent such documents and

records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.

- (c) The appointment of the successor Agent shall take effect on the date specified in the notice from the Majority Lenders to the retiring Agent. As from this date, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) above) but shall remain entitled to the benefit of Clause 16.3 (*Indemnity to the Agent*) and this Clause 26 (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.

#### **26.13 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.

#### **26.14 Relationship with the Lenders**

- (a) Subject to Clause 23.10 (*Pro rata interest settlement*), the Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office:
  - (i) entitled to or liable for any payment due under any Finance Document on that day; and
  - (ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,

unless it has received not less than five Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.

- (b) Any Lender may by notice to the Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender under the Finance Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under Clause 32.6 (*Electronic communication*)) electronic mail address and/or any other information required to enable the transmission of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address (or such other information), department and officer by that Lender for the purposes of Clause 32.2 (*Addresses*) and paragraph (a)(i) of Clause 32.6 (*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.

## **26.15 Credit appraisal by the Lenders**

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

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document, the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;
- (c) whether that Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the Transaction Security, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;
- (d) the adequacy, accuracy or completeness of any information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property.

## **26.16 Agent's management time**

At any time when an Event of Default is continuing, any amount payable to the Agent under Clause 16.3 (*Indemnity to the Agent*), Clause 18 (*Costs and expenses*) and Clause 26.10 (*Lenders' indemnity to the Agent*) shall include the cost of utilising the Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Agent may notify to the Borrower and the Lenders, and is in addition to any fee paid or payable to the Agent under Clause 13 (*Fees*).

## **26.17 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.

## **26.18 Amounts paid in error**

- (a) If the Agent pays an amount to another Party and within three Business Days of the date of payment the Agent 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 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.

- (b) Neither:
  - (i) the obligations of any Party to the Agent; nor
  - (ii) the remedies of the Agent,(whether arising under this Clause 26.18 or otherwise) which relate to an Erroneous Payment will be affected by any act, omission, matter or thing which, but for this paragraph (b) would reduce, release or prejudice any such obligation or remedy (whether or not known by the Agent or any other Party).
- (c) All payments to be made by a Party to the Agent (whether made pursuant to this Clause 26.18 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.

In this Agreement, "**Erroneous Payment**" means a payment of an amount by the Agent to another Party which the Agent determines (in its sole discretion) was made in error.

#### **26.19 Reliance and engagement letters**

Each Finance Party and Secured Party confirms that the Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by the Agent) the terms of any reliance letter or engagement letters relating to any reports or letters provided by accountants in connection with the Finance Documents or the transactions contemplated in the Finance Documents and to bind it in respect of those reports 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.

### **27. SECURITY AGENT**

#### **27.1 Security Agent appointment**

- (a) Until such time as a Security Agent is appointed pursuant to this Clause 27.1, references throughout this Agreement to Security Agent will be deemed to be references to the Original Lender and the Original Lender will act only on behalf of itself and will not act as agent for any Party.
- (b) If there is intended to be more than one Lender under this Agreement, then the Original Lender, in consultation with the Borrower, may appoint a Security Agent and each Lender shall appoint such Security Agent to act as security agent under and in connection with the Finance Documents.
- (c) The Security Agent declares that it holds the Transaction Security on trust for the Secured Parties on the terms contained in this agreement.
- (d) Each of the Agent and the Lenders 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.

### **28. CONDUCT OF BUSINESS BY THE FINANCE PARTIES**

No provision of this Agreement will:

- (a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (c) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

## 29. SHARING AMONG THE FINANCE PARTIES

### 29.1 Payments to Finance Parties

If a Finance Party (a "**Recovering Finance Party**") receives or recovers any amount from the Borrower other than in accordance with Clause 30 (*Payment mechanics*) (a "**Recovered Amount**") and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery, to the Agent;
- (b) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause 30 (*Payment mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within three Business Days of demand by the Agent, pay to the Agent an amount (the "**Sharing Payment**") equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 30.6 (*Partial payments*).

### 29.2 Redistribution of payments

The Agent shall treat the Sharing Payment as if it had been paid by the Borrower and distribute it between the Finance Parties (other than the Recovering Finance Party) (the "**Sharing Finance Parties**") in accordance with Clause 30.6 (*Partial payments*) towards the obligations of the Borrower to the Sharing Finance Parties.

### 29.3 Recovering Finance Party's rights

On a distribution by the Agent under Clause 29.2 (*Redistribution of payments*) of a payment received by a Recovering Finance Party from the Borrower, as between the Borrower and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by the Borrower.

### 29.4 Reversal of redistribution

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Sharing Finance Party shall, upon request of the Agent, pay to the Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay) (the "**Redistributed Amount**"); and



- (b) as between the Borrower and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by the Borrower.

## **29.5 Exceptions**

- (a) This Clause 29 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the Borrower.
- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
  - (i) it notified the other Finance Party of the legal or arbitration proceedings; and
  - (ii) the other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

## **SECTION 10 ADMINISTRATION**

### **30. PAYMENT MECHANICS**

#### **30.1 Payments to the Agent**

- (a) On each date on which the Borrower or a Lender is required to make a payment under a Finance Document the Borrower or Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency and with such bank as the Agent, in each case, specifies.

#### **30.2 Distributions by the Agent**

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 30.3 (*Distributions to the Borrower*) and Clause 30.4 (*Clawback and pre-funding*) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five Business Days' notice with a bank specified by that Party in the principal financial centre of the country of that currency.

#### **30.3 Distributions to the Borrower**

The Agent may (with the consent of the Borrower or in accordance with Clause 31 (*Set-Off*)) apply any amount received by it for the Borrower in or towards payment (on the date and in the currency and funds of receipt) of any amount due from the Borrower under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

#### **30.4 Clawback and pre-funding**

- (a) Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform

any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.

- (b) Unless paragraph (c) below applies, if the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.
- (c) If the Agent is willing to make available amounts for the account of the Borrower before receiving funds from the Lenders then if and to the extent that the Agent does so but it proves to be the case that it does not then receive funds from a Lender in respect of a sum which it paid to the Borrower:
  - (i) the Borrower shall on demand refund it to the Agent; and
  - (ii) the Lender by whom those funds should have been made available or, if that Lender fails to do so, the Borrower, shall on demand pay to the Agent the amount (as certified by the Agent) which will indemnify the Agent against any funding cost incurred by it as a result of paying out that sum before receiving those funds from that Lender.

### 30.5 Impaired Agent

- (a) If, at any time, the Agent becomes an Impaired Agent, the Borrower or a Lender which is required to make a payment under the Finance Documents to the Agent in accordance with Clause 30.1 (*Payments to the Agent*) may instead either:
  - (i) pay that amount direct to the required recipient(s); or
  - (ii) if in its absolute discretion it considers that it is not reasonably practicable to pay that amount direct to the required recipient(s), pay that amount or the relevant part of that amount to an interest-bearing account held with an Acceptable Bank within the meaning of paragraph (a) of the definition of "**Acceptable Bank**" and in relation to which no Insolvency Event has occurred and is continuing, in the name of the Borrower or the Lender making the payment (the "**Paying Party**") and designated as a trust account for the benefit of the Party or Parties beneficially entitled to that payment under the Finance Documents (the "**Recipient Party**" or "**Recipient Parties**").

In each case such payments must be made on the due date for payment under the Finance Documents.

- (b) All interest accrued on the amount standing to the credit of the trust account shall be for the benefit of the Recipient Party or the Recipient Parties *pro rata* to their respective entitlements.
- (c) A Party which has made a payment in accordance with this Clause 30.5 shall be discharged of the relevant payment obligation under the Finance Documents and shall not take any credit risk with respect to the amounts standing to the credit of the trust account.
- (d) Promptly upon the appointment of a successor Agent in accordance with Clause 26.12 (*Replacement of the Agent*), each Paying Party shall (other than to the extent that that Party has given an instruction pursuant to paragraph (e) below) give all requisite

instructions to the bank with whom the trust account is held to transfer the amount (together with any accrued interest) to the successor Agent for distribution to the relevant Recipient Party or Recipient Parties in accordance with Clause 30.2 (*Distributions by the Agent*).

- (e) A Paying Party shall, promptly upon request by a Recipient Party and to the extent:
  - (i) that it has not given an instruction pursuant to paragraph (d) above; and
  - (ii) that it has been provided with the necessary information by that Recipient Party,give all requisite instructions to the bank with whom the trust account is held to transfer the relevant amount (together with any accrued interest) to that Recipient Party.

### **30.6 Partial payments**

- (a) If the Agent receives a payment for application against amounts due in respect of any Finance Documents that is insufficient to discharge all the amounts then due and payable by the Borrower under those Finance Documents, the Agent shall apply that payment towards the obligations of the Borrower under the Finance Documents in the following order:
  - (i) **first**, in or towards payment *pro rata* of any unpaid fees, costs and expenses of the Agent, the Original Lenders and the Security Agent under the Finance Documents;
  - (ii) **secondly**, in or towards payment *pro rata* of any accrued interest, fee or commission due but unpaid under those Finance Documents;
  - (iii) **thirdly**, in or towards payment *pro rata* of any principal due but unpaid under those Finance Documents; and
  - (iv) **fourthly**, in or towards payment *pro rata* of any other sum due but unpaid under the Finance Documents.
- (b) The Agent shall, if so directed by the Majority Lenders, vary the order set out in paragraphs (a)(i) to (a)(iv) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by the Borrower.

### **30.7 Set-off by Borrower**

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

### **30.8 Business Days**

- (a) Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

### **30.9 Currency of account**

- (a) Subject to paragraphs (b) to (e) below, US dollar is the currency of account and payment for any sum due from the Borrower under any Finance Document.
- (b) A repayment of a Loan or Unpaid Sum or a part of a Loan or Unpaid Sum shall be made in the currency in which that Loan or Unpaid Sum is denominated, pursuant to this Agreement, on its due date.
- (c) Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated, pursuant to this Agreement, when that interest accrued.
- (d) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (e) Any amount expressed to be payable in a currency other than US dollar shall be paid in that other currency.

### **30.10 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 Borrower); and
  - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Market and otherwise to reflect the change in currency.

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

- (a) the Agent may, and shall if requested to do so by the Borrower, consult with the Borrower with a view to agreeing with the Borrower such changes to the operation or administration of the Facilities as the Agent may deem necessary in the circumstances;
- (b) the Agent shall not be obliged to consult with the Borrower in relation to any changes mentioned in paragraph (a) above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) the Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) above but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;

- (d) any such changes agreed upon by the Agent and the Borrower shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 36 (*Amendments and Waivers*);
- (e) the Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 30.11; and
- (f) the Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

## **31. SET-OFF**

Subject to Clause 4.4 (*Utilisations during the Certain Funds Period*), a Finance Party may set off any matured obligation due from the Borrower under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to the Borrower, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

## **32. NOTICES**

### **32.1 Communications in writing**

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax, letter or (subject to Clause 32.6 (*Electronic communication*)) electronic mail.

### **32.2 Addresses**

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

### **32.3 Delivery**

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
  - (i) if by way of fax, when received in legible form; or
  - (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 32.2 (*Addresses*), if addressed to that department or officer.
- (b) Any communication or document to be made or delivered to the Agent or the Security Agent will be effective only when actually received by the Agent or Security Agent and

then only if it is expressly marked for the attention of the department or officer identified with the Agent's or Security Agent's signature below (or any substitute department or officer as the Agent or Security Agent shall specify for this purpose).

- (c) All notices from or to the Borrower shall be sent through the Agent.
- (d) Any communication or document made or delivered to the Borrower in accordance with this Clause 32.3 will be deemed to have been made or delivered to the Investor as well.
- (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.

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

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

#### **32.5 Communication when Agent is Impaired Agent**

If the Agent is an Impaired Agent the Parties may, instead of communicating with each other through the Agent, communicate with each other directly and (while the Agent is an Impaired Agent) all the provisions of the Finance Documents which require communications to be made or notices to be given to or by the Agent shall be varied so that communications may be made and notices given to or by the relevant Parties directly. This provision shall not operate after a replacement Agent has been appointed.

#### **32.6 Electronic communication**

- (a) Any communication or document to be made or delivered by one Party to another under or in connection with the Finance Documents may be made or delivered by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties:
  - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
  - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any such electronic communication or delivery as specified in paragraph (a) above to be made between the Borrower and a Finance Party may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication or delivery.
- (c) Any such electronic communication or document as specified in paragraph (a) above made or delivered by one Party to another will be effective only when actually received (or made available) in readable form and in the case of any electronic communication or document made or delivered by a Party to the Agent or the Security Agent only if it is addressed in such a manner as the Agent or Security Agent shall specify for this purpose.
- (d) Any electronic communication or document which becomes effective, in accordance with paragraph (c) above, after 5:00 p.m. in the place in which the Party to whom the relevant communication or document is sent or made available has its address for the

purpose of this Agreement shall be deemed only to become effective on the following day.

- (e) Any reference in a Finance Document to a communication being sent or received or a document being delivered shall be construed to include that communication or document being made available in accordance with this Clause 32.6.

### **32.7 Direct electronic delivery by Borrower**

The Borrower may satisfy its obligation under this Agreement to deliver any information in relation to a Lender by delivering that information directly to that Lender in accordance with Clause 32.6 (*Electronic communication*) to the extent that Lender and the Agent agree to this method of delivery.

### **32.8 English language**

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
  - (i) in English; or
  - (ii) if not in English, and if so required by the Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

## **33. CALCULATIONS AND CERTIFICATES**

### **33.1 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.

### **33.2 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.

### **33.3 Day count convention and interest calculation**

- (a) 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, in accordance with that market practice.
- (b) Subject to paragraph (i) below, without rounding.
  - (i) The aggregate amount of any accrued interest, commission or fee which is, or becomes, payable by the Borrower under a Finance Document shall be rounded to 2 decimal places.

## **34. 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.

### **35. 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.

### **36. AMENDMENTS AND WAIVERS**

#### **36.1 Intercreditor Agreement**

This Clause 36 is subject to the terms of the Intercreditor Agreement.

#### **36.2 Required consents**

- (a) Subject to Clause 36.3 (*All Lender matters*) and Clause 36.4 (*Other exceptions*), any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Borrower and any such amendment or waiver will be binding on all Parties.
- (b) The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 36.
- (c) Without prejudice to the generality of paragraphs (c), (d) and (e) of Clause 26.6 (*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 amendment, waiver or consent under this Agreement.
- (d) The Investor agrees to any such amendment or waiver permitted by this Clause 36 which is agreed to by the Borrower. This includes any amendment or waiver which would, but for this paragraph (d), require the consent of the Investor.
- (e) Paragraph (c) of Clause 23.10 (*Pro rata interest settlement*) shall apply to this Clause 36.

#### **36.3 All Lender matters**

Subject to Clause 36.5 (*Replacement of SOFR*), an amendment, waiver or (in the case of a Transaction Security Document) a consent of, or in relation to, any term of any Finance Document that has the effect of changing or which relates to:

- (a) the definition of "Majority Lenders" in Clause 1.1 (*Definitions*);
- (b) an extension to the date of payment of any amount under the Finance Documents (other than in relation to Clause 8 (*Mandatory Prepayment and Cancellation*));
- (c) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;



- (d) an increase in any Commitment or the Total Commitments, an extension of any Availability Period or any requirement that a cancellation of Commitments reduces the Commitments of the Lenders rateably under the relevant Facility;
- (e) a change to the Borrower or the Investor other than in accordance with Clause 25 (*Changes to the Borrower or the Investor*);
- (f) any provision which expressly requires the consent of all the Lenders;
- (g) Clause 2.3 (*Finance Parties' rights and obligations*), Clause 5.1 (*Delivery of a Utilisation Request*), Clause 7.1 (*Illegality*), Clause 9.8 (*Application of prepayments*), Clause 23 (*Changes to the Lenders*), Clause 25 (*Changes to the Borrower or the Investor*), this Clause 36, Clause 43 (*Governing law*) or Clause 44.1 (*Jurisdiction of English courts*);
- (h) (other than as expressly permitted by the provisions of any Finance Document) the nature or scope of:
  - (i) the Charged Property; or
  - (ii) the manner in which the proceeds of enforcement of the Transaction Security are distributed

(except insofar as it relates to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document); or
- (i) the release of any Transaction Security unless permitted under this Agreement or any other Finance Document or relating to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is permitted under this Agreement or any other Finance Document,

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

#### **36.4 Other exceptions**

- (a) An amendment or waiver which relates to the rights or obligations of the Agent or the Security Agent (each in their capacity as such) may not be effected without the consent of the Agent or the Security Agent, as the case may be.
- (b) Any amendment or waiver which:
  - (i) relates only to the rights or obligations applicable to a particular Loan or class of Lender; and
  - (ii) does not materially and adversely affect the rights or interests of Lenders in respect of any other Loan or another class of Lender,

may be made in accordance with this Clause 36 but as if references in this Clause 36 to the specified proportion of Lenders (including, for the avoidance of doubt, all the Lenders) whose consent would, but for this paragraph (b), be required for that amendment or waiver were to that proportion of the Lenders participating in that particular Loan or forming part of that particular class.

#### **36.5 Replacement of SOFR**

- (a) Subject to Clause 36.4 (*Other exceptions*), if a SOFR Replacement Event has occurred any amendment or waiver which relates to:

- (i) providing for the use of a Replacement Benchmark in place of SOFR; and
- (ii)
  - (A) aligning any provision of any Finance Document to the use of the Replacement Benchmark;
  - (B) enabling that Replacement Benchmark to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Benchmark to be used for the purposes of this Agreement);
  - (C) implementing market conventions applicable to that Replacement Benchmark;
  - (D) providing for appropriate fallback (and market disruption) provisions for that Replacement Benchmark; or
  - (E) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Benchmark (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

may be made with the consent of the Agent (acting on the instructions of the Majority Lenders and the Borrower.

- (b) In this Clause 36.5

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

**"Replacement Benchmark"** means a benchmark rate which is:

- (i) formally designated, nominated or recommended as the replacement for SOFR by:
  - (A) the administrator of SOFR (provided that the market or economic reality that such benchmark rate measures is the same as that measured by SOFR); or
  - (B) any Relevant Nominating Body,

and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the "Replacement Benchmark" will be the replacement under paragraph (a) above;
- (ii) in the opinion of the Majority Lenders and the Borrower, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to SOFR; or
- (iii) in the opinion of the Majority Lenders and the Borrower, an appropriate successor to SOFR.

**"SOFR Replacement Event"** means:

- (i) the methodology, formula or other means of determining SOFR has, in the opinion of the Majority Lenders and the Borrower, materially changed;
- (ii)
  - (A)
    - (1) the administrator of SOFR or its supervisor publicly announces that such administrator is insolvent; or
    - (2) information is published in any order, decree, notice, petition or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of SOFR is insolvent,

provided that, in each case, at that time, there is no successor administrator to continue to provide SOFR;
  - (B) the administrator of SOFR publicly announces that it has ceased or will cease to provide SOFR permanently or indefinitely and, at that time, there is no successor administrator to continue to provide SOFR;
  - (C) the supervisor of the administrator of SOFR publicly announces that SOFR has been or will be permanently or indefinitely discontinued; or
  - (D) the administrator of SOFR or its supervisor announces that SOFR may no longer be used;
- (iii) the administrator of SOFR (or the administrator of an interest rate which is a constituent element of SOFR) determines that SOFR should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:
  - (A) the circumstance(s) or event(s) leading to such determination are not (in the opinion of the Majority Lenders and the Borrower) temporary; or
  - (B) SOFR is calculated in accordance with any such policy or arrangement for a period no less than the period specified as the SOFR Contingency Period in the SOFR Rate Terms; or
- (iv) in the opinion of the Majority Lenders and the Borrower, SOFR is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.

### **36.6 [Reserved]**

### **36.7 Disenfranchisement of Defaulting Lenders**

- (a) For so long as a Defaulting Lender has any Available Commitment, in ascertaining:
  - (i) the Majority Lenders; or
  - (ii) whether:

- (A) any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments under the relevant Facility; or
- (B) the agreement of any specified group of Lenders, has been obtained to approve any request for a consent, waiver, amendment or other vote of Lenders under the Finance Documents,

that Defaulting Lender's Commitments under the relevant Facility will be reduced by the amount of its Available Commitments under the relevant Facility and, to the extent that that reduction results in that Defaulting Lender's Total Commitments being zero, that Defaulting Lender shall be deemed not to be a Lender for the purposes of paragraphs (i) and (ii) above.

- (b) For the purposes of this Clause 36.7, the Agent may assume that the following Lenders are Defaulting Lenders:
  - (i) any Lender which has notified the Agent that it has become a Defaulting Lender;
  - (ii) any Lender in relation to which it is aware that any of the events or circumstances referred to in paragraphs (a), (b) or (c) of the definition of "Defaulting Lender" has occurred,

unless it has received notice to the contrary from the Lender concerned (together with any supporting evidence reasonably requested by the Agent) or the Agent is otherwise aware that the Lender has ceased to be a Defaulting Lender.

### 36.8 Replacement of a Defaulting Lender

- (a) The Borrower may, at any time a Lender has become and continues to be a Defaulting Lender, by giving ten Business Days' prior written notice to the Agent and such Lender replace such Lender by requiring such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 23 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement to an Eligible Institution (a "**Replacement Lender**") which confirms its willingness to assume and does assume all the obligations, or all the relevant obligations, of the transferring Lender in accordance with Clause 23 (*Changes to the Lenders*) for a purchase price in cash payable at the time of transfer which is either:
  - (i) in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Loans and all accrued interest (to the extent that the Agent has not given a notification under Clause 23.10 (*Pro rata interest settlement*)), Break Costs and other amounts payable in relation thereto under the Finance Documents; or
  - (ii) in an amount agreed between that Defaulting Lender, the Replacement Lender and the Borrower and which does not exceed the amount described in paragraph (i) above.
- (b) Any transfer of rights and obligations of a Defaulting Lender pursuant to this Clause 36.8 shall be subject to the following conditions:
  - (i) the Borrower shall have no right to replace the Agent or Security Agent;
  - (ii) neither the Agent nor the Defaulting Lender shall have any obligation to the Borrower to find a Replacement Lender;

- (iii) the transfer must take place no later than twenty Business Days after the notice referred to in paragraph (a) above;
  - (iv) in no event shall the Defaulting Lender be required to pay or surrender to the Replacement Lender any of the fees received by the Defaulting Lender pursuant to the Finance Documents; and
  - (v) the Defaulting Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (a) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer to the Replacement Lender.
- (c) The Defaulting Lender shall perform the checks described in paragraph (b)(v) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a) above and shall notify the Agent and the Borrower when it is satisfied that it has complied with those checks.

## **37. CONFIDENTIAL INFORMATION**

### **37.1 Confidentiality**

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 37.2 (*Disclosure of Confidential Information*), 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.

### **37.2 Disclosure of Confidential Information**

Any Finance Party may disclose:

- (a) to any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
  - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Agent or Security Agent and, in each case, to any of that person's Affiliates, Representatives, professional advisers and contractors;
  - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or the Borrower and to any of that person's Affiliates, 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 (including, without limitation, any person appointed under paragraph (b) of Clause 26.14 (*Relationship with the Lenders*));

- (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;
- (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, quasi-government, administrative, banking, taxation or other regulatory authority or supervisory body or similar body or authority, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
- (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
- (vii) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 23.9 (*Security over Lenders' rights*);
- (viii) who is a Party; or
- (ix) with the consent of the Borrower,

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

- (A) in relation to paragraphs (b)(i),(b)(ii) and (b)(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
  - (B) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
  - (C) in relation to paragraphs (b)(v), (b)(vi) and (b)(vii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;
- (c) to any person appointed by that Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to

whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Borrower and the relevant Finance Party; and

- (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Borrower if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

Nothing in any Finance Document shall prevent disclosure of any Confidential Information or other matter to the extent that preventing that disclosure would otherwise cause any transaction contemplated by the Finance Documents or any transaction carried out in connection with any transaction contemplated by the Finance Documents to become an arrangement described in Part II A 1 of Annex IV of DAC6 in circumstances where no such transaction would otherwise have been such an arrangement or any other arrangement that is reportable under DAC6 or any law or regulation which implements DAC6.

### **37.3 Entire agreement**

This Clause 37 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.

### **37.4 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.

### **37.5 Notification of disclosure**

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

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 37.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 37.

### **37.6 Continuing obligations**

The obligations in this Clause 37 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of twelve months from the earlier of:

- (a) the date on which all amounts payable by the Borrower 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.

### **38. CONFIDENTIALITY OF FUNDING RATES**

#### **38.1 Confidentiality and disclosure**

- (a) The Agent and the Borrower agree to keep each Funding Rate confidential and not to disclose it to anyone, save to the extent permitted by paragraphs (b) and (c) below.
- (b) The Agent may disclose:
  - (i) any Funding Rate to the Borrower pursuant to Clause 10.4 (*Notification of rates of interest*); and
  - (ii) any Funding Rate to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Agent and the relevant Lender.
- (c) The Agent may disclose any Funding Rate, and the Borrower may disclose any Funding Rate, to:
  - (i) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives if any person to whom that Funding Rate is to be given pursuant to this paragraph (i) is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of that Funding Rate or is otherwise bound by requirements of confidentiality in relation to it;
  - (ii) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the Borrower, as the case may be, it is not practicable to do so in the circumstances;
  - (iii) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes if the person to whom that Funding Rate is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the Borrower, as the case may be, it is not practicable to do so in the circumstances; and



- (iv) any person with the consent of the relevant Lender.

### **38.2 Related obligations**

- (a) The Agent and the Borrower acknowledge that each Funding Rate is or may be price-sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Agent and the Borrower undertake not to use any Funding Rate for any unlawful purpose.
- (b) The Agent and the Borrower agree (to the extent permitted by law and regulation) to inform the relevant Lender:
  - (i) of the circumstances of any disclosure made pursuant to paragraph (c)(ii) of Clause 38.1 (*Confidentiality and disclosure*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
  - (ii) upon becoming aware that any information has been disclosed in breach of this Clause 38.

### **38.3 No Event of Default**

No Event of Default will occur under Clause 22.2 (*Other obligations*) by reason only of the Borrower's failure to comply with this Clause 38.

## **39. DISCLOSURE OF LENDER DETAILS BY AGENT**

### **39.1 Supply of Lender details to Borrower**

The Agent shall provide to the Borrower, within ten Business Days of a request by the Borrower (but no more frequently than once per calendar month), a list (which may be in electronic form) setting out the names of the Lenders as at the date of that request, their respective Commitments, the address and fax number (and the department or officer, if any, for whose attention any communication is to be made) of each Lender for any communication to be made or document to be delivered under or in connection with the Finance Documents, the electronic mail address and/or any other information required to enable the transmission of information by electronic mail or other electronic means to and by each Lender to whom any communication under or in connection with the Finance Documents may be made by that means and the account details of each Lender for any payment to be distributed by the Agent to that Lender under the Finance Documents.

### **39.2 Supply of Lender details at Borrower's direction**

- (a) The Agent shall, at the request of the Borrower, disclose the identity of the Lenders and the details of the Lenders' Commitments to any:
  - (i) other Party or any other person if that disclosure is made to facilitate, in each case, a refinancing of the Financial Indebtedness arising under the Finance Documents or a material waiver or amendment of any term of any Finance Document; and
  - (ii) member of the Group.
- (b) Subject to paragraph (c) below, the Borrower shall procure that the recipient of information disclosed pursuant to paragraph (a) above shall keep such information confidential and shall not disclose it to anyone and shall ensure that all such information

is protected with security measures and a degree of care that would apply to the recipient's own confidential information.

- (c) The recipient may disclose such information to any of its officers, directors, employees, professional advisers, auditors and partners as it shall consider appropriate if any such person is informed in writing of its confidential nature, except that there shall be no such requirement to so inform if that person is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by duties of confidentiality in relation to the information.

### **39.3 Supply of Lender details to other Lenders**

- (a) If a Lender (a "**Disclosing Lender**") indicates to the Agent that the Agent may do so, the Agent shall disclose that Lender's name and Commitment to any other Lender that is, or becomes, a Disclosing Lender.
- (b) The Agent shall, if so directed by the Requisite Lenders, request each Lender to indicate to it whether it is a Disclosing Lender.

### **39.4 Lender enquiry**

If any Lender believes that any entity is, or may be, a Lender and:

- (a) that entity ceases to have an Investment Grade Rating; or
- (b) an Insolvency Event occurs in relation to that entity,

the Agent shall, at the request of that Lender, indicate to that Lender the extent to which that entity has a Commitment.

### **39.5 Lender details definitions**

In this Clause 39:

**"Investment Grade Rating"** means, in relation to an entity, a rating for its long-term unsecured and non credit-enhanced debt obligations of BBB- or higher by Standard & Poor's Rating Services or Fitch Ratings Ltd or Baa3 or higher by Moody's Investors Service Limited or a comparable rating from an internationally recognised credit rating agency.

**"Requisite Lenders"** means a Lender or Lenders whose Commitments aggregate 15 per cent. (or more) of the Total Commitments (or if the Total Commitments have been reduced to zero, aggregated 15 per cent. (or more) of the Total Commitments immediately prior to that reduction).

## **40. CONTRACTUAL RECOGNITION OF BAIL-IN**

- (a) 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:
  - (i) any Bail-In Action in relation to any such liability, including (without limitation):
    - (A) 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;

- (B) 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
    - (C) a cancellation of any such liability; and
  - (ii) 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.
- (b) In this Clause 40:

**"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.

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

**"Bail-In Legislation"** means:

- (i) 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;
- (ii) in relation to the United Kingdom, the UK Bail-In Legislation; and
- (iii) 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 Write-down and Conversion Powers contained in that law or regulation.

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

**"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.

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

**"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).

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

- (i) 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;
- (ii) 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; and

- (iii) in relation to any other applicable Bail-In Legislation:
  - (A) 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
  - (B) any similar or analogous powers under that Bail-In Legislation.

#### 41. ACKNOWLEDGMENT REGARDING ANY SUPPORTED QFCS

To the extent that the Finance Documents provide support, through a guarantee or otherwise, for 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 US 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 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 or 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 to the foregoing, it is understood and agreed that the rights and remedies of the Parties with respect to a Defaulting Lender shall in no event affect the rights and remedies of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

- (b) As used in this Clause 41, 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.

**"C.F.R."** means the US Code of Federal Regulations.

**"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).

**"U.S.C."** means the Code of Laws of the United States of America.

## **42. COUNTERPARTS**

- (a) Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document. Delivery of a counterpart of a Finance Document by e-mail attachment or telecopy shall be an effective mode of delivery.
- (b) The Parties acknowledge and agree that they may execute any Finance Document by electronic instrument. The Parties agree that the electronic signatures appearing on the document shall have the same effect as handwritten signatures and the use of an electronic signature on the relevant Finance Document shall have the same validity and legal effect as the use of a signature affixed by hand and is made with the intention of authenticating the relevant Finance Document, and evidencing the Parties' intention to be bound by the terms and conditions contained in the relevant Finance Document. For the purposes of using an electronic signature, the Parties authorise each other to the lawful processing of personal data of the signers for contract performance and their legitimate interests including contract management.

## **SECTION 11 GOVERNING LAW AND ENFORCEMENT**

### **43. GOVERNING LAW**

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

### **44. ENFORCEMENT**

#### **44.1 Jurisdiction of English courts**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence,

validity or termination of this Agreement or the consequences of its nullity or any non-contractual obligation arising out of or in connection with this Agreement) (a "**Dispute**").

- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

#### **44.2 Service of process**

- (a) Without prejudice to any other mode of service allowed under any relevant law, the Borrower and the Investor:
  - (i) irrevocably appoint GlobeInvestUK Ltd of Labs Atrium, Stables Market, London, England, NW1 8AH as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
  - (ii) agrees that failure by an agent for service of process to notify the Borrower of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Borrower (on behalf of the Investor) must immediately (and in any event within five days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may appoint another agent for this purpose.

**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 LENDERS**

<b>Name of Original Lender</b>	<b>Accordion Bridge Facility Commitment (USD)</b>	<b>Cash Bridge Facility Commitment (USD)</b>
HSBC Bank plc	75,000,000	268,000,000

**SCHEDULE 2**  
**PART A**  
**INITIAL CONDITIONS PRECEDENT**

**1. Borrower**

- (a) A copy of the Constitutional Documents of Borrower.
- (b) A copy of a resolution of the board of the Borrower:
  - (i) approving the terms of, and the transactions contemplated by, the Transaction Documents to which it is a party and resolving that it execute, deliver and perform the Transaction Documents to which it is a party;
  - (ii) approving the terms of, and the transactions contemplated by, the Announcement; and approving the release of the Announcement;
  - (iii) attaching the Announcement;
  - (iv) attaching a copy of the Group Structure Chart;
  - (v) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
  - (vi) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.
- (c) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above in relation to the Finance Documents and related documents.
- (d) A copy of a resolution of the shareholder of the Borrower approving the resolutions of the Borrower referred to in paragraph (b) above.
- (e) A certificate of an authorised signatory of the Borrower certifying that each copy document relating to it specified in this Part A of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of this Agreement.
- (f) A certificate of the Borrower (signed by a director) confirming that borrowing, securing or guaranteeing, as appropriate, the Total Commitments would not cause any borrowing, securing, guaranteeing or similar limit binding on the Borrower to be exceeded.
- (g) A certificate from the registered agent (certifying details of the current directors, shareholders and registered charges) of the Borrower.

**2. Documents**

- (a) This Agreement executed by the Borrower and the Investor.
- (b) The Fee Letter(s) executed by the Borrower.
- (c) A copy of the Intercreditor Agreement executed by the Borrower and the Investor.
- (d) A copy of the Holdco Loan Agreement executed by the Borrower.
- (e) At least two originals of the Borrower Share Pledge executed by the parties thereto.
- (f) A copy of the Shareholder Loan Assignment executed by the parties thereto.



- (g) At least two originals of the Target Share Pledge executed by the parties thereto.
- (h) A copy of all deliverables required to be sent (and any acknowledgments required to be returned) under the Transaction Security Documents executed by the parties thereto.

3. **Legal opinions**

The following legal opinions:

- (a) A legal opinion of Clifford Chance LLP, legal advisers to the Original Lenders, addressed to the Original Lenders and the Security Agent as to English law substantially in the form distributed to the Original Lenders prior to signing this Agreement.
- (b) A legal opinion of Keystone Law, legal advisers to the Original Lenders, addressed to the Original Lenders and the Security Agent as to Isle of Man law substantially in the form distributed to the Original Lenders prior to signing this Agreement.

4. **Other documents and evidence**

- (a) A copy of the Announcement.
- (b) Evidence that any process agent referred to in Clause 46.2 (*Service of process*) has accepted its appointment.
- (c) A copy, certified by an authorised signatory of the Borrower to be a true copy, of the Original Financial Statements of the Borrower.
- (d) A copy of the Structure Memorandum on a non-reliance basis.

**SCHEDULE 2**  
**PART B**  
**FURTHER CONDITIONS PRECEDENT**

1. In the case of a Scheme (which are provided for information purposes only and are not required to be in form and substance satisfactory to any Finance Party):
  - (a) a copy of any subsequent version of the Scheme Announcement;
  - (b) a copy of the Scheme Documents (save for the Scheme Announcement), including the Scheme Resolutions passed at each of the Court Meeting and the General Meeting;
  - (c) a copy of the Scheme Court Order; and
  - (d) evidence that the Scheme Court Order has been delivered to the Registrar.
2. In the case of an Offer, (which are provided for information purposes only and are not required to be in form and substance satisfactory to any Finance Party):
  - (a) a copy of the Offer Announcement issued in connection with the Acquisition; and
  - (b) a copy of the Offer Document.
3. A duly executed copy of the certificate of an authorised signatory of the Borrower (in the form agreed prior to the date of this Agreement) certifying that:
  - (a) (if the Acquisition proceeds by way of a Scheme) the Scheme Effective Date has occurred; and
  - (b) (if the Acquisition proceeds by way of an Offer) the Offer Unconditional Date has occurred.
4. A duly executed copy of the certificate of an authorised signatory of the Borrower (in the form agreed prior to the date of this Agreement) certifying that:
  - (a) each copy document delivered under paragraphs 1 or 2 (as applicable) of Part B of this Schedule 2 (*Further Conditions Precedent*) is correct, complete and in full force and effect as at a date no earlier than the date of the first Loan; and
  - (b) no Major Default has occurred and is continuing.

### SCHEDULE 3 UTILISATION REQUEST

From: [Borrower]

To: [Agent]

Dated:

**[Borrower] – Bridge Facilities Agreement dated 13 February 2023 (the "Facilities Agreement")**

1. We refer to the Facilities Agreement. This is a Utilisation Request. Terms defined in the Facilities Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to borrow a Loan on the following terms:
  - (a) Proposed Utilisation Date: [●] (or, if that is not a Business Day, the next Business Day)
  - (b) Facility to be utilised [Accordion Bridge Facility]/[Cash Bridge Facility]
  - (c) Currency of Loan: Dollar
  - (d) Amount: [●] or, if less, the Available Facility
  - (e) Interest Period: 3 Months
3. We confirm that each condition specified in Clause 4.4 (*Utilisations during the Certain Funds Period*) of the Facilities Agreement is satisfied on the date of this Utilisation Request.
4. [We confirm that, following the use of proceeds from such drawdown, the Cash Bridge Facility is fully drawn.]<sup>1</sup>
5. We confirm that, following (and *pro forma* for) the use of proceeds from such drawdown, each of the Ownership Threshold and the Pro Rata Equity Condition is met.
6. [We confirm that (i) the purpose of the drawdown is to refinance amounts of Excess Equity Contribution and/or Holdco Loans, (ii) the Pro Rata Equity Condition (calculated *pro forma* for such use of proceeds and reducing the amount of (A) the Applied Equity Contribution Amount by the amount of the Equity Excess Equity Contribution being refinanced and (B) the amount of the Holdco Loans by the amount of such loans being refinanced) is met following any such refinancing, (iii) the Certain Funds Period has ended and such drawdown is made within three Business Days after the end of the Certain Funds Period and (iv) all fees then due in relation to the Facilities have been paid in full].
7. The amount of the proposed Loan does not exceed the lower of (i) the Drawn Debt Cap and (ii) the Available Commitments under the relevant Facility, in each case on the proposed Utilisation Date.
8. We confirm the Scheme Effective Date or Offer Unconditional Date (as the case may be) has occurred or will occur.
9. The proceeds of this Loan should be credited to [account].
10. This Utilisation Request is irrevocable.

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<sup>1</sup> Only required in Utilisation requests for Accordion Bridge Facility Loans.

Yours faithfully

.....  
authorised signatory for

*[insert name of Borrower]*

NOTES:

Amend as appropriate.

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

To: [●] as Agent and [●] as Security Agent

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

Dated:

**[Borrower] – Bridge Facilities Agreement dated 13 February 2023 (the "Facilities Agreement")**

1. We refer to the Facilities Agreement and to the Intercreditor Agreement (as defined in the Facility Agreement). This agreement (the "**Agreement**") shall take effect as a Transfer Certificate for the purposes of the Facilities Agreement and as a Creditor Accession Undertaking for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to Clause 23.6 (*Procedure for transfer*) of the Facilities Agreement and subject to paragraph (a) of Clause 23.2 (*Borrower consent*):
  - (a) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation and in accordance with Clause 23.6 (*Procedure for transfer*) of the Facilities Agreement all of the Existing Lender's rights and obligations under the Facilities Agreement, the other Finance Documents and in respect of the Transaction Security which relate to that portion of the Existing Lender's Commitment(s) and participations in Loans under the Facilities Agreement as specified in the Schedule.
  - (b) The proposed Transfer Date is [●].
  - (c) The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 32.2 (*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 (c) of Clause 23.5 (*Limitation of responsibility of Existing Lenders*) of the Facilities Agreement.
- [4]. We refer to clause 17.2 (*Change of Bridge Lender or HoldCo Lender*) of the Intercreditor Agreement.

In consideration of the New Lender being accepted as a Senior Lender for the purposes of the Intercreditor Agreement (and as defined therein), the New Lender confirms that, as from the Transfer Date, it intends to be party to the Intercreditor Agreement as a Senior Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a Senior Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.

- [4/5]. This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.
- [5/6]. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
- [6/7]. This Agreement has been entered into on the date stated at the beginning of this Agreement.

**Note:** The execution of this Transfer Certificate may not transfer a proportionate share of the Existing Lender's interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

## THE SCHEDULE

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

*[Insert relevant details]*

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

[Existing Lender]

[New Lender]

By:

By:

This Agreement is accepted as a Transfer Certificate for the purposes of the Facility Agreement by the Agent, and as a Creditor Accession Undertaking for the purposes of the Intercreditor Agreement by the Security Agent, and the Transfer Date is confirmed as [●].

[Agent]

By:

[Security Agent]

By:

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

To: [●] as Agent and [●], [●] as Security Agent, [●] as Borrower

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

Dated:

**[Borrower] – Bridge Facilities Agreement dated 13 February 2023 (the "Facilities Agreement")**

1. We refer to the Facilities Agreement and to the Intercreditor Agreement (as defined in the Facilities Agreement). This is an Assignment Agreement. This agreement (the "**Agreement**") shall take effect as an Assignment Agreement for the purposes of the Facilities Agreement and as a Creditor Accession Undertaking for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to Clause 23.7 (*Procedure for assignment*) of the Facilities Agreement and subject to paragraph (a) of Clause 23.2 (*Borrower consent*):
  - (a) The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Facilities Agreement, the other Finance Documents and in respect of the Transaction Security which correspond to that portion of the Existing Lender's Commitment(s) and participations in Loans under the Facilities Agreement as specified in the Schedule.
  - (b) The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender's Commitment(s) and participations in Loans under the Facilities Agreement specified in the Schedule.
  - (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.
3. The proposed Transfer Date is [●].
4. On the Transfer Date the New Lender becomes:
  - (a) Party to the relevant Finance Documents (other than the Intercreditor Agreement) as a Lender; and
  - (b) Party to the Intercreditor Agreement as a Senior Lender (as defined in the Intercreditor Agreement).
5. On the Transfer Date the New Lender becomes party to the relevant Finance Documents as a Lender.
6. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 32.2 (*Addresses*) of the Facilities Agreement are set out in the Schedule.
7. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 23.5 (*Limitation of responsibility of Existing Lenders*) of the Facilities Agreement.
- [8.] We refer to clause 17.2 (*Change of Bridge Lender or HoldCo Lender*) of the Intercreditor Agreement.



In consideration of the New Lender being accepted as a Senior Lender for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement), the New Lender confirms that, as from the Transfer Date, it intends to be party to the Intercreditor Agreement as a Senior Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a Senior Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.

[8/9.] This Agreement acts as notice to the Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 23.8 (*Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Borrower*), to the Borrower of the assignment referred to in this Agreement.

[9/10.] This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

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

[14/15.] This Agreement has been entered into on the date stated at the beginning of this Agreement.

**Note: The execution of this Assignment Agreement may not transfer a proportionate share of the Existing Lender's interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.**

## THE SCHEDULE

### **Commitment/rights and obligations to be transferred by assignment, release and accession**

*[Insert relevant details]*

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

[Existing Lender]

[New Lender]

By:

By:

This Agreement is accepted as an Assignment Agreement for the purposes of the Facility Agreement by the Agent, and as a Creditor Accession Undertaking for the purposes of the Intercreditor Agreement by the Security Agent, and the Transfer Date is confirmed as [●].

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

[Agent]

By:

[Security Agent]

By:

**SCHEDULE 6**  
**LMA FORM OF CONFIDENTIALITY UNDERTAKING**

**LMA CONFIDENTIALITY AND FRONT RUNNING LETTER<sup>2</sup>**  
**FOR PRIMARY SYNDICATION**

**THE CONFIDENTIALITY PROVISIONS CONTAINED IN THIS LETTER HAVE BEEN PRODUCED SPECIFICALLY FOR PRIMARY SYNDICATION. THIS LETTER SHOULD NOT THEREFORE BE USED FOR SECONDARY LOAN TRADING. SEPARATE LMA CONFIDENTIALITY LETTERS ARE AVAILABLE FOR USE WITH SECONDARY TRADES.**

**[Letterhead of Arranger]**

To:

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*[insert name of Potential Lender]*

Re:    **The Facilit[y/ies]**

<b>Company:</b>	(the " <b>Company</b> ")
<b>Date:</b>	
<b>Amount:</b>	
<b>Agent:</b>	

Dear Sirs

We understand that you are considering participating in the Facilit[y/ies]. In consideration of us agreeing to make available to you certain information with the knowledge and approval of the Company<sup>3</sup> and to prevent front-running of the Facilit[y/ies], by your signature of a copy of this letter you agree as follows:

**(A)    CONFIDENTIALITY**

**1.       CONFIDENTIALITY UNDERTAKING**

You undertake:

- 1.1**     to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by paragraph (A)129 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;

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<sup>2</sup>           Please note this document is for use on primary syndication and therefore does not include language dealing with indirect transfers of loan facility interests such as sub-participations etc. Please see the other LMA forms of Confidentiality Undertaking if you wish to cover these interests.

<sup>3</sup>           Please note that this document **does not** constitute permission from the Company to the Arranger for the Arranger to disclose this information to the potential lender. Arrangers should ensure that adequate permissions from the Company are in place before entering into this document and making any such disclosure.

1.2 to keep confidential and not disclose to anyone except as provided for by paragraph (A)129 below 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 the Facilit[y/ies]; and

1.3 to use the Confidential Information only for the Permitted Purpose.<sup>4</sup>

## 2. PERMITTED DISCLOSURE

We agree that you may disclose such Confidential Information and such of those matters referred to in paragraph (A)1.2 above as you shall consider appropriate:

2.1 to members of the Participant Group<sup>5</sup> and their officers, directors, employees, professional advisers and auditors if any person to whom the Confidential Information is to be given pursuant to this paragraph (A)2.1 is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information, except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;

2.2 to any person to whom information is required or requested to be disclosed by any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;

2.3 [to any person with (or through) whom you enter into (or may potentially enter into) any transaction under which payments are to be made or may be made by reference to the Facility Agreement or any Obligor if:

(a) that disclosure and that transaction are permitted under Part B of this letter; and

(b) the person to whom the Confidential Information is to be given pursuant to this paragraph (A)2.3 has entered into a confidentiality agreement substantially in the form of the LMA Confidentiality Undertaking for Disclosure by Potential Initial Lenders/Subscribers to Credit Protection Providers or such other form of confidentiality undertaking agreed between us, the Company and you;]<sup>6</sup>

2.4 [subject to the requirements of the Facility Agreement and with effect from the Free to Trade Time, to any person:

(a) to (or through) whom you assign or transfer (or may potentially assign or transfer) all or any of your rights and/or obligations which you may acquire

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<sup>4</sup> Please note that if the potential lender does not participate in the Facilit[y/ies], it is not permitted to use any Confidential Information it has acquired for any purpose other than the Permitted Purpose.

<sup>5</sup> The concept of Participant Group has been retained in this letter and has not been replaced with the concept of Affiliates which is used in the LMA Secondary Confidentiality Letters and the LMA Primary Facility Agreement. This reflects its use in the front running provisions and also avoids the requirement for both concepts particularly since the definitions of Participant Group and Affiliate are substantively the same.

<sup>6</sup> Paragraph (A)2.3 is primarily intended to allow the Potential Lender to disclose information to providers of credit protection which it may wish to take steps to put in place prior to the Free to Trade Time. It should be included only if paragraph (b) of the definition of "Front Running" is **not** included.

In any event paragraph (A)2.3 should not be included if the Facilit[y/ies] are being made available to finance a transaction which is subject to the City Code on Takeovers and Mergers.

under the Facility Agreement if the person to whom the Confidential Information is to be given pursuant to this paragraph (a) of paragraph (A)2.4 has entered into a confidentiality agreement substantially in the form of the LMA Confidentiality Letter (Seller) or the LMA Confidentiality Letter (Buyer); and

- (b) with (or through) whom you enter into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to the Facility Agreement or any Obligor if the person to whom the Confidential Information is to be given pursuant to this paragraph (b) of paragraph (A)2.4 has entered into a confidentiality agreement substantially in the form of the LMA Confidentiality Letter (Seller) or the LMA Confidentiality Letter (Buyer);<sup>7</sup> and

2.5 with the prior written consent of us and the Company.

### 3. NOTIFICATION OF DISCLOSURE

You agree (to the extent permitted by law and regulation) to inform us:

- 3.1 of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (A)2.2 above except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- 3.2 upon becoming aware that Confidential Information has been disclosed in breach of this letter.

### 4. RETURN OF COPIES

If you do not participate in the Facilit[y/ies] and we so request in writing, you shall return or destroy 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 your 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 (A)2.2 above.

### 5. CONTINUING OBLIGATIONS<sup>8</sup>

The obligations in this letter are continuing and, in particular, shall survive the termination of any discussions or negotiations between you and us. Notwithstanding

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<sup>7</sup> Paragraph (A)2.4 allows the Potential Lender to disclose information to a potential trading counterparty during any gap between the Free to Trade Time and the Potential Lender becoming a lender of record under the Facility Agreement. Its inclusion may not be appropriate if the Facilit[y/ies] are being made available to finance a transaction which is subject to the City Code on Takeovers and Mergers and users should seek advice before including paragraph (A)2.4 in such circumstances.

<sup>8</sup> This paragraph assumes that primary syndication takes place in two ways: (i) the lender becomes a party to the Facility Agreement by signing up to it or (ii) the lender becomes party to the Facility Agreement by way of novation.

the previous sentence, the obligations in Part A of this letter [(other than those set out in paragraph (A)10 below which shall remain in place until the end of the Offer Period (as defined in paragraph (A)10 below))]<sup>9</sup> shall cease on the earlier of (a) the date on which you become a party to the Facility Agreement or (b) the date falling [twelve] months after the date of your final receipt (in whatever manner) of any Confidential Information.

## 6. NO REPRESENTATION; CONSEQUENCES OF BREACH, ETC

You acknowledge and agree that:

- 6.1 neither we nor any of our 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 any member of the Group 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 any member of the Group or be otherwise liable to you or any other person in respect of the Confidential Information or any such information; and
- 6.2 we or members of the Group may be irreparably harmed by the breach of the terms of this letter and damages may not be an adequate remedy; each Relevant Person or member of the Group 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

- 7.1 This letter constitutes the entire agreement between us in relation to your obligations regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.
- 7.2 No failure to exercise, nor any delay in exercising any right or remedy under this letter will operate as a waiver of any such right or remedy or constitute an election to affirm this letter. No election to affirm this letter will be effective unless it is in writing. No single or partial exercise of any right or remedy will prevent any further or other exercise or the exercise of any other right or remedy under this letter.
- 7.3 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.

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<sup>9</sup> This wording should be included if one of the two options provided in paragraph (A)10 is used. One of those two options should be included if the Facilit[y/ies] are being made available to finance a transaction which is subject to the City Code on Takeovers and Mergers. Explanation and background for the inclusion of those provisions is contained in the Users Guide to the LMA Confidentiality Undertakings (English law).

9. NATURE OF UNDERTAKINGS

The undertakings given by you under Part A of this letter are given to us and (without implying any fiduciary obligations on our part) are also given for the benefit of the Company and each other member of the Group.

10. [[STANDSTILL

You acknowledge and agree that neither you nor any other member of the Participant Group:

10.1 hold any shares in [*offeree company*] or are otherwise interested in shares carrying voting rights in [*offeree company*];

10.2 will:

- (a) acquire or offer to acquire, or cause any other person to acquire or to offer to acquire, any shares in [*offeree company*] or other interests in shares carrying voting rights in [*offeree company*] until the end of the offer period (as defined in the Takeover Code) (the "**Offer Period**"); or
- (b) enter into an agreement or arrangement (whether or not legally binding) that would result in the acquisition of shares in [*offeree company*] or other interests in shares carrying voting rights in [*offeree company*] until the end of the Offer Period,

**provided that** nothing in this paragraph 10.2 shall prevent the acquisition of shares in [*offeree company*] or other interests in shares carrying voting rights in [*offeree company*]:

- (c) carried out in a client-serving capacity by any part of the trading operations of an entity in the Participant Group that is a recognised intermediary within the meaning of the Takeover Code; or
- (d) with the consent of the Takeover Panel, by a member of the Participant Group as security for a loan in the normal course of business.]/ **OR**

[10. INFORMATION BARRIERS

You acknowledge and agree that:

10.1 you have established information barriers between the persons or entities within the Participant Group which are responsible for:

- (a) making decisions in relation to your or their participation in the Facilit[y/ies]; and
- (b) trading, or making investment decisions in relation to, equity investments,

and that those information barriers comply with the minimum standards for effective information barriers identified in Practice Statement No. 25 ("Debt Syndication During Offer Periods") published by the Takeover Panel Executive on 17 June 2009 (as

amended, supplemented or restated from time to time) (the "**Information Barriers**"); and

- 10.2 you will maintain the Information Barriers, and ensure that the Confidential Information may not be accessed by any persons or entities within the Participant Group who hold or may acquire shares in [offeree company] or who are or may be otherwise interested in shares carrying voting rights in [offeree company], until the end of the offer period (as defined in the Takeover Code).]]<sup>10</sup>

**(B) FRONT RUNNING - PARTICIPANT**

**No Front Running Undertaking**

You acknowledge and agree that:

- (a) you will not, and you will procure that no other member of the Participant Group will engage in any Front Running;
- (b) if you or any other member of the Participant Group engages in any Front Running we may suffer loss or damage [and your position in future financings with us and the Company may be prejudiced];\*
- (c) if you or any other member of the Participant Group engages in any Front Running we retain the right not to allocate to you a participation under the Facilit[y/ies];
- (d) [you confirm that neither you nor any other member of the Participant Group has engaged in any Front Running.]\*

[When you sign the Facility Agreement and any transfer document under the Facility Agreement (in the case of any transfer document, only if signed within [three/six] months after [the date of signing of the Facility Agreement]/[the Free to Trade Time]), you will, if we so request, confirm to us in writing that neither you nor any other member of the Participant Group has breached the terms of this Part B of this letter.]\*

[Any arrangement, front-end or similar fee which may be payable to you in connection with the Facilit[y/ies] is only payable on condition that neither you nor any other member of the Participant Group has breached the terms of this Part B of this letter. This condition is in addition to any other conditions agreed between us in relation to your entitlement to any such fee.]\*

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<sup>10</sup> One of the two options provided in paragraph (A)10 should be included if the Facilit[y/ies] are being made available to finance a transaction which is subject to the City Code on Takeovers and Mergers. Explanation and background for the inclusion of these provisions is contained in the Users Guide to the LMA Confidentiality Undertakings (English law).

The first option is intended for use where the Potential Lender does not hold shares in the offeree company and is not otherwise interested in shares carrying voting rights in the offeree company. The second option is intended for use where the Potential Lender holds or may hold shares in the offeree company or is otherwise interested or may become interested in shares carrying voting rights in the offeree company.

\* Optional



(C) **FRONT RUNNING - ARRANGER**

**No Front Running Undertaking**

On our receipt of a copy of this letter signed by you, we acknowledge and agree that:

- (a) we will not, and we will procure that no other member of the Arranger Group will engage in any Front Running;
- (b) if we or any other member of the Arranger Group engages in any Front Running you may suffer loss or damage [and our position in future financings with you and the Company may be prejudiced]\*;
- (c) [we confirm that neither we nor any other member of the Arranger Group has engaged in any Front Running.]\*

[When we sign the Facility Agreement and any transfer document under the Facility Agreement (in the case of any transfer document, only if signed within [three/six] months after [the date of signing of the Facility Agreement]/[the Free to Trade Time]), we will, if you so request, confirm to you in writing that neither we nor any other member of the Arranger Group has breached the terms of Part C of this letter.]

(D) **MISCELLANEOUS**

1. **THIRD PARTY RIGHTS**

- 1.1 Subject to this paragraph (D)1 and to paragraphs (A)6 and (A)9, a person who is not a party to this letter has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce or to enjoy the benefit of any term of this letter.
- 1.2 The Relevant Persons and each member of the Group may enjoy the benefit of the terms of paragraphs (A)6 and (A)9 subject to and in accordance with this paragraph (D)1 and the provisions of the Third Parties Act.
- 1.3 Notwithstanding any provisions of this letter, the parties to this letter do not require the consent of any Relevant Person or any member of the Group to rescind or vary this letter at any time.

2. **GOVERNING LAW AND JURISDICTION**<sup>11</sup>

- 2.1 This letter and the agreement constituted by your acknowledgement of its terms (the "**Letter**") and any non-contractual obligations arising out of or in connection with it (including any non-contractual obligations arising out of the negotiation of the transaction contemplated by this Letter)<sup>12</sup> are governed by English law.
- 2.2 The courts of England have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Letter (including a dispute relating to any non-contractual

<sup>11</sup> The references to non-contractual obligations in this paragraph assume that any commitment letter in respect of the participant's participation and the Facility Agreement will be governed by English law. If this is not the case these references may need to be considered in the context of the relevant transaction.

<sup>12</sup> The reference to non-contractual obligations arising out of the negotiation of the contemplated transaction is intended to specifically apply the governing law (and jurisdiction) clause to any non-contractual obligations arising out of negotiations where the transaction breaks down before the proposed participant becomes party to any commitment letter in respect of its participation or to the Facility Agreement.

obligation arising out of or in connection with either this Letter or the negotiation of the transaction contemplated by this Letter).

### 3. DEFINITIONS

In this letter (including the acknowledgement set out below):

**"Arranger Group"** means us, each of our holding companies and subsidiaries and each subsidiary of each of our holding companies (as each such term is defined in the Companies Act 2006) and each of our or their directors, officers and employees (including any sales and trading teams) provided that when used in this letter in respect of an Arranger it applies severally only in respect of that Arranger, each of that Arranger's holding companies and subsidiaries, each subsidiary of each of its holding companies and each director, officer and employee (including any sales and trading teams) of that Arranger or any of the foregoing and not, for the avoidance of doubt, those of another Arranger.

**"Confidential Information"** means all information relating to the Company, any Obligor, the Group, [the Target Group,]<sup>13</sup> the Finance Documents and/or the Facilit[y/ies] which is provided to you in relation to the Finance Documents or Facilit[y/ies] 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 [or the Target Group]<sup>14</sup> 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.

**"Facility Agreement"** means the facility agreement entered into or to be entered into in relation to the Facilit[y/ies].

**"Facility Interest"** means a legal, beneficial or economic interest acquired or to be acquired expressly and specifically in or in relation to the Facilit[y/ies], whether as initial lender or by way of assignment, transfer, novation, sub-participation (whether disclosed, undisclosed, risk or funded) or any other similar method.

**"Finance Documents"** means the documents defined in the Facility Agreement as Finance Documents.

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<sup>13</sup> Include if financing is to be used in connection with an acquisition.  
<sup>14</sup> Include if financing is to be used in connection with an acquisition.

**"Free to Trade Time"** means the time we, or any relevant bookrunner(s), notify the parties participating as lenders of record in Syndication of their final allocations in the Facilit[y/ies].

**"Front Running"** means:

- (a) undertaking any of the following activities prior to the Free to Trade Time which is intended to or is reasonably likely to encourage any person to take a Facility Interest except as a lender of record in Syndication:
  - (i) communication with any person or the disclosure of any information to any person in relation to a Facility Interest; or
  - (ii) making a price (whether firm or indicative) with a view to buying or selling a Facility Interest[; or]
- (b) [entering into (or agreeing to enter into) prior to the Free to Trade Time any agreement, option or other arrangement, whether legally binding or not, giving rise to the assumption of any risk or participation in any exposure in relation to a Facility Interest],<sup>15</sup>

excluding where any of the foregoing is:

- (A) made to or entered into by you with another member of the Participant Group (in the case of the undertaking made by you in this letter) or by us with another member of the Arranger Group (in the case of the undertaking made by us in this letter);
- (B) an act of a member of the Participant Group (in the case of the undertaking made by you in this letter) or the Arranger Group (in the case of the undertaking made by us in this letter) who in each case is operating on the public side of an information barrier unless such person is acting on the instructions of a person who has received Confidential Information and is aware of the proposed Facilit[y/ies]; or
- (C) in the case of the undertaking made by us in this letter, made to, or entered into by us (or another member of the Arranger Group) with, a member of another

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<sup>15</sup> Paragraph (b) of the definition of "*Front Running*" is optional and is designed to include within the definition of "*Front Running*" credit derivatives and credit risk insurance in relation to the Facilit[y/ies]. Include paragraph (b) of the definition of "*Front Running*" if the intention is for such activities to be subject to the restrictions on Front Running under Parts B and C of this letter.

Arranger Group in connection with the facilitation of either Syndication or initial drawdown under the Facilit[y/ies].

**"Group"** means the Company and its subsidiaries for the time being (as such term is defined in the Companies Act 2006).

**["interests in shares"** shall have the same meaning as "interests in securities" under the Takeover Code.]"<sup>16</sup>

**"Obligor"** means a borrower or a guarantor under the Facility Agreement.

**"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 where such term is used in Part B of this letter and the definition of "Front Running" each of your or their directors, officers and employees (including any sales and trading teams).

**"Permitted Purpose"** means considering and evaluating whether to enter into the Facilit[y/ies].

**"Syndication"** means the primary syndication of the Facilit[y/ies].

**["Takeover Code"** means The City Code on Takeovers and Mergers.]"<sup>17</sup>

**["Takeover Panel"** means the Panel on Takeovers and Mergers.]"<sup>18</sup>

**["Target"** means [ ].]"<sup>19</sup>

**["Target Group"** means the Target and its subsidiaries (as such term is defined in the Companies Act 2006).]"<sup>20</sup>

Please acknowledge your agreement to the above by signing and returning the enclosed copy.

Yours faithfully

.....  
For and on behalf of

[Arranger]

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<sup>16</sup> Include if either of the provisions in paragraph (A)10 are included.  
<sup>17</sup> Include if either of the provisions in paragraph (A)10 are included.  
<sup>18</sup> Include if either of the provisions in paragraph (A)10 are included.  
<sup>19</sup> Include if financing is to be used in connection with an acquisition.  
<sup>20</sup> Include if financing is to be used in connection with an acquisition.

To: [Arranger]  
The Company and each other member of the Group

We acknowledge and agree to the above:

.....  
For and on behalf of  
[Potential Lender]

## SCHEDULE 7 TIMETABLES

### Loans in Dollar

Delivery of a duly completed Utilisation Request (Clause 5.1  
*(Delivery of a Utilisation Request)*)

U-2

9.30am

Agent notifies the Lenders of a Loan in accordance with  
Clause 5.4 *(Lenders' participation)*

"U" = date of utilisation or, if applicable, in the case of a Loan that has already been borrowed, the first day of the relevant Interest Period for that Loan.

"U – X" = X Business Days prior to date of utilisation

**SCHEDULE 8**  
**FORM OF INCREASE CONFIRMATION**

To: [●] as Agent, [●] as Security Agent and [●] as Borrower

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

Dated:

**[Borrower] – Bridge Facilities Agreement dated 13 February 2023 (the "Facilities Agreement")**

1. We refer to the Facilities Agreement and to the Intercreditor Agreement (as defined in the Facilities Agreement). This agreement (the "**Agreement**") shall take effect as an Increase Confirmation for the purposes of the Facilities Agreement and as a Creditor Accession Undertaking for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to Clause 2.2 (*Increase*) of the Facilities Agreement.
3. The Increase Lender agrees to assume and will assume all of the obligations corresponding to the Commitment(s) specified in the Schedule (the "**Relevant Commitment(s)**") as if it had been an Original Lender under the Facilities Agreement in respect of the Relevant Commitment(s).
4. The proposed date on which the increase in relation to the Increase Lender and the Relevant Commitment(s) is to take effect (the "**Increase Date**") is [●].
5. On the Increase Date, the Increase Lender becomes:
  - (a) party to the relevant Finance Documents (other than the Intercreditor Agreement) as a Lender; and
  - (b) party to the Intercreditor Agreement as a Senior Lender (as defined in the Intercreditor Agreement).
6. The Facility Office and address, fax number and attention details for notices to the Increase Lender for the purposes of Clause 32.2 (*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 (j) of Clause 2.2 (*Increase*) of the Facilities Agreement.
- [8.] [The Increase Lender confirms that it [is]/[is not] a Non-Acceptable L/C Lender.]
- [8/9.] We refer to clause 17.5 (*Creditor Accession Undertaking*) of the Intercreditor Agreement.

In consideration of the Increase Lender being accepted as a Senior Lender for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement), the Increase Lender confirms that, as from the Increase Date, it intends to be party to the Intercreditor Agreement as a Senior Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a Senior Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.

- [9/10.] This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

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

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

**Note:** The execution of this Increase Confirmation may not be sufficient for the Increase Lender to obtain the benefit of the Transaction Security in all jurisdictions. It is the responsibility of the Increase Lender to ascertain whether any other documents or other formalities are required to obtain the benefit of the Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.



## THE SCHEDULE

### **Relevant Commitment(s)/rights and obligations to be assumed by the Increase Lender**

*[Insert relevant details]*

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

[Increase Lender]

By:

This Agreement is accepted as an Increase Confirmation for the purposes of the Facility Agreement by the Agent, and as a Creditor Accession Undertaking for the purposes of the Intercreditor Agreement by the Security Agent and the Increase Date is confirmed as [●].

Agent

By:

Security Agent

By:

**SCHEDULE 9**  
**SOFR RATE TERMS**

<b>CURRENCY</b>	Dollars
<b>Business Days:</b>	A SOFR Banking Day.
<b>Credit Adjustment Spread:</b>	Not applicable
<b>Central Bank Rate:</b>	<p>(a) The short-term interest rate target set by the U.S. Federal Open Market Committee as published by the Federal Reserve Bank of New York from time to time; or</p> <p>(b) If that target is not a single figure, the arithmetic mean of:</p> <p style="padding-left: 40px;">(i) The upper bound of the short-term interest rate target range set by the U.S. Federal Open Market Committee and published by the Federal Reserve Bank of New York; and</p> <p style="padding-left: 40px;">(ii) The lower bound of that target rate.</p>
<b>Central Bank Rate Adjustment:</b>	In relation to the Central Bank Rate prevailing at close of business on any SOFR Banking Day, the 20 per cent. trimmed arithmetic mean (calculated by the Agent) of the Central Bank Rate Spreads for the five most immediately preceding SOFR Banking Days for which SOFR is available.
<b>Central Bank Rate Spread:</b>	<p>In relation to any SOFR Banking Day, the difference (expressed as a percentage rate per annum, calculated by the Agent) of:</p> <p>(a) SOFR for that SOFR Banking Day; and</p> <p>(b) the Central Bank Rate prevailing at close of business on that SOFR Banking Day.</p>
<b>Daily Rate:</b>	<p>The "<b>Daily Rate</b>" for any SOFR Banking Day is:</p> <p>(a) SOFR for that SOFR Banking Day; or</p> <p>(b) if SOFR is not available for that SOFR Banking Day, the percentage rate per annum which is the aggregate of:</p> <p style="padding-left: 20px;">(i) the Central Bank Rate for that SOFR Banking Day;</p> <p style="padding-left: 20px;">(ii) the applicable Central Bank Rate Adjustment; or</p> <p style="padding-left: 20px;">(c) if paragraph (b) above applies but the Central Bank Rate for that SOFR Banking Day is not available, the percentage rate per annum which is the aggregate of:</p> <p style="padding-left: 40px;">(i) the most recent Central Bank Rate for a day which is no more than five SOFR Banking Days before that SOFR Banking Day; and</p> <p style="padding-left: 40px;">(ii) the applicable Central Bank Rate Adjustment, rounded, in either case, to two decimal places and if, in either case, that rate is less than zero, the Daily Rate shall be deemed to be zero.</p>

<b>Lookback Period:</b>	Five SOFR Banking Days.
<b>Market Disruption Rate:</b>	Not applicable.
<b>Reporting Day:</b>	The Business Day which follows the day which is the Lookback Period prior to the last day of the Interest Period.
<b>SOFR Contingency Period:</b>	30 days.

## SCHEDULE 10

### DAILY NON-CUMULATIVE COMPOUNDED SOFR (WITHOUT OBSERVATION SHIFT)

The "**Daily Non-Cumulative Compounded SOFR**" for any SOFR Banking Day "i" during an Interest Period for a Loan is the percentage rate per annum (without rounding, to the extent reasonably practicable for the Finance Party performing the calculation, taking into account the capabilities of any software used for that purpose) calculated as set out below:

$$(UCCDR_i - UCCDR_{i-1}) \times \frac{dcc}{n_i}$$

where:

"**UCCDR<sub>i</sub>**" means the Unannualised Cumulative Compounded Daily Rate for that SOFR Banking Day "i";

"**UCCDR<sub>i-1</sub>**" means, in relation to that SOFR Banking Day "i" the Unannualised Cumulative Compounded Daily Rate for the immediately preceding SOFR Banking Day (if any) during that Interest Period;

"**dcc**" means 360;

"**n<sub>i</sub>**" means the number of calendar days from and including, that SOFR Banking Day "i" up to, but excluding, the following SOFR Banking Day; and

the "**Unannualised Cumulative Compounded Daily Rate**" for any SOFR Banking Day (the "**Cumulated SOFR Banking Day**") during that Interest Period is the result of the below calculation (without rounding, to the extent reasonably practicable for the Finance Party performing the calculation, taking into account the capabilities of any software used for that purpose):

$$ACCDR \times \frac{tn_i}{dcc}$$

where:

"**ACCDR**" means the Annualised Cumulative Compounded Daily Rate for that Cumulated SOFR Banking Day;

"**tn<sub>i</sub>**" means the number of calendar days from, and including, the first day of the Cumulation Period to, but excluding, the SOFR Banking Day which immediately follows the last day of the Cumulation Period;

"**Cumulation Period**" means the period from, and including the first SOFR Banking Day of that Interest Period to, and including, that Cumulated SOFR Banking Day;

"**dcc**" has the meaning given to that term above; and

the "**Annualised Cumulative Compounded Daily Rate**" for that Cumulated SOFR Banking Day is the percentage rate per annum (rounded to five 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:

"**d<sub>0</sub>**" means the number of SOFR 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  $d_0$  each representing the relevant SOFR Banking Day in chronological order in the Cumulation Period;

"**DailyRate<sub>i-LP</sub>**" means, for any SOFR Banking Day "**i**" in the Cumulation Period, the Daily Rate for the SOFR Banking Day which is five SOFR Banking Days prior to that SOFR Banking Day "**i**";

"**n<sub>i</sub>**" means, for any SOFR Banking Day "**i**" in the Cumulation Period, the number of calendar days from, and including, that SOFR Banking Day "**i**" up to, but excluding, the following SOFR Banking Day;

"**dcc**" has the meaning given to that term above; and

"**tn<sub>i</sub>**" has the meaning given to that term above.

**SCHEDULE 11**  
**CUMULATIVE COMPOUNDED SOFR (WITHOUT OBSERVATION SHIFT)**

The "**Cumulative Compounded SOFR**" for any Interest Period for a Loan is the percentage rate per annum (rounded to the same number of decimal places as is specified in the definition of "**Annualised Cumulative Compounded Daily Rate**" in Schedule 10 (*Daily Non-Cumulative Compounded SOFR (Without Observation Shift)*)) calculated as set out below:

$$\left[ \prod_{i=1}^{d_0} \left( 1 + \frac{\text{DailyRate}_{i-LP} \times n_i}{\text{dcc}} \right) - 1 \right] \times \frac{\text{dcc}}{d}$$

where:

"**d<sub>0</sub>**" means the number of SOFR Banking Days during the Interest Period;

"**i**" means a series of whole numbers from one to **d<sub>0</sub>** each representing the relevant SOFR Banking Day in chronological order during the Interest Period;

"**DailyRate<sub>i-LP</sub>**" means for any SOFR Banking Day "**i**" during the Interest Period, the Daily Rate for the SOFR Banking Day which is five SOFR Banking Days prior to that SOFR Banking Day "**i**";

"**n<sub>i</sub>**" means, for any SOFR Banking Day "**i**", the number of calendar days from, and including, that SOFR Banking Day "**i**" up to, but excluding, the following SOFR Banking Day;

"**dcc**" means 360; and

"**d**" means the number of calendar days during that Interest Period.



## EXECUTION

### THE BORROWER

**SIGNED BY UNIKMIND HOLDINGS  
LIMITED,**

a company incorporated in the Isle of Man, acting  
by a director being a person who, in accordance  
with the laws of that territory, is acting under the  
authority of Unikmind Holdings Limited.



Address: Labs Atrium, Stables Market, London, England, NW1 8 AH  
Attention:   
Email: 

**THE INVESTOR**

BY EXECUTING THIS AGREEMENT, YOU ARE CONFIRMING THE FOLLOWING:

- (A) THAT YOU UNDERSTAND AND AGREE TO BE LEGALLY BOUND BY THE PROVISIONS OF THIS AGREEMENT; AND
- (B) THAT YOU HAVE HAD THE OPPORTUNITY TO TAKE INDEPENDENT LEGAL ADVICE ON THE PROVISIONS OF THIS AGREEMENT AND THE EFFECT OF THE TRANSACTION CONTEMPLATED BY IT AND HAVE EITHER OBTAINED SUCH LEGAL ADVICE OR HAVE DECLINED TO DO SO.

**TEDDY SAGI**

By:

Address:

Fax:

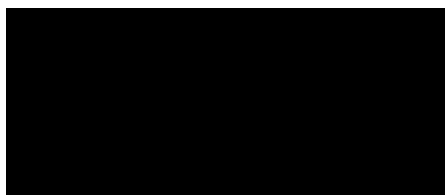
n/a



**THE ORIGINAL LENDER**

**HSBC BANK PLC**

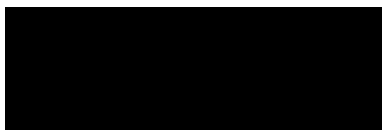
By:



Address:

8 Canada Square, London, E14 5HQ, U.K.

Fax:



Attention: