

For the avoidance of doubt, this document is in a non-binding, recommended form. Its intention is to be used as a starting point for negotiation only. Individual parties are free to depart from its terms and should always satisfy themselves of the regulatory implications of its use.¹

LMA FUNDED PARTICIPATION (PAR/DISTRESSED)

GRANTOR:

Date:

PARTICIPANT:

This Funded Participation is entered into pursuant to the agreed terms agreement (the "Agreed TermsSale Agreement") evidenced by the Confirmation [~~dated~~ _____] [~~with a trade date of [_____]~~ _____] between the Grantor and the Participant ~~and the representations and warranties incorporated therein are detailed in the schedule annexed hereto.~~

On and from the Participation EffectiveSettlement Date the Grantor grants to the Participant a participation in ~~under which (amongst other things) the Participant undertakes to pay to the Grantor, on the Settlement Date, the Settlement Amount in order to enable the Grantor to fund all,~~ or, as the case may be, part of the Loans subject to:

- (a) the Agreed TermsSale Agreement and the terms and conditions incorporated in the Agreed TermsSale Agreement;
- (b) the terms and conditions to this Funded Participation; ~~annexed hereto (including the annexes to such terms and conditions);~~ and
- (c) the schedule to this Funded Participation ~~annexed hereto~~;

all of which are incorporated in this Funded Participation ~~herein by reference.~~

The Grantor

[_____]

By:

The Participant

[_____]

By:

¹ Please delete this box before sending out document.

The Schedule

Credit Agreement Details:

Borrower(s): _____

Credit Agreement Dated: _____

Guarantor(s): _____

Agent Bank: _____

Security: No Yes (specify) _____

Total ~~Original~~ Facility Amount: _____

Governing Law: _____

Additional Information: _____

Participation Details:

Participated Tranches/Facilities:

Name of Tranche/Facility: _____

Nature (Revolving or Term): _____

~~Contractual Margin:~~² _____ %

Final Maturity: _____

Grantor's Commitment:¹⁻³ _____

Drawn Amount:⁴ ~~÷¹⁻²~~ _____

Undrawn Amount:⁵ ~~÷¹~~ _____

Participation Commitment: _____

² ~~As at the date of the Funded Participation.~~

³ Including PIK Interest that has capitalised on or after the Trade Date and prior to the Settlement Date.

⁴ As at the Participation Effective Date and including PIK Interest that has been capitalised on or after the Trade Date and prior to the Participation Effective Date.

⁵ As at the Participation Effective Date.

Participant's Proportion: 6 [±] _____ %
_____ %

Participation Effective Settlement Date: 7 _____

Details of outstanding Loans⁸

Specify in respect of each Loan:

Drawn Amount: _____

Tranche/Facility: _____

Nature: Term or Revolver

Interest Period: _____

Drawn Amount: _____

Tranche/Facility: _____

Nature: Term or Revolver

Interest Period: _____

Details of other Loans are set out on the attached sheet

Details of certain terms of transaction:

Voting Rights: No (Applicable to Distressed Trade transactions only) ~~No~~
Ye

Collateral for undrawn commitment: No
Ye

Information Rights: No
Ye

⁶ As at the Participation Effective Date.

⁷ It is assumed that this will be the same date as the Settlement Date under the Agreed Terms.

⁸ As at the Participation Effective Date.

Type of transaction (as specified in Agreed Terms): Details of Representations and Warranties incorporated in Sale Agreement:

Par trade transaction LMA Standard Representations and Warranties for Distressed Trade Transactions (Bank Debt/Original Lender)

Distressed trade transaction LMA Standard Representations and Warranties for Distressed Trade Transactions (Bank Debt/Secondary Lender)

Mutually acceptable representations and warranties of the Grantor with respect to the assets to be sold or participated under the Sale Agreement. [Such representations and warranties are set out in a side letter to this Funded Participation, from the Grantor to the Participant, with an even date herewith]

Administration Details:

Grantor's Receiving Account:

Participant's Receiving Account:

Addresses:

Grantor

Participant

[_____]

[_____]

Address:

Address:

Telephone:

Telephone:

Facsimile:

Facsimile:

E-Mail:

E-Mail:

Attn/Ref:

Attn/Ref:

|

TERMS AND CONDITIONS

These are the Terms and Conditions applicable to the funded participation including the Schedule to the funded participation~~hereto~~ (the "**Funded Participation**") to which they are annexed.

1. INTERPRETATION

1.1 Definitions

In these Terms and Conditions words and expressions shall (unless otherwise expressly defined in these Terms and Conditions) ~~have herein) bear~~ the meaning given to them in the Funded Participation or in the Agreed Terms (as if any references in such words and expressions to "Seller" were to "Grantor" and as if any references in such words and expressions to "Buyer" were to "Participant")~~Sale Agreement~~ and:

"**Agents**" means any facility, security or other agent, trustee, representative or co-ordinator under the Credit Documentation and "Agent" shall be construed accordingly.;

"**Binding Amendment and Debt Restructuring**" means:

any amendment or waiver of any term of the Credit Documentation or any refinancing of the indebtedness of any Borrower under the Credit Documentation in each case made in accordance with the terms of the Credit Documentation; or

1.1.1 any rescheduling, restructuring or re-organisation of the indebtedness (or of any class of the indebtedness) of any Obligor following the Participation Effective Date which satisfies the following tests:

~~"**Ancillary Rights and Claims**" means (to the extent that the same are capable of being or permitted to be sub-participated by the Grantor to the Participant in contract and under applicable law) all claims, suits, causes of action, and any other right of the Grantor (including where such claims, suits, causes of action or other rights have been acquired by the Grantor from its Predecessor in Title), whether known or unknown, against the Borrower, any Obligor, or any of their respective affiliates, agents, representatives, contractors, advisors, or any other person that in any way is based upon, arises out of or is related to the Participated Tranche or Participation Commitment, including all claims (in contract or in tort), suits, causes of action, and any other right of the Grantor (including where such claims, suits, causes of action or other rights have been acquired by the Grantor from its Predecessor in Title), against any auditor, legal, tax, financial or other professional advisor, or other person arising under or in connection with the Credit Documentation but, excluding for the avoidance of doubt, the Retained Rights;~~

~~"**Benefit Plan**" means an "employee benefit plan" (as defined in ERISA) that is subject to Title I of ERISA, a "plan" as defined in Section 4975 of the Code or any entity whose assets include (for purposes of United States Department of Labour Regulations Section 2510.3-101 as modified by Section 3(42) of ERISA or otherwise for purposes~~

~~of Title I of ERISA or Section 4975 of the Code) the assets of any such "employee benefit plan" or "plan";~~

~~"Borrower" means any person identified as such in the Funded Participation and any other person entitled to the benefit of any credit under the Credit Documentation;~~

~~"Business Day" means a day (other than a Saturday or Sunday) on which banks generally are open for business in any financial centre appropriate for the transaction described in the Funded Participation;~~

~~"Code" means the United States Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated under it;~~

(a) the holders of more than half of that indebtedness or of any class of that indebtedness participate in or agree to the same; and

(b) the same arises in relation to any actual or purported insolvency, payments difficulty, moratorium, exchange control or transfer restrictions, withholding of foreign currency payments or similar circumstance.

"Commitment" means, in relation to any Participated Tranche, the aggregate of the Grantor's drawn (which shall include PIK Interest that has been capitalised from time to time) and undrawn commitment from time to time under that Participated Tranche which, as at the Participation Effective Settlement Date, is as specified in the Schedule as "Grantor's Commitment".";

~~"Contractual Margin" means, in respect of any period and any Loan, the rate of interest applicable to such Loan during such period less the interest rate funding basis rate applicable to such Loan during such period;~~

~~"Contractual Rate" means, in respect of any period and any Loan, the rate of interest applicable to such Loan during such period (without taking account of any additional rate of interest imposed by reason of any default);~~

~~"Credit Agreement" means the credit agreement to which the Funded Participation relates as set out in the Schedule;~~

~~"Credit Documentation" means the Credit Agreement, together with all schedules and appendices thereto, any amendments, supplements, accessions, waivers or variations thereto and all ancillary guarantee, security, intercreditor and restructuring documentation;~~

"Elevation" shall bear the meaning given to it in Clause 19 (Elevation).19;

~~"ERISA" means the United States Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated under it;~~

"ERISA Representation" means (in respect of an assignee, ~~a transferee~~ or a Transferee) a representation and agreement to the Grantor in the form set out in Clause 18.1 (*Participant representation*) but substituting: (a) such assignee, ~~such transferee~~ or such Transferee in place of "the Participant"; and (b) the rights being assigned or transferred to such assignee or ~~transferee~~ or the rights being acquired by and the obligations being assumed by, ~~such~~the Transferee, in place of "the Funded Participation".[;]

~~"General Debt Restructuring" means any rescheduling, restructuring or re-organisation of the indebtedness (or of any class of the indebtedness) of any Obligor following the Settlement Date which satisfies the following tests:~~

~~(a) the holders of more than half of that indebtedness or of any class of that indebtedness participate in or agree to the same; and~~

~~(b) the same arises in relation to any actual or purported insolvency, payments difficulty, moratorium, exchange control or transfer restrictions, withholding of foreign currency payments or similar circumstance;~~

"Guarantor" means any person who has given a guarantee, indemnity, security interest or other assurance against loss to the Grantor (or any person acting on the Grantor's behalf) in respect of any obligations of any Borrower to the Grantor in relation to any Participated Tranche or Loan.[;]

"Interest" means, unless the context otherwise requires, all interest received by or accruing to the Grantor in respect of any Loan.[;]

"Lender" means each person originally named as a lender in the Credit Agreement and its successors and assignees from time to time.[;]

"Loan" means the principal amount of any borrowing made or to be made by any Borrower from the Grantor under a Participated Tranche (which shall include PIK Interest that has been capitalised from time to time) or the principal amount outstanding of that borrowing.[;]

"Majority Participants" means at any time, a majority by value of participants who have the right to vote and who vote on any issue on which they have a right to vote as aforesaid with whom the Grantor has entered into participation or similar agreements in relation to any Loan or Commitment and whose participations or similar arrangements are outstanding at such time and, for this purpose, the Grantor shall be deemed to be a participant to the extent of any Loan or Commitment which it has (i) not participated or (ii) participated but the participant thereunder either does not have the right to vote or has not exercised its right to vote.[;]

"Non-Cash Distribution" means any note, debenture or other financial instrument, non-cash asset or right, whether debt, equity or otherwise, issued to the Grantor in satisfaction or purported satisfaction of any obligation of an Obligor to make any payment with respect to any Participated Tranche or Loan, or any part –of any

Participated Tranche or Loanpart thereof, or any Interest, commission or fees payable in respect of any Participated Tranche or Loan or any part of any Participated Tranche or Loan.thereof;

"**Obligor**" means any Borrower or Guarantor.‡

"**Participant's Global Proportion**" means the proportion (expressed as a percentage) borne by the aggregate of the Participation Commitments in respect of all Participated Tranches to the aggregate of all the Grantor's drawn and undrawn commitment under the Credit Agreement.‡

"**Participant's Proportion**" means, in relation to any Participated Tranche, the proportion (expressed as a percentage) borne by the relevant Participation Commitment to the relevant Commitment.‡

"**Participated Tranche**" means any Tranche in respect of which the Participant is granted a participation under the Funded Participation, as set out in the Schedule.‡

"**Participation**" means the participation in the funding of the Loans accepted by the Participant under the Funded Participation.‡

"**Participation Commitment**" means, in relation to any Participated Tranche, the amount specified as such in the Schedule (which shall include PIK Interest that has been capitalised from time to time) less an amount equal to the Participant's Proportion of any amount of the Commitment under that Participated Tranche cancelled or permanently reduced from time to time pursuant to the Credit Agreement.‡

"Participation Effective Date" means the date specified as such in the Schedule.⁹

"**Party**" means a party to the Funded Participation.‡

"Prohibited Transaction Class Exemptions" means prohibited transaction class exemptions ("PTE") issued by the United States Department of Labor, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds), and PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers).

~~"Pricing Letter" means the letter agreement between the Parties dated the date of the Funded Participation and containing, among other things, details of the Settlement Amount;~~

"**Receiving Account**" means the account of a Party designated as its Receiving Account as specified in the Schedule.‡

⁹ It is assumed that this will be the same date as the Settlement Date under the Agreed Terms.

"Relevant Costs and ExpensesPeriod" means costs or expenses which the Grantor incurs ÷

~~(a) in respect of any Loan which is outstanding on the Settlement Date, any period which commences on or after the Participation EffectiveSettlement Date as a result of or in connection with (a), in relation to any period which commences before the Credit DocumentationSettlement Date, that part of such period which falls on or (b)after the Settlement Date; and~~

~~(b) in respect of any actionCommitment or inaction pursuant to Clause 6.2 (Credit Documentationany Loan which is made on or after the Settlement Date, any period which commences on or after the Settlement Date or, in relation to the Commitment and voting rights).any period which commences before the Settlement Date, that part of such period which falls on or after the Settlement Date;~~

"Tranche" means any tranche or facility granted to the Obligors under the Credit Agreement.

~~"Settlement Amount" means the amount to be paid by the Participant to the Grantor on the Settlement Date as specified in the Pricing Letter adjusted, if applicable, in accordance with the Sale Agreement;~~

~~"Settlement Date" means the date specified as such in the Schedule;~~

"Transfer" shall bear the meaning given to it in Clause 14 (Assignment and Transfer).14;

"Transferee" shall bear the meaning given to it in Clause 14 (Assignment and Transfer).÷

~~"Tranche" means any tranche or facility granted to the Obligors under the Credit Agreement; and~~

"Transfer Date" shall bear the meaning given to it in Clause 14 (Assignment and Transfer).÷

1.2 Construction

1.2.1 In the Funded Participation and these Terms and Conditions unless the contrary intention appears, a reference to:

- (a) a Clause is a reference to a clause of these Terms and Conditions;
- (b) the Schedule is a reference to the schedule to the Funded Participation; and
- (c) a **"Party"** or any othera person includes its successors in title, permitted assigns and permitted transfereesassignees.

1.2.2 ~~Headings~~The headings in these Terms and Conditions are for ease of referenceconvenience only and are to be ignored in construing them.

1.2.3 If there is any inconsistency between these Terms and Conditions and the Agreed TermsSale Agreement, the Agreed Termsterms of the Sale Agreement shall prevail.

1.2.4 References to any document shall be references to the same as amended, varied, supplemented, replaced and restated in any manner from time to time.

1.2.5 A provision of law is a reference to that provision as amended or re-enacted.

1.3 **Third Party Rights**

A person who is not a Party has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of the Funded Participation.

2. **PARTICIPANT'S ~~SUBSEQUENT~~ OBLIGATIONS**

Settlement Amount

The Participant shall pay to the Grantor on the Participation Effective Date, the Settlement Amount to enable the Grantor to fund all, or as the case may be, part of the Loans.

2.1 Sums due under Credit Documentation

~~2.1~~ If at any time on or after the Participation EffectiveSettlement Date a sum falls due from the Grantor under the Credit Documentation and the sum is attributable in whole or in part to any Loan or Participated Tranche, then the Grantor shall notify the Participant accordingly either no later than two Business Days prior to the time at which the Grantor is required to make the payment under the Credit Documentation or, if the Grantor has received less than two Business Days' notice of the requirement to make that payment under the Credit Documentation, upon its receipt of that notice under the Credit Documentation. Subject to the giving of such notice and to Clause 2.3 (Retained Obligations), the Participant shall promptly notify the Participant thereof and the Participant shall, subject to the giving of such notice and subject to Clause 2.2, pay to the account of the Grantor an amount equal to the relevant Participant's Proportion of such sum in the currency and funds and in the place and time at which the Grantor is required to make the payment under the Credit Documentation.

2.2 Retained Obligations

~~2.2~~ Save as otherwise provided in the Agreed TermsSale Agreement, the Participant shall not be obliged to make any payment under Clause 2.2 (Sums due under Credit Documentation)2.1 if and to the extent that the sum falling due from the Grantor relates to a Retained Obligation.

3. **PAYMENTS**

3.1 **Receipts**

The Grantor shall be entitled to receive, recover and retain all principal, Interest and other money payable: ~~under the Credit Documentation or in respect of the Ancillary Rights and Claims in relation to each Participated Tranche.~~

under the Credit Documentation; or

3.1.1 in respect of the Ancillary Rights and Claims,

in relation to each Participated Tranche.

3.2 **Payments**

Subject to compliance by the Participant with its obligations under the Funded Participation, ~~with effect from and after~~ the Participation Effective Settlement Date the Grantor shall, upon applying any amount actually received by it:

in the case of paragraph (e) below, on or following the Participation Effective Date; or

3.2.1 in the case of paragraphs (f) and (g) below, on or following the Trade Date;

-in respect of:

-any Loan or Commitment; or

3.2.2 the Ancillary Rights and Claims;

-(whether by way of actual receipt, the exercise of any right of set-off or otherwise), pay to the Participant within two Business Days of such application (or, in the case of any application on or following the Trade Date but prior to the Participation Effective Date, within two Business Days of the Participation Effective Date):

~~3.2.1~~3.2.3 if that amount is applied in respect of the principal of a Loan ~~in respect of which the Grantor has received the relevant Participant's Proportion from the Participant,~~ an amount equal to the relevant Participant's Proportion of the amount so applied by the Grantor;

~~3.2.2~~3.2.4 if that amount is applied in satisfaction of Interest accruing on a Loan (or default interest accruing on a Loan, on any Interest or on any other amount in respect of which the Participant has made a payment under Clause 2 (Participant's Obligations)), ~~2) in respect of any Relevant Period,~~ an amount equal to the relevant Participant's Proportion of the amount so applied by the Grantor to the extent that the Participant is entitled to that application pursuant to Condition 14 (Interest payments and fees) of the terms and conditions incorporated in the Agreed Terms; and

3.2.5 if that amount is applied in respect of any commission, fees or any other amount relating to:

(a) -any Loan or any Commitment; or

(b) any Ancillary Right and Claim

~~3.2.3~~ in respect of any Relevant Period, an amount equal to the relevant Participant's Proportion of the amount so applied by the Grantor to the extent that the Participant is entitled to that application pursuant to Condition 14 (Interest payments and fees) of the terms and conditions incorporated in the Agreed Terms.

3.3 Non-Cash Distributions

Subject to compliance by the Participant with its obligations under the Funded Participation, on and after the Participation Effective Settlement Date, the Grantor shall, upon receipt of any Non-Cash Distribution, hold the Participant's Proportion of that Non-Cash Distribution thereof as agent for the Participant and shall, to the extent reasonably practicable, keep such Non-Cash Distribution separate from its other assets, and, as soon as practicable at the Participant's expense and to the extent permitted by the terms and conditions applicable to such Non-Cash Distribution, have the Participant's Proportion of the Non-Cash Distribution registered in the name of or transferred to the Participant (or such other person as the Participant may reasonably direct). Until such registration or transfer, the Participant's Proportion of such Non-Cash Distribution shall form part of the Funded Participation and the Grantor shall (a) account to the Participant for the full economic benefit thereof and (b) to the extent it is able to do so without breaching any law or the terms and conditions applicable to such Non-Cash Distribution exercise any voting rights or discretions in accordance with the directions of the Participant subject always to the proviso in paragraph (b) of Clause 6.2 (Credit Documentation and voting rights)~~sub-clause 6.2.2~~ which shall apply *mutatis mutandis*, to such Non-Cash Distribution.

3.4 Non-attributable sSums

If any sum which is received or recovered under the Credit Documentation is not attributable to any particular amount due under the Credit Documentation, that sum will be applied (after payment of any expenses incurred in its collection) by the Grantor towards the obligations of the relevant Obligor as may be required by the Credit Documentation or, if there is no such requirement in the Credit Documentation, on a *pro rata* basis across such obligations.

3.5 No reinvestment

Subject to compliance by the Participant with its obligations under the Funded Participation, on and after the Participation Effective Settlement Date the Grantor is not entitled to reinvest any amount received by it in respect of any Loan or Commitment or the Ancillary Rights and Claims, except for investments in cash or cash equivalents (where interest earned on such investments is passed to the Participant) during the short settlement period, if any, from the collection date of such amounts to the date of required remittance to the Participant.

4. PAYMENTS ADMINISTRATION

4.1 Place

All payments or deposits by either Party to, or with, the other under the Funded Participation shall be made to the Receiving Account of that other Party. Each Party may designate a different account as its Receiving Account for payment by giving the other not less than five Business Days' notice before the due date for payment.

4.2 Funds and cCurrency

4.2.1 Subject to paragraph (b) below~~sub-clause 4.2.2~~, payments under the Funded Participation shall be made in the currency in which the amount is

denominated for value on the due date at such times and in such funds as are customary at the time for settlement of transactions in that currency.

- 4.2.2 Where the Grantor's obligation to make a payment under the Funded Participation arises from receipt or recovery of an amount pursuant to the Credit Documentation or the Ancillary Rights and Claims, the Grantor shall make the payment in the currency and funds in which those monies were received or recovered and, if that currency is not the currency of the country where the designated Receiving Account of the Participant is located, it shall be made to the account of the Participant in the principal financial centre of the country of that currency specified by the Participant.

4.3 Grantor withholding

4.3 ~~Set-off and Counterclaim~~

~~All payments by a Party shall be made without set off or counterclaim other than in respect of amounts which are due to that Party under the Funded Participation.~~

4.4 ~~Withholding~~

~~4.4.14.3.1~~ All payments by the Grantor under the Funded Participation shall be made net of any deduction or withholding required to be made from such payments by any law, regulation or practice. If any such deduction or withholding is required to be made, the Grantor shall pay the full amount required to be deducted or withheld to the relevant taxation or other authority within the time allowed for such payment under applicable law and then deliver to the Participant within thirty days after it has made such payment to the applicable authority, an original receipt (or certified copy thereof) issued by such authority evidencing the payment to such authority of all amounts required to be deducted or withheld in respect of such payment. The Participant shall bear the risk of such deduction or withholding and the obligation of the Grantor to pay an amount net of such deduction or withholding and to account to the relevant taxation or other authority for the amount of such deduction or withholding shall satisfy the Grantor's obligation to make the original payment to the Participant (and, for the avoidance of doubt, the requirement in Condition 28.2 (Free and clear payments) of the terms and conditions incorporated into the Agreed Terms to make increased payments in respect of deductions or withholdings shall not apply to payments made by the Grantor under the Funded Participation).

~~4.4.2~~ ~~The All payments by the Participant under the Funded Participation shall be made free and clear of any deduction or withholding save for such deduction or withholding as may be required to be made from such payments by any law, regulation or practice. If any such deduction or withholding is made or is required to be made the Participant shall increase the amount to be paid to the Grantor to ensure that the Grantor receives and retains a sum equal to the sum which it would have received and so retained had no such deduction or withholding been made or required to be made.~~

~~4.4.34.3.2~~ ~~Both the Grantor and the Participant~~ shall use ~~its~~their reasonable endeavours to avoid any obligation to make ~~any~~ such deduction or withholding as is referred to in paragraph (a) above~~sub-clause 4.4.1 and 4.4.2~~.

~~4.54.4~~ **Failure to rRemit**

The Grantor shall not be:

~~(a)~~ responsible for any loss or liability arising out of its failure, or the failure of its relevant branch, owing to causes outside its control (such as, but not limited to, the imposition of foreign exchange restrictions) to remit to the Participant any amount due to it under the Funded Participation; or

4.4.1 ~~except(b) save~~ as otherwise provided in Clause 4.5 (Default Interest), ~~4.6~~ liable to remit to the Participant any amount greater than the relevant Participant's Proportion of any amount it receives from any Obligor in respect of any Participated Tranche or Loan.

~~4.64.5~~ **Default Interest**

If either Party (the "payer") fails to pay in full any sum due from it under the Funded Participation to the other Party (the "payee") on the due date for payment of the sum, then interest shall accrue (as well after as before judgment) on the unpaid balance of the sum from day to day at a rate which is 2% per annum over the rate (as determined by the payee) which is being offered by leading banks in the relevant interbank market for overnight deposits in the currency of and for an amount equal to the unpaid balance. Interest shall be payable by the payer at the end of each day and, for the purposes of this Clause ~~4.5, 4.6~~, shall constitute part of the unpaid balance to the extent it is not so paid.

~~4.74.6~~ **Participant Commitment**

Subject to: compliance by the Participant with its obligations under the Funded Participation, on and after the Participation Effective~~Settlement~~ Date the Grantor shall not:

~~4.7.14.6.1~~ (other than pursuant to Clause 15 (Termination) or Clause 19 (Elevation)) sell, transfer or otherwise dispose of; or

~~4.7.24.6.2~~ create any mortgage, charge, pledge, lien or other security interest in respect of,

the relevant Participation Commitment other than in favour of the Participant.

5. **INFORMATION**

~~5.15.1.1~~ Other than as provided in paragraph (b) below~~Clause 5.2~~, the Grantor shall have no responsibility either initially or on a continuing basis to provide the Participant with any credit or other information relating to any Obligor or any other person and the Participant acknowledges that it has made and will continue to make such independent appraisal and examination of the same as it thinks necessary or advisable without reliance upon the Grantor.

~~5.25.1.2~~ If the Funded Participation grants information rights to the Participant, the Grantor shall, to the extent that it is lawfully able to do so without breaching any duty of confidentiality or other obligation owed to any person, promptly provide the Participant with copies of all communications and documents it receives under the Credit Documentation in its capacity as a Lender.

5.1.3 Paragraph (b) of this Clause 5 shall not apply if the Participant gives notice to the Grantor that it does not wish to receive copies of all communications and documents received by the Grantor under the Credit Documentation.

5.1.4 Any notice given by the Participant under paragraph (c) above may be revoked by the Participant at any time. If such notice is revoked, the provisions of paragraph (b) above will apply from the date on which the Grantor receives notice of the revocation.

6. STATUS OF PARTICIPATION

6.1 Status of Participation

Other than Save as provided in Clause 3.3 (Non-Cash Distributions):

(a) ~~3.3~~, the Grantor does not transfer or assign any rights or obligations under the Credit Documentation and the Participant will have no proprietary interest in the benefit of the Credit Documentation or in any monies received by the Grantor under or in relation to the Credit Documentation; and

~~6.1.1(b)~~ the Grantor does not transfer or assign any rights or obligations in respect of the Ancillary Rights and Claims and the Participant will have no proprietary interest in the benefit of the ~~Credit Documentation or the~~ Ancillary Rights and Claims or in any ~~monies or~~ Non-Cash Distributions received by the Grantor under or in relation to the ~~Credit Documentation or the~~ Ancillary Rights and Claims.

6.1.2 The relationship between the Grantor and the Participant is that of debtor and creditor with the right of the Participant to receive monies from the Grantor restricted to the extent of an amount equal to the relevant portion of any monies received by the Grantor from any Obligor.

6.1.3 The Participant shall not be subrogated to or substituted in respect of the Grantor's claims by virtue of any payment under the Funded Participation and the Participant shall have no direct contractual relationship with or rights against any Obligor or other party to the Credit Documentation (except the Grantor) by reason of the Funded Participation.

6.1.4 Other than Save as provided in Clause 3.3 (Non-Cash Distributions), ~~3.3~~, nothing in the Funded Participation constitutes the Grantor as agent, fiduciary or trustee for the Participant.

- 6.1.5 Nothing in the Funded Participation shall place the Grantor under an obligation to enquire as to the occurrence or otherwise of an event of default under the Credit Documentation.
- 6.1.6 Nothing in the Funded Participation shall place the Grantor under an obligation to exercise any rights of set-off it may have against any Obligor.
- 6.1.7 The Grantor's obligations under the Funded Participation shall be subject to its obligations under the Credit Documentation.

6.2 **Credit Documentation and voting rights**

6.2.1 If the Funded Participation is a Distressed Trade and does not grant voting rights to the Participant, the Grantor may, without responsibility to the Participant:

- (a) exercise or refrain from exercising any or all of its rights, powers and discretions arising under or in connection with the Credit Documentation;
- (b) agree to any variation or waiver of the terms of the Credit Documentation; and
- (c) perform any other acts under the Credit Documentation as it in its discretion sees fit.

6.2.2 If the Funded Participation is a Distressed Trade and grants voting rights to the Participant, the Grantor shall not, without the prior written consent of the Participant:

- (a) exercise or refrain from exercising any or all of its rights, powers and discretions arising under or in connection with the Credit Documentation;
- (b) agree to any variation or waiver of the terms of the Credit Documentation; or
- (c) perform any other acts under the Credit Documentation,

provided that if the Grantor holds for its own account, or enters into other sub-participation arrangements in relation to any Loan or Commitment and it is not possible to act or refrain from acting in the circumstances described in this paragraph (b) sub-clause 6.2.2 separately in respect of the Participation Commitment, then the Grantor shall act or refrain from acting in the circumstances described in this paragraph (b) sub-clause 6.2.2 in accordance with the written instructions of the Majority Participants. In the event that there are no Majority Participants, the Grantor shall be entitled to act or refrain from acting in the circumstances described in this paragraph (b) sub-clause 6.2.2 as it in its discretion sees fit.

6.2.3 If the Funded Participation is a Par Trade, subject to paragraph (d) below the Grantor may, without responsibility to the Participant:

- (a) exercise or refrain from exercising any or all of its rights, powers and discretions arising under or in connection with the Credit Documentation;
- (b) agree to any variation or waiver of the terms of the Credit Documentation; and
- (c) perform any other acts under the Credit Documentation as it in its discretion sees fit.

6.2.4 If the Funded Participation is a Par Trade and relates to all of the Grantor's commitment and outstandings under the Credit Agreement, the Grantor shall not, without the prior written consent of the Participant, take such action as would result in:

- (a) any variation to the date for payment of, or any variation to an amount or a change in the currency of, any Loan or Participated Tranche;
- (b) a reduction of any amount in respect of Interest or any commission or fees of a recurring nature relating to any Loan or Commitment payable by any Borrower;
- (c) the release of any security, guarantee or collateral relating to any Loan or Participated Tranche; or
- (d) any amendment to or waiver of any provision of the Credit Documentation where such amendment or waiver requires the consent of all providers of credit under the Credit Documentation.

6.3 Grantor's duty of care

~~6.3 Grantor's Duty of Care~~

The Grantor shall comply in a timely manner with its obligations under the Credit Documentation and exercise the same degree of care with regard to the Participation Commitment as it would if it had not entered into the Funded Participation.

7. CONFIRMATION OF RECEIPTS

Where the obligation of the Grantor to make a payment to the Participant under the Funded Participation arises as a result of its having received an amount from another person, the Grantor is not obliged to make that payment ~~to the Participant~~ until the Grantor has established that it has actually received that amount.

7.1.1 ~~The~~ ~~However, the~~ Grantor may assume that the sum has been paid to it in accordance with the Credit Documentation, and, in reliance on that assumption, make available to the Participant a corresponding amount or the

relevant portion ~~of that sum. thereof.~~ If the sum has not been made available but the Grantor has paid a corresponding amount or the relevant portion ~~of that sum~~thereof to the Participant, the Participant shall forthwith on demand by the Grantor refund the corresponding amount or the relevant portion thereof together with interest on that amount from the date of payment to the date of refund, calculated at a rate reasonably determined by the Grantor to reflect its costs of funds.

8. REFUNDS

8.1 If the Grantor applies any amount in or towards satisfaction of an Obligor's obligations under the Credit Documentation and the Grantor is, as a result of the application or any payment to the Grantor giving rise to the application, obliged by any law, rule or regulation to make any payment to any person, then the Participant shall, upon demand by the Grantor, repay to the Grantor a corresponding portion of any amount paid to the Participant as a result of the application.

8.2 If under any *pro rata* sharing, loss-sharing or similar clause in the Credit Documentation, the Grantor is obliged:

8.2.1 to pay a sum to other Lenders or the Agent under the Credit Documentation;

8.2.2 to acquire an interest in any sum owing to any other Lender under the Credit Documentation; or

8.2.3 otherwise to share any receipts or recoveries by the Grantor under the Credit Documentation,

then the Grantor shall not be deemed for the purposes of the Funded Participation to have received any sum from an Obligor to the extent of that payment, interest acquired or sharing. Any interest acquired shall be deemed to be part of the relevant Loan, if applicable.

9. COLLATERAL FOR UNDRAWN COMMITMENT

If the Funded Participation specifies collateral for undrawn commitment, the Participant shall provide such collateral to the Grantor as is set out in, and upon the terms set out in, Annex 2 *(Details and Terms of Collateral for Undrawn Commitment)*.-

10. BINDING AMENDMENTS AND~~GENERAL~~ DEBT RESTRUCTURING

10.1 Risk

The Participant will bear the risk of any Binding Amendment and~~General~~ Debt Restructuring in relation to the Participation.

10.2 **Blocked pPayments**

The Grantor shall not be obliged to make any payment to the Participant under the Funded Participation in respect of:

~~10.2.1~~(a) any sum which is paid into a blocked account or is paid in non-transferable or non-convertible currency until that impediment is removed; or

~~10.2.2~~(b) any sum which is required to be used for a specific purpose pursuant to a Binding Amendment and~~General~~ Debt Restructuring.

10.3 **Other iInstruments**

The Grantor may, in connection with any Binding Amendment and~~General~~ Debt Restructuring, apply for or accept any Non-Cash Distributions issued or proposed to be issued by an Obligor or any other person.

10.4 **Agreements**

~~10.4~~ **Rescheduling Agreement**

Subject as provided in this Funded Participation~~herein~~, the Grantor may participate in any agreement in connection with a Binding Amendment and~~General~~ Debt Restructuring and which relates to any principal of, Interest on or fees in respect of, any Participated Tranche or Loan.

10.4.1 ~~—~~The Grantor shall give to the Participant the benefit of ~~each~~the agreement referred to above on the same terms (with any necessary amendments to reflect the nature of that agreement~~mutatis mutandis~~) as the Funded Participation to the extent that payments received and applied by the Grantor under ~~that~~the agreement are in the Grantor's reasonable opinion attributable to the Participant's Proportion in relation to any Participated Tranche or Loan.

10.5 **New mMoney**

If, in connection with any Binding Amendment and~~General~~ Debt Restructuring, the Grantor agrees to increase its exposure (whether by way of additional advances or otherwise), the Grantor shall not be obliged to account to the Participant under the Funded Participation until that increased exposure has been paid and satisfied unless:

(a) —the Participant participates in the increased exposure on the terms of the Funded Participation (with any necessary amendments to reflect the nature of~~mutatis mutandis~~); ~~provided that~~ agreement);

(b) the terms on which the Grantor so agrees to increase its exposure provide otherwise; or

(c) any sums received by the Grantor following the increased exposure are, in the Grantor's reasonable opinion, attributable to any Loan or Participated Tranche.

~~10.5.2 Notwithstanding, notwithstanding~~ any other provision of these Terms and Conditions the Participant shall have no obligation to participate in any ~~such~~ increased exposure whether in connection with any Binding Amendment and General Debt Restructuring or otherwise.

11. SET-OFF AND COUNTERCLAIM

No set-off and counterclaim

Subject to Clause 11.2 (Permitted set-off), all payments by a Party under the Funded Participation shall be made without set-off or counterclaim.

Permitted set-off

Either Party may (but is not obliged to) set off any amount due and payable by the other Party under the Funded Participation against any such amounts due and payable by it to the other Party under the Funded Participation ~~thereunder~~. The Party exercising its rights under this Clause 11.2 provision may effect such currency exchanges as it considers necessary to implement the set off.

12. PARTICIPANT'S ACKNOWLEDGMENTS

The Grantor notifies the Participant and the Participant acknowledges that:

12.1.1 the Participant shall have no recourse to the Grantor if any Obligor fails to comply with its obligations under the Credit Documentation; ~~and~~

12.1.2 the Grantor is under no obligation to support, and shall not be liable to reimburse or otherwise be responsible for, any losses directly or indirectly sustained or incurred by the Participant in connection with the Funded Participation for any reason whatsoever; ~~and (other than any loss caused by the gross negligence or wilful default of the Grantor in performing its obligations under the Funded Participation).~~

paragraphs (a) and (b) above are without prejudice to the Participant's rights under Clause 13.5 (Indemnity) or Condition 22.1 (Seller's Indemnity) of the terms and conditions incorporated into the Agreed Terms.

13. EXPENSES AND INDEMNITY

Relevant Costs and Expenses

~~13.1 Subject to Clause 13.2 (Retained Obligations) and Clause 13.3 (Subsequent recoveries), Subject to Clause 13.2 and Clause 13.3, if the Grantor incurs any costs or expenses as a result of or in connection with (a) the Credit Documentation or (b) any action or inaction pursuant to Clause 6.2 ("Relevant Costs and Expenses"), then the~~ Participant shall forthwith on demand pay to the Grantor an amount equal to the Participant's Global Proportion of ~~all~~ the Relevant Costs and Expenses.

13.1 Retained Obligations

~~13.2~~ The Participant shall not be required to pay to the Grantor any amount equal to any Relevant Costs and Expenses which constitute a Retained Obligation.

13.2 Subsequent recoveries

~~13.3~~ The Grantor shall pay to the Participant the Participant's Global Proportion of any amounts subsequently recovered by the Grantor in respect of any Relevant Costs and Expenses.

13.3 Information

~~13.4~~ At the request of the Participant, the Grantor shall provide to the Participant as soon as ~~practicable~~possible reasonably detailed information regarding any Relevant Costs and Expenses incurred by the Grantor.

13.4 Indemnity

~~13.5~~ Each Party (the "**Indemnifying Party**") shall, forthwith on demand, indemnify the other Party (the "**Indemnified Party**") against any loss or liability (other than any loss or liability resulting from the gross negligence or wilful misconduct of the Indemnified Party) which the Indemnified Party incurs as a consequence of any breach by the Indemnifying Party of its obligations or representations under the Funded Participation.

14. ASSIGNMENT AND TRANSFER

Assignment~~The Funded Participation shall be binding upon~~ and Transfer

Subject to this Clause 14:

~~enure to the benefit of each Party and their respective successors and permitted assignees and transferees provided that neither Party may assign or transfer its rights; and~~

14.1.1 each Party may transfer by novation its rights and obligations,

~~under this Funded Participation~~ to a third party.

14.2 Conditions of ~~without the prior assignment or transfer~~

~~14.1~~14.2.1 ~~The written consent of the other Party is required for an~~(which consent shall not, in the case of a proposed assignment or transfer, by the Participant, be unreasonably withheld).

14.2.2 ~~The~~Subject to the prior written consent of the Grantor to a proposed assignment or transfer by the Participant must~~(which consent shall not be unreasonably withheld or delayed. The~~and the Participant acknowledges that, ~~in determining whether to grant or refuse consent~~ to a proposed transfer of rights and obligations, a relevant factor may be the creditworthiness of the proposed Transferee.

14.2.3 It shall be reasonable for the Grantor to withhold consent, in the case of a proposed assignment or transfer by the Participant if the proposed Transferee or assignee would be unable to make an ERISA Representation on the effective date of such assignment or transfer.

14.2.4 An assignment or transfer by the Participant will only be effective on the assignee or Transferee making an ERISA Representation to the Grantor.

14.3 Procedure for transfer by Participant

The Participant ~~) the Participant~~ may transfer its rights and obligations under the Funded Participation ~~(a "Transfer")~~ to a third party (a "Transferee") by delivery to the Grantor of a transfer certificate ("Transfer Certificate") in the form set out in Annex 1 (Form of a "Transfer Certificate) to this Funded Participation ~~")~~ duly completed and signed by the Participant and the Transferee.

~~14.2~~14.3.1 ~~With and with~~ effect from the date of receipt ~~by the Grantor~~ of ~~the such~~ Transfer Certificate by the Grantor, or, if later, the date specified in ~~the such~~ Transfer Certificate: ~~(hereafter the "Transfer Date")~~:

~~14.2.1~~(a) the Grantor and the Participant shall ~~each~~ be released from further obligations towards one another under the Funded Participation ~~to the other arising on or after the Transfer Date~~ and their respective rights against ~~one another~~ each other shall be cancelled (being the "Discharged Rights and Obligations"); ÷

~~14.2.2~~(b) the Grantor and the Transferee shall assume obligations towards one another ~~each other~~ and acquire rights against one another ~~each other~~ which differ from the Discharged Rights ~~rights~~ and Obligations ~~obligations so discharged~~ only insofar as the Grantor and the Transferee have assumed and/or acquired the same in place of the Grantor and the Participant;

~~14.2.3~~(c) the Transferee shall be deemed to make an ERISA Representation to the Grantor; and

~~14.2.4~~(d) the Transferee shall become a party to the Funded Participation ~~hereto~~ as the "**Participant**".

14.4 Limitation of responsibility of Participant

Nothing in any Transaction Document obliges the Participant to:

accept a re-transfer from the Transferee of any of the rights and obligations assigned or transferred under this Clause 14 (Assignment and Transfer); or

14.4.1 support any losses directly or indirectly incurred by the Transferee by reason of the non-performance by any Obligor of its obligations under the Credit Documentation or otherwise.

~~The obligations of the Grantor and the Participant to each other which are attributable to the period prior to the Transfer Date and their respective rights against each other shall survive the occurrence of the Transfer.~~

~~14.3 It shall be reasonable for the Grantor to withhold consent, in the case of a proposed assignment or transfer by the Participant, if the proposed assignee or transferee would be unable to make an ERISA Representation on the effective date of such assignment or transfer.~~

~~14.4 An assignment or transfer by the Participant will only be effective on the assignee or, as the case may be, the transferee making an ERISA Representation to the Grantor.~~

15. TERMINATION

15.1 Termination by notice and sale

If the Participant breaches any of its material obligations under the Funded Participation and that breach is not remedied within two Business Days of the Grantor notifying the Participant of that breach or if any of the Participant's representations was untrue in any material respect at the time such representation was made under the Funded Participation, the Grantor shall have the right to cancel all or part of the Funded Participation by notice to the Participant and, ~~not less than one Business Day following the giving of such notice,~~ by selling for fair market value on arm's length terms all or part of any Participation Commitment (each such sale being a "Loan Sale" and the amount of a Participation Commitment sold in such Loan Sale being a "Sold Portion").

15.2 Effect of Termination and Loan Sale

Following a Loan Sale the relevant Participation Commitment shall be reduced, for all purposes under the Funded Participation, by an amount equal to the Sold Portion and all rights and obligations of each Party (other than accrued claims and liabilities including, without limitation, any rights of the Participant in respect of Clause 15.3 *(Proceeds of Loan Sale)* and in respect of accrued interest, commission and fees) shall be cancelled and shall have no further force or effect to the extent that they relate to the Sold Portion.

15.3 Proceeds of Loan Sale

The Grantor shall account to the Participant for an amount equal to the proceeds of each Loan Sale less the aggregate of all amounts due and payable by the Participant to the Grantor under the Funded Participation and reasonable costs and expenses incurred by the Grantor in effecting such Loan Sale.

15.4 Without pPrejudice

The rights and remedies provided in the Funded Participation are cumulative and not exclusive of any rights and remedies provided by law.

16. NOTICES

Communications in writing

~~16.1 Any Giving of Notices~~

~~All notices or other~~ communications to be made under or in connection with the Funded Participation shall be made given in writing and, unless otherwise stated, may

be made by fax or letter. ~~or facsimile. Any such notice will be deemed to be given as follows:~~

~~16.1.1 if by letter, when delivered personally or on actual receipt; and~~

~~16.1.2 if by facsimile, when received in legible form.~~

~~However, a notice given in accordance with the above but received on a non Business Day or after business hours in the place of receipt will only be deemed to be given on the next Business Day in that place.~~

~~16.2~~ 16.1 ~~Addresses for Notices~~

The address and ~~fax~~facsimile number (and the department or officer, if any for whose attention the communication is to be made) of the Grantor and the Participant of each Party for any communication or document to be made~~all notices~~ under or in connection with ~~the~~this Funded Participation ~~is that identified with its name are those set out~~ in the Schedule or any substitute address, fax number or department or office as the Grantor or the Participant may notify to the other~~other notified by that Party for this purpose to the other Party by not less than five Business Days' notice.~~

16.2 Delivery

~~16.3~~ Any Electronic Communication

~~Subject to paragraph (b) below, any communication or document to be made or delivered by one person to another between the Parties under or in connection with the Funded Participation will only be effective:~~

if by way of fax, when received in legible form; or

16.2.1 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 16.2 (Addresses), if addressed to that department or officer.

16.3 Electronic communication

(a) Any communication to be made between the Grantor and the Participant under or in connection with the~~this~~ Funded Participation may be made by electronic mail or other electronic means, ~~if unless and until either Party notifies the Grantor and other to the Participant; contrary.~~

(a) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;

~~(b) Each Party shall notify each the other in writing of :~~

~~(b)~~ their electronic email address and/or any other~~such~~ information required to enable the sending and receipt of information by that means; and

~~(c)~~ notify each other of any change to their address or any other such information supplied by them.

~~(e)~~ 16.3.2 Any electronic communication made between the Grantor and the Participant Parties will be effective only when actually received in readable form.

16.4 English language

Any notice given under or in connection with the Funded Participation must be in English.

17. CONFIDENTIALITY

The Participant undertakes to keep confidential all information it receives from the Grantor under the Funded Participation hereunder to the extent required by the Credit Documentation. ~~If there is any inconsistency between this Clause 17 (Confidentiality) and any confidentiality agreement entered into between the Parties the terms of that confidentiality agreement shall prevail.~~

18. ERISA REPRESENTATIONS

Participant representation

~~18.1~~ The Participant represents and warrants to and agrees with the Grantor that either (a) no interest in the Funded Participation is being acquired by or on behalf of a person who is, or at any time while the Funded Participation is held thereby will be, one or more Benefit Plans or (b) (i) the transaction exemption set forth in one or more Prohibited Transaction Class Exemptions prohibited transaction class exemptions ("PTE") issued by the United States Department of Labor, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds), and PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers) is applicable with respect to the purchase and holding of the Funded Participation and the exercise of the Participant's rights thereunder and (ii) less than 25%, in the aggregate, of the Funded Participation (including any interest in the Funded Participation acquired by any parties to whom the Participant sub-participates, sells, assigns or transfers the Funded Participation or any part thereof) is being acquired by, and shall at all times until the termination or Elevation of the Funded Participation be held by, Benefit Plans, excluding from consideration such interests (held by other than Benefit Plans) as are disregarded under the second sentence of Section 3(42) of ERISA or under applicable related regulations.

18.1 Grantor representation

~~18.2~~ The Grantor represents and warrants to and agrees with the Participant that either (a) no interest in the Funded Participation is being sold by or on behalf of a

person who is one or more Benefit Plans or (b) the transaction exemption set forth in one or more ~~Prohibited Transaction Class Exemptions~~ prohibited transaction class exemptions ("PTE") issued by the United States Department of Labor, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds), and PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers) is applicable with respect to the sale of the Funded Participation.

19. ELEVATION

Elevation – on request

~~19.1~~ Subject to the terms and provisions of the Credit Documentation and applicable law and regulation, upon the request of either Party, each Party shall use its commercially reasonable efforts to, as soon as reasonably practicable, execute any documents and/or instruments as the other Party may reasonably request in order to cause the Participant (or such other person as may be directed by the Participant) to become a Lender under the Credit Documentation with respect to the Participated Tranches, or part thereof, as the case may be (an "Elevation").

19.1 Elevation – perfection

~~Subject to the terms and provisions of the Credit Documentation and applicable law and regulation, to the extent that the transaction documented under the Agreed Terms has settled as this Funded Participation pursuant to paragraph (a) of Condition 6.2 (Mandatory settlement) of the terms and conditions incorporated in the Agreed Terms by reason of any third party consent required in connection with the transaction not being granted, the Grantor shall use its reasonable endeavours to assist in bringing about an Elevation to the Participant or to its nominee.~~

19.2 Request of Grantor

~~19.2~~ If the Elevation is at the request of the Grantor pursuant to Clause 19.1 (Elevation – on request), it must provide notice of such request to the Participant. If the Participant cannot become a Lender under the terms of the Credit Documentation, or if Elevation to the Participant would be contrary to applicable law or regulation, the Participant must within ten Business Days of receipt of such notice, notify the Grantor of a third party to become a Lender under the Credit Documentation and to enter into a funded participation with the Participant on substantially the same terms as the Funded Participation or on such other terms as the Participant shall agree. If no third party is notified by the Participant to the Grantor, then the Elevation shall be consummated with such third party as the Grantor may reasonably direct provided that such third party shall agree to enter into a funded participation with the Participant on substantially the same terms as the Funded Participation or on such other terms as the Participant shall agree.

19.3 Third party

~~19.3~~ In the event that either Party (the "**Directing Party**") directs a third party to become a Lender in accordance with this Clause 19, the Parties shall, and the Directing Party shall use reasonable endeavours to ensure that the third party shall, execute a termination and transfer agreement substantially in the recommended form of the LMA.

19.4 Termination of Funded Participation

~~19.4~~ Upon the effective date of the Elevation, the Funded Participation shall be terminated to the extent it relates to the Participated Tranches which are the subject of the Elevation (provided however, that rights and liabilities of the Grantor and the Participant with respect to any facts, events and circumstances which have arisen or accrued, or are otherwise attributable to the period prior to the effective date of Elevation, shall not be terminated and shall remain in full force and effect).—~~Any transfer fees payable in connection with an Elevation shall be payable by the requesting Party.~~

19.5 Transfer Fees

Any transfer fees payable in connection with an Elevation shall be payable by the requesting Party in the case of an Elevation directed under Clause 19.1 (Elevation – on request) or, in the case of an Elevation pursuant to Clause 19.2 (Elevation – perfection), as envisaged in the Agreed Terms in respect of transfer fees in relation to the transaction documented by the Agreed Terms.

20. GOVERNING LAW AND JURISDICTION

Governing Law

The Funded Participation and any non-contractual obligations arising out of or in connection with it ~~are~~ shall be governed by English law. ~~the laws of England.~~

20.1 Jurisdiction

The courts of England have non-exclusive jurisdiction to settle any dispute arising out of or in connection with the Funded Participation (including a dispute relating to any non-contractual obligation arising out of or in connection with the Funded Participation).

20.2 Service of Process

Each Party irrevocably appoints the person described as process agent (if any) specified in the Agreed Terms~~Sale Agreement~~ to receive on its behalf service of any action, suit or proceedings in connection with the Funded Participation. If any person appointed as process agent ceases to act for any reason the appointing Party shall notify the other Party and shall promptly appoint another person incorporated within England and Wales to act as its process agent.

|

ANNEX 1

FORM OF TRANSFER CERTIFICATE

To: _____ [_____] the Grantor

From: _____ [The Participant] (the "**Participant**") and [The Transferee] (the "**Transferee**")

Dated: _____

Funded Participation Agreement
dated [_____] (the "**Funded Participation**")

1. We refer to the Funded Participation. This is a Transfer Certificate. Terms defined in the Funded Participation have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
2. We refer to Clause 14.3 (*Procedure for transfer by Participant*):
 - (a) The Participant and the Transferee agree to the Participant transferring to the Transferee by novation all of the Participant's rights and obligations under the Funded Participation in accordance with Clause 14.3 (*Procedure for transfer by Participant*).
 - (b) The proposed Transfer Date is [____].
3. The Transferee expressly acknowledges the limitations on the Participant's obligations set out in Clause 14.4 (*Limitation of responsibility of Participant*).
4. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
5. This Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by English law.

THE SCHEDULE

Rights and obligations to be transferred

[insert relevant details]

[Address, fax number, e-mail address if applicable and attention details for notices and receiving account details for payments.]

[Participant]**PARTICIPANT:**

[Transferee]**Date:**

TRANSFeree:

This Transfer Certificate is entered into pursuant to (a) the agreement (the "**Sale Agreement**") evidenced by the Confirmation [dated _____] / [with a trade date of _____] between the Participant and the Transferee (acting directly or through their respective agents) and (b) the Funded Participation.

On the Transfer Date, the transfer by way of novation of the Purchased Assets from the Participant to the Transferee on the terms set out herein and in the Sale Agreement shall become effective subject to:

- (a) _____ the Sale Agreement and the terms and conditions incorporated in the Sale Agreement;
- (b) _____ the terms and conditions annexed hereto; and
- (c) _____ the Schedule annexed hereto,

all of which are incorporated herein by reference.

The Participant

{ _____ }

By:

The Transferee

{ _____ }

By:

The Grantor

{ _____ }

By:

The Schedule

Funded Participation Details:

Grantor: _____
Participant: _____
Funded Participation Dated: _____

Credit Agreement Details:

Borrower(s): _____
Credit Agreement Dated: _____
Guarantor(s): _____
Agent Bank: _____
Security: No Yes (specify) _____
Total Original Facility Amount: _____
Governing Law: _____
Additional Information: _____

Participation Details:

Participated Tranches/Facilities:

Name of Tranche/Facility:	_____	_____
Nature (Revolving or Term):	_____	_____
Contractual Margin [†] :	_____ %	_____ %
Final Maturity:	_____	_____
Grantor's Commitment: [†]	_____	_____
Drawn Amount: [†]	_____	_____
Undrawn Amount: [†]	_____	_____
Participation Commitment:	_____	_____
Participant's Proportion: [†]	_____ %	_____ %

Transfer Date: _____

Details of outstanding Loans:[†]

Specify in respect of each Loan:

Drawn Amount: _____
Tranche/Facility: _____
Nature: Term or Revolver

Drawn Amount: _____
Tranche/Facility: _____
Nature: _____

Details of other Loans are set out on the attached sheet

[†]—As at the date of the Transfer Certificate.

Administration Details:

Participant's Receiving Account: _____

Transferee 's Receiving Account: _____

Addresses

Participant

Transferee

[_____]

[_____]

Address:

Address:

Telephone:

Telephone:

Facsimile:

Facsimile:

Attn/Ref:

Attn/Ref:

~~TERMS AND CONDITIONS~~

~~These are the Terms and Conditions applicable to the transfer certificate including the Schedule thereto (the "Transfer Certificate") to which they are annexed.~~

~~1. INTERPRETATION~~

~~In these Terms and Conditions words and expressions shall (unless otherwise expressly defined herein) bear the meaning given to them in the Transfer Certificate, the Funded Participation or the Sale Agreement.~~

~~2. TRANSFER~~

~~The Participant requests the Transferee to accept and procure the transfer by novation of all of the rights and obligations of the Participant under the Funded Participation (the "**Purchased Assets**") by counter signing and delivering the Transfer Certificate to the Grantor at its address for the service of notice specified in the Funded Participation. On the Transfer Date the Transferee shall pay to the Participant the Settlement Amount as specified in the pricing letter between the Participant and the Transferee dated the date of the Transfer Certificate (adjusted, if applicable, in accordance with the Sale Agreement) and completion of the transfer will take place.~~

~~3. EFFECTIVENESS OF TRANSFER~~

~~The Transferee hereby requests the Grantor to accept the Transfer Certificate as being delivered to the Grantor pursuant to and for the purposes of the Funded Participation so as to take effect in accordance with the terms of the Funded Participation on the Transfer Date or on such later date as may be determined in accordance with the terms thereof.~~

~~4. TRANSFEREE'S UNDERTAKING~~

~~The Transferee hereby undertakes with the Grantor and the Participant that it will perform in accordance with its terms all those obligations which by the terms thereof will be assumed by it after delivery of the Transfer Certificate to the Grantor and satisfaction of the conditions (if any) subject to which the Transfer Certificate is to take effect.~~

~~5. EXCLUDED RIGHTS~~

~~5.1 The Sale Agreement regulates the allocation of and entitlement to payments under the Funded Participation.~~

~~5.2 If any amount to which the Transferee is entitled pursuant to the Sale Agreement is received or recovered by the Participant, the Participant shall forthwith pay an amount equal to such amount to the Transferee for same day value together with interest on it from the date of receipt of the amount to the date of payment, calculated at the overnight rate charged to the Transferee's Receiving Account in respect of each day of that period if the account is or would be in debit and, pending such payment, the Participant shall hold that amount on trust for the Transferee.~~

~~5.3 If any amount to which the Participant is entitled pursuant to the Sale Agreement is received or recovered by the Transferee, the Transferee shall forthwith pay to the Participant for same day value an amount equal to such amount together with interest on it from the date of receipt of the amount to the date of payment, calculated at the overnight rate charged to the Participant's Receiving Account in respect of each day of that period if the account is, or would be, in debit and, pending such payment, the Transferee shall hold that amount on trust for the Participant.~~

~~6. PAYMENTS~~

~~6.1 Place~~

~~All payments by either party to the other under the Transfer Certificate shall be made to the Receiving Account of that other party. Each party may designate a different account as its Receiving Account for payment by giving the other not less than five Business Days notice before the due date for payment.~~

~~6.2 Funds~~

~~Payments under the Transfer Certificate shall be made in the currency in which the amount is denominated for value on the due date at such times and in such funds as are customary at the time for settlement of transactions in that currency.~~

~~7. THE GRANTOR~~

~~The Grantor shall not be required to concern itself with the Sale Agreement and may rely on the Transfer Certificate without taking account of the provisions of such agreement.~~

~~8. TRANSFEREE'S ACKNOWLEDGMENTS~~

~~The Participant notifies the Transferee and the Transferee acknowledges that:~~

~~8.1.1 the Participant shall have no obligation to repurchase or reacquire all or any part of the Purchased Assets from the Transferee or to support any losses directly or indirectly sustained or incurred by the Transferee for any reason whatsoever, including the non performance by the Grantor under the Funded Participation of its obligations thereunder; and~~

~~8.1.2 any rescheduling or renegotiation of the Purchased Assets shall be for the account of, and the responsibility of, the Transferee, who will be subject to the rescheduled or renegotiated terms.~~

~~9. ASSIGNMENT OF RIGHTS~~

~~The Transfer Certificate shall be binding upon and enure to the benefit of each party and its successors and permitted assignees and transferees provided that neither party may assign or transfer its rights thereunder without the prior written consent of the other party.~~

~~10. — **THIRD PARTY RIGHTS**~~

~~Unless expressly provided to the contrary in the Transfer Certificate (including, without limitation, these Terms and Conditions) a person who is not a party to the Transfer Certificate has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of the Transfer Certificate (including, without limitation, these Terms and Conditions).~~

~~11. — **GOVERNING LAW AND JURISDICTION**~~

~~The Transfer Certificate (including, without limitation, these Terms and Conditions) and any non-contractual obligations arising out of or in connection with it shall be governed by the laws of England.~~

~~The courts of England have non-exclusive jurisdiction to settle any dispute arising out of or in connection with the Transfer Certificate (including, without limitation, these Terms and Conditions) (including, without limitation, a dispute relating to any non-contractual obligation arising out of or in connection with the Transfer Certificate (including, without limitation, these Terms and Conditions)).~~

~~Each party irrevocably appoints the person described as process agent (if any) in the Sale Agreement to receive service of any action, suit or other proceedings in connection with the Transfer Certificate (including, without limitation, these Terms and Conditions). If any person appointed as process agent ceases to act for any reason the appointing party shall notify the other party and shall promptly appoint another person incorporated within England and Wales to act as its process agent.~~

|

ANNEX 2

DETAILS AND TERMS OF COLLATERAL FOR ~~UNDRAWNUNFUNDED~~
COMMITMENT

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