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| **For the avoidance of doubt, this document is in a non-binding form. Its intention is to be used to facilitate awareness of some of the issues involved in structuring syndicated loans referencing IBOR or similar term rates initially with a switch to compounded daily risk-free reference rates and to provide a documentary reflection of the recommendations for SONIA Loan Market Conventions issued by the Working Group on Sterling Risk-Free Reference Rates. This document does not constitute a recommended form of the LMA. Individual parties are free to depart from its terms and should always satisfy themselves of the regulatory implications of its use. In particular nothing in this document is intended to, or should be construed as, a recommendation of, or support for, any particular pricing methodology by the LMA.**  **Readers choosing to use this document as the basis for preparing loan documentation for transactions should note that in the absence of established market or operational practice in relation to the SONIA Loan Market Conventions this document seeks only to reflect those conventions and does not purport to offer any standardised position in relation to a number of issues associated with the use of compounded risk-free reference rates or the operation of those conventions. Those issues are outlined in the Commentary but will require consideration and resolution by the relevant parties in the context of the relevant transaction.** | | | |
|  | |  | |
| *MULTICURRENCY TERM AND REVOLVING FACILITIES AGREEMENT INCORPORATING RATE SWITCH PROVISIONS*  *(LOOKBACK WITHOUT OBSERVATION SHIFT)* | | | |
|  | | | |
| [*amount in numbers*]  FACILITY AGREEMENT  dated [                           ]  for  [*NAME OF PRINCIPAL COMPANY*]  arranged by  [*NAME OF ARRANGERS*]  with  [*NAME OF AGENT*]  acting as Agent | | | |
|  | **[*NAME OF LAW FIRM*]** | |  |
| **The Loan Market Association ("LMA") consents to the use and reproduction of this document by members of the LMA subject to the restrictions contained in the byelaws of the LMA (a copy of which is available through the LMA website) for the preparation and documentation of agreements relating to transactions or potential transactions in the loan markets. This document may be reproduced and distributed to non-members of the LMA in hard copy only. The LMA does not consent to the use, reproduction, distribution or communication to the public of this document for any other purpose, in any other manner or by any other person and expressly reserves all other rights.**  **For further information on members' rights and obligations in relation to this document, please refer to the articles of association and byelaws of the LMA (copies of which are available through the LMA website).**  **© Loan Market Association. All rights reserved.** | | | |

**IMPORTANT NOTICE**

***General***

This document is intended to be read in conjunction with LMA commentary to the Exposure Drafts of the Multicurrency Term and Revolving Facilities Agreements Incorporating Rate Switch Provisions (the "**Commentary**"). Whilst every care has been taken in the preparation of this document no representation or warranty is given by the LMA or Clifford Chance LLP:

* as to the suitability of this document for any particular transaction; or
* that this document will cover any eventuality.

Readers of this document should satisfy themselves as to its taxation, regulatory and accounting aspects.

Neither the LMA nor Clifford Chance LLP is liable for any losses suffered by any person as a result of any contract made on the terms of this document or which may arise from the presence of any errors or omissions in this document and no proceedings shall be taken by any person in relation to such losses.

***Purpose of this document***

For the avoidance of doubt, this document is in a non-binding form and does not constitute a recommended form of the LMA. The purpose of this document is to:

* facilitate awareness of the issues involved in structuring syndicated loans referencing IBOR or similar term rates initially with a switch to compounded risk-free reference rates and the development of an approach to these issues by market participants; and
* provide a documentary reflection of the recommendations for SONIA Loan Market Conventions (the "**£RFR Working Group Conventions**")[[1]](#footnote-2) issued by the Working Group on Sterling Risk-Free Reference Rates (the "**£RFR Working Group**") in September 2020. This is intended to facilitate market participants in their assessment of the extent to which the £RFR Working Group Conventions are appropriate for use (whether for sterling amounts or on a multicurrency basis) in the European syndicated lending market when documenting facilities which switch to compounded risk-free reference rates.

***The £RFR Working Group Conventions***

Readers should note that the £RFR Working Group Conventions are recommendations of the £RFR Working Group only. The materials constituting the £RFR Working Group Conventions emphasise that the £RFR Working Group Conventions are not binding and that it is recognised that in certain circumstances alternative methodologies or rates may be more appropriate or convenient, and that market conventions may continue to evolve over time.

In particular readers should note that the £RFR Working Group Conventions acknowledge that different approaches are viable options on some key issues. In particular, whilst this document adopts:

* a Lookback without Observation Shift; and
* a non-cumulative compounded methodology for interest calculation,

in accordance with the £RFR Working Group Conventions[[2]](#footnote-3), readers should note that the £RFR Working Group Conventions acknowledge that:

* "*where lenders are also able to offer lookback with an observation shift this remains a viable and robust alternative*";[[3]](#footnote-4) and
* "*several methods exist to calculate SONIA Compounded in arrears and implementation choice is left to individual market participant*s."

Readers should refer to the materials constituting the £RFR Working Group Conventions for more information on the status of those conventions, the process leading to their recommendation by the £RFR Working Group, and a discussion of the concepts involved. The reflection of the £RFR Working Group Conventions in this document should not be construed as an endorsement of, or recommendation for the adoption of, the £RFR Working Group Conventions by the LMA.

***Other recommendations for loan conventions and approach of this document***

Readers should note that recommendations for loan market conventions for the use of risk-free reference rates are being developed separately by each currency-specific risk-free reference rate working group. Each such working group has its own priorities and frames of reference and, understandably, this results in differences between each set of recommendations.

Market participants should consider the extent to which the preference will be to adopt a single set of conventions for use across all currencies or to adopt a bifurcated approach whereby the conventions applied will vary by reference to currency. In the documentary context the question is particularly relevant in the context of multicurrency facilities but it is a wider issue for each market participant's operational and system requirements.[[4]](#footnote-5)

Readers should note that this document envisages multicurrency facilities and it applies the £RFR Working Group Conventions to each referenced currency and the risk-free reference rate which corresponds to that currency[[5]](#footnote-6). As a result, the application of the £RFR Working Group Conventions in this document is not confined to the use of SONIA and sterling amounts. This is for reasons of simplicity and ease of illustration and is intended to facilitate market participants in their assessment of the extent to which the £RFR Working Group Conventions are appropriate for use (whether for sterling amounts or on a multicurrency basis) in the European syndicated lending market when documenting facilities which switch to compounded risk-free reference rates. It should not be construed as an endorsement of, or recommendation for the adoption of, such an approach by the LMA.

In particular readers should note that although there are similarities between the £RFR Working Group Conventions and both:

* the Conventions related to using SOFR in arrears for syndicated loans issued by the US Alternative Reference Rates Committee in July 2020 (the "**ARRC Conventions**")[[6]](#footnote-7); and
* the recommendation related to using SARON for syndicated loans made by the National Working Group on Swiss Franc Reference Rates in May 2020 and updated in September 2020 (the "**NWG Recommendation**")[[7]](#footnote-8),

there are also, in each case, a number of differences. This document does not seek to reflect the ARRC Conventions or the NWG Recommendation.

Neither does this document seek to reflect any other conventions that are being developed by other currency-specific risk-free reference rate working groups.

Readers should consider those other convention recommendations and make their own determination as to the extent to which those other conventions are appropriate for use in the European syndicated lending market when documenting facilities which switch to compounded risk-free reference rates. The approach taken in this document should not be construed as an LMA endorsement of, or recommendation for the adoption of, the £RFR Working Group Conventions in preference to the ARRC Conventions, the NWG Recommendation or any other convention recommendation. As above, the approach adopted in this document is for reasons of simplicity and to facilitate market participants in their making of the assessments described above.

***Development of this document***

The initial version of the LMA's exposure draft of Multicurrency Term and Revolving Facilities Agreement Incorporating Rate Switch Provisions (Lookback without Observation Shift) was published on 11 September 2020 (the "**Initial Exposure Draft**"). That document was published without input and views provided by a working party of market participants. This departure from the LMA's usual practice was a function of the urgency with which it was felt that provision of a documentary reflection of the £RFR Working Group Conventions was required to facilitate market participants in their making of the assessments described above.

The LMA sought initial market feedback on the Initial Exposure Draft. That market feedback has resulted in the publication of this document, which is a revised form of the Initial Exposure Draft.

***Document not a recommended form of the LMA***

This document continues not to constitute a recommended form of the LMA. The LMA is providing this document to market participants for the purposes set out above. It is for individual market participants to form their own view of the extent to which it (and each £RFR Working Group Convention) is suitable for use as the basis for preparing loan documentation for transactions. Individual parties are free to depart from its terms and should always satisfy themselves of the regulatory implications of its use.

Readers choosing to use this document as the basis for preparing loan documentation for transactions should note that in the absence of established market or operational practice in relation to the £RFR Working Group Conventions this document seeks only to reflect the £RFR Working Group Conventions and does not purport to offer any standardised position in relation to a number of issues associated with the use of compounded risk-free reference rates or the operation of the £RFR Working Group Conventions. Those issues are outlined in the Commentary but will require consideration and resolution by the relevant parties in the context of the relevant transaction.

Nothing in this document is intended to, or should be construed as, a recommendation of, or support for, any particular pricing methodology by the LMA.

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**THIS AGREEMENT** is dated [                            ] and made between:

* 1. **[                     ]** (the "**Company**");
  2. **THE SUBSIDIARIES** of the Company listed in Part I of Schedule 1 as original borrowers ([together with the Company] the "**Original Borrowers**");
  3. **THE SUBSIDIARIES** of the Company listed in Part I of Schedule 1 as original guarantors ([together with the Company] the "**Original Guarantors**");
  4. **[               ]** [and **[               ]**] as mandated lead arranger[s] ([whether acting individually or together] the "**Arranger**");
  5. **THE FINANCIAL INSTITUTIONS** listed in Part II and Part III of Schedule 1 as lenders (the "**Original Lenders**"); and
  6. **[               ]** as agent of the other Finance Parties (the "**Agent**").

**IT IS AGREED** as follows:

**SECTION 1  
INTERPRETATION**

1. Definitions and Interpretation
   1. Definitions

In this Agreement:

1. "**Accession Letter**" means a document substantially in the form set out in Schedule 6 (*Form of Accession Letter)*.
2. "**Additional Borrower**" means a company which becomes an Additional Borrower in accordance with Clause 25 (*Changes to the Obligors*).
3. "**Additional Business Day**" means any day specified as such in the applicable Compounded Rate Terms.
4. "**Additional Guarantor**" means a company which becomes an Additional Guarantor in accordance with Clause 25 (*Changes to the Obligors*).
5. "**Additional Obligor**" means an Additional Borrower or an Additional Guarantor.
6. "**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.
7. "**Agent's Spot Rate of Exchange**" means:
   1. the Agent's spot rate of exchange; or
   2. (if the Agent does not have an available spot rate of exchange) any other publicly available spot rate of exchange selected by the Agent (acting reasonably),

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

1. "**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.
2. "**Authorisation**" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.
3. "**Availability Period**" means:
   1. in relation to Facility A, the period from and including the date of this Agreement to and including [                   ]; and
   2. in relation to Facility B, the period from and including the date of this Agreement to and including [                   ].
4. "**Available Commitment**" means, in relation to a Facility, a Lender's Commitment under that Facility minus:
   1. the Base Currency Amount of its participation in any outstanding Loans under that Facility; and
   2. in relation to any proposed Utilisation, the Base Currency Amount of its participation in any Loans that are due to be made under that Facility on or before the proposed Utilisation Date,

other than, in relation to any proposed Utilisation under Facility B only, that Lender's participation in any Facility B Loans that are due to be repaid or prepaid on or before the proposed Utilisation Date.

1. "**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.
2. "**Backstop Rate Switch Date**" means:
   1. [in relation to a Rate Switch Currency for which the Term Reference Rate for Loans is LIBOR, [*insert agreed date*]; and]
   2. in relation to [a] / [any other] Rate Switch Currency, the date (if any) specified as such in the applicable Compounded Rate Terms,

or any other date agreed as such between the Agent, [the Majority Lenders] and the Company in relation to that currency.[[8]](#footnote-9)

1. "**Base Currency**" means [                        ].
2. "**Base Currency Amount**" means, in relation to a Loan, the amount specified in the Utilisation Request delivered by a Borrower for that Loan (or, if the amount requested is not denominated in the Base Currency, that amount converted into the Base Currency at the Agent's Spot Rate of Exchange on the date which is three Business Days before the Utilisation Date or, if later, on the date the Agent receives the Utilisation Request) as adjusted to reflect any repayment (other than, in relation to Facility A, a repayment arising from a change of currency), prepayment, consolidation or division of a Loan.
3. ["**Benchmark Rate**" means, in relation to any Term Rate Loan in a Non-LIBOR Currency:
   1. the applicable Screen Rate as of the Specified Time for the currency of that Loan and for a period equal in length to the Interest Period of that Loan; or
   2. as otherwise determined pursuant to Clause 11.1 (*Unavailability of Screen Rate*)[,

and if, in either case, that rate is less than zero, the Benchmark Rate shall be deemed to be zero][[9]](#footnote-10).]

"**Block Rounding Period**" has the meaning given to that term in Clause ‎32.3 (*Day count convention and interest calculation*).

1. "**Borrower**" means an Original Borrower or an Additional Borrower unless it has ceased to be a Borrower in accordance with Clause 25 (*Changes to the Obligors*).
2. "**Break Costs**" means:
   1. in respect of any Term Rate Loan, the amount (if any) by which:
      1. the interest 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 in that currency 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:

* + 1. 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, or
  1. in respect of any Compounded Rate Loan, any amount specified as such in the applicable Compounded Rate Terms.[[10]](#footnote-11)

1. "**Business Day**" means a day (other than a Saturday or Sunday) on which banks are open for general business in London [, [           ]] and:
   1. (in relation to any date for payment or purchase of a currency other than euro [or a Non-LIBOR Currency]) the principal financial centre of the country of that currency;
   2. (in relation to any date for payment or purchase of euro) any TARGET Day[;
   3. (in relation to any date for payment or purchase of (or the fixing of an interest rate in relation to) a Non-LIBOR Currency) any day specified as such in respect of that currency in Schedule 13 (*Other Benchmarks*);] and
   4. (in relation to:
      1. any date for payment or purchase of a Compounded Rate Currency; [or]
      2. the determination of the first day or the last day of an Interest Period for a Compounded Rate Loan, or otherwise in relation to the determination of the length of such an Interest Period[; or
      3. the Lookback Period for a Compounded Rate Currency]),

an Additional Business Day relating to that currency or that Loan.

1. "**Central Bank Rate**" has the meaning given to that term in the applicable Compounded Rate Terms.
2. "**Central Bank Rate Adjustment**" has the meaning given to that term in the applicable Compounded Rate Terms.
3. "**Code**" means the US Internal Revenue Code of 1986.
4. "**Commitment**" means a Facility A Commitment or Facility B Commitment.
5. ["**Compliance Certificate**" means a certificate [substantially in the form set out in Schedule 8 (*Form of Compliance Certificate*)]/[in form and substance satisfactory to the Agent].]
6. "**Compounded Rate Currency**" means any Rate Switch Currency in respect of which the Rate Switch Date has occurred.
7. "**Compounded Rate Interest Payment**" means the aggregate amount of interest that:
   1. is, or is scheduled to become, payable under any Finance Document; and
   2. relates to a Compounded Rate Loan.
8. "**Compounded Rate Loan**" means any Loan or, if applicable, Unpaid Sum in a Compounded Rate Currency which is, or becomes, a "Compounded Rate Loan" pursuant to Clause 9A (*Rate Switch*).
9. "**Compounded Rate Supplement**" means, in relation to any currency, a document which:
   1. is agreed in writing by the Company and the Agent (acting on the instructions of [          ][[11]](#footnote-12));
   2. specifies for that currency the relevant terms which are expressed in this Agreement to be determined by reference to Compounded Rate Terms; and
   3. has been made available to the Company and each Finance Party.
10. "**Compounded Rate Terms**" means in relation to:
    1. a currency;
    2. a Loan or an Unpaid Sum in that currency;
    3. an Interest Period for such a Loan or Unpaid Sum (or other period for the accrual of commission or fees in respect of that currency); or
    4. any term of this Agreement relating to the determination of a rate of interest in relation to such a Loan or Unpaid Sum,

the terms set out for that currency in Schedule 15 *(Compounded Rate Terms*) or in any Compounded Rate Supplement.

1. "**Compounded Reference Rate**" means, in relation to any RFR Banking Day during the Interest Period of a Compounded Rate Loan, the percentage rate per annum which is the aggregate of:
   1. the Daily Non-Cumulative Compounded RFR Rate for that RFR Banking Day; and
   2. the applicable Credit Adjustment Spread.
2. "**Compounding Methodology Supplement**" means, in relation to the Daily Non-Cumulative Compounded RFR Rate or the Cumulative Compounded RFR Rate, a document which:
   1. is agreed in writing by the Company, the Agent (in its own capacity) and the Agent (acting on the instructions of [ ][[12]](#footnote-13));
   2. specifies a calculation methodology for that rate; and
   3. has been made available to the Company and each Finance Party.
3. "**Confidential Information**" means all information relating to the Company, any Obligor, the Group, the Finance Documents or a Facility of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Finance Documents or a Facility from either:
   1. any member of the Group or any of its advisers; or
   2. another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group or any of its advisers,

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

* + 1. information that:
       1. is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 36 (*Confidential Information*); or
       2. is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
       3. 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 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
    2. any Funding Rate [or Reference Bank Quotation].

1. "**Confidentiality Undertaking**" means a confidentiality undertaking substantially in a recommended form of the LMA as set out in Schedule 10 (*LMA Form of Confidentiality Undertaking*) or in any other form agreed between the Company and the Agent.
2. "**Credit Adjustment Spread**"[[13]](#footnote-14) means, in respect of any Compounded Rate Loan, any rate which is either:
   1. specified as such in the applicable Compounded Rate Terms; or
   2. 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 specified in the applicable Compounded Rate Terms.[[14]](#footnote-15)
3. "**CTA**" means the Corporation Tax Act 2009.
4. "**Cumulative Compounded RFR Rate**" means, in relation to an Interest Period for a Compounded Rate 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 17 (*Cumulative Compounded RFR Rate*) or in any relevant Compounding Methodology Supplement.
5. "**Daily Non-Cumulative Compounded RFR Rate**" means, in relation to any RFR Banking Day during an Interest Period for a Compounded Rate Loan, the percentage rate per annum determined by the Agent (or 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 16 (*Daily Non-Cumulative Compounded RFR Rate*) or in any relevant Compounding Methodology Supplement.
6. "**Daily Rate**" means the rate specified as such in the applicable Compounded Rate Terms.
7. "**Default**" means an Event of Default or any event or circumstance specified in Clause 23 (*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.
8. "**Disruption Event**" means either or both of:
   1. 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
   2. 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:
      1. from performing its payment obligations under the Finance Documents; or
      2. 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.

1. "**Eligible Institution**" means any Lender or other bank, financial institution, trust, fund or other entity selected by the Company [and which, in each case, is not a member of the Group].[[15]](#footnote-16)
2. ["**EURIBOR**" means, in relation to any Term Rate Loan in euro:
   1. the applicable Screen Rate as of the Specified Time for euro and for a period equal in length to the Interest Period of that Loan; or
   2. as otherwise determined pursuant to Clause 11.1 (*Unavailability of Screen Rate*)[,

and if, in either case, that rate is less than zero, EURIBOR shall be deemed to be zero][[16]](#footnote-17).]

1. "**Event of Default**" means any event or circumstance specified as such in Clause 23 (*Events of Default*).
2. "**Facility**" means Facility A or Facility B.
3. "**Facility A**" means the term loan facility made available under this Agreement as described in Clause 2 (*The Facilities*).
4. "**Facility A Commitment**" means:
   1. in relation to an Original Lender, the amount in the Base Currency set opposite its name under the heading "Facility A Commitment" in Part II or Part III of Schedule 1 (*The Original Parties*) and the amount of any other Facility A Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*); and
   2. in relation to any other Lender, the amount in the Base Currency of any Facility A 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.

1. "**Facility A Loan**" means a loan made or to be made under Facility A or the principal amount outstanding for the time being of that loan.
2. "**Facility A Repayment Date**" means [                      ].
3. "**Facility B**" means the revolving loan facility made available under this Agreement as described in Clause 2 (*The Facilities*).
4. "**Facility B Commitment**" means:
   1. in relation to an Original Lender, the amount in the Base Currency set opposite its name under the heading "Facility B Commitment" in Part II or Part III of Schedule 1 (*The Original Parties*) and the amount of any other Facility B Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*); and
   2. in relation to any other Lender, the amount in the Base Currency of any Facility B Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*),

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

1. "**Facility B Loan**" means a loan made or to be made under Facility B or the principal amount outstanding for the time being of that loan.
2. "**Facility Office**" means the office or offices notified by a Lender to the Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement.
3. ["**Fallback Interest Period**" means [       ][[17]](#footnote-18) [or, if the Loan is in a Non-LIBOR Currency, the period specified as such in respect of that currency in Schedule 13 (*Other Benchmarks*)].]
4. "**FATCA**" means:
   1. sections 1471 to 1474 of the Code or any associated regulations;
   2. 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
   3. 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.
5. "**FATCA Application Date**" means:
   1. 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
   2. 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.
6. "**FATCA Deduction**" means a deduction or withholding from a payment under a Finance Document required by FATCA.
7. "**FATCA Exempt Party**" means a Party that is entitled to receive payments free from any FATCA Deduction.
8. "**Fee Letter**" means any letter or letters dated on or about the date of this Agreement between the Arranger and the Company (or the Agent and the Company) setting out any of the fees referred to in Clause 12 (*Fees*).
9. "**Finance Document**" means this Agreement, any Fee Letter, any Accession Letter, any Resignation Letter, any Compounded Rate Supplement, any Compounding Methodology Supplement and any other document designated as such by the Agent and the Company.
10. "**Finance Party**" means the Agent, the Arranger or a Lender.
11. "**Financial Indebtedness**" means any indebtedness for or in respect of:
    1. moneys borrowed;
    2. any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
    3. any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
    4. the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP, be treated as a balance sheet liability [(other than any liability in respect of a lease or hire purchase contract which would, in accordance with GAAP in force [prior to 1 January 2019] / [prior to [    ]] / [         ][[18]](#footnote-19), have been treated as an operating lease)][[19]](#footnote-20);
    5. receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
    6. any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
    7. any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);
    8. any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
    9. the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above.
12. "**Funding Rate**" means any individual rate notified by a Lender to the Agent pursuant to paragraph (a)(ii) of Clause 11.5 (*Cost of funds*).
13. "**GAAP**" means generally accepted accounting principles in [                    ][, including IFRS].
14. "**Group**" means the Company and its Subsidiaries for the time being.
15. "**Guarantor**" means an Original Guarantor or an Additional Guarantor, unless it has ceased to be a Guarantor in accordance with Clause 25 (*Changes to the Obligors*).
16. ["**Historic Screen Rate**" means, in relation to any Term Rate Loan, the most recent applicable Screen Rate for the currency of that Loan and for a period equal in length to the Interest Period of that Loan and which is as of a day which is no more than [ ] days before the Quotation Day.]
17. "**Holding Company**" means, in relation to a person, any other person in respect of which it is a Subsidiary.
18. ["**IFRS**" means international accounting standards within the meaning of the IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.]
19. "**Increase Confirmation**" means a confirmation substantially in the form set out in Schedule 12 (*Form of Increase Confirmation*).
20. "**Increase Lender**" has the meaning given to that term in Clause 2.2 (*Increase*).
21. ["**Information Memorandum**" means the document in the form approved by the Company concerning the Group which, at the Company's request and on its behalf, was prepared in relation to this transaction and distributed by the Arranger to selected financial institutions [during [            ]]/[before the date of this Agreement].]
22. "**Interest Period**" means, in relation to a Loan, each period determined in accordance with Clause 10 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 9.4 (*Default interest*)*.*
23. ["**Interpolated Historic Screen Rate**" means, in relation to any Term Rate Loan, the rate [(rounded [to the same number of decimal places as the two relevant Screen Rates])] which results from interpolating on a linear basis between:
    1. the most recent applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period of that Loan; and
    2. the most recent applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that Loan,

each for the currency of that Loan and each of which is as of a day which is no more than [ ] days before the Quotation Day.]

1. "**Interpolated Screen Rate**" means, in relation to any Term Rate Loan, the rate [(rounded [to the same number of decimal places as the two relevant Screen Rates])][[20]](#footnote-21) which results from interpolating on a linear basis between:
   1. the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period of that Loan; and
   2. the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that Loan,

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

1. "**ITA**" means the Income Tax Act 2007.
2. "**Lender**" means:
   1. any Original Lender; and
   2. 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 24 (*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.

1. "**LIBOR**" means, in relation to any Term Rate Loan:
   1. the applicable Screen Rate as of the Specified Time for the currency of that Loan and for a period equal in length to the Interest Period of that Loan;[[21]](#footnote-22) or
   2. as otherwise determined pursuant to Clause 11.1 (*Unavailability of Screen Rate*)[,

and if, in either case, that rate is less than zero, LIBOR shall be deemed to be zero][[22]](#footnote-23).

1. "**LMA**" means the Loan Market Association.
2. "**Loan**" means a Facility A Loan or a Facility B Loan.
3. "**Lookback Period**" means the number of days specified as such in the applicable Compounded Rate Terms.
4. "**Majority Lenders**" means 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 the reduction).
5. "**Margin**" means [                           ] per cent. per annum.[[23]](#footnote-24)
6. "**Market Disruption Rate**" means the rate (if any) specified as such in the applicable Compounded Rate Terms.
7. "**Material Adverse Effect**" means [                         ].
8. "**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:
   1. other than where paragraph (b) below applies:
      1. (subject to paragraph (iii) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
      2. 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
      3. if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end[; and
   2. in relation to an Interest Period for any Loan (or any other period for the accrual of commission or fees) in a [Non-LIBOR Currency or a] Compounded Rate Currency for which there are rules specified as "Business Day Conventions" in respect of that currency in [Schedule 13 (*Other Benchmarks*), or in] the applicable Compounded Rate Terms, those rules shall apply.

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

1. "**New Lender**" has the meaning given to that term in Clause 24 (*Changes to the Lenders*).
2. ["**Non-LIBOR Currency**" means [ ].][[24]](#footnote-25)
3. "**Obligor**" means a Borrower or a Guarantor.
4. "**Optional Currency**" means a currency (other than the Base Currency) which complies with the conditions set out in Clause 4.3 (*Conditions relating to Optional Currencies*).
5. "**Original Financial Statements**" means:
   1. in relation to the Company, the audited consolidated financial statements of the Group for the financial year ended [                     ]; and
   2. in relation to each Original Obligor other than the Company, its audited financial statements for its financial year ended [                     ].
6. "**Original Obligor**" means an Original Borrower or an Original Guarantor.
7. "**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.
8. "**Party**" means a party to this Agreement.
9. "**Qualifying Lender**" has the meaning given to it in Clause 13 (*Tax gross-up and indemnities*).
10. "**Quotation Day**" means, in relation to any period for which an interest rate is to be determined:
    * 1. (if the currency is sterling) the first day of that period;
      2. [(if the currency is euro) two TARGET Days before the first day of that period;][[25]](#footnote-26) or
      3. (for any other currency [(other than a Non-LIBOR Currency)]), two Business Days before the first day of that period,

(unless market practice differs in the Relevant Market for that currency, in which case the Quotation Day for that currency 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))[; or

* 1. (if the currency is a Non-LIBOR Currency) the day specified as such in respect of that currency in Schedule 13 (*Other Benchmarks*)].

1. "**Quoted Tenor**" means, in relation to the Screen Rate for a Term Reference Rate applicable to Loans in a currency, any period for which that Screen Rate is customarily displayed on the relevant page or screen of an information service.
2. "**Rate Switch Currency**" means any currency for which there are Compounded Rate Terms.
3. "**Rate Switch Date**"[[26]](#footnote-27) means:
   1. in relation to a Rate Switch Currency, the earlier of:
      1. the Backstop Rate Switch Date; and
      2. any Rate Switch Trigger Event Date,

for that Rate Switch Currency; or

* 1. in relation to a Rate Switch Currency which:
     1. becomes a Rate Switch Currency after the date of this Agreement; and
     2. for which there is a date specified as the "Rate Switch Date" in the Compounded Rate Terms for that currency,

that date.[[27]](#footnote-28)

1. "**Rate Switch Trigger Event**"[[28]](#footnote-29) means:
   1. in relation to any Rate Switch Currency and the Screen Rate for the Term Reference Rate applicable to Loans in that Rate Switch Currency:
      1. 1. the administrator of that Screen Rate 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 that Screen Rate is insolvent,

**provided that**, in each case, at that time, there is no successor administrator to continue to provide that Screen Rate;

* + 1. the administrator of that Screen Rate publicly announces that it has ceased or will cease, to provide that Screen Rate for any Quoted Tenor permanently or indefinitely and, at that time, there is no successor administrator to continue to provide that Screen Rate for that Quoted Tenor;
    2. the supervisor of the administrator of that Screen Rate publicly announces that such Screen Rate has been or will be permanently or indefinitely discontinued for any Quoted Tenor; or
    3. the administrator of that Screen Rate or its supervisor publicly announces that that Screen Rate for any Quoted Tenor may no longer be used [; and
  1. in relation to [any Rate Switch Currency and the Screen Rate for the LIBOR applicable to Loans in that Rate Switch Currency] / [[*specify currency*] and the Screen Rate for [ ]]][[29]](#footnote-30), the supervisor of the administrator of that Screen Rate publicly announces or publishes information[[30]](#footnote-31):
     1. stating that that Screen Rate for any Quoted Tenor is no longer, or as of a specified future date will no longer be, representative of the underlying market and the economic reality that it is intended to measure and that such representativeness will not be restored (as determined by such supervisor) [; and
     2. with awareness that any such announcement or publication will engage certain triggers for fallback provisions in contracts which may be activated by any such pre-cessation announcement or publication]][; or
  2. [*other*]].

1. "**Rate** **Switch Trigger Event Date**" means, in relation to a Rate Switch Currency:
   1. in the case of an occurrence of a Rate Switch Trigger Event for that Rate Switch Currency described in paragraph (a)(i) of the definition of Rate Switch Trigger Event, the date on which the relevant Screen Rate ceases to be published or otherwise becomes unavailable; [and]
   2. in the case of an occurrence of a Rate Switch Trigger Event for that Rate Switch Currency described in paragraphs (a)(ii), (a)(iii) or (a)(iv) of the definition of Rate Switch Trigger Event, the date on which the relevant Screen Rate for the relevant Quoted Tenor ceases to be published or otherwise becomes unavailable[;] [and]
   3. [in the case of an occurrence of a Rate Switch Trigger Event for that Rate Switch Currency described in paragraph (b) of the definition of Rate Switch Trigger Event, the date on which the relevant Screen Rate for the relevant Quoted Tenor ceases to be representative of the underlying market and the economic reality that it is intended to measure (as determined by the supervisor of the administrator of such Screen Rate)] [; and]
   4. [*specify applicable Rate Switch Trigger Event Date for any other Rate Switch Trigger Events which are specified*].
2. ["**Reduction Date**" means [                     ].]
3. ["**Reduction Instalment**" means [                 ].]
4. ["**Reference Bank Quotation**" means any quotation supplied to the Agent by a Reference Bank.]
5. ["**Reference Bank Rate**" means:
   1. the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Agent at its request by the Reference Banks:
      1. in relation to LIBOR as either:
         1. if:
            1. the Reference Bank is a contributor to the applicable Screen Rate; and
            2. it consists of a single figure,

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

* + - 1. in any other case, the rate at which the relevant Reference Bank could fund itself in the relevant currency for the relevant period with reference to the unsecured wholesale funding market[; or
    1. in relation to EURIBOR:
       1. (other than where paragraph (B) below applies) as the rate at which the relevant Reference Bank believes one prime bank is quoting to another prime bank for interbank term deposits in euro within the Participating Member States for the relevant period; or
       2. if different, as the rate (if any and applied to the relevant Reference Bank and the relevant period) which contributors to the applicable Screen Rate are asked to submit to the relevant administrator][; or
  1. in relation to a Benchmark Rate for a Loan in a Non-LIBOR Currency, the rate specified as such in respect of that currency in Schedule 13 (*Other Benchmarks*)].]

1. ["**Reference Banks**" means, in relation to LIBOR, the principal London offices of [    ], [    ] and [    ] [and, in relation to EURIBOR, the principal office in [       ] of [      ],[     ] and [    ]] [and, in relation to the Benchmark Rate for a Loan in a Non-LIBOR Currency, the entities specified as such in respect of that currency in Schedule 13 (*Other Benchmarks*)] or[, in each case,] such other entities as may be appointed by the Agent in consultation with the Company.]
2. "**Related Fund**" in relation to a fund (the "**first fund**"), means a fund which is managed or advised by the same investment manager or investment adviser as the first fund or, if it is managed by a different investment manager or investment adviser, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the first fund.
3. "**Relevant Market**" means:
   1. subject to paragraph (b) below:
      1. [in relation to euro, the European interbank market;]
      2. [in relation to a Non-LIBOR Currency, the market specified as such in respect of that currency in Schedule 13 (*Other Benchmarks*);] [and]
      3. in relation to any [other] currency, the London interbank market; and
   2. in relation to a Compounded Rate Currency, the market specified as such in the applicable Compounded Rate Terms.
4. ["**Repayment Instalment**" means [                     ].]
5. "**Repeating Representations**" means each of the representations set out in Clauses 19.[    ], 19.[   ] and 19.[    ].
6. "**Reporting Day**" means the day specified as such in the applicable Compounded Rate Terms.
7. "**Reporting Time**" means the relevant time (if any) specified as such in the applicable Compounded Rate Terms.
8. "**Representative**" means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.
9. "**Resignation Letter**" means a letter substantially in the form set out in Schedule 7 (*Form of Resignation Letter*).
10. "**RFR**" means the rate specified as such in the applicable Compounded Rate Terms.
11. "**RFR Banking Day**" means any day specified as such in the applicable Compounded Rate Terms.[[31]](#footnote-32)
12. "**Rollover Loan**" means one or more Facility B Loans:
    1. made or to be made on the same day that a maturing Facility B Loan is due to be repaid;
    2. the aggregate amount of which is equal to or less than the amount of the maturing Facility B Loan;
    3. in the same currency as the maturing Facility B Loan (unless it arose as a result of the operation of Clause 6.2 (*Unavailability of a currency*)); and
    4. made or to be made to the same Borrower for the purpose of refinancing that maturing Facility B Loan.
13. "**Screen Rate**" means[[32]](#footnote-33):
    1. in relation to LIBOR, the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant currency and period displayed [(before any correction, recalculation or republication by the administrator)] on pages LIBOR01 or LIBOR02 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate)[; and
    2. in relation to EURIBOR, the euro interbank offered rate administered by the European Money Markets Institute (or any other person which takes over the administration of that rate) for the relevant period displayed [(before any correction, recalculation or republication by the administrator)] on page EURIBOR01 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate)][[33]](#footnote-34)[; and
    3. in relation to a Benchmark Rate, the rate specified as such in respect of the relevant currency in Schedule 13 (*Other Benchmarks*)].
14. "**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.
15. "**Selection Notice**" means a notice substantially in the form set out in Part II of Schedule 3 (*Requests*) given in accordance with Clause 10 (*Interest Periods*) in relation to Facility A.
16. "**Specified Time**" means a day or time determined in accordance with Schedule 11 (*Timetables*).
17. "**Subsidiary**" means [a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006] / [a subsidiary within the meaning of section 1159 of the Companies Act 2006] / [                 ].
18. "**TARGET2**" means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilises a single shared platform and which was launched on 19 November 2007.
19. "**TARGET Day**" means any day on which TARGET2 is open for the settlement of payments in euro.
20. "**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).
21. "**Term Rate Loan**" means any Loan or, if applicable, Unpaid Sum which is not a Compounded Rate Loan.
22. "**Term** **Reference Rate**" means:
    1. LIBOR [or;
    2. in relation to any Loan in euro, EURIBOR;] [or]
    3. in relation to any Loan in a Non-LIBOR Currency, the Benchmark Rate for that currency].
23. "**Termination Date**" means:
    1. in relation to Facility A [              ]; and
    2. in relation to Facility B [              ].
24. "**Total Commitments**" means the aggregate of the Total Facility A Commitments and the Total Facility B Commitments, being [               ] at the date of this Agreement.
25. "**Total Facility A Commitments**" means the aggregate of the Facility A Commitments, being [         ] at the date of this Agreement.
26. "**Total Facility B Commitments**" means the aggregate of the Facility B Commitments, being [        ] at the date of this Agreement.
27. "**Transfer Certificate**" means a certificate substantially in the form set out in Schedule 4 (*Form of Transfer Certificate*) or any other form agreed between the Agent and the Company.
28. "**Transfer Date**" means, in relation to an assignment or a transfer, the later of:
    1. the proposed Transfer Date specified in the relevant Assignment Agreement or Transfer Certificate; and
    2. the date on which the Agent executes the relevant Assignment Agreement or Transfer Certificate.
29. "**Unpaid Sum**" means any sum due and payable but unpaid by an Obligor under the Finance Documents.
30. "**US**" means the United States of America.
31. "**US Tax Obligor**" means:
    1. a Borrower which is resident for tax purposes in the US; or
    2. an Obligor some or all of whose payments under the Finance Documents are from sources within the US for US federal income tax purposes.
32. "**Utilisation**" means a utilisation of a Facility.
33. "**Utilisation Date**" means the date of a Utilisation, being the date on which the relevant Loan is to be made.
34. "**Utilisation Request**" means a notice substantially in the form set out in Part I of Schedule 3 (*Requests*).
35. "**VAT**" means:
    1. any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
    2. any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere.
    3. Construction
       1. Unless a contrary indication appears, any reference in this Agreement to:
          1. the "**Agent**", the "**Arranger**", any "**Finance Party**", any "**Lender**", any "**Obligor**" or any "**Party**" 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;
          2. "**assets**" includes present and future properties, revenues and rights of every description;
          3. a Lender's "**cost of funds**" in relation to its participation in a Loan is a reference to the average cost (determined either on an actual or a notional basis) which that Lender would incur if it were to fund, from whatever source(s) it may reasonably select, an amount equal to the amount of that participation in that Loan for a period equal in length to the Interest Period of that Loan;[[34]](#footnote-35)
          4. a "**Finance Document**" or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
          5. a "**group of Lenders**" includes all the Lenders;
          6. "**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;
          7. 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);
          8. 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;
          9. a provision of law is a reference to that provision as amended or re-enacted from time to time; and
          10. a time of day is a reference to London time.
       2. Section, Clause and Schedule headings are for ease of reference only.
       3. 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.
       4. A Default (other than an Event of Default) is "**continuing**" if it has not been remedied or waived and an Event of Default is "**continuing**" if it has not been [remedied or waived]/[waived].
       5. A reference in this Agreement to a page or screen of an information service displaying a rate shall include:
          1. any replacement page of that information service which displays that rate; and
          2. the appropriate page of such other information service which displays that rate from time to time in place of that information service,

and, if such page or service ceases to be available, shall include any other page or service displaying that rate specified by the Agent after consultation with the Company.

* + 1. A reference in this Agreement to a Central Bank Rate shall include any successor rate to, or replacement rate for, that rate.
    2. Any Compounded Rate Supplement relating to a currency overrides anything relating to that currency in:
       1. Schedule 15 (*Compounded Rate Terms*); or
       2. any earlier Compounded Rate Supplement.
    3. [The Compounded Rate Terms for a Compounded Rate Currency override any terms in Schedule 13 (*Other Benchmarks*) which relate to that currency.]
    4. A Compounding Methodology Supplement relating to the Daily Non-Cumulative Compounded RFR Rate or the Cumulative Compounded RFR Rate overrides anything relating to that rate in:
       1. Schedule 16 (*Daily Non-Cumulative Compounded RFR Rate*) or Schedule 17 (*Cumulative Compounded RFR Rate*), as the case may be; or
       2. any earlier Compounding Methodology Supplement.
    5. 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.
  1. Currency symbols and definitions

["**$**", "**USD"** and "**dollars**" denote the lawful currency of the United States of America]/["**£**", "**GBP**" and "**sterling**" denote the lawful currency of the United Kingdom]/["**€**", "**EUR**" and "**euro**" denote the single currency of the Participating Member States]/["**CHF**" and "**Swiss francs**" denote the lawful currency of Switzerland]/[     ][[35]](#footnote-36).

* 1. Third party rights

[A person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.] / **OR**

* + 1. [Unless expressly provided to the contrary in a Finance Document a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce or to enjoy the benefit of any term of this Agreement.
    2. [Subject to Clause 35.3 (*Other exceptions*) but otherwise notwithstanding]/[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.]

**SECTION 2  
THE FACILITIES**

1. The Facilities
   1. The Facilities

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

* + 1. a multicurrency term loan facility in an aggregate amount equal to the Total Facility A Commitments; and
    2. a multicurrency revolving loan facility in an aggregate amount equal to the Total Facility B Commitments.
  1. Increase
     1. The Company may by giving prior notice to the Agent [by no later than the date falling [     ][[36]](#footnote-37)] after the effective date of a cancellation of the Commitments of a Lender in accordance with:
        1. Clause 8.1 (*Illegality*); or
        2. paragraph (a) of Clause 8.6 (*Right of replacement or repayment and cancellation 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 in the Base Currency of up to the amount of the Commitments relating to that Facility so cancelled as follows:

* + - 1. 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;
      2. each of the Obligors and any Increase Lender shall assume obligations towards one another and/or acquire rights against one another as the Obligors and the Increase Lender would have assumed and/or acquired had the Increase Lender been an Original Lender in respect of that part of the increased Commitments which it is to assume;[[37]](#footnote-38)
      3. 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;
      4. the Commitments of the other Lenders shall continue in full force and effect; and
      5. any increase in the Commitments relating to a Facility shall take effect on the date specified by the Company 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.
    1. 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.
    2. 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.
    3. Each Increase Lender, by executing the Increase Confirmation, confirms (for the avoidance of doubt) that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the increase becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as it would have been had it been an Original Lender.
    4. [The Company shall promptly on demand pay the Agent the amount of all costs and expenses (including legal fees) reasonably incurred by it in connection with any increase in Commitments under this Clause 2.2.]
    5. [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 24.4 (*Assignment or transfer fee*) if the increase was a transfer pursuant to Clause 24.6 (*Procedure for transfer*) and if the Increase Lender was a New Lender.]
    6. [The Company may pay to the Increase Lender a fee in the amount and at the times agreed between the Company and the Increase Lender in a letter between the Company and the Increase Lender setting out that fee. A reference in this Agreement to a Fee Letter shall include any letter referred to in this paragraph (g).]
    7. 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.
    8. Clause 24.5 (*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:
       1. an "**Existing Lender**" were references to all the Lenders immediately prior to the relevant increase;
       2. the "**New Lender**" were references to that "**Increase Lender**"; and
       3. a "**re-transfer**" and "**re-assignment**" were references to respectively a "**transfer**" and "**assignment**".
  1. Finance Parties' rights and obligations
     1. 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.
     2. The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor is a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with 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 an Obligor which relates to a Finance Party's participation in a Facility or its role under a Finance Document (including any such amount payable to the Agent on its behalf) is a debt owing to that Finance Party by that Obligor.
     3. A Finance Party may, except as specifically provided in the Finance Documents, separately enforce its rights under or in connection with the Finance Documents.

1. Purpose
   1. Purpose
      1. Each Borrower shall apply all amounts borrowed by it under Facility A towards [        ].
      2. Each Borrower shall apply all amounts borrowed by it under Facility B towards [        ].
   2. Monitoring

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

1. Conditions of Utilisation
   1. Initial conditions precedent
      1. No Borrower may deliver a Utilisation Request unless the Agent has received all of the documents and other evidence listed in Part I of Schedule 2 (*Conditions precedent*) in form and substance satisfactory to the Agent. The Agent shall notify the Company and the Lenders promptly upon being so satisfied.
      2. Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent gives the notification described in paragraph (a) above, the Lenders authorise (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.
   2. Further conditions precedent
      1. The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) if on the date of the Utilisation Request and on the proposed Utilisation Date:
         1. in the case of a Rollover Loan, no Event of Default is continuing or would result from the proposed Loan and, in the case of any other Loan, no Default is continuing or would result from the proposed Loan; and
         2. the Repeating Representations to be made by each Obligor are true in all material respects.
      2. The Lenders will only be obliged to comply with Clause 6.3 (*Change of currency*) if, on the first day of an Interest Period, no Default is continuing or would result from the change of currency and the Repeating Representations to be made by each Obligor are true in all material respects.
   3. Conditions relating to Optional Currencies
      1. A currency will constitute an Optional Currency in relation to a Loan if:
         1. it is readily available in the amount required and freely convertible into the Base Currency in the wholesale market for that currency at the Specified Time and on the Utilisation Date for that Loan; and
         2. it [is [                  ] or] has been approved by the Agent (acting on the instructions of all the Lenders) on or prior to receipt by the Agent of the relevant Utilisation Request or Selection Notice for that Loan. [[38]](#footnote-39)
      2. If the Agent has received a written request from the Company for a currency to be approved under paragraph (a)(ii) above, the Agent will confirm to the Company by the Specified Time:
         1. whether or not the Lenders have granted their approval; and
         2. if approval has been granted, the minimum amount (and, if required, integral multiples) for any subsequent Utilisation in that currency.
   4. Maximum number of Loans
      1. A Borrower may not deliver a Utilisation Request if as a result of the proposed Utilisation:
         1. [     ] or more Facility A Loans would be outstanding; or
         2. [     ] or more Facility B Loans would be outstanding.
      2. A Borrower may not request that a Facility A Loan be divided if, as a result of the proposed division, [      ] or more Facility A Loans would be outstanding.
      3. Any Loan made by a single Lender under Clause 6.2 (*Unavailability of a currency*) shall not be taken into account in this Clause 4.4.

**SECTION 3  
UTILISATION**

1. Utilisation
   1. Delivery of a Utilisation Request

A Borrower may utilise a Facility by delivery to the Agent of a duly completed Utilisation Request not later than the Specified Time.

* 1. Completion of a Utilisation Request
     1. Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:
        1. it identifies the Facility to be utilised;
        2. the proposed Utilisation Date is a Business Day within the Availability Period applicable to that Facility;
        3. the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*); and
        4. the proposed Interest Period complies with Clause 10 (*Interest Periods*).
     2. Only one Loan may be requested in each Utilisation Request.
  2. Currency and amount
     1. The currency specified in a Utilisation Request must be the Base Currency or an Optional Currency.
     2. The amount of the proposed Loan must be:
        1. if the currency selected is the Base Currency, a minimum of [           ] for Facility A and [             ] for Facility B or in either case, if less, the Available Facility; or
        2. [if the currency selected is [      ], a minimum of [ ] for Facility A and [    ] for Facility B or in either case, if less, the Available Facility; or]
        3. if the currency selected is an Optional Currency [other than [             ]], the minimum amount (and, if required, integral multiple) specified by the Agent pursuant to paragraph (b)(ii) of Clause 4.3 (*Conditions relating to Optional Currencies*) or, if less, the Available Facility; and
        4. in any event such that its Base Currency Amount is less than or equal to the Available Facility.
  3. Lenders' participation
     1. If the conditions set out in this Agreement have been met, [and subject to Clause 7.2 (*Repayment of Facility B Loans*),][[39]](#footnote-40) each Lender shall make its participation in each Loan available by the Utilisation Date through its Facility Office.
     2. The amount of each Lender's participation in each Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to making the Loan.
     3. The Agent shall determine the Base Currency Amount of each Loan which is to be made in an Optional Currency and shall notify each Lender of the amount, currency and the Base Currency Amount of each Loan, the amount of its participation in that Loan [and, in the case of a Facility B Loan and if different, the amount of that participation to be made available in accordance with Clause 29.1 (*Payments to the Agent*)],[[40]](#footnote-41) in each case by the Specified Time.
  4. Cancellation of Commitment
     1. The Facility A Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period for Facility A.
     2. The Facility B Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period for Facility B.

1. Optional Currencies
   1. Selection of currency
      1. A Borrower (or the Company on behalf of a Borrower) shall select the currency of a Loan:
         1. (in the case of an initial Utilisation) in a Utilisation Request; and
         2. (afterwards in relation to a Facility A Loan made to it) in a Selection Notice.
      2. If a Borrower (or the Company on behalf of a Borrower) fails to issue a Selection Notice in relation to a Facility A Loan, the Loan will remain denominated for its next Interest Period in the same currency as that in which it is denominated, pursuant to paragraph (a) above, for its current Interest Period.
      3. If a Borrower (or the Company on behalf of a Borrower) issues a Selection Notice requesting a change of currency and the first day of the requested Interest Period is not a Business Day for the new currency, the Agent shall promptly notify the Borrower and the Lenders and the Loan will remain in the existing currency (with Interest Periods running from one Business Day until the next Business Day) until the next day which is a Business Day for both currencies, on which day the requested Interest Period will begin.
   2. Unavailability of a currency

If before the Specified Time:

* + 1. a Lender notifies the Agent that the Optional Currency requested is not readily available to it in the amount required; or
    2. a Lender notifies the Agent that compliance with its obligation to participate in a Loan in the proposed Optional Currency would contravene a law or regulation applicable to it,

the Agent will give notice to the relevant Borrower to that effect by the Specified Time. In this event, any Lender that gives notice pursuant to this Clause 6.2 will be required to participate in the Loan in the Base Currency (in an amount equal to that Lender's proportion of the Base Currency Amount or, in respect of a Rollover Loan, an amount equal to that Lender's proportion of the Base Currency Amount of the Rollover Loan that is due to be made) and its participation will be treated as a separate Loan denominated in the Base Currency during that Interest Period.

* 1. Change of currency
     1. If a Facility A Loan is to be denominated in different currencies during two successive Interest Periods:
        1. if the currency for the second Interest Period is an Optional Currency, the amount of the Loan in that Optional Currency will be calculated by the Agent as the amount of that Optional Currency equal to the Base Currency Amount of the Loan at the Agent's Spot Rate of Exchange at the Specified Time;
        2. if the currency for the second Interest Period is the Base Currency, the amount of the Loan will be equal to the Base Currency Amount;
        3. (unless the Agent and the Borrower agree otherwise in accordance with paragraph (b) below) the Borrower that has borrowed the Loan shall repay it on the last day of the first Interest Period in the currency in which it was denominated, pursuant to this Clause 6, for that Interest Period; and
        4. (subject to Clause 4.2 (*Further conditions precedent*)) the Lenders shall re-advance the Loan in the new currency in accordance with Clause 6.5 (*Agent's calculations*).
     2. If the Agent and the Borrower that has borrowed the Facility A Loan agree, the Agent shall:
        1. apply the amount paid to it by the Lenders pursuant to paragraph (a)(iv) above (or so much of that amount as is necessary) in or towards purchase of an amount in the currency in which the Facility A Loan is denominated, pursuant to this Clause 6, for the first Interest Period; and
        2. use the amount it purchases in or towards satisfaction of the relevant Borrower's obligations under paragraph (a)(iii) above.
     3. If the amount purchased by the Agent pursuant to paragraph (b)(i) above is less than the amount required to be repaid by the relevant Borrower, the Agent shall promptly notify that Borrower and that Borrower shall, on the last day of the first Interest Period, pay an amount to the Agent (in the currency of the outstanding Facility A Loan for the first Interest Period) equal to the difference.
     4. If paragraph (b) above applies and any part of the amount paid to the Agent by the Lenders pursuant to paragraph (a)(iv) above is not needed to purchase the amount required to be repaid by the relevant Borrower, the Agent shall promptly notify that Borrower and pay that Borrower, on the last day of the first Interest Period that part of that amount (in the new currency).
  2. Same Optional Currency during successive Interest Periods
     1. If a Facility A Loan is to be denominated, pursuant to this Clause 6, in the same Optional Currency during two successive Interest Periods, the Agent shall calculate the amount of the Facility A Loan in the Optional Currency for the second of those Interest Periods (by calculating the amount of Optional Currency equal to the Base Currency Amount of that Facility A Loan at the Agent's Spot Rate of Exchange at the Specified Time) and (subject to paragraph (b) below):
        1. if the amount calculated is less than the existing amount of that Facility A Loan in the Optional Currency during the first Interest Period, promptly notify the Borrower that has borrowed that Facility A Loan and that Borrower shall pay, on the last day of the first Interest Period, an amount equal to the difference; or
        2. if the amount calculated is more than the existing amount of that Facility A Loan in the Optional Currency during the first Interest Period, promptly notify each Lender and, if no [Default/Event of Default] is continuing, each Lender shall, on the last day of the first Interest Period, pay its participation in an amount equal to the difference.
     2. If the calculation made by the Agent pursuant to paragraph (a) above shows that the amount of the Facility A Loan in the Optional Currency for the second of those Interest Periods converted into the Base Currency at the Agent's Spot Rate of Exchange at the Specified Time[[41]](#footnote-42) has increased or decreased by less than [          ] per cent. compared to its Base Currency Amount (taking into account any payments made pursuant to paragraph (a) above), no notification shall be made by the Agent and no payment shall be required under paragraph (a) above.
  3. Agent's calculations
     1. All calculations made by the Agent pursuant to this Clause 6 will take into account any repayment, prepayment, consolidation or division of Facility A Loans to be made on the last day of the first Interest Period.
     2. Each Lender's participation in a Loan will, subject to paragraph (a) above, be determined in accordance with paragraph (b) of Clause 5.4 (*Lenders' participation).*

**SECTION 4  
REPAYMENT, PREPAYMENT AND CANCELLATION**

1. Repayment
   1. Repayment of Facility A Loans
      1. [                               ].
      2. No Borrower may reborrow any part of Facility A which is repaid.
   2. Repayment of Facility B Loans
      1. Each Borrower which has drawn a Facility B Loan shall repay that Loan on the last day of its Interest Period.
      2. [Without prejudice to each Borrower's obligation under paragraph (a) above, if:
         1. one or more Facility B Loans are to be made available to a Borrower:
            1. on the same day that a maturing Facility B Loan is due to be repaid by that Borrower;
            2. in the same currency as the maturing Facility B Loan (unless it arose as a result of the operation of Clause 6.2 (*Unavailability of a currency*)); and
            3. in whole or in part for the purpose of refinancing the maturing Facility B Loan; and
         2. the proportion borne by each Lender's participation in the maturing Facility B Loan to the amount of that maturing Facility B Loan is the same as the proportion borne by that Lender's participation in the new Facility B Loans to the aggregate amount of those new Facility B Loans,

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

* + - * 1. if the amount of the maturing Facility B Loan exceeds the aggregate amount of the new Facility B Loans:

the relevant Borrower will only be required to make a payment under Clause 29.1 (*Payments to the Agent*) in an amount in the relevant currency equal to that excess; and

each Lender's participation in the new Facility B Loans shall be treated as having been made available and applied by the Borrower in or towards repayment of that Lender's participation in the maturing Facility B Loan and that Lender will not be required to make a payment under Clause 29.1 (*Payments to the Agent*) in respect of its participation in the new Facility B Loans; and

* + - * 1. if the amount of the maturing Facility B Loan is equal to or less than the aggregate amount of the new Facility B Loans:

the relevant Borrower will not be required to make a payment under Clause 29.1 (*Payments to the Agent*); and

each Lender will be required to make a payment under Clause 29.1 (*Payments to the Agent*) in respect of its participation in the new Facility B Loans only to the extent that its participation in the new Facility B Loans exceeds that Lender's participation in the maturing Facility B Loan and the remainder of that Lender's participation in the new Facility B Loans shall be treated as having been made available and applied by the Borrower in or towards repayment of that Lender's participation in the maturing Facility B Loan.]

* 1. Reduction of Facility B

[                              ].

1. Prepayment and Cancellation
   1. Illegality

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

* + 1. that Lender shall promptly notify the Agent upon becoming aware of that event;
    2. upon the Agent notifying the Company, each Available Commitment of that Lender will be immediately cancelled; and
    3. to the extent that the Lender's participation has not been transferred pursuant to paragraph (d) of Clause 8.6 (*Right of replacement or repayment and cancellation in relation to a single Lender*), each Borrower shall repay that Lender's participation in the Loans made to that Borrower on the last day of the Interest Period for each Loan occurring after the Agent has notified the Company or, if earlier, the date specified by the Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law) and that Lender's corresponding Commitment(s) shall be immediately cancelled in the amount of the participations repaid.
  1. Change of control
     1. If [[     ] ceases to control the Company]/[any person or group of persons acting in concert gains control of the Company]:
        1. the Company shall promptly notify the Agent upon becoming aware of that event;
        2. [a Lender shall not be obliged to fund a Utilisation (except for a Rollover Loan);] and
        3. if [the Majority Lenders so require]/[a Lender so requires and notifies the Agent within [   ] days of the Company notifying the Agent of the event], the Agent shall, by not less than [   ] days' notice to the Company, cancel each Available Commitment of [each]/[that] Lender and declare [the participation of that Lender in] all Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents immediately due and payable, whereupon each such Available Commitment will be immediately cancelled, [each Facility]/[any Commitment of that Lender] shall immediately cease to be available for further utilisation and all such Loans, accrued interest and other amounts shall become immediately due and payable.
     2. For the purpose of paragraph (a) above "**control**" means [         ].
     3. [For the purpose of paragraph (a) above "**acting in concert**" means [        ].]
  2. Voluntary cancellation

The Company may, if it gives the Agent not less than [    ] 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 [         ]) of an Available Facility. Any cancellation under this Clause 8.3 shall reduce the Commitments of the Lenders rateably under that Facility.

* 1. Voluntary prepayment of Facility A Loans
     1. A Borrower to which a Facility A Loan has been made may, if it gives the Agent not less than:
        1. in the case of a Term Rate Loan, [     ] Business Days' (or such shorter period as the Majority Lenders may agree) prior notice; or
        2. in the case of a Compounded Rate Loan, [     ] RFR Banking Days' (or such shorter period as the Majority Lenders [and the Agent] may agree) prior notice,[[42]](#footnote-43)

prepay the whole or any part of any Facility A Loan (but, if in part, being an amount that reduces the Base Currency Amount of the Facility A Loan by a minimum amount of [         ]).

* + 1. A Facility A Loan may only be prepaid after the last day of the Availability Period for Facility A (or, if earlier, the day on which the applicable Available Facility is zero).
    2. [Any prepayment under this Clause 8.4 shall satisfy the obligations under Clause 7.1 (*Repayment of Facility A Loans*) in [                          ] order.]
  1. Voluntary prepayment of Facility B Loans

The Borrower to which a Facility B Loan has been made may, if it gives the Agent not less than:

* + 1. in the case of a Term Rate Loan [         ] Business Days' (or such shorter period as the Majority Lenders may agree) prior notice; or
    2. in the case of a Compounded Rate Loan, [     ] RFR Banking Days' (or such shorter period as the Majority Lenders [and the Agent] may agree) prior notice,[[43]](#footnote-44)

prepay the whole or any part of a Facility B Loan (but if in part, being an amount that reduces the Base Currency Amount of the Facility B Loan by a minimum amount of [        ]).

* 1. Right of replacement or repayment and cancellation in relation to a single Lender
     1. If:
        1. any sum payable to any Lender by an Obligor is required to be increased under paragraph (c) of Clause 13.2 (*Tax gross-up*); or
        2. any Lender claims indemnification from the Company under Clause 13.3 (*Tax indemnity*) or Clause 14.1 (*Increased costs*),

the Company 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 or give the Agent notice of its intention to replace that Lender in accordance with paragraph (d) below.

* + 1. On receipt of a notice of cancellation referred to in paragraph (a) above, the Available Commitment(s) of that Lender shall be immediately reduced to zero.
    2. On the last day of each Interest Period which ends after the Company has given notice of cancellation under paragraph (a) above (or, if earlier, the date specified by the Company in that notice), each Borrower to which a Loan is outstanding shall repay that Lender's participation in that Loan and that Lender's corresponding Commitment(s) shall be immediately cancelled in the amount of the participations repaid.
    3. If:
       1. any of the circumstances set out in paragraph (a) above apply to a Lender; or
       2. an Obligor becomes obliged to pay any amount in accordance with Clause 8.1 (*Illegality*) to any Lender,

the Company may, on [ ] Business Days' prior notice to the Agent and that Lender, replace that Lender by requiring that Lender to (and, to the extent permitted by law, that Lender shall) transfer pursuant to Clause 24 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement to an Eligible Institution which confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with Clause 24 (*Changes to the Lenders*) for a purchase price in cash payable at the time of the transfer in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Loans and all accrued interest [(to the extent that the Agent has not given a notification under Clause 24.10 (*Pro rata interest settlement*))], Break Costs and other amounts payable in relation thereto under the Finance Documents.

* + 1. The replacement of a Lender pursuant to paragraph (d) above shall be subject to the following conditions:
       1. the Company shall have no right to replace the Agent;
       2. neither the Agent nor any Lender shall have any obligation to find a replacement Lender;
       3. in no event shall the Lender replaced under paragraph (d) above be required to pay or surrender any of the fees received by such Lender pursuant to the Finance Documents; and
       4. the Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (d) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer.
    2. A Lender shall perform the checks described in paragraph (e)(iv) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (d) above and shall notify the Agent and the Company when it is satisfied that it has complied with those checks.
  1. Restrictions
     1. Any notice of cancellation or prepayment given by any Party under this Clause 8 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.
     2. 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.[[44]](#footnote-45)
     3. No Borrower may reborrow any part of Facility A which is prepaid.
     4. Unless a contrary indication appears in this Agreement, any part of Facility B which is prepaid or repaid may be reborrowed in accordance with the terms of this Agreement.
     5. The Borrowers 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.
     6. Subject to Clause 2.2 (*Increase*), no amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
     7. If the Agent receives a notice under this Clause 8 it shall promptly forward a copy of that notice to either the Company or the affected Lender, as appropriate.
     8. If all or part of any Lender's participation in a Loan under a Facility is repaid or prepaid and is not available for redrawing (other than by operation of Clause 4.2 (*Further conditions precedent*)), an amount of that Lender's Commitment (equal to the Base Currency Amount of the amount of the participation which is repaid or prepaid) in respect of that Facility will be deemed to be cancelled on the date of repayment or prepayment.
  2. Application of prepayments

Any prepayment of a Loan pursuant to [Clause 8.2 (*Change of control*),][[45]](#footnote-46) Clause 8.4 (*Voluntary prepayment of Facility A Loans*) or Clause 8.5 (*Voluntary prepayment of Facility B Loans*) shall be applied *pro rata* to each Lender's participation in that Loan.

**SECTION 5  
COSTS OF UTILISATION**

9A. **RATE SWITCH[[46]](#footnote-47)**

9A.1 **Switch to Compounded Reference Rate**

Subject to Clause 9A.2 (*Delayed switch for existing Term Rate Loans*), on and from the Rate Switch Date for a Rate Switch Currency:

(a) use of the Compounded Reference Rate will replace the use of the applicable Term Reference Rate for the calculation of interest for Loans in that Rate Switch Currency; and

(b) any Loan or Unpaid Sum in that Rate Switch Currency shall be a "Compounded Rate Loan" and Clause 9.2 (*Calculation of interest – Compounded Rate Loans*) shall apply to each such Loan or Unpaid Sum.

9A.2 **Delayed switch for existing Term Rate Loans**

If the Rate Switch Date for a Rate Switch Currency falls before the last day of an Interest Period for a Term Rate Loan in that currency:

(a) that Loan shall continue to be a Term Rate Loan for that Interest Period and Clause 9.1 (*Calculation of interest – Term Rate Loans*) shall continue to apply to that Loan for that Interest Period;

(b) any provision of this Agreement which is expressed to relate to a Compounded Rate Currency shall not apply in relation to that Loan for that Interest Period; and

(c) on and from the first day of the next Interest Period (if any) for that Loan:

(i) that Loan shall be a "Compounded Rate Loan"; and

(ii) Clause 9.2 (*Calculation of interest – Compounded Rate Loans*) shall apply to that Loan.

9A.3 **[Early termination of Interest Periods for existing Term Rate Loans**

If:

(a) an Interest Period for a Term Rate Loan would otherwise end on a day which falls after the Rate Switch Date for the currency of that Loan; and

(b) prior to the date of selection of that Interest Period:

(i) the Backstop Rate Switch Date for that currency was scheduled to occur during that Interest Period; or

(ii) notice of a Rate Switch Trigger Event Date for that currency falling during that Interest Period had been given pursuant to paragraph (a)(ii) of Clause 9A.4 (*Notifications by Agent*),

that Interest Period will instead end on the Rate Switch Date for the currency of that Loan.[[47]](#footnote-48)]

9A.4 **Notifications by Agent**

(a) Following the occurrence of a Rate Switch Trigger Event for a Rate Switch Currency, the Agent shall:

(i) promptly upon becoming aware of the occurrence of that Rate Switch Trigger Event, notify the Company and the Lenders of that occurrence; and

(ii) promptly upon becoming aware of the date of the Rate Switch Trigger Event Date applicable to that Rate Switch Trigger Event, notify the Company and the Lenders of that date.

(b) The Agent shall, promptly upon becoming aware of the occurrence of the Rate Switch Date for a Rate Switch Currency, notify the Company and the Lenders of that occurrence.

1. Interest
   1. Calculation of interest – Term Rate Loans

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

* + 1. Margin; and
    2. Term Reference Rate.
  1. Calculation of interest – Compounded Rate Loans [[48]](#footnote-49) [[49]](#footnote-50)
     1. The rate of interest on each Compounded Rate Loan for any day during an Interest Period is the percentage rate per annum which is the aggregate of the applicable:
        1. Margin;[[50]](#footnote-51) and
        2. Compounded Reference Rate[[51]](#footnote-52) for that day.[[52]](#footnote-53)
     2. If any day during an Interest Period for a Compounded Rate Loan is not an RFR Banking Day, the rate of interest on that Compounded Rate Loan for that day will be the rate applicable to the immediately preceding RFR Banking Day.[[53]](#footnote-54)
  2. Payment of interest

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

* 1. Default interest
     1. If an Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is [    ] 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 9.4 shall be immediately payable by the Obligor on demand by the Agent.
     2. If any overdue amount consists of all or part of a Term Rate Loan and which became due on a day which was not the last day of an Interest Period relating to that Loan:
        1. the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
        2. the rate of interest applying to the overdue amount during that first Interest Period shall be [   ] per cent. per annum higher than the rate which would have applied if the overdue amount had not become due.[[54]](#footnote-55)
     3. 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.
  2. Notifications[[55]](#footnote-56)
     1. The Agent shall promptly notify the relevant Lenders and the relevant Borrower of the determination of a rate of interest relating to a Term Rate Loan.
     2. The Agent shall promptly upon a Compounded Rate Interest Payment being determinable notify:
        1. the relevant Borrower of that Compounded Rate Interest Payment;
        2. each relevant Lender of the proportion of that Compounded Rate Interest Payment which relates to that Lender's participation in the relevant Compounded Rate Loan; and
        3. the relevant Lenders and the relevant Borrower of:
           1. each applicable rate of interest relating to the determination of that Compounded Rate Interest Payment; and
           2. to the extent it is then determinable, the Market Disruption Rate (if any) relating to the relevant Compounded Rate Loan.

This paragraph (b) shall not apply to any Compounded Rate Interest Payment determined pursuant to Clause 11.5 (*Cost of funds*)[[56]](#footnote-57).

* + 1. The Agent shall promptly notify the relevant Borrower of each Funding Rate relating to a Loan.
    2. The Agent shall promptly notify the relevant Lenders and the relevant Borrower of the determination of a rate of interest relating to a Compounded Rate Loan to which Clause 11.5 (*Cost of funds*) applies.
    3. This Clause 9.5 shall not require the Agent to make any notification to any Party on a day which is not a Business Day.

1. Interest Periods
   1. Selection of Interest Periods
      1. A Borrower (or the Company on behalf of a Borrower) may select an Interest Period for a Loan in the Utilisation Request for that Loan or (if the Loan has already been borrowed) in a Selection Notice.
      2. Each Selection Notice for a Facility A Loan is irrevocable and must be delivered to the Agent by the Borrower (or the Company on behalf of a Borrower) to which that Facility A Loan was made not later than the Specified Time.
      3. If a Borrower (or the Company) fails to deliver a Selection Notice to the Agent in accordance with paragraph (b) above, the relevant Interest Period will, subject to Clause 10.2 (*Changes to Interest Periods*), be [one] Month or, if the Loan is [in a Non-LIBOR Currency or is] a Compounded Rate Loan, the period specified [in respect of that currency in Schedule 13 (*Other Benchmarks*) or] in the applicable Compounded Rate Terms.
      4. Subject to this Clause 10, a Borrower (or the Company) may select an Interest Period of [[ ] or [ ]] Months if the Loan is not [in a Non-LIBOR Currency or is not] a Compounded Rate Loan or, if the Loan is [in a Non-LIBOR Currency or is] a Compounded Rate Loan, of any period specified [in respect of that currency in Schedule 13 (*Other Benchmarks*) or] in the applicable Compounded Rate Terms or, in either case, of any other period agreed between the Company, the Agent and all the Lenders in relation to the relevant Loan.[[57]](#footnote-58) [[58]](#footnote-59) [In addition a Borrower (or the Company on its behalf) may select an Interest Period of:
         1. (in relation to Facility A) a period of less than [one] Month, if necessary to ensure that there are sufficient Facility A Loans (with an aggregate Base Currency Amount equal to or greater than the Repayment Instalment) which have an Interest Period ending on a Facility A Repayment Date for the Borrowers to make the Repayment Instalment due on that date; or
         2. (in relation to Facility B) a period of less than [one] Month, if necessary to ensure that (when aggregated with the Available Facility for Facility B) there are sufficient Facility B Loans (with an aggregate Base Currency Amount equal to or greater than the Reduction Instalment) which have an Interest Period ending on a Reduction Date for the scheduled reduction to occur.]
      5. An Interest Period for a Loan shall not extend beyond the Termination Date applicable to its Facility.
      6. Each Interest Period for a Facility A Loan shall start on the Utilisation Date or (if already made) on the last day of its preceding Interest Period.
      7. A Facility B Loan has one Interest Period only.
      8. No Interest Period for a Compounded Rate Loan shall be longer than six Months.[[59]](#footnote-60)
      9. [No Interest Period for a Term Rate Loan in a Rate Switch Currency for which the applicable Term Reference Rate is LIBOR shall extend beyond 31 December 2021.][[60]](#footnote-61)
   2. Changes to Interest Periods
      1. [Prior to the earlier of:
         1. the Agent determining the interest rate for a Facility A Loan; and
         2. the first day of an Interest Period for a Facility A Loan,

the Agent may shorten an Interest Period for any Facility A Loan to ensure there are sufficient Facility A Loans (with an aggregate Base Currency Amount equal to or greater than the Repayment Instalment) which have an Interest Period ending on a Facility A Repayment Date for the Borrowers to make the Repayment Instalment due on that date.]

* + 1. [Prior to the earlier of:
       1. the Agent determining the interest rate for a Facility B Loan; and
       2. the first day of an Interest Period for a Facility B Loan,

the Agent may shorten the Interest Period for any Facility B Loan to ensure that, when aggregated with the Available Facility for Facility B, there are sufficient Facility B Loans (with an aggregate Base Currency Amount equal to or greater than the Reduction Instalment) which have an Interest Period ending on a Reduction Date for the scheduled reduction to occur.]

* + 1. If the Agent makes any of the changes to an Interest Period referred to in this Clause 10.2, it shall promptly notify the Company and the Lenders.
  1. Non-Business Days [[61]](#footnote-62)
     1. Other than where paragraph (b) below applies, 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).
     2. If the Loan is [in a Non-LIBOR Currency or is] a Compounded Rate Loan and there are rules specified as "Business Day Conventions" [for the currency of that Loan in Schedule 13 (*Other Benchmarks*) or] in the applicable Compounded Rate Terms, those rules shall apply to each Interest Period for that Loan.]
  2. Consolidation and division of Facility A Loans
     1. Subject to paragraph (b) below, if two or more Interest Periods:
        1. relate to Facility A Loans in the same currency made to the same Borrower; and
        2. end on the same date,

those Facility A Loans will, unless that Borrower (or the Company on its behalf) specifies to the contrary in the Selection Notice for the next Interest Period, be consolidated into, and treated as, a single Facility A Loan on the last day of the Interest Period.

* + 1. Subject to Clause 4.4 (*Maximum number of Loans*) and Clause 5.3 (*Currency and amount*), if a Borrower (or the Company on its behalf) requests in a Selection Notice that a Facility A Loan be divided into two or more Facility A Loans, that Facility A Loan will, on the last day of its Interest Period, be so divided with Base Currency Amounts specified in that Selection Notice, being an aggregate Base Currency Amount equal to the Base Currency Amount of the Facility A Loan immediately before its division.

1. Changes to the Calculation of Interest
   1. [[Unavailability of Screen Rate prior to Rate Switch Date[[62]](#footnote-63)]
      1. *Interpolated Screen Rate*: If no Screen Rate is available for LIBOR [or, if applicable, EURIBOR] [or, if applicable, the Benchmark Rate] for the Interest Period of a Loan, the applicable LIBOR [or EURIBOR] [or Benchmark Rate] shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of that Loan.
      2. *Shortened Interest Period*: If no Screen Rate is available for LIBOR [or, if applicable, EURIBOR] [or, if applicable, the Benchmark Rate] for:
         1. the currency of a Loan; or
         2. the Interest Period of a Loan and it is not possible to calculate the Interpolated Screen Rate,

the Interest Period of that Loan shall (if it is longer than the applicable Fallback Interest Period) be shortened to the applicable Fallback Interest Period and the applicable LIBOR [or EURIBOR] [or Benchmark Rate] for that shortened Interest Period shall be determined pursuant to [the definition of "**LIBOR**"] / [the relevant definition].

* + 1. *Shortened Interest Period and Historic Screen Rate*: If the Interest Period of a Loan is, after giving effect to paragraph (b) above, either the applicable Fallback Interest Period or shorter than the applicable Fallback Interest Period and, in either case, no Screen Rate is available for LIBOR [or, if applicable EURIBOR] [or, if applicable, the Benchmark Rate] for:
       1. the currency of that Loan; or
       2. the Interest Period of that Loan and it is not possible to calculate the Interpolated Screen Rate,

the applicable LIBOR [or EURIBOR] [or Benchmark Rate] shall be the Historic Screen Rate for that Loan.

* + 1. *Shortened Interest Period and Interpolated Historic Screen Rate*: If paragraph (c) above applies but no Historic Screen Rate is available for the Interest Period of the Loan, the applicable LIBOR [or EURIBOR] [or Benchmark Rate] shall be the Interpolated Historic Screen Rate for a period equal in length to the Interest Period of that Loan.
    2. [*Reference Bank Rate*:] / [*Cost of funds*:] If paragraph (d) above applies but it is not possible to calculate the Interpolated Historic Screen Rate, the Interest Period of that Loan shall, if it has been shortened pursuant to paragraph (b) above, revert to its previous length and [the applicable LIBOR [or EURIBOR] [or Benchmark Rate] shall be the Reference Bank Rate as of the Specified Time for the currency of that Loan and for a period equal in length to the Interest Period of that Loan] / [there shall be no LIBOR [or EURIBOR] [or Benchmark Rate] for that Loan and Clause 11.5 (*Cost of funds*) shall apply to that Loan for that Interest Period].
    3. [*Cost of funds*: If paragraph (e) above applies but no Reference Bank Rate is available for the relevant currency or Interest Period there shall be no LIBOR [or EURIBOR] [or Benchmark Rate] for that Loan and Clause 11.5 (*Cost of funds*) shall apply to that Loan for that Interest Period.]] / **OR**

11.1 **[[Unavailability of Screen Rate prior to Rate Switch Date]**

* + 1. *Interpolated Screen Rate*: If no Screen Rate is available for LIBOR [or, if applicable, EURIBOR] [or, if applicable, the Benchmark Rate] for the Interest Period of a Loan, the applicable LIBOR [or EURIBOR] [or Benchmark Rate] shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of that Loan.
    2. [*Reference Bank Rate*:] / [*Cost of funds*:] If no Screen Rate is available for LIBOR [or, if applicable, EURIBOR] [or, if applicable, the Benchmark Rate] for:
       1. the currency of a Loan; or
       2. the Interest Period of a Loan and it is not possible to calculate the Interpolated Screen Rate,

[the applicable LIBOR [or EURIBOR] [or Benchmark Rate] shall be the Reference Bank Rate as of the Specified Time for the currency of that Loan and for a period equal in length to the Interest Period of that Loan] / [there shall be no LIBOR [or EURIBOR] [or Benchmark Rate] for that Loan and Clause 11.5 (*Cost of funds*) shall apply to that Loan for that Interest Period].

* + 1. [*Cost of funds*: If paragraph (b) above applies but no Reference Bank Rate is available for the relevant currency or Interest Period there shall be no LIBOR [or EURIBOR] [or Benchmark Rate] for that Loan and Clause 11.5 (*Cost of funds*) shall apply to that Loan for that Interest Period.]][[63]](#footnote-64)
  1. [Calculation of Reference Bank Rate[[64]](#footnote-65)
     1. Subject to paragraph (b) below, if LIBOR [or EURIBOR] [or a Benchmark Rate] is to be determined on the basis of a Reference Bank Rate but a Reference Bank does not supply a quotation by the Specified Time, the Reference Bank Rate shall be calculated on the basis of the quotations of the remaining Reference Banks.
     2. If at or about:
        1. [noon] on the Quotation Day[; or
        2. in the case of a Benchmark Rate, the time specified in respect of the relevant currency in Schedule 13 (*Other Benchmarks*),]

none or only one of the Reference Banks supplies a quotation, there shall be no Reference Bank Rate for the relevant Interest Period.]

* 1. Interest calculation if no RFR or Central Bank Rate

If:

* + 1. there is no applicable RFR or Central Bank Rate for the purposes of calculating the Daily Non-Cumulative Compounded RFR Rate for an RFR Banking Day during an Interest Period for a Compounded Rate Loan; and
    2. "***Cost of funds will apply as a fallback***" is specified in respect of that Loan in the Compounded Rate Terms for that Loan,[[65]](#footnote-66)

Clause 11.5 (*Cost of funds*) shall apply to that Loan for that Interest Period.[[66]](#footnote-67)

* 1. Market disruption[[67]](#footnote-68)
     1. In the case of a Term Rate Loan, if:
        1. before close of business in London on the Quotation Day for the relevant Interest Period[; or
        2. in the case of a Loan in a Non-LIBOR Currency, before the time specified in respect of that currency in Schedule 13 (*Other Benchmarks*)],

the Agent receives notifications from a Lender or Lenders (whose participations in a Loan exceed [               ] per cent. of that Loan) that its cost of funds relating to its participation in that Loan would be in excess of LIBOR [or, if applicable, EURIBOR] [or, if applicable, the Benchmark Rate] then Clause 11.5 (*Cost of funds*) shall apply to that Loan for the relevant Interest Period.

* + 1. In the case of a Compounded Rate Loan, if:
       1. a Market Disruption Rate is specified in the Compounded Rate Terms for that Loan; and
       2. before the Reporting Time for that Loan, the Agent receives notifications from a Lender or Lenders (whose participations in a Loan exceed [               ] per cent. of that Loan) that its cost of funds relating to its participation in that Loan would be in excess of that Market Disruption Rate,

then Clause 11.5 (*Cost of funds*) shall apply to that Loan for the relevant Interest Period.[[68]](#footnote-69)

* 1. Cost of funds[[69]](#footnote-70)
     1. If this Clause 11.5 applies to a Loan for an Interest Period neither Clause 9.1 (*Calculation of interest - Term Rate Loans*) nor Clause 9.2 (*Calculation of interest - Compounded Rate Loans*) shall apply to that Loan for that Interest Period and the rate of interest on [each Lender's share of][[70]](#footnote-71) that Loan for that Interest Period shall be the percentage rate per annum which is the sum of:
        1. the applicable Margin; and
        2. [the rate notified to the Agent by that Lender] / [the weighted average of the rates notified to the Agent by each Lender] as soon as practicable and in any event:
           1. in relation to a Term Rate Loan, within [ ] Business Days of the first day of that Interest Period] / [by close of business on the date falling [    ] Business Days after the Quotation Day] (or, if earlier, on the date falling [ ] Business Days before the date on which interest is due to be paid in respect of that Interest Period); or
           2. in relation to a Compounded Rate Loan, by the Reporting Time for that Loan,

to be that which expresses as a percentage rate per annum its cost of funds relating to its participation in that Loan.

* + 1. If this Clause 11.5 applies and the Agent or the Company so requires, the Agent and the Company shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.
    2. Any alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Company, be binding on all Parties.
    3. [If this Clause 11.5 applies pursuant to Clause ‎11.4 (*Market disruption*) and:
       1. in relation to a Term Rate Loan:
          1. a Lender's Funding Rate is less than LIBOR [or, in relation to any Loan in euro, EURIBOR] [or, in relation to any Loan in a Non-LIBOR Currency, the Benchmark Rate]; or
          2. a Lender does not supply a quotation by the time specified in paragraph (a)(ii) above,

that Lender's cost of funds relating to its participation in that Loan for that Interest Period shall be deemed, for the purposes of paragraph (a) above, to be LIBOR [or, in relation to a Loan in euro, EURIBOR] [or, in relation to a Loan in a Non-LIBOR Currency, the Benchmark Rate],]; or

* + - 1. in relation to a Compounded Rate Loan:
         1. a Lender's Funding Rate is less than the relevant Market Disruption Rate; or
         2. a Lender does not supply a quotation by the time specified in paragraph (a)(ii) above,

that Lender's cost of funds relating to its participation in that Loan for that Interest Period shall be deemed, for the purposes of paragraph (a) above, to be the Market Disruption Rate for that Loan.]

* + 1. [Subject to paragraph (d) above] if this Clause 11.5 applies but any Lender does not supply a quotation by the time specified in paragraph ‎(a)(ii) above the rate of interest shall be calculated on the basis of the quotations of the remaining Lenders.][[71]](#footnote-72)
    2. If this Clause 11.5 applies the Agent shall, as soon as is practicable, notify the Company.
  1. Break Costs[[72]](#footnote-73)
     1. Subject to paragraph (b) below, each 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 that Borrower on a day prior to the last day of an Interest Period for that Loan or Unpaid Sum.
     2. Paragraph (a) above shall apply in respect of a Compounded Rate Loan if an amount is specified as Break Costs in the applicable Compounded Rate Terms.
     3. 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.

1. Fees
   1. Commitment fee
      1. The Company shall pay to the Agent (for the account of each Lender) a fee [in the Base Currency] computed at the rate of:
         1. [            ] per cent. per annum on that Lender's Available Commitment under Facility A for the Availability Period applicable to Facility A; and
         2. [            ] per cent. per annum on that Lender's Available Commitment under Facility B for the Availability Period applicable to Facility B.
      2. The accrued commitment fee is payable on the last day of each successive period of three Months which ends during the relevant Availability Period, on the last day of the Availability Period and, if cancelled in full, on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.
   2. Arrangement fee

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

* 1. Agency fee

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

**SECTION 6  
ADDITIONAL PAYMENT OBLIGATIONS**

1. Tax Gross-Up[[73]](#footnote-74) and Indemnities
   1. Definitions

In this Agreement:

1. "**Borrower DTTP Filing**" means an HM Revenue & Customs' Form DTTP2 duly completed and filed by the relevant Borrower, which:
   1. where it relates to a Treaty Lender that is an Original Lender, contains the scheme reference number and jurisdiction of tax residence stated opposite that Lender's name in Part II of Schedule 1 (*The Original Parties*), and
      1. where the Borrower is an Original Borrower, is filed with HM Revenue & Customs within 30 days of the date of this Agreement; or
      2. where the Borrower is an Additional Borrower, is filed with HM Revenue & Customs within 30 days of the date on which that Borrower becomes an Additional Borrower; or
   2. where it relates to a Treaty Lender that is not an Original Lender, contains the scheme reference number and jurisdiction of tax residence stated in respect of that Lender in the documentation which it executes on becoming a Party as a Lender; and
      1. where the Borrower is a Borrower as at the date on which that Treaty Lender becomes a Party as a Lender, is filed with HM Revenue & Customs within 30 days of that date; or
      2. where the Borrower is not a Borrower as at the date on which that Treaty Lender becomes a Party as a Lender, is filed with HM Revenue & Customs within 30 days of the date on which that Borrower becomes an Additional Borrower.
2. "**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.
3. "**Qualifying Lender**" means:
   1. a Lender which is beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document and is:
      1. a Lender:
         1. which is a bank (as defined for the purpose of section 879 of the ITA) making an advance under a Finance Document and is within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance or would be within such charge as respects such payments apart from section 18A of the CTA; or
         2. in respect of an advance made under a Finance Document by a person that was a bank (as defined for the purpose of section 879 of the ITA) at the time that that advance was made and within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance; or
      2. [a Lender which is:
         1. a company resident in the United Kingdom for United Kingdom tax purposes;
         2. a partnership each member of which is:
            1. a company so resident in the United Kingdom; or
            2. a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA;
         3. a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company; or]
      3. a Treaty Lender[; or
   2. a Lender which is a building society (as defined for the purpose of section 880 of the ITA) making an advance under a Finance Document].
4. ["**Tax Confirmation**" means a confirmation by a Lender that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:
   1. a company resident in the United Kingdom for United Kingdom tax purposes;
   2. a partnership each member of which is:
      1. a company so resident in the United Kingdom; or
      2. a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or
   3. a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.]
5. "**Tax Credit**" means a credit against, relief or remission for, or repayment of any Tax.
6. "**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.[[74]](#footnote-75)
7. "**Tax Payment**" means either the increase in a payment made by an Obligor to a Finance Party under Clause 13.2 (*Tax gross-up*) or a payment under Clause 13.3 (*Tax indemnity*).
8. "**Treaty Lender**" means a Lender which:
   1. is treated as a resident of a Treaty State for the purposes of the Treaty;
   2. does not carry on a business in the United Kingdom through a permanent establishment with which that Lender's participation in the Loan is effectively connected [; and
   3. ][[75]](#footnote-76).
9. "**Treaty State**" means a jurisdiction having a double taxation agreement (a "**Treaty**") with the United Kingdom which makes provision for full exemption from tax imposed by the United Kingdom on interest.
10. ["**UK Non-Bank Lender**" means:
    1. an Original Lender listed in Part III of Schedule 1 (*The Original Parties*); and[[76]](#footnote-77)
    2. a Lender which is not an Original Lender and which gives a Tax Confirmation in the documentation which it executes on becoming a Party as a Lender.]

Unless a contrary indication appears, in this Clause 13 a reference to "**determines**" or "**determined**" means a determination made in the absolute discretion of the person making the determination.

* 1. Tax gross-up
     1. Each Obligor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
     2. The Company shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Agent accordingly. Similarly, a Lender shall 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 Company and that Obligor.
     3. If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
     4. A payment shall not be increased under paragraph (c) above by reason of a Tax Deduction on account of Tax imposed by the United Kingdom, if on the date on which the payment falls due:
        1. the payment could have been made to the relevant Lender without a Tax Deduction if the Lender had been a Qualifying Lender, but on that date that Lender is not or has ceased to be a Qualifying Lender other than as a result of any change after the date it became a Lender under this Agreement in (or in the interpretation, administration, or application of) any law or Treaty or any published practice or published concession of any relevant taxing authority[; or
        2. the relevant Lender is a Qualifying Lender solely by virtue of paragraph (a)(ii) of the definition of Qualifying Lender and:
           1. an officer of H.M. Revenue & Customs has given (and not revoked) a direction (a "**Direction**") under section 931 of the ITA which relates to the payment and that Lender has received from the Obligor making the payment or from the Company a certified copy of that Direction; and
           2. the payment could have been made to the Lender without any Tax Deduction if that Direction had not been made; or
        3. the relevant Lender is a Qualifying Lender solely by virtue of paragraph (a)(ii) of the definition of Qualifying Lender and:
           1. the relevant Lender has not given a Tax Confirmation to the Company; and
           2. the payment could have been made to the Lender without any Tax Deduction if the Lender had given a Tax Confirmation to the Company, on the basis that the Tax Confirmation would have enabled the Company to have formed a reasonable belief that the payment was an "excepted payment" for the purpose of section 930 of the ITA]; or
        4. the relevant Lender is a Treaty Lender and the Obligor making the payment is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had that Lender complied with its obligations under paragraph (g) or (h) (as applicable) below.
     5. If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
     6. Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Agent for the Finance Party entitled to the payment a statement under section 975 of the ITA or other evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.
     7. 1. Subject to paragraph (ii) below, a Treaty Lender and each Obligor which makes a payment to which that Treaty Lender is entitled shall co-operate in completing any procedural formalities necessary for that Obligor to obtain authorisation to make that payment without a Tax Deduction.
        2. 1. A Treaty Lender which is an Original Lender and that holds a passport under the HMRC DT Treaty Passport scheme, and which wishes that scheme to apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence opposite its name in Part II of Schedule 1 (*The Original Parties*); and
           2. a Treaty Lender which is not an Original Lender and that holds a passport under the HMRC DT Treaty Passport scheme, and which wishes that scheme to apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence in the documentation which it executes on becoming a Party as a Lender,

and, having done so, that Lender shall be under no obligation pursuant to paragraph (i) above.

* + 1. If a Lender has confirmed its scheme reference number and its jurisdiction of tax residence in accordance with paragraph (g)(ii) above and:
       1. a Borrower making a payment to that Lender has not made a Borrower DTTP Filing in respect of that Lender; or
       2. a Borrower making a payment to that Lender has made a Borrower DTTP Filing in respect of that Lender but:
          1. that Borrower DTTP Filing has been rejected by HM Revenue & Customs;
          2. HM Revenue & Customs has not given the Borrower authority to make payments to that Lender without a Tax Deduction within [60] days of the date of the Borrower DTTP Filing; or
          3. HM Revenue & Customs has given the Borrower authority to make payments to that Lender without a Tax Deduction but such authority has subsequently been revoked or expired,

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

* + 1. If a Lender has not confirmed its scheme reference number and jurisdiction of tax residence in accordance with paragraph (g)(ii) above, no Obligor shall make a Borrower DTTP Filing or file any other form relating to the HMRC DT Treaty Passport scheme in respect of that Lender's Commitment(s) or its participation in any Loan unless the Lender otherwise agrees.
    2. A Borrower shall, promptly on making a Borrower DTTP Filing, deliver a copy of that Borrower DTTP Filing to the Agent for delivery to the relevant Lender.
    3. [A UK Non-Bank Lender which is an Original Lender gives a Tax Confirmation to the Company by entering into this Agreement.
    4. A UK Non-Bank Lender shall promptly notify the Company and the Agent if there is any change in the position from that set out in the Tax Confirmation.]
  1. Tax indemnity
     1. The Company 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.
     2. Paragraph (a) above shall not apply:
        1. with respect to any Tax assessed on a Finance Party:
           1. 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
           2. 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

* + - 1. to the extent a loss, liability or cost:
         1. is compensated for by an increased payment under Clause 13.2 (*Tax gross-up*);
         2. would have been compensated for by an increased payment under Clause 13.2 (*Tax gross-up*) but was not so compensated solely because one of the exclusions in paragraph (d) of Clause 13.2 (*Tax gross-up*) applied; or
         3. relates to a FATCA Deduction required to be made by a Party.[[77]](#footnote-78)
    1. 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 Company.
    2. A Protected Party shall, on receiving a payment from an Obligor under this Clause 13.3, notify the Agent.
  1. Tax Credit

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

* + 1. 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
    2. that Finance Party has obtained and utilised that Tax Credit,

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

* 1. Lender status confirmation

Each Lender which is not an Original Lender shall indicate, in the documentation which it executes on becoming a Party as a Lender, and for the benefit of the Agent and without liability to any Obligor, which of the following categories it falls in:

* + 1. not a Qualifying Lender;
    2. a Qualifying Lender (other than a Treaty Lender); or
    3. a Treaty Lender.

If such a Lender fails to indicate its status in accordance with this Clause 13.5 then that Lender shall be treated for the purposes of this Agreement (including by each Obligor) as if it is not a Qualifying Lender until such time as it notifies the Agent which category applies (and the Agent, upon receipt of such notification, shall inform the Company). For the avoidance of doubt, the documentation which a Lender executes on becoming a Party as a Lender shall not be invalidated by any failure of a Lender to comply with this Clause 13.5.

* 1. Stamp taxes

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

* 1. VAT
     1. All amounts expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).
     2. If VAT is or becomes chargeable on any supply made by any Finance Party (the "**Supplier**") to any other Finance Party (the "**Recipient**") under a Finance Document, and any Party other than the Recipient (the "**Relevant Party**") is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):
        1. (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
        2. (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
     3. 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.
     4. Any reference in this Clause 13.7 to any Party shall, at any time when such Party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the representative member of such group at such time (the term "representative member" to have the same meaning as in the Value Added Tax Act 1994)[[78]](#footnote-79).
     5. 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[[79]](#footnote-80).
  2. FATCA information
     1. Subject to paragraph (c) below, each Party shall, within [ten] Business Days of a reasonable request by another Party:
        1. confirm to that other Party whether it is:
           1. a FATCA Exempt Party; or
           2. not a FATCA Exempt Party;
        2. 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
        3. 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.
     2. 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.
     3. 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:
        1. any law or regulation;
        2. any fiduciary duty; or
        3. any duty of confidentiality.
     4. 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.
     5. [If a Borrower is a US Tax Obligor or the Agent reasonably believes that its obligations under FATCA or any other applicable law or regulation require it, each Lender shall, within [ten] Business Days of:
        1. where an Original Borrower is a US Tax Obligor and the relevant Lender is an Original Lender, the date of this Agreement;
        2. where a Borrower is a US Tax Obligor on a date on which any other Lender becomes a Party as a Lender, that date;
        3. the date a new US Tax Obligor accedes as a Borrower; or
        4. where a Borrower is not a US Tax Obligor, the date of a request from the Agent,

supply to the Agent:

* + - * 1. a withholding certificate on Form W-8, Form W-9 or any other relevant form; or
        2. any withholding statement or other document, authorisation or waiver as the Agent may require to certify or establish the status of such Lender under FATCA or that other law or regulation.
    1. The Agent shall provide any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) above to the relevant Borrower.
    2. If any withholding certificate, withholding statement, document, authorisation or waiver provided to the Agent by a Lender pursuant to paragraph (e) above is or becomes materially inaccurate or incomplete, that Lender shall promptly update it and provide such updated withholding certificate, withholding statement, document, authorisation or waiver to the Agent unless it is unlawful for the Lender to do so (in which case the Lender shall promptly notify the Agent). The Agent shall provide any such updated withholding certificate, withholding statement, document, authorisation or waiver to the relevant Borrower.
    3. The Agent may rely on any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) or (g) above without further verification. The Agent shall not be liable for any action taken by it under or in connection with paragraphs (e), (f) or (g) above.][[80]](#footnote-81)
  1. FATCA Deduction[[81]](#footnote-82)
     1. 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.
     2. 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 Company and the Agent and the Agent shall notify the other Finance Parties.

1. Increased Costs
   1. Increased Costs[[82]](#footnote-83)
      1. Subject to Clause 14.3 (*Exceptions*) the Company shall, within three Business Days of a demand by the Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party 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.
      2. In this Agreement "**Increased Costs**" means:
         1. a reduction in the rate of return from a Facility or on a Finance Party's (or its Affiliate's) overall capital;
         2. an additional or increased cost; or
         3. 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.

* 1. Increased Cost claims
     1. A Finance Party intending to make a claim pursuant to Clause 14.1 (*Increased Costs*) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Company.
     2. Each Finance Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount of its Increased Costs.
  2. Exceptions[[83]](#footnote-84)
     1. Clause 14.1 (*Increased Costs*) does not apply to the extent any Increased Cost is:
        1. attributable to a Tax Deduction required by law to be made by an Obligor;
        2. attributable to a FATCA Deduction required to be made by a Party;[[84]](#footnote-85)
        3. compensated for by Clause 13.3 (*Tax indemnity*)(or would have been compensated for under Clause 13.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 13.3 (*Tax indemnity*) applied); or
        4. attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.
     2. In this Clause 14.3, a reference to a "**Tax Deduction**" has the same meaning given to that term in Clause 13.1 (*Definitions*).

1. Other Indemnities
   1. Currency indemnity
      1. If any sum due from an Obligor under the Finance Documents (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:
         1. making or filing a claim or proof against that Obligor;
         2. obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

that Obligor shall as an independent obligation, within three Business Days of 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.

* + 1. Each Obligor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.
  1. Other indemnities

The Company shall (or shall procure that an Obligor will), 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:

* + 1. the occurrence of any Event of Default;
    2. a failure by an Obligor 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 28 (*Sharing among the Finance Parties*);
    3. funding, or making arrangements to fund, its participation in a Loan requested by a Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone); or
    4. a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by a Borrower or the Company.
  1. Indemnity to the Agent

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

* + 1. investigating any event which it reasonably believes is a Default;
    2. entering into or performing any foreign exchange contract for the purposes of paragraph (b) of Clause 6.3 (*Change of currency*);
    3. acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
    4. instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement.

1. Mitigation by the Lenders
   1. Mitigation
      1. Each Finance Party shall, in consultation with the Company, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 8.1 (*Illegality*), Clause 13 (*Tax gross-up and indemnities*) or Clause 14 (*Increased costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
      2. Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.
   2. Limitation of liability
      1. The Company shall promptly indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 16.1 (*Mitigation*).
      2. A Finance Party is not obliged to take any steps under Clause 16.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.
2. Costs and Expenses
   1. Transaction expenses

The Company shall promptly on demand pay the Agent and the Arranger the amount of all costs and expenses (including legal fees) reasonably incurred by any of them in connection with the negotiation, preparation, printing, execution and syndication of:

* + 1. this Agreement and any other documents referred to in this Agreement; and
    2. any other Finance Documents executed after the date of this Agreement.
  1. Amendment costs

[Subject to Clause 17.4 (*Reference rate transition costs*)] if:

* + 1. an Obligor requests an amendment, waiver or consent; or
    2. an amendment is required pursuant to Clause 29.9 (*Change of currency*),

the Company shall, within three Business Days of demand, reimburse the Agent for the amount of all costs and expenses (including legal fees) reasonably incurred by the Agent in responding to, evaluating, negotiating or complying with that request or requirement.

* 1. Enforcement costs

The Company shall, within three Business Days of demand, pay to each Finance Party the amount of all costs and expenses (including legal fees) incurred by that Finance Party in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

* 1. [Reference rate transition costs] [[85]](#footnote-86)

[  ]

**SECTION 7  
GUARANTEE**

1. Guarantee and Indemnity
   1. Guarantee and indemnity

Each Guarantor irrevocably and unconditionally jointly and severally:

* + 1. guarantees to each Finance Party punctual performance by each Borrower of all that Borrower's obligations under the Finance Documents;
    2. undertakes with each Finance Party that whenever a Borrower does not pay any amount when due under or in connection with any Finance Document, that Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and
    3. agrees with each Finance Party that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Finance Party immediately on demand against any cost, loss or liability it incurs as a result of a Borrower not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by a Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 18 if the amount claimed had been recoverable on the basis of a guarantee.
  1. Continuing guarantee

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

* 1. Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is made by a Finance Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Guarantor under this Clause 18 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

* 1. Waiver of defences

The obligations of each Guarantor under this Clause 18 will not be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under this Clause 18 (without limitation and whether or not known to it or any Finance Party) including:

* + 1. any time, waiver or consent granted to, or composition with, any Obligor or other person;
    2. the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
    3. the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
    4. any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;
    5. any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
    6. any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
    7. any insolvency or similar proceedings.
  1. Immediate recourse

Each Guarantor waives any right it may have of first requiring any Finance Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under this Clause 18. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

* 1. Appropriations

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

* + 1. refrain from applying or enforcing any other moneys, security or rights held or received by that Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Guarantor shall be entitled to the benefit of the same; and
    2. hold in an interest-bearing suspense account any moneys received from any Guarantor or on account of any Guarantor's liability under this Clause 18.
  1. Deferral of Guarantors' rights

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Agent otherwise directs, no Guarantor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 18:

* + 1. to be indemnified by an Obligor;
    2. to claim any contribution from any other guarantor of any Obligor's obligations under the Finance Documents;
    3. to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Finance Party;
    4. to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which any Guarantor has given a guarantee, undertaking or indemnity under Clause 18.1 (*Guarantee and indemnity*);
    5. to exercise any right of set-off against any Obligor; and/or
    6. to claim or prove as a creditor of any Obligor in competition with any Finance Party.

If a Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Finance Parties by the Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Finance Parties and shall promptly pay or transfer the same to the Agent or as the Agent may direct for application in accordance with Clause 29 (*Payment mechanics*).

* 1. Release of Guarantors' right of contribution

If any Guarantor (a "**Retiring Guarantor**") ceases to be a Guarantor in accordance with the terms of the Finance Documents for the purpose of any sale or other disposal of that Retiring Guarantor then on the date such Retiring Guarantor ceases to be a Guarantor:

* + 1. that Retiring Guarantor is released by each other Guarantor from any liability (whether past, present or future and whether actual or contingent) to make a contribution to any other Guarantor arising by reason of the performance by any other Guarantor of its obligations under the Finance Documents; and
    2. each other Guarantor waives any rights it may have by reason of the performance of its obligations under the Finance Documents to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under any Finance Document or of any other security taken pursuant to, or in connection with, any Finance Document where such rights or security are granted by or in relation to the assets of the Retiring Guarantor.
  1. Additional security

This guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by any Finance Party.

**SECTION 8  
REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT**

1. Representations[[86]](#footnote-87)

Each Obligor makes the representations and warranties set out in this Clause 19 to each Finance Party on the date of this Agreement.

* 1. Status
     1. It is a corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation.
     2. It and each of its Subsidiaries has the power to own its assets and carry on its business as it is being conducted.
  2. Binding obligations

The obligations expressed to be assumed by it in each Finance Document are, subject to any general principles of law limiting its obligations which are specifically referred to in any legal opinion delivered pursuant to Clause 4 (*Conditions of Utilisation*) or Clause 25 (*Changes to the Obligors*), legal, valid, binding and enforceable obligations.

* 1. Non-conflict with other obligations

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

* + 1. any law or regulation applicable to it;
    2. its or any of its Subsidiaries' constitutional documents; or
    3. any agreement or instrument binding upon it or any of its Subsidiaries or any of its or any of its Subsidiaries' assets.
  1. 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 Finance Documents to which it is a party and the transactions contemplated by those Finance Documents.

* 1. Validity and admissibility in evidence

All Authorisations required or desirable:

* + 1. to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party; and
    2. to make the Finance Documents to which it is a party admissible in evidence in its jurisdiction of incorporation,

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

* 1. Governing law and enforcement
     1. The choice of English law as the governing law of the Finance Documents will be recognised and enforced in its jurisdiction of incorporation.
     2. Any judgment obtained in England in relation to a Finance Document will be recognised and enforced in its jurisdiction of incorporation.
  2. Deduction of Tax[[87]](#footnote-88)

It is not required to make any Tax Deduction (as defined in Clause 13.1 (*Definitions*)) from any payment it may make under any Finance Document to a Lender which is:

* + 1. a Qualifying Lender:
       1. falling within paragraph (a)(i) of the definition of "Qualifying Lender"; [or]
       2. [except where a Direction has been given under section 931 of the ITA in relation to the payment concerned, falling within paragraph (a)(ii) of the definition of "Qualifying Lender"][[88]](#footnote-89); or
       3. [falling within paragraph (b) of the definition of "Qualifying Lender" or;][[89]](#footnote-90)
    2. a Treaty Lender and the payment is one specified in a direction given by the Commissioners of Revenue & Customs under Regulation 2 of the Double Taxation Relief (Taxes on Income) (General) Regulations 1970 (SI 1970/488).
  1. No filing or stamp taxes

Under the law of its jurisdiction of incorporation 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 or similar tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents.

* 1. No default
     1. No Event of Default is continuing or might reasonably be expected to result from the making of any Utilisation.
     2. No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or any of its Subsidiaries') assets are subject which might have a Material Adverse Effect.
  2. No misleading information
     1. Any factual information provided by any member of the Group for the purposes of the Information Memorandum was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.
     2. The financial projections contained in the Information Memorandum have been prepared on the basis of recent historical information and on the basis of reasonable assumptions.
     3. Nothing has occurred or been omitted from the Information Memorandum and no information has been given or withheld that results in the information contained in the Information Memorandum being untrue or misleading in any material respect.
  3. Financial statements
     1. Its Original Financial Statements were prepared in accordance with GAAP consistently applied [unless expressly disclosed to the Agent in writing to the contrary before the date of this Agreement].
     2. Its Original Financial Statements fairly present its financial condition as at the end of the relevant financial year and its results of operations during the relevant financial year (consolidated in the case of the Company) [unless expressly disclosed to the Agent in writing to the contrary before the date of this Agreement].
     3. There has been no material adverse change in its business or financial condition (or the business or consolidated financial condition of the Group, in the case of the Company) since [                               ].
  4. *Pari passu* ranking

Its payment obligations under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

* 1. No proceedings
     1. No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect has or have (to the best of its knowledge and belief) been started or threatened against it or any of its Subsidiaries.
     2. No judgment or order of a court, arbitral body or agency which might reasonably be expected to have a Material Adverse Effect has (to the best of its knowledge and belief) been made against it or any of its Subsidiaries.
  2. Repetition

The Repeating Representations are deemed to be made by each Obligor by reference to the facts and circumstances then existing on:

* + 1. the date of each Utilisation Request and the first day of each Interest Period; and
    2. in the case of an Additional Obligor, the day on which the company becomes (or it is proposed that the company becomes) an Additional Obligor.

1. 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.

* 1. Financial statements

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

* + 1. as soon as the same become available, but in any event within [            ] days after the end of each of its financial years:
       1. its audited consolidated financial statements for that financial year; and
       2. the audited financial statements of each Obligor for that financial year; and
    2. as soon as the same become available, but in any event within [               ] days after the end of each half of each of its financial years:
       1. its consolidated financial statements for that financial half year[; and
       2. the financial statements of each Obligor for that financial half year].
  1. Compliance Certificate
     1. [The Company shall supply to the Agent, with each set of financial statements delivered pursuant to paragraph (a)(i) or (b)(i) of Clause 20.1 (*Financial statements*), a Compliance Certificate setting out (in reasonable detail) computations as to compliance with Clause 21 (*Financial Covenants*) as at the date as at which those financial statements were drawn up.
     2. Each Compliance Certificate shall be signed by two directors of the Company [and, if required to be delivered with the financial statements delivered pursuant to paragraph (a)(i) of Clause 20.1 (*Financial statements*), [shall be reported on by the Company's auditors in the form agreed by the Company and all the Lenders before the date of this Agreement]/[by the Company's auditors]].]
  2. Requirements as to financial statements
     1. Each set of financial statements delivered by the Company pursuant to Clause 20.1 (*Financial statements*) shall be certified by a director of the relevant company as fairly presenting its financial condition as at the date as at which those financial statements were drawn up.
     2. [The Company shall procure that each set of financial statements delivered pursuant to Clause 20.1 (*Financial statements*) is prepared using GAAP.] / **OR**

[The Company shall procure that each set of financial statements of an Obligor delivered pursuant to Clause 20.1 (*Financial statements*) is prepared using GAAP, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements for that Obligor unless, in relation to any set of financial statements, it notifies the Agent that there has been a change in GAAP, the accounting practices or reference periods and its auditors (or, if appropriate, the auditors of the Obligor) deliver to the Agent:

* + - 1. a description of any change necessary for those financial statements to reflect the GAAP, accounting practices and reference periods upon which that Obligor's Original Financial Statements were prepared; and
      2. sufficient information, in form and substance as may be reasonably required by the Agent, to enable the Lenders to determine whether Clause 21 (*Financial covenants*) has been complied with and make an accurate comparison between the financial position indicated in those financial statements and that Obligor's Original Financial Statements.

Any reference in this Agreement to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.]

* 1. Information: miscellaneous

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

* + 1. all documents dispatched by the Company to its shareholders (or any class of them) or its creditors generally at the same time as they are dispatched;
    2. 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 might, if adversely determined, have a Material Adverse Effect;
    3. 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 might have a Material Adverse Effect; and
    4. promptly, such further information regarding the financial condition, business and operations of any member of the Group as any Finance Party (through the Agent) may reasonably request.
  1. Notification of default
     1. Each Obligor shall notify the Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).
     2. Promptly upon a request by the Agent, the Company 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).
  2. Direct electronic delivery by Company

The Company 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 31.5 (*Electronic communication*) to the extent that Lender and the Agent agree to this method of delivery.

* 1. "Know your customer" checks
     1. If:
        1. 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;
        2. any change in the status of an Obligor (or of a Holding Company of an Obligor) after the date of this Agreement; or[[90]](#footnote-91)
        3. a proposed assignment or transfer by a Lender of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges 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, each Obligor shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or, in the case of the event described in 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.

* + 1. 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.
    2. The Company shall, by not less than [10] Business Days' prior written notice to the Agent, notify the Agent (which shall promptly notify the Lenders) of its intention to request that one of its Subsidiaries becomes an Additional Obligor pursuant to Clause 25 (*Changes to the Obligors*).
    3. Following the giving of any notice pursuant to paragraph (c) above, if the accession of such Additional Obligor obliges the Agent or any Lender to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Company 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 on behalf of any prospective new Lender) in order for the Agent or such Lender or any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the accession of such Subsidiary to this Agreement as an Additional Obligor.

1. Financial Covenants

[ ]

1. General Undertakings[[91]](#footnote-92)

The undertakings in this Clause 22 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.

* 1. Authorisations

Each Obligor shall promptly:

* + 1. obtain, comply with and do all that is necessary to maintain in full force and effect; and
    2. supply certified copies to the Agent of,

any Authorisation required under any law or regulation of its jurisdiction of incorporation to enable it to perform its obligations under the Finance Documents and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of any Finance Document.

* 1. Compliance with laws

Each Obligor shall comply in all respects with all laws to which it may be subject, if failure so to comply would materially impair its ability to perform its obligations under the Finance Documents.

* 1. Negative pledge

1. In this Clause 22.3, "**Quasi-Security**" means an arrangement or transaction described in paragraph (b) below.
   1. No Obligor shall (and the Company shall ensure that no other member of the Group will) create or permit to subsist any Security over any of its assets.
   2. No Obligor shall (and the Company shall ensure that no other member of the Group will):
      1. sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by an Obligor [or any other member of the Group];
      2. sell, transfer or otherwise dispose of any of its receivables on recourse terms;
      3. 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
      4. 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.

* 1. Paragraphs (a) and (b) above do not apply to any Security or (as the case may be) Quasi-Security, listed below:
     1. any Security or Quasi-Security listed in Schedule 9 (*Existing Security*) except to the extent the principal amount secured by that Security or Quasi-Security exceeds the amount stated in that Schedule;
     2. any netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;
     3. any payment or close out netting or set-off arrangement pursuant to any hedging transaction entered into by a member of the Group for the purpose of:
        1. hedging any risk to which any member of the Group is exposed in its ordinary course of trading; or
        2. its interest rate or currency management operations which are carried out in the ordinary course of business and for non-speculative purposes only,

excluding, in each case, any Security or Quasi-Security under a credit support arrangement in relation to a hedging transaction;

* + 1. any lien arising by operation of law and in the ordinary course of trading;
    2. any Security or Quasi-Security over or affecting any asset acquired by a member of the Group after the date of this Agreement if:
       1. the Security or Quasi-Security was not created in contemplation of the acquisition of that asset by a member of the Group;
       2. the principal amount secured has not been increased in contemplation of or since the acquisition of that asset by a member of the Group; and
       3. the Security or Quasi-Security is removed or discharged within [       ] months of the date of acquisition of such asset;
    3. any Security or Quasi-Security over or affecting any asset of any company which becomes a member of the Group after the date of this Agreement, where the Security or Quasi-Security is created prior to the date on which that company becomes a member of the Group, if:
       1. the Security or Quasi-Security was not created in contemplation of the acquisition of that company;
       2. the principal amount secured has not increased in contemplation of or since the acquisition of that company; and
       3. the Security or Quasi-Security is removed or discharged within [        ] months of that company becoming a member of the Group;
    4. any Security or Quasi-Security entered into pursuant to any Finance Document;
    5. any Security or Quasi-Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a member of the Group in the ordinary course of trading and on the supplier's standard or usual terms and not arising as a result of any default or omission by any member of the Group;
    6. [                                                                 ]; or
    7. any Security or Quasi-Security securing indebtedness the principal amount of which (when aggregated with the principal amount of any other indebtedness which has the benefit of Security or Quasi-Security given by any member of the Group other than any permitted under paragraphs (i) to (ix) above) does not exceed [                  ] (or its equivalent in another currency or currencies).
  1. Disposals
     1. No Obligor shall [(and the Company shall ensure that no other member of the Group will)], enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset.
     2. Paragraph (a) above does not apply to any sale, lease, transfer or other disposal:
        1. made in the ordinary course of trading of the disposing entity;
        2. of assets in exchange for other assets comparable or superior as to type, value and quality (other than an exchange of a non-cash asset for cash);
        3. [                   ]; or
        4. where the higher of the market value or consideration receivable (when aggregated with the higher of the market value or consideration receivable for any other sale, lease, transfer or other disposal, other than any permitted under paragraphs (i) to [(iii)] above) does not exceed [                 ] (or its equivalent in another currency or currencies) in any financial year.
  2. Merger
     1. No Obligor shall (and the Company shall ensure that no other member of the Group will) enter into any amalgamation, demerger, merger or corporate reconstruction.
     2. Paragraph (a) above does not apply to any sale, lease, transfer or other disposal permitted pursuant to Clause 22.4 (*Disposals*).
  3. Change of business

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

1. Events of Default

Each of the events or circumstances set out in Clause 23 is an Event of Default (save for Clause 23.13 (*Acceleration*)).

* 1. Non-payment

An Obligor does not pay on the due date any amount payable pursuant to a Finance Document at the place and in the currency in which it is expressed to be payable unless:

* + 1. its failure to pay is caused by:
       1. administrative or technical error; or
       2. a Disruption Event; and
    2. [payment is made within:
       1. (in the case of paragraph (a)(i) above) [   ] Business Days of its due date; or
       2. (in the case of paragraph (a)(ii) above) [   ] Business Days of its due date.] / **OR**

[payment is made within [   ] Business Days of its due date.]

* 1. Financial covenants

Any requirement of Clause 21 (*Financial covenants*) is not satisfied.

* 1. Other obligations
     1. An Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 23.1 (*Non-payment*) [and Clause 23.2 (*Financial covenants*)]).
     2. No Event of Default under paragraph (a) above in relation to Clause [          ] will occur if the failure to comply is capable of remedy and is remedied within:
        1. (in relation to [                 ]) [       ] Business Days; or
        2. (in relation to [                 ]) [       ] Business Days,

of the earlier of (A) the Agent giving notice to the Company and (B) the Company becoming aware of the failure to comply.

* 1. Misrepresentation

Any representation or statement made or deemed to be made by an Obligor in the Finance Documents or any other document delivered by or on behalf of any Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.

* 1. Cross default
     1. Any Financial Indebtedness of any member of the Group is not paid when due nor within any originally applicable grace period.
     2. Any Financial Indebtedness of any member of the Group is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
     3. Any commitment for any Financial Indebtedness of any member of the Group is cancelled or suspended by a creditor of any member of the Group as a result of an event of default (however described).
     4. Any creditor of any member of the Group becomes entitled to declare any Financial Indebtedness of any member of the Group due and payable prior to its specified maturity as a result of an event of default (however described).
     5. No Event of Default will occur under this Clause 23.5 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than [                  ] (or its equivalent in any other currency or currencies).
  2. Insolvency
     1. A member of the Group:
        1. is unable or admits inability to pay its debts as they fall due;
        2. suspends making payments on any of its debts; or
        3. 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.
     2. The value of the assets of any member of the Group is less than its liabilities (taking into account contingent and prospective liabilities).
     3. A moratorium is declared in respect of any indebtedness of any member of the Group.
  3. Insolvency proceedings

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

* + 1. the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any member of the Group other than a solvent liquidation or reorganisation of any member of the Group which is not an Obligor;
    2. a composition, compromise, assignment or arrangement with any creditor of any member of the Group;
    3. the appointment of a liquidator (other than in respect of a solvent liquidation of a member of the Group which is not an Obligor), receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of any member of the Group or any of its assets; or
    4. enforcement of any Security over any assets of any member of the Group,

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

This Clause 23.7 shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within [ ] days of commencement.

* 1. Creditors' process

Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of a member of the Group [having an aggregate value of [     ]] [and is not discharged within [    ] days].

* 1. Ownership of the Obligors

An Obligor (other than the Company) is not or ceases to be a Subsidiary of the Company.

* 1. Unlawfulness

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

* 1. Repudiation

An Obligor repudiates a Finance Document or evidences an intention to repudiate a Finance Document.

* 1. Material adverse change

[                      ].

* 1. Acceleration

On and at any time after the occurrence of an Event of Default [which is continuing] the Agent may, and shall if so directed by the Majority Lenders, by notice to the Company:

* + 1. cancel each Available Commitment of each Lender whereupon each such Available Commitment shall immediately be cancelled and each Facility shall immediately cease to be available for further utilisation;
    2. declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable; and/or
    3. declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders.

**SECTION 9  
CHANGES TO PARTIES**

1. Changes to the Lenders
   1. Assignments and transfers by the Lenders

Subject to this Clause 24, a Lender (the "**Existing Lender**") may:

* + 1. assign any of its rights; or
    2. transfer by novation any of its rights and obligations,

to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (the "**New Lender**").[[92]](#footnote-93)

* 1. Company consent
     1. The consent of the Company is required for an assignment or transfer by an Existing Lender, unless the assignment or transfer is:
        1. to another Lender or an Affiliate of any Lender[; or
        2. made at a time when an Event of Default is continuing].
     2. The consent of the Company to an assignment or transfer must not be unreasonably withheld or delayed. The Company 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 Company within that time.
  2. Other conditions of assignment or transfer
     1. An assignment will only be effective on:
        1. receipt by the Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that the New Lender will assume the same obligations to the other Finance Parties as it would have been under if it had been an Original Lender; and
        2. 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.
     2. A transfer will only be effective if the procedure set out in Clause 24.6 (*Procedure for transfer*) is complied with.
     3. If:
        1. a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
        2. as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 13 (*Tax gross-up and indemnities*) or Clause 14 (*Increased Costs*),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred. This paragraph (c) shall not apply:

* + - 1. in respect of an assignment or transfer made in the ordinary course of the primary syndication of any Facility; or
      2. in relation to Clause 13.2 (*Tax gross-up*), to a Treaty Lender that has included a confirmation of its scheme reference number and its jurisdiction of tax residence in accordance with paragraph (g)(ii)(B) of Clause 13.2 (*Tax gross-up*) if the Obligor making the payment has not made a Borrower DTTP Filing in respect of that Treaty Lender.
    1. 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.
  1. Assignment or transfer fee

The New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Agent (for its own account) a fee of [       ].

* 1. Limitation of responsibility of Existing Lenders
     1. Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
        1. the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;
        2. the financial condition of any Obligor;
        3. the performance and observance by any Obligor of its obligations under the Finance Documents or any other documents; or
        4. the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,

and any representations or warranties implied by law are excluded.

* + 1. Each New Lender confirms to the Existing Lender and the other Finance Parties that it:
       1. has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender in connection with any Finance Document; and
       2. will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.
    2. Nothing in any Finance Document obliges an Existing Lender to:
       1. accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 24; or
       2. support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under the Finance Documents or otherwise.
  1. Procedure for transfer
     1. Subject to the conditions set out in Clause 24.2 (*Company consent*) and Clause 24.3 (*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.
     2. 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.
     3. [Subject to Clause 24.10 (*Pro rata interest settlement*),] on the Transfer Date:
        1. to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents each of the Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and their respective rights against one another under the Finance Documents shall be cancelled (being the "**Discharged Rights and Obligations**");
        2. each of the Obligors and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Obligor and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;
        3. the Agent, the Arranger, the New Lender and other Lenders shall acquire the same rights and assume the same obligations between themselves 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 Arranger and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and
        4. the New Lender shall become a Party as a "Lender".
  2. Procedure for assignment
     1. Subject to the conditions set out in Clause 24.2 (*Company consent*) and Clause 24.3 (*Other conditions of assignment or transfer*) an assignment may be effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.
     2. 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.
     3. [Subject to Clause 24.10 (*Pro rata interest settlement*),] on the Transfer Date:
        1. the Existing Lender will assign absolutely to the New Lender the rights under the Finance Documents expressed to be the subject of the assignment in the Assignment Agreement;
        2. the Existing Lender will be released by each Obligor and the other Finance Parties from the obligations owed by it (the "**Relevant Obligations**") and expressed to be the subject of the release in the Assignment Agreement; and
        3. the New Lender shall become a Party as a "Lender" and will be bound by obligations equivalent to the Relevant Obligations.[[93]](#footnote-94)
     4. Lenders may utilise procedures other than those set out in this Clause 24.7 to assign their rights under the Finance Documents (but not, without the consent of the relevant Obligor or unless in accordance with Clause 24.6 (*Procedure for transfer*), to obtain a release by that Obligor from the obligations owed to that Obligor by the Lenders nor the assumption of equivalent obligations by a New Lender) **provided that** they comply with the conditions set out in Clause 24.2 (*Company consent*) and Clause 24.3 (*Other* *conditions of assignment or transfer*).
  3. Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Company

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

* 1. [Security over Lenders' rights

In addition to the other rights provided to Lenders under this Clause 24, each Lender may without consulting with or obtaining consent from any Obligor, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

* + 1. any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and
    2. 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:

* + - 1. 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
      2. require any payments to be made by an Obligor 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.]
  1. [*Pro rata* interest settlement[[94]](#footnote-95)
     1. 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 24.6 (*Procedure for transfer*) or any assignment pursuant to Clause 24.7 (*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):
        1. 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
        2. 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:
           1. when the Accrued Amounts become payable, those Accrued Amounts will be payable to the Existing Lender; and
           2. the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 24.10, have been payable to it on that date, but after deduction of the Accrued Amounts.
     2. In this Clause 24.10 references to "Interest Period" shall be construed to include a reference to any other period for accrual of fees.
     3. An Existing Lender which retains the right to the Accrued Amounts pursuant to this Clause 24.10 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.]

1. Changes to the Obligors
   1. Assignments and transfer by Obligors

No Obligor may assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

* 1. Additional Borrowers
     1. Subject to compliance with the provisions of paragraphs (c) and (d) of Clause 20.7 (*"Know your customer" checks*), the Company may request that any of its [wholly owned] Subsidiaries becomes an Additional Borrower. That Subsidiary shall become an Additional Borrower if:
        1. [all the Lenders]/[the Majority Lenders] approve the addition of that Subsidiary;
        2. the Company delivers to the Agent a duly completed and executed Accession Letter;
        3. the Company confirms that no Default is continuing or would occur as a result of that Subsidiary becoming an Additional Borrower; and
        4. the Agent has received all of the documents and other evidence listed in Part II of Schedule 2 (*Conditions precedent*) in relation to that Additional Borrower, each in form and substance satisfactory to the Agent.
     2. The Agent shall notify the Company and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part II of Schedule 2 (*Conditions precedent*).
     3. Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent gives the notification described in paragraph (b) 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.
  2. Resignation of a Borrower
     1. The Company may request that a Borrower (other than the Company) ceases to be a Borrower by delivering to the Agent a Resignation Letter.
     2. The Agent shall accept a Resignation Letter and notify the Company and the Lenders of its acceptance if:
        1. no Default is continuing or would result from the acceptance of the Resignation Letter (and the Company has confirmed this is the case); and
        2. the Borrower is under no actual or contingent obligations as a Borrower under any Finance Documents,

whereupon that company shall cease to be a Borrower and shall have no further rights or obligations under the Finance Documents.

* 1. Additional Guarantors
     1. Subject to compliance with the provisions of paragraphs (c) and (d) of Clause 20.7 (*"Know your customer" checks*), the Company may request that any of its [wholly owned] Subsidiaries become an Additional Guarantor. That Subsidiary shall become an Additional Guarantor if:
        1. the Company delivers to the Agent a duly completed and executed Accession Letter; and
        2. the Agent has received all of the documents and other evidence listed in Part II of Schedule 2 (*Conditions precedent*) in relation to that Additional Guarantor, each in form and substance satisfactory to the Agent.
     2. The Agent shall notify the Company and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part II of Schedule 2 (*Conditions precedent*).
     3. Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent gives the notification described in paragraph (b) 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.
  2. Repetition of Representations

Delivery of an Accession Letter constitutes confirmation by the relevant Subsidiary that the Repeating Representations are true and correct in relation to it as at the date of delivery as if made by reference to the facts and circumstances then existing.

* 1. Resignation of a Guarantor
     1. The Company may request that a Guarantor (other than the Company [or [*insert details of any other Guarantor which is not permitted to resign*]]) ceases to be a Guarantor by delivering to the Agent a Resignation Letter
     2. The Agent shall accept a Resignation Letter and notify the Company and the Lenders of its acceptance if:
        1. no Default is continuing or would result from the acceptance of the Resignation Letter (and the Company has confirmed this is the case); [and]
        2. all the Lenders have consented to the Company's request[; and]
        3. [                           ].

**SECTION 10  
THE FINANCE PARTIES**

1. Role of the Agent [and] the Arranger [and the Reference Banks]
   1. Appointment of the Agent
      1. Each of the Arranger and the Lenders appoints the Agent to act as its agent under and in connection with the Finance Documents.
      2. Each of the Arranger and the Lenders authorises the Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.
   2. Instructions
      1. The Agent shall:
         1. 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:
            1. all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision; and
            2. in all other cases, the Majority Lenders; and
         2. not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above.
      2. The Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Lender or group of Lenders, from that Lender or group of Lenders) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion. The Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
      3. 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.
      4. 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.
      5. 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.
      6. 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.
   3. Duties of the Agent
      1. The Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
      2. 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.
      3. Without prejudice to Clause 24.8 (*Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Company*), paragraph (b) above shall not apply to any Transfer Certificate, any Assignment Agreement or any Increase Confirmation.
      4. 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.
      5. 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.
      6. 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 Arranger) under this Agreement, it shall promptly notify the other Finance Parties.
      7. 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).
   4. Role of the Arranger

Except as specifically provided in the Finance Documents, the Arranger has no obligations of any kind to any other Party under or in connection with any Finance Document.

* 1. No fiduciary duties
     1. Nothing in any Finance Document constitutes the Agent or the Arranger as a trustee or fiduciary of any other person.
     2. Neither the Agent nor the Arranger shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.
  2. Business with the Group

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

* 1. Rights and discretions
     1. The Agent may:
        1. rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
        2. assume that:
           1. 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
           2. unless it has received notice of revocation, that those instructions have not been revoked; and
        3. rely on a certificate from any person:
           1. as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
           2. 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.

* + 1. The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:
       1. no Default has occurred (unless it has actual knowledge of a Default arising under Clause 23.1 (*Non-payment*));
       2. any right, power, authority or discretion vested in any Party or any group of Lenders has not been exercised; and
       3. any notice or request made by the Company (other than a Utilisation Request or Selection Notice) is made on behalf of and with the consent and knowledge of all the Obligors.
    2. The Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
    3. 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.
    4. 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.
    5. The Agent may act in relation to the Finance Documents through its officers, employees and agents.
    6. 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.
    7. Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent nor the Arranger 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.
    8. 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.
  1. Responsibility for documentation

Neither the Agent nor the Arranger is responsible or liable for:

* + 1. the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Agent, the Arranger, an Obligor or any other person in or in connection with any Finance Document or the Information Memorandum 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]
    2. the legality, validity, effectiveness, adequacy or enforceability of 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[; or
    3. 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].
  1. No duty to monitor

The Agent shall not be bound to enquire:

* + 1. whether or not any Default has occurred;
    2. as to the performance, default or any breach by any Party of its obligations under any Finance Document; or
    3. whether any other event specified in any Finance Document has occurred.
  1. Exclusion of liability
     1. Without limiting paragraph (b) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Agent), the Agent will not be liable for:
        1. 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, unless directly caused by its gross negligence or wilful misconduct;
        2. exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, 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, other than by reason of its gross negligence or wilful misconduct; or
        3. without prejudice to the generality of paragraphs (i) and (ii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever ([including, without limitation, for negligence or any other category of liability whatsoever][[95]](#footnote-96) but not including any claim based on the fraud of the Agent) arising as a result of:
           1. any act, event or circumstance not reasonably within its control; or
           2. 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.

* + 1. No Party (other than the Agent) may take any proceedings against any officer, employee or agent of the Agent in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of the Agent may rely on this paragraph (b) [subject to Clause 1.4 (*Third party rights*) and the provisions of the Third Parties Act].
    2. 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.
    3. Nothing in this Agreement shall oblige the Agent or the Arranger to carry out:
       1. any "know your customer" or other checks in relation to any person; or
       2. any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Lender [or for any Affiliate of any Lender],

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

* + 1. 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 shall be limited to the amount of actual loss which has been suffered (as determined by reference to the date of default of the Agent or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Agent at any time which increase the amount of that loss. In no event shall the Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Agent has been advised of the possibility of such loss or damages.
  1. Lenders' indemnity to the Agent

Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, within three Business Days of demand, against any cost, loss or liability [(including, without limitation, for negligence or any other category of liability whatsoever)][[96]](#footnote-97) 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 29.10 (*Disruption to payment systems etc*.), notwithstanding the Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent)][[97]](#footnote-98) in acting as Agent under the Finance Documents (unless the Agent has been reimbursed by an Obligor pursuant to a Finance Document).

* 1. Resignation of the Agent
     1. The Agent may resign and appoint one of its Affiliates acting through an office [in the United Kingdom][[98]](#footnote-99) as successor by giving notice to the Lenders and the Company.
     2. Alternatively the Agent may resign by giving 30 days' notice to the Lenders and the Company, in which case the Majority Lenders (after consultation with the Company) may appoint a successor Agent.
     3. If the Majority Lenders have not appointed a successor Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Agent (after consultation with the Company) may appoint a successor Agent [(acting through an office in the United Kingdom)][[99]](#footnote-100).
     4. [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 [and any other term of this Agreement dealing with the rights or obligations of the Agent] consistent with then current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to the agency fee payable under this Agreement which are consistent with the successor Agent's normal fee rates and those amendments will bind the Parties.]
     5. 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. [The Company shall, within three Business Days of demand, reimburse the retiring Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.]
     6. The Agent's resignation notice shall only take effect upon the appointment of a successor.
     7. 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 15.3 (*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.
     8. After consultation with the Company, the Majority Lenders may, by notice to the Agent, require it to resign in accordance with paragraph (b) above. In this event, the Agent shall resign in accordance with paragraph (b) above.
     9. 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:
        1. the Agent fails to respond to a request under Clause 13.8 (*FATCA information*) and [the Company or] a Lender reasonably believes that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
        2. the information supplied by the Agent pursuant to Clause 13.8 (*FATCA information*) indicates that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
        3. the Agent notifies the Company and the Lenders that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

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

* 1. Confidentiality
     1. 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.
     2. 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.
  2. Relationship with the Lenders
     1. [Subject to Clause 24.10 (*Pro rata interest settlement*), the]/[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:
        1. [entitled to or liable for any payment due under any Finance Document on that day; and]
        2. 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.

* + 1. 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 31.5 (*Electronic communication*)) electronic mail address and/or any other information required to enable the transmission of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address (or such other information), department and officer by that Lender for the purposes of Clause 31.2 (*Addresses*) and paragraph (a)(ii) of Clause 31.5 (*Electronic communication*) and the Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.
  1. Credit appraisal by the Lenders

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to the Agent and the Arranger 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:

* + 1. the financial condition, status and nature of each member of the Group;
    2. the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
    3. 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 transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
    4. the adequacy, accuracy or completeness of the Information Memorandum and any other information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document.
  1. [Agent's management time

Any amount payable to the Agent under Clause 15.3 (*Indemnity to the Agent*), Clause 17 (*Costs and expenses*) and Clause 26.11 (*Lenders' indemnity to the Agent*) shall include the cost of utilising the Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Agent may notify to the Company and the Lenders, and is in addition to any fee paid or payable to the Agent under Clause 12 (*Fees*).]

* 1. 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.

* 1. [Role of Reference Banks
     1. No Reference Bank is under any obligation to provide a quotation or any other information to the Agent.
     2. [No Reference Bank will be liable for any action taken by it under or in connection with any Finance Document, or for any Reference Bank Quotation, unless directly caused by its gross negligence or wilful misconduct.
     3. No Party (other than the relevant Reference Bank) may take any proceedings against any officer, employee or agent of any Reference Bank in respect of any claim it might have against that Reference Bank or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document, or to any Reference Bank Quotation, and any officer, employee or agent of each Reference Bank may rely on this Clause 26.18 subject to Clause 1.4 (*Third party rights*) and the provisions of the Third Parties Act.]]
  2. [Third party Reference Banks

A Reference Bank which is not a Party may rely on Clause 26.18 (*Role of Reference Banks*), Clause 35.3 (*Other exceptions*) and Clause 37 (*Confidentiality of Funding Rates [and Reference Bank Quotations]*) subject to Clause 1.4 (*Third party rights*) and the provisions of the Third Parties Act.][[100]](#footnote-101)

1. Conduct of Business by the Finance Parties

No provision of this Agreement will:

* + 1. interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
    2. 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
    3. oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

1. Sharing among the Finance Parties
   1. Payments to Finance Parties

If a Finance Party (a "**Recovering Finance Party**") receives or recovers any amount from an Obligor other than in accordance with Clause 29 (*Payment mechanics*) (a "**Recovered Amount**") and applies that amount to a payment due under the Finance Documents then:

* + 1. the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery to the Agent;
    2. 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 29 (*Payment mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
    3. 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 29.5 (*Partial payments*).
  1. Redistribution of payments

The Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Finance Parties (other than the Recovering Finance Party) (the "**Sharing Finance Parties**") in accordance with Clause 29.5 (*Partial payments*) towards the obligations of that Obligor to the Sharing Finance Parties.

* 1. Recovering Finance Party's rights

On a distribution by the Agent under Clause 28.2 (*Redistribution of payments*) of a payment received by a Recovering Finance Party from an Obligor, as between the relevant Obligor and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by that Obligor.

* 1. 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:

* + 1. 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
    2. as between the relevant Obligor and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Obligor.
  1. Exceptions
     1. This Clause 28 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Obligor.
     2. 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:
        1. it notified that other Finance Party of the legal or arbitration proceedings; and
        2. that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

**SECTION 11  
ADMINISTRATION**

1. Payment Mechanics
   1. Payments to the Agent
      1. On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, that Obligor or Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
      2. Payment shall be made to such account in the principal financial centre of the country of that currency (or, in relation to euro, in a principal financial centre in such Participating Member State or London, as specified by the Agent) and with such bank as the Agent, in each case, specifies.
   2. Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 29.3 (*Distributions to an Obligor*) and Clause 29.4 (*Clawback and pre-funding*) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five Business Days' notice with a bank specified by that Party in the principal financial centre of the country of that currency (or, in relation to euro, in the principal financial centre of a Participating Member State or London, as specified by that Party).

* 1. Distributions to an Obligor

The Agent may (with the consent of the Obligor or in accordance with Clause 30 (*Set-off*)) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

* 1. Clawback and pre-funding
     1. 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.
     2. 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.
     3. If the Agent [has notified the Lenders that it] is willing to make available amounts for the account of a Borrower before receiving funds from the Lenders then if and to the extent that the Agent does so but it proves to be the case that it does not then receive funds from a Lender in respect of a sum which it paid to a Borrower:
        1. [the Agent shall notify the Company of that Lender's identity and] the Borrower to whom that sum was made available shall on demand refund it to the Agent; and
        2. the Lender by whom those funds should have been made available or, if that Lender fails to do so, the Borrower to whom that sum was made available, shall on demand pay to the Agent the amount (as certified by the Agent) which will indemnify the Agent against any funding cost incurred by it as a result of paying out that sum before receiving those funds from that Lender.
  2. Partial payments
     1. If the Agent receives a payment that is insufficient to discharge all the amounts then due and payable by an Obligor under the Finance Documents, the Agent shall apply that payment towards the obligations of that Obligor under the Finance Documents in the following order:
        1. ***first***, in or towards payment *pro rata* of any unpaid amount owing to the Agent under the Finance Documents;
        2. ***secondly***, in or towards payment *pro rata* of any accrued interest, fee or commission due but unpaid under this Agreement;
        3. ***thirdly***, in or towards payment *pro rata* of any principal due but unpaid under this Agreement; and
        4. ***fourthly***, in or towards payment *pro rata* of any other sum due but unpaid under the Finance Documents.
     2. The Agent shall, if so directed by the Majority Lenders, vary the order set out in paragraphs (a)(ii) to (a)(iv) above.
     3. Paragraphs (a) and (b) above will override any appropriation made by an Obligor.
  3. No set-off by Obligors

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

* 1. Business Days
     1. 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).[[101]](#footnote-102)
     2. 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.
  2. Currency of account
     1. Subject to paragraphs (b) to (e) below, the Base Currency is the currency of account and payment for any sum due from an Obligor under any Finance Document.
     2. 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.
     3. 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.
     4. Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
     5. Any amount expressed to be payable in a currency other than the Base Currency shall be paid in that other currency.
  3. Change of currency
     1. 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:
        1. any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Agent (after consultation with the Company); and
        2. 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).
     2. If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Company) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Market and otherwise to reflect the change in currency.
  4. [Disruption to payment systems etc.

If either the Agent determines (in its discretion) that a Disruption Event has occurred or the Agent is notified by the Company that a Disruption Event has occurred:

* + 1. the Agent may, and shall if requested to do so by the Company, consult with the Company with a view to agreeing with the Company such changes to the operation or administration of the Facilities as the Agent may deem necessary in the circumstances;
    2. the Agent shall not be obliged to consult with the Company in relation to any changes mentioned in paragraph (a) above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
    3. 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;
    4. any such changes agreed upon by the Agent and the Company shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 35(*Amendments and Waivers*);
    5. 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 29.10; and
    6. the Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.]

1. Set-off

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

1. Notices
   1. Communications in writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

* 1. Addresses

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

* + 1. in the case of the Company, that identified with its name below;
    2. in the case of each Lender or any other Obligor, that notified in writing to the Agent on or prior to the date on which it becomes a Party; and
    3. in the case of the Agent, that identified with its name below,

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

* 1. Delivery
     1. Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
        1. if by way of fax, when received in legible form; or
        2. 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 31.2 (*Addresses*), if addressed to that department or officer.

* + 1. Any communication or document to be made or delivered to the Agent will be effective only when actually received by the Agent and then only if it is expressly marked for the attention of the department or officer identified with the Agent's signature below (or any substitute department or officer as the Agent shall specify for this purpose).
    2. All notices from or to an Obligor shall be sent through the Agent.
    3. Any communication or document made or delivered to the Company in accordance with this Clause will be deemed to have been made or delivered to each of the Obligors.
    4. 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.
  1. Notification of address and fax number

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

* 1. Electronic communication
     1. 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:
        1. 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
        2. 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.
     2. Any such electronic communication or delivery as specified in paragraph (a) above to be made between an Obligor and a Finance Party may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication or delivery.
     3. Any such electronic communication or delivery 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 only if it is addressed in such a manner as the Agent shall specify for this purpose.
     4. 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.
     5. 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 31.5.
  2. English language
     1. Any notice given under or in connection with any Finance Document must be in English.
     2. All other documents provided under or in connection with any Finance Document must be:
        1. in English; or
        2. 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.

1. Calculations and Certificates
   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.

* 1. 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.

* 1. Day count convention and interest calculation
     1. 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).[[102]](#footnote-103)
     2. Subject to paragraph (c) below, the amount of interest, commission or fee which accrues in respect of any day during an Interest Period for a Compounded Rate Loan (or of any amount equal to that interest, commission or fee) shall be rounded to 2 decimal places.[[103]](#footnote-104)
     3. To the extent that an Interest Period for a Compounded Rate Loan contains any Block Rounding Period:
        1. the aggregate amount of any accrued interest, commission or fee which accrues in respect of each Block Rounding Period (or of any amount equal to that interest, commission or fee) shall be rounded to 2 decimal places; and
        2. the amount of interest, commission or fee which accrues in respect of each day in a Block Rounding Period (or of any amount equal to that interest, commission or fee) shall (to the extent reasonably practicable for the Finance Party performing the calculation, taking into account the capabilities of any software used for that purpose), be calculated without rounding.[[104]](#footnote-105)
     4. To the extent that an RFR Banking Day "**bd**" during an Interest Period for a Compounded Rate Loan is followed by a day during that Interest Period which is not an RFR Banking Day, the period from, and including, that RFR Banking Day "**bd**" up to, but excluding, the following RFR Banking Day shall be a "**Block Rounding Period**" for the purposes of this Agreement.

1. 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.

1. Remedies and Waivers

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

1. Amendments and Waivers
   1. Required consents
      1. Subject to Clause 35.2 (*All Lender matters*) and Clause 35.3 (*Other exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Obligors and any such amendment or waiver will be binding on all Parties.
      2. The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 35.
      3. [Paragraph (c) of Clause 24.10 (*Pro rata interest settlement*) shall apply to this Clause 35.][[105]](#footnote-106)
   2. All Lender matters

[Subject to Clause 35.4 (*Changes to reference rates*) an]/[An] amendment or waiver of any term of any Finance Document that has the effect of changing or which relates to:

* + 1. the definition of "Majority Lenders" in Clause 1.1 (*Definitions*);
    2. an extension to the date of payment of any amount under the Finance Documents;
    3. a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;
    4. [a change in currency of payment of any amount under the Finance Documents;]
    5. an increase in any Commitment, 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;
    6. a change to the Borrowers or Guarantors other than in accordance with Clause 25 (*Changes to the Obligors*);
    7. any provision which expressly requires the consent of all the Lenders;
    8. Clause 2.3 (*Finance Parties' rights and obligations*), [Clause 5.1 (*Delivery of a Utilisation Request*),] Clause 8.1 (*Illegality*), [Clause 8.2 (*Change of control*),][[106]](#footnote-107) [Clause 8.8 (*Application of prepayments*),] Clause 24 (*Changes to the Lenders*), Clause 25 (*Changes to the Obligors*), [Clause 28 (*Sharing among the Finance Parties*),] this Clause 35, Clause 39 (*Governing law*) or Clause 40.1 (*Jurisdiction*); [or]
    9. the nature or scope of the guarantee and indemnity granted under Clause 18 (*Guarantee and indemnity*)[; or]
    10. [               ],

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

* 1. Other exceptions

An amendment or waiver which relates to the rights or obligations of the Agent or the Arranger [or a Reference Bank] (each in their capacity as such) may not be effected without the consent of the Agent, the Arranger [or that Reference Bank], as the case may be.

* 1. [Changes to reference rates[[107]](#footnote-108) [[108]](#footnote-109)
     1. Subject to Clause 35.3 (*Other exceptions*), [if a Published Rate Replacement Event has occurred in relation to any Published Rate for a currency which can be selected for a Loan,] [[109]](#footnote-110) any amendment or waiver which relates to:
        1. providing for the use of a Replacement Benchmark [in relation to that currency in place of that[[110]](#footnote-111) Published Rate][[111]](#footnote-112); and
           1. aligning any provision of any Finance Document to the use of that Replacement Benchmark;
           2. 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);
           3. implementing market conventions applicable to that Replacement Benchmark;
           4. providing for appropriate fallback (and market disruption) provisions for that Replacement Benchmark; or
           5. 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)[[112]](#footnote-113),

may be made with the consent of the Agent (acting on the instructions of the [Majority Lenders][[113]](#footnote-114)) and the Obligors.

* + 1. [An amendment or waiver that relates to, or has the effect of, aligning the means of calculation of interest on a Compounded Rate Loan [in any currency] under this Agreement to any recommendation of a Relevant Nominating Body which:
       1. relates to the use of [an RFR] / [the RFR for that currency] on a compounded basis in the international or any relevant domestic syndicated loan markets; and
       2. is issued on or after the date of this Agreement,

may be made with the consent of the Agent (acting on the instructions of the [Majority Lenders][[114]](#footnote-115)) and the Obligors.][[115]](#footnote-116)

* + 1. [If any Lender fails to respond to a request for an amendment or waiver described in paragraph (a) [or paragraph (b)] above within [ ][[116]](#footnote-117) Business Days (or such longer time period in relation to any request which the Company and the Agent may agree) of that request being made:
       1. its Commitment(s) shall not be included for the purpose of calculating the Total Commitments under the relevant Facility/ies when ascertaining whether any relevant percentage of Total Commitments has been obtained to approve that request; and
       2. its status as a Lender shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve that request.]
    2. In this Clause 35.4:

"**Published Rate**" means:

(a) an RFR; or

(b) the Screen Rate for any Quoted Tenor.

["**Published Rate Replacement Event**" means, in relation to a Published Rate:

(a) the methodology, formula or other means of determining that Published Rate has [, in the opinion of the [Majority Lenders][[117]](#footnote-118) and the Obligors,] materially changed;

(b)

(i)

(A) the administrator of that Published Rate or its supervisor publicly announces that such administrator is insolvent; or

(B) information is published in any order, decree, notice, petition or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of that Published Rate is insolvent,

**provided that**, in each case, at that time, there is no successor administrator to continue to provide that Published Rate;

(ii) the administrator of that Published Rate publicly announces that it has ceased or will cease to provide that Published Rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide that Published Rate;

(iii) the supervisor of the administrator of that Published Rate publicly announces that such Published Rate has been or will be permanently or indefinitely discontinued; [or]

(iv) the administrator of that Published Rate or its supervisor announces that that Published Rate may no longer be used; [or]

(v) [in the case of [the Screen Rate for any Quoted Tenor for LIBOR] / [the Screen Rate for any Quoted Tenor for [ ]][[118]](#footnote-119), the supervisor of the administrator of that Screen Rate makes a public announcement or publishes information[[119]](#footnote-120):

(A) stating that that Screen Rate for that Quoted Tenor is no longer, or as of a specified future date will no longer be, representative of the underlying market and the economic reality that it is intended to measure and that representativeness will not be restored (as determined by such supervisor)[; and

(B) with awareness that any such announcement or publication will engage certain triggers for fallback provisions in contracts which may be activated by any such pre-cessation announcement or publication]; [or]

(c) [the administrator of that Published Rate determines that that Published Rate should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:

(i) the circumstance(s) or event(s) leading to such determination are not (in the opinion of the [Majority Lenders][[120]](#footnote-121) and the Obligors) temporary; or

(ii) that Published Rate is calculated in accordance with any such policy or arrangement for a period no less than the period which is:

(A) set out opposite the relevant Screen Rate in Schedule 14 (*Screen Rate contingency periods*); [[121]](#footnote-122) or

(B) specified as the "RFR Contingency Period" in the Compounded Rate Terms relating to that Published Rate; [or]]

(d) [in the opinion of the [Majority Lenders][[122]](#footnote-123) and the Obligors, that Published Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.]]

"**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 [ ][[123]](#footnote-124)/[a benchmark rate which is:

(a) formally designated, nominated or recommended as the replacement for a Published Rate by:

(i) the administrator of that Published Rate [(**provided that** the market or economic reality that such benchmark rate measures is the same as that measured by that Published Rate)]; or

(ii) any Relevant Nominating Body,

and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the "Replacement Benchmark" will be the replacement under paragraph (ii) above;

(b) in the opinion of the [Majority Lenders][[124]](#footnote-125) and the Obligors, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to a Published Rate; or

(c) in the opinion of the [Majority Lenders][[125]](#footnote-126) and the Obligors, an appropriate successor to a Published Rate.]

1. Confidential Information
   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 36.2 (*Disclosure of Confidential Information*) [and Clause 36.3 (*Disclosure to numbering service providers*)], and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

* 1. Disclosure of Confidential Information

Any Finance Party may disclose:

* + 1. to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom 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;
    2. to any person:
       1. 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 and, in each case, to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
       2. with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Obligors and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
       3. appointed by any Finance Party or by a person to whom paragraph (b)(i) or (ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph (b) of Clause 26.14 (*Relationship with the Lenders*));
       4. 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;
       5. 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;
       6. 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;
       7. [to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 24.9 (*Security over Lenders' rights*);][[126]](#footnote-127)
       8. who is a Party; or
       9. with the consent of the Company;

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

* + - * 1. 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;
        2. 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;
        3. in relation to paragraphs (b)(v), (b)(vi) [and (b)(vii)][[127]](#footnote-128) 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; [and]
    1. 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 Company and the relevant Finance Party[; and
    2. to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Obligors [if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information]].
  1. [Disclosure to numbering service providers
     1. Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facilities and/or one or more Obligors the following information:
        1. names of Obligors;
        2. country of domicile of Obligors;
        3. place of incorporation of Obligors;
        4. date of this Agreement;
        5. Clause 39 (*Governing law*);
        6. the names of the Agent and the Arranger;
        7. date of each amendment and restatement of this Agreement;
        8. amounts of, and names of, the Facilities (and any tranches);
        9. amount of Total Commitments;
        10. currencies of the Facilities;
        11. type of Facilities[[128]](#footnote-129);
        12. ranking of Facilities;
        13. Termination Date for the Facilities;
        14. changes to any of the information previously supplied pursuant to paragraphs (i) to (xiii) above; and
        15. such other information agreed between such Finance Party and the Company,

to enable such numbering service provider to provide its usual syndicated loan numbering identification services.[[129]](#footnote-130)

* + 1. The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facilities and/or one or more Obligors by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.
    2. [[The Company]/[Each Obligor] represents that none of the information set out in paragraphs (i) to (xv) of paragraph (a) above is, nor will at any time be, unpublished price-sensitive information.][[130]](#footnote-131)
    3. [The Agent shall notify the Company and the other Finance Parties of:
       1. the name of any numbering service provider appointed by the Agent in respect of this Agreement, the Facilities and/or one or more Obligors; and
       2. the number or, as the case may be, numbers assigned to this Agreement, the Facilities and/or one or more Obligors by such numbering service provider.][[131]](#footnote-132)]
  1. Entire agreement

This Clause 36 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.

* 1. 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.

* 1. Notification of disclosure

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

* + 1. of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 36.2 (*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
    2. upon becoming aware that Confidential Information has been disclosed in breach of this Clause 36.
  1. Continuing obligations

The obligations in this Clause 36 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of [twelve] months from the earlier of:

* + 1. the date on which all amounts payable by the Obligors under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
    2. the date on which such Finance Party otherwise ceases to be a Finance Party.

1. Confidentiality of Funding Rates [and Reference Bank Quotations]
   1. Confidentiality and disclosure
      1. The Agent and each Obligor agree to keep each Funding Rate [(and, in the case of the Agent, each Reference Bank Quotation)] confidential and not to disclose it to anyone, save to the extent permitted by paragraphs (b), (c) [and (d)] below.
      2. The Agent may disclose:
         1. any Funding Rate [(but not, for the avoidance of doubt, any Reference Bank Quotation)] to the relevant Borrower pursuant to Clause 9.5 (*Notification of rates of interest*); and
         2. any Funding Rate [or any Reference Bank Quotation] to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Agent and the relevant Lender [or Reference Bank, as the case may be].
      3. The Agent may disclose any Funding Rate [or any Reference Bank Quotation], and each Obligor may disclose any Funding Rate, to:
         1. any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives if any person to whom that Funding Rate [or Reference Bank Quotation] is to be given pursuant to this 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 Reference Bank Quotation] or is otherwise bound by requirements of confidentiality in relation to it;
         2. any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate [or Reference Bank Quotation] is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances;
         3. any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes if the person to whom that Funding Rate [or Reference Bank Quotation] is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances; and
         4. any person with the consent of the relevant Lender [or Reference Bank, as the case may be].
      4. [The Agent's obligations in this Clause 37 relating to Reference Bank Quotations are without prejudice to its obligations to make notifications under Clause 9.5 (*Notification of rates of interest*) **provided that** (other than pursuant to paragraph (b)(i) above) the Agent shall not include the details of any individual Reference Bank Quotation as part of any such notification.]
   2. Related obligations
      1. The Agent and each Obligor acknowledge that each Funding Rate [(and, in the case of the Agent, each Reference Bank Quotation)] is or may be price-sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Agent and each Obligor undertake not to use any Funding Rate [or, in the case of the Agent, any Reference Bank Quotation] for any unlawful purpose.
      2. The Agent and each Obligor agree (to the extent permitted by law and regulation) to inform the relevant Lender [or Reference Bank, as the case may be]:
         1. of the circumstances of any disclosure made pursuant to paragraph (c)(ii) of Clause 37.1 (*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
         2. upon becoming aware that any information has been disclosed in breach of this Clause 37.
   3. No Event of Default

No Event of Default will occur under Clause 23.3 (*Other obligations*) by reason only of an Obligor's failure to comply with this Clause 37.

1. Counterparts

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

**SECTION 12  
GOVERNING LAW AND ENFORCEMENT**

1. Governing Law

This Agreement [and any non-contractual obligations arising out of or in connection with it][[132]](#footnote-133) [is/are] governed by English law.

1. Enforcement
   1. Jurisdiction[[133]](#footnote-134)
      1. The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement [or any non-contractual obligation arising out of or in connection with this Agreement][[134]](#footnote-135)) (a "**Dispute**").
      2. 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.
      3. Notwithstanding paragraphs (a) and (b) above, no Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.
   2. Service of process

Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in England and Wales):

* + 1. irrevocably appoints [the Company]/[          ] as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
    2. agrees that failure by a process agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned.

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

1. The Original Parties
   1. The Original Obligors

| **Name of Original Borrower** | **Registration number (or equivalent, if any)** |
| --- | --- |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
| **Name of Original Guarantor** | **Registration number (or equivalent, if any)** |
|  |  |

* 1. The Original Lenders [- other than UK Non-Bank Lenders][[135]](#footnote-136)

| **Name of Original Lender** | **Facility A Commitment** | **Facility B Commitment** | **Treaty Passport scheme reference number and jurisdiction of tax residence (if applicable)**[[136]](#footnote-137) |
| --- | --- | --- | --- |
|  |  |  |  |
|  |  |  |  |

* 1. [The Original Lenders - UK Non-Bank Lenders][[137]](#footnote-138)

| **Name of Original Lender** | **Facility A Commitment** | **Facility B Commitment** |
| --- | --- | --- |
|  |  |  |
|  |  |  |

1. Conditions Precedent
   1. Conditions Precedent To Initial Utilisation
      1. **Original Obligors**
         * 1. A copy of the constitutional documents of each Original Obligor.
           2. A copy of a resolution of the board of directors of each Original Obligor:

approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute the Finance Documents to which it is a party;

authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and

authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request and Selection Notice) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.

* + - * 1. A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above.
        2. [A copy of a resolution signed by all the holders of the issued shares in each Original Guarantor, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Original Guarantor is a party.]
        3. A certificate of the Company (signed by a director) confirming that borrowing or guaranteeing, as appropriate, the Total Commitments would not cause any borrowing, guaranteeing or similar limit binding on any Original Obligor to be exceeded.
        4. A certificate of an authorised signatory of the relevant Original Obligor certifying that each copy document relating to it specified in this Part I of Schedule 2 is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.
    1. **Legal opinions**
       - 1. A legal opinion of [                   ], legal advisers to the Arranger and the Agent in England, substantially in the form distributed to the Original Lenders prior to signing this Agreement.
         2. If an Original Obligor is incorporated in a jurisdiction other than England and Wales, a legal opinion of the legal advisers to [the Arranger and the Agent] in the relevant jurisdiction, substantially in the form distributed to the Original Lenders prior to signing this Agreement.
    2. **Other documents and evidence**
       - 1. Evidence that any process agent referred to in Clause 40.2 (*Service of process*), if not an Original Obligor, has accepted its appointment.
         2. A copy of any other Authorisation or other document, opinion or assurance which the Agent considers to be necessary or desirable (if it has notified the Company accordingly) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.
         3. The Original Financial Statements of each Original Obligor.
         4. Evidence that the fees, costs and expenses then due from the Company pursuant to Clause 12 (*Fees*) and Clause 17 (*Costs and expenses*) have been paid or will be paid by the first Utilisation Date.
  1. Conditions Precedent Required To Be  
     Delivered By An Additional Obligor
     1. An Accession Letter, duly executed by the Additional Obligor and the Company.
     2. A copy of the constitutional documents of the Additional Obligor.
     3. A copy of a resolution of the board of directors of the Additional Obligor:
        + 1. approving the terms of, and the transactions contemplated by, the Accession Letter and the Finance Documents and resolving that it execute the Accession Letter;
          2. authorising a specified person or persons to execute the Accession Letter on its behalf; and
          3. authorising a specified person or persons, on its behalf, to sign and/or despatch all other documents and notices (including, in relation to an Additional Borrower, any Utilisation Request or Selection Notice) to be signed and/or despatched by it under or in connection with the Finance Documents.
     4. A specimen of the signature of each person authorised by the resolution referred to in paragraph 3 above.
     5. [A copy of a resolution signed by all the holders of the issued shares of the Additional Guarantor, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Additional Guarantor is a party.]
     6. A certificate of the Additional Obligor (signed by a director) confirming that borrowing or guaranteeing, as appropriate, the Total Commitments would not cause any borrowing, guaranteeing or similar limit binding on it to be exceeded.
     7. A certificate of an authorised signatory of the Additional Obligor certifying that each copy document listed in this Part II of Schedule 2 is correct, complete and in full force and effect as at a date no earlier than the date of the Accession Letter.
     8. A copy of any other Authorisation or other document, opinion or assurance which the Agent considers to be necessary or desirable in connection with the entry into and performance of the transactions contemplated by the Accession Letter or for the validity and enforceability of any Finance Document.
     9. If available, the latest audited financial statements of the Additional Obligor.
     10. A legal opinion of [                        ], legal advisers to the Arranger and the Agent in England.
     11. If the Additional Obligor is incorporated in a jurisdiction other than England and Wales, a legal opinion of the legal advisers to the Arranger and the Agent in the jurisdiction in which the Additional Obligor is incorporated.
     12. If the proposed Additional Obligor is incorporated in a jurisdiction other than England and Wales, evidence that the process agent specified in Clause 40.2 (*Service of process*), if not an Obligor, has accepted its appointment in relation to the proposed Additional Obligor.

1. Requests
   1. Utilisation Request

From: [*Borrower*]

To: [*Agent*]

Dated:

Dear Sirs

**[Company] – [           ] Facility Agreement**

**dated [           ] (the "Agreement")**

* + 1. We refer to the Agreement. This is a Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
    2. We wish to borrow a Loan on the following terms:

|  |  |
| --- | --- |
| Proposed Utilisation Date: | [         ] (or, if that is not a Business Day, the next Business Day) |
| Facility to be utilised: | [Facility A]/[Facility B][[138]](#footnote-139)\* |
| Currency of Loan: | [         ] |
| Amount: | [   ] or, if less, the Available Facility |
| Interest Period: | [         ] |

* + 1. We confirm that each condition specified in Clause 4.2 (*Further conditions precedent*) of the Agreement is satisfied on the date of this Utilisation Request.
    2. [This Loan is to be made in [whole]/[part] for the purpose of refinancing [*identify maturing Facility B Loan*]/[The proceeds of this Loan should be credited to [*account*].][[139]](#footnote-140)/[The proceeds of this Loan should be credited to [*account*].][[140]](#footnote-141)
    3. This Utilisation Request is irrevocable.

Yours faithfully

authorised signatory for

[name of relevant Borrower]

* 1. Selection Notice

**Applicable To A Facility A Loan**

From: [*Borrower*]

To: [*Agent*]

Dated:

Dear Sirs

**[Company] - [     ] Facility Agreement   
dated [        ] (the "Agreement")**

* + 1. We refer to the Agreement. This is a Selection Notice. Terms defined in the Agreement have the same meaning in this Selection Notice unless given a different meaning in this Selection Notice.
    2. We refer to the following Facility A Loan[s] in [*identify currency*] with an Interest Period ending on [           ].[[141]](#footnote-142)\*
    3. [We request that the above Facility A Loan[s] be divided into [             ] Facility A Loans with the following Base Currency Amounts and Interest Periods:][[142]](#footnote-143)\*\*

*or*

[We request that the next Interest Period for the above Facility A Loan[s] is [     ]].[[143]](#footnote-144)\*\*\*

* + 1. We request that the above Facility A Loan[s] [is]/[are] [denominated in the same currency for the next Interest Period]/[denominated in the following currencies: [                         ]. As this results in a change of currency we confirm that each condition specified in Clause 4.2 (*Further conditions precedent*) of the Agreement is satisfied on the date of this Selection Notice. The proceeds of any change in currency should be credited to [*account*]].
    2. This Selection Notice is irrevocable.

Yours faithfully

authorised signatory for

[the Company on behalf of]

[*name of relevant Borrower*]

1. Form of Transfer Certificate

To: [            ] as Agent

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

Dated:

**[Company] – [             ] Facility Agreement**

**dated [           ] (the "Agreement")**

* + 1. We refer to the Agreement. This is a Transfer Certificate. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
    2. We refer to Clause 24.6 (*Procedure for transfer*) of the Agreement:
       - 1. The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation, and in accordance with Clause 24.6 (*Procedure for transfer*) of the Agreement, all of the Existing Lender's rights and obligations under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment(s) and participations in Loans under the Agreement as specified in the Schedule.
         2. The proposed Transfer Date is [            ].
         3. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 31.2 (*Addresses*) of the Agreement are set out in the Schedule.
    3. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 24.5 (*Limitation of responsibility of Existing Lenders*) of the Agreement.
    4. The New Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:
       - 1. [a Qualifying Lender (other than a Treaty Lender);]
         2. [a Treaty Lender;]
         3. [not a Qualifying Lender].[[144]](#footnote-145)
    5. [The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:
       - 1. a company resident in the United Kingdom for United Kingdom tax purposes;
         2. a partnership each member of which is:

a company so resident in the United Kingdom; or

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

* + - * 1. a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.][[145]](#footnote-146)

5. [The New Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number [     ]) and is tax resident in [       ][[146]](#footnote-147), so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax, and requests that the Company notify:

(a) each Borrower which is a Party as a Borrower as at the Transfer Date; and

(b) each Additional Borrower which becomes an Additional Borrower after the Transfer Date,

that it wishes that scheme to apply to the Agreement.][[147]](#footnote-148)

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

[6/7]. This Transfer Certificate [and any non-contractual obligations arising out of or in connection with it] [is/are][[148]](#footnote-149) governed by English law.

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

**THE SCHEDULE**

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

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

|  |  |
| --- | --- |
| [Existing Lender] | [New Lender] |
| By: | By: |

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

[Agent]

By:

1. Form of Assignment Agreement

To: [     ] as Agent and [            ] as Company, for and on behalf of each Obligor

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

Dated:

**[Company] - [         ] Facility Agreement**

**dated [         ] (the "Agreement")**

* + 1. We refer to the Agreement. This is an Assignment Agreement. Terms defined in the Agreement have the same meaning in this Assignment Agreement unless given a different meaning in this Assignment Agreement.
    2. We refer to Clause 24.7 (*Procedure for assignment*) of the Agreement:
       - 1. The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment(s) and participations in Loans under the Agreement as specified in the Schedule.
         2. 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 Agreement specified in the Schedule.
         3. 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.[[149]](#footnote-150)
    3. The proposed Transfer Date is [          ].
    4. On the Transfer Date the New Lender becomes Party to the Finance Documents as a Lender.
    5. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 31.2 (*Addresses*) of the Agreement are set out in the Schedule.
    6. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 24.5 (*Limitation of responsibility of Existing Lenders*) of the Agreement.
    7. The New Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:
       - 1. [a Qualifying Lender (other than a Treaty Lender);]
         2. [a Treaty Lender;]
         3. [not a Qualifying Lender].[[150]](#footnote-151)
    8. [The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:
       - 1. a company resident in the United Kingdom for United Kingdom tax purposes;
         2. a partnership each member of which is:

a company so resident in the United Kingdom; or

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

* + - * 1. a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.][[151]](#footnote-152)

8. [The New Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number [      ]) and is tax resident in [         ][[152]](#footnote-153), so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax, and requests that the Company notify:

(a) each Borrower which is a Party as a Borrower as at the Transfer Date; and

(b) each Additional Borrower which becomes an Additional Borrower after the Transfer Date,

that it wishes that scheme to apply to the Agreement.][[153]](#footnote-154)

[8/9]. This Assignment Agreement acts as notice to the Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 24.8 (*Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Company*) of the Agreement, to the Company (on behalf of each Obligor) of the assignment referred to in this Assignment Agreement.

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

[10/11].This Assignment Agreement [and any non-contractual obligations arising out of or in connection with it] [is/are][[154]](#footnote-155) governed by English law.

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

**THE SCHEDULE**

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

[*Insert relevant details*]

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

|  |  |
| --- | --- |
| [Existing Lender] | [New Lender] |
| By: | By: |

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

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

[Agent]

By:

1. Form of Accession Letter

To: [        ] as Agent

From: [*Subsidiary*] and [*Company*]

Dated:

Dear Sirs

**[Company] – [       ] Facility Agreement**

**dated [        ] (the "Agreement")**

* + 1. We refer to the Agreement. This is an Accession Letter. Terms defined in the Agreement have the same meaning in this Accession Letter unless given a different meaning in this Accession Letter.
    2. [*Subsidiary*] agrees to become an Additional [Borrower]/[Guarantor] and to be bound by the terms of the Agreement as an Additional [Borrower]/[Guarantor] pursuant to [Clause 25.2 (*Additional Borrowers*)]/[Clause 25.4 (*Additional Guarantors*)] of the Agreement. [*Subsidiary*] is a company duly incorporated under the laws of [*name of relevant jurisdiction*].
    3. [The Company confirms that no Default is continuing or would occur as a result of [*Subsidiary*] becoming an Additional Borrower.][[155]](#footnote-156)
    4. [*Subsidiary's*] administrative details are as follows:

Address:

Fax No:

Attention:

* + 1. This Accession Letter [and any non-contractual obligations arising out of or in connection with it] [is/are][[156]](#footnote-157) governed by English law.

[This Accession Letter is entered into by deed.]

|  |  |
| --- | --- |
| [Company] | [Subsidiary] |

1. Form of Resignation Letter

To: [       ] as Agent

From: [*resigning Obligor*] and [*Company*]

Dated:

Dear Sirs

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

* + 1. We refer to the Agreement. This is a Resignation Letter. Terms defined in the Agreement have the same meaning in this Resignation Letter unless given a different meaning in this Resignation Letter.
    2. Pursuant to [Clause 25.3 (*Resignation of a Borrower*)]/[Clause 25.6 (*Resignation of a Guarantor*)] of the Agreement, we request that [*resigning Obligor*] be released from its obligations as a [Borrower]/[Guarantor] under the Agreement.
    3. We confirm that:
       - 1. no Default is continuing or would result from the acceptance of this request; and
         2. [                                 ][[157]](#footnote-158)\*
    4. This Resignation Letter [and any non-contractual obligations arising out of or in connection with it] [is/are][[158]](#footnote-159) governed by English law.

|  |  |
| --- | --- |
| [Company] | [Subsidiary] |
| By: | By: |

1. Form of Compliance Certificate

To: [       ] as Agent

From: [*Company*]

Dated:

Dear Sirs

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

* + 1. We refer to the Agreement. This is a Compliance Certificate. Terms defined in the Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
    2. We confirm that: [Insert details of covenants to be certified]
    3. [We confirm that no Default is continuing.][[159]](#footnote-160)\*

|  |  |  |
| --- | --- | --- |
| Signed: |  |  |
|  | Director | Director |
|  | of | of |
|  | [*Company*] | [*Company*] |

[*insert applicable certification language*][[160]](#footnote-161)\*\*

[for and on behalf of  
[*name of auditors of the Company*]][[161]](#footnote-162)\*\*\*

1. Existing Security

| **Name of Obligor** | **Security** | **Total Principal Amount of Indebtedness Secured** |
| --- | --- | --- |
|  |  |  |
|  |  |  |

1. LMA Form of Confidentiality Undertaking[[162]](#footnote-163)
2. Timetables

|  | **Loans in euro** | **Loans in sterling** | **Loans in other currencies** |
| --- | --- | --- | --- |
| Currency to be available and convertible into the Base Currency (Clause 4.3 (*Conditions relating to Optional Currencies*)) | On the day which is two TARGET Days before the first day of the Interest Period for the relevant Loan. | On the first day of the Interest Period for the relevant Loan. | On the day which is two Business Days before the first day of the Interest Period for the relevant Loan. |
| Agent notifies the Company if a currency is approved as an Optional Currency in accordance with Clause 4.3 (*Conditions relating to Optional Currencies*) |  |  |  |
| Delivery of a duly completed Utilisation Request (Clause 5.1 (*Delivery of a Utilisation Request*)) or a Selection Notice (Clause 10.1 (*Selection of Interest Periods*)) |  |  |  |
| Agent determines (in relation to a Utilisation) the Base Currency Amount of the Loan, if required under Clause 5.4 (*Lenders' participation*) and notifies the Lenders of the Loan in accordance with Clause 5.4 (*Lenders' participation*) |  |  |  |
| Agent receives a notification from a Lender under Clause 6.2 (*Unavailability of a currency*) | [*insert time*] on the day which is two TARGET Days before the first day of the Interest Period for the relevant Loan. | - | [*insert time*] on the day which is two Business Days before the first day of the Interest Period for the relevant Loan. |
| Agent gives notice in accordance with Clause 6.2 (*Unavailability of a currency*) | [*insert time*] on the day which is two TARGET Days before the first day of the Interest Period for the relevant Loan. | - | [*insert time*] on the day which is two Business Days before the first day of the Interest Period for the relevant Loan. |
| Agent determines amount of the Facility A Loan in Optional Currency in accordance with Clause 6.3 (*Change of currency*) | [*insert time*] on the day which is two TARGET Days before the first day of the Interest Period for the relevant Loan. | **[***insert time*] on the first day of the Interest Period for the relevant Loan. | [*insert time*] on the day which is two Business Days before the first day of the Interest Period for the relevant Loan. |
| Agent determines amount of the Facility A Loan in Optional Currency in accordance with paragraph (a) of Clause 6.4 (*Same Optional Currency during Successive Interest Periods*). | [*insert time*] on the day which is two TARGET Days before the first day of the second of those Interest Periods. | [*insert time*] on the first day of the second of those Interest Periods. | [*insert time*] on the day which is two Business Days before the first day of the second of those Interest Periods. |
| Agent determines amount of Facility A Loan in Optional Currency converted into Base Currency in accordance with paragraph (b) of Clause 6.4 (*Same Optional Currency during Successive Interest Periods*).[[163]](#footnote-164) |  |  |  |
| LIBOR or EURIBOR is fixed | Quotation Day 11:00 a.m. in respect of LIBOR and 11:00 a.m. (Brussels time) in respect of EURIBOR | Quotation Day 11:00 a.m. | Quotation Day 11:00 a.m. |
| [Benchmark Rate is fixed for a Loan in a Non-LIBOR Currency] | [-] | [-] | [As specified as such in respect of that currency in Schedule 13 (*Other Benchmarks*)] |
| [Reference Bank Rate calculated by reference to available quotations in accordance with Clause 11.2 (*Calculation of Reference Bank Rate*)] | [[Noon] on the Quotation Day in respect of LIBOR [and Quotation Day [11:30 a.m. (Brussels time)] in respect of EURIBOR]] | [[Noon] on the Quotation Day] | [[Noon] on the Quotation Day in respect of LIBOR [and as specified as such in respect of the relevant currency in Schedule 13 (*Other Benchmarks*) in respect of a Benchmark Rate]] |

1. Form of Increase Confirmation

To: [      ] as Agent and [             ] as Company, for and on behalf of each Obligor

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

Dated:

**[Company] – [            ] Facility Agreement**

**dated [             ] (the "Agreement")**

* + 1. We refer to the Agreement. This is an Increase Confirmation. Terms defined in the Agreement have the same meaning in this Increase Confirmation unless given a different meaning in this Increase Confirmation.
    2. We refer to Clause 2.2 (*Increase*) of the Agreement.
    3. The Increase Lender agrees to assume and will assume all of the obligations corresponding to the Commitment(s) specified in the Schedule (the "**Relevant Commitment(s)**") as if it had been an Original Lender under the 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 party to the Finance Documents as a Lender.
    6. The Facility Office and address, fax number and attention details for notices to the Increase Lender for the purposes of Clause 31.2 (*Addresses*) of the Agreement are set out in the Schedule.
    7. The Increase Lender expressly acknowledges the limitations on the Lenders' obligations referred to in paragraph (i) of Clause 2.2 (*Increase*) of the Agreement.
    8. The Increase Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:
       - 1. [a Qualifying Lender (other than a Treaty Lender);]
         2. [a Treaty Lender;]
         3. [not a Qualifying Lender].[[164]](#footnote-165)
    9. [The Increase Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:

(a) a company resident in the United Kingdom for United Kingdom tax purposes;

(b) a partnership each member of which is:

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

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

(c) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.][[165]](#footnote-166)

9. [The Increase Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number [     ]) and is tax resident in [          ][[166]](#footnote-167)\*, so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax and requests that the Company notify:

* + - * 1. each Borrower which is a Party as a Borrower as at the Increase Date; and
        2. each Additional Borrower which becomes an Additional Borrower after the Increase Date,

that it wishes the scheme to apply to the Agreement.][[167]](#footnote-168)\*\*

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

[10/11].This Increase Confirmation [and any non-contractual obligations arising out of or in connection with it] [is/are][[168]](#footnote-169) governed by English law.

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

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

Agent

By:

1. [Other Benchmarks]

**[Part] [    ][[169]](#footnote-170)  
[*Insert Benchmark label*] Currency/ies**

|  |  |
| --- | --- |
| **[CURRENCY:** | [ ] |
| ***Definitions*** |  |
| **Business Day:** | [ ] |
| **Business Day Conventions (definition of "Month" and Clause 10.3 (*Non-Business Days*)):** | [ ] |
| **[Fallback Interest Period:** | [ ]] |
| **Quotation Day:** | [ ] |
| **[Reference Bank Rate:** | [ ] |
| **Reference Banks:** | [ ]] |
| **Relevant Market:** | [ ] |
| **Screen Rate:** | [ ]. If [such page or service] ceases to be available the Agent may specify another page or service displaying the relevant rate after consultation with the Company. |
| ***Interest Periods*** |  |
| **Length of Interest Period in absence of selection (paragraph (c) of Clause 10.1 (*Selection of Interest Periods*)):** | [ ] |
| **Periods capable of selection as Interest Periods (paragraph (d) of Clause 10.1 (*Selection of Interest Periods*)):** | [ ] |
| ***Rate fixing timings*** |  |
| **Time at which Benchmark Rate is fixed (Schedule 11 (*Timetables*)):** | [ ] |
| **[Time at which Reference Bank Rate falls to be calculated by reference to available quotations (Schedule 11 (*Timetables*)):** | [ ] |
| **Deadline for quotations to establish a Reference Bank Rate (paragraph (b) of Clause 11.2 (*Calculation of Reference Bank Rate*)):** | [ ]] |
| **Deadline for Lenders to report market disruption (Clause 11.4 (*Market disruption*)):** | [ ]] |

1. [Screen Rate Contingency Periods]

| **[Screen Rate** | **Period** |
| --- | --- |
| LIBOR | [ ] |
| [EURIBOR] | [ ]] |

1. Compounded Rate Terms
   1. Dollars[[170]](#footnote-171)

|  |  |  |
| --- | --- | --- |
| **CURRENCY:** | Dollars. | |
| ***Cost of funds as a fallback*** |  |
| Cost of funds [will]/[will not][[171]](#footnote-172) apply as a fallback.[[172]](#footnote-173) | |
| ***Definitions*** |  |
| **Additional Business Days:** | An RFR Banking Day. | |
| **[Backstop Rate Switch Date:]** | [[ ].][[173]](#footnote-174) | |
| **Break Costs:** | [None specified]/[     ].[[174]](#footnote-175) | |
| 1. **Business Day Conventions (definition of "Month" and Clause 10.3 (*Non-Business Days*)):** | * 1. If any period is expressed to accrue by reference to a Month or any number of Months then, in respect of the last Month of that period: | |
|  | * + 1. subject to paragraph (iii) below, if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day; | |
|  | * + 1. 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 | |
|  | * + 1. 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. | |
|  | * 1. 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).[[175]](#footnote-176) | |
| 1. **Central Bank Rate:** | * 1. [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   2. if that target is not a single figure, the arithmetic mean of:      1. the upper bound of the short-term interest rate target range set by the US Federal Open Market Committee and published by the Federal Reserve Bank of New York; and      2. the lower bound of that target range].[[176]](#footnote-177) | |
| **Central Bank Rate Adjustment:** | [None specified]/[        ][[177]](#footnote-178) | |
| **Credit Adjustment Spread:** | [ ].[[178]](#footnote-179) | |
| **Daily Rate**: | 1. The "**Daily Rate**" for any RFR Banking Day is: | |
|  | * 1. the RFR[[179]](#footnote-180) for that RFR Banking Day; [or] | |
|  | * 1. if the RFR is not available for that RFR Banking Day, [the percentage rate per annum which is the aggregate of:]      1. the Central Bank Rate for that RFR Banking Day [; and      2. the applicable Central Bank Rate Adjustment][; or | |
|  | * 1. if paragraph (b) above applies but the Central Bank Rate for that RFR Banking Day is not available, [the percentage rate per annum which is the aggregate of:]      1. the most recent Central Bank Rate for a day which is no more than [ ] RFR Banking Days before that RFR Banking Day[; and      2. the applicable Central Bank Rate Adjustment]],   rounded, in either case, to four decimal places[[180]](#footnote-181) [and if, in either case, the aggregate of that rate and the applicable Credit Adjustment Spread is less than zero, the Daily Rate shall be deemed to be such a rate that the aggregate of the Daily Rate and the applicable Credit Adjustment Spread is zero][[181]](#footnote-182) [[182]](#footnote-183). | |
| **Lookback Period:** | [Five] RFR Banking Days [[183]](#footnote-184). | |
| **Market Disruption Rate:** | 1. [The percentage rate per annum which is the aggregate of:    1. the Cumulative Compounded RFR Rate for the Interest Period of the relevant Loan; and    2. the applicable Credit Adjustment Spread.]   **OR**  [None specified.] [[184]](#footnote-185) | |
| **Relevant Market:** | The market for overnight cash borrowing collateralised by US Government securities. | |
| **Reporting Day:** | The Business Day which follows the day which is the Lookback Period[[185]](#footnote-186) prior to the last day of the Interest Period.[[186]](#footnote-187) |
| **RFR:** | The secured overnight financing rate (SOFR) 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).[[187]](#footnote-188) | |
| **RFR Banking Day:** | 1. Any day other than:    1. a Saturday or Sunday; and    2. 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. |
| **[*RFR Contingency Period*]** | [                          ] | |
| ***Interest Periods*** |  | |
| Length of Interest Period in absence of selection (paragraph (c) of Clause 10.1 (*Selection of Interest Periods*)): | [                   ] | |
| Periods capable of selection as Interest Periods (paragraph (d) of Clause 10.1 (*Selection of Interest Periods*)): | [                   ] | |
| ***Reporting Times*** |  | |
| [Deadline for Lenders to report market disruption in accordance with Clause 11.4 (*Market disruption*) | [Close of business in London on the Reporting Day for the relevant Loan.]][[188]](#footnote-189) | |
| [Deadline for Lenders to report their cost of funds in accordance with Clause 11.5 (*Cost of funds*) | Close of business on the date falling [     ] Business Days after the Reporting Day for the relevant Loan (or, if earlier, on the date falling [     ] Business Days before the date on which interest is due to be paid in respect of the Interest Period for that Loan).][[189]](#footnote-190) | |

* 1. Sterling[[190]](#footnote-191)

|  |  |  |
| --- | --- | --- |
| **CURRENCY:** | Sterling. | |
| ***Cost of funds as a fallback*** |  |
| Cost of funds [will]/[will not][[191]](#footnote-192) apply as a fallback.[[192]](#footnote-193) | |
| ***Definitions*** |  | |
| **Additional Business Days:** | An RFR Banking Day. |
| [**Backstop Rate Switch Date:**] | [[ ].][[193]](#footnote-194) |
| **Break Costs:** | [None Specified]/[     ].[[194]](#footnote-195) | |
| 1. **Business Day Conventions (definition of "Month" and Clause 10.3 (*Non-Business Days*)):** | * 1. If any period is expressed to accrue by reference to a Month or any number of Months then, in respect of the last Month of that period: | |
|  | * + 1. subject to paragraph (iii) below, if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day; | |
|  | * + 1. 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 | |
|  | * + 1. 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. | |
|  | * 1. 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).[[195]](#footnote-196) | |
| **Central Bank Rate:** | The Bank of England's Bank Rate as published by the Bank of England from time to time. | |
| **Central Bank Rate Adjustment:** | [       ]. | |
| **Credit Adjustment Spread:** | [ ].[[196]](#footnote-197) | |
| **Daily Rate:** | 1. The "**Daily Rate**" for any RFR Banking Day is: | |
|  | * 1. the RFR[[197]](#footnote-198) for that RFR Banking Day; or | |
|  | * 1. if the RFR is not available for that RFR Banking Day, the percentage rate per annum which is the aggregate of:      1. the Central Bank Rate for that RFR Banking Day; and      2. the applicable Central Bank Rate Adjustment [; or | |
|  | * 1. if paragraph (b) above applies but the Central Bank Rate for that RFR Banking Day is not available, the percentage rate per annum which is the aggregate of:      1. the most recent Central Bank Rate for a day which is no more than [ ] RFR Banking Days before that RFR Banking Day; and      2. the applicable Central Bank Rate Adjustment],   rounded, in either case, to four decimal places[[198]](#footnote-199) [and if, in either case, the aggregate of that rate and the applicable Credit Adjustment Spread is less than zero, the Daily Rate shall be deemed to be such a rate that the aggregate of the Daily Rate and the applicable Credit Adjustment Spread is zero].[[199]](#footnote-200) [[200]](#footnote-201) | |
| **Lookback Period:** | [Five] RFR Banking Days. [[201]](#footnote-202) | |
| **Market Disruption Rate:** | 1. [The percentage rate per annum which is the aggregate of:    1. the Cumulative Compounded RFR Rate for the Interest Period of the relevant Loan; and    2. the applicable Credit Adjustment Spread.] /   **OR**  [None specified.][[202]](#footnote-203) | |
| **Relevant Market:** | The sterling wholesale market. | |
| **Reporting Day:** | The day which is the Lookback Period[[203]](#footnote-204) prior to the last day of the Interest Period or, if that day is not a Business Day, the immediately following Business Day. | |
| **RFR:** | The SONIA (sterling overnight index average) reference rate displayed on the relevant screen of any authorised distributor of that reference rate.[[204]](#footnote-205) | |
| **RFR Banking Day:** | A day (other than a Saturday or Sunday) on which banks are open for general business in London. | |
| **[*RFR Contingency Period*]** | [                   ] | |
| ***Interest Periods*** |  | |
| Length of Interest Period in absence of selection (paragraph (c) of Clause 10.1 (*Selection of Interest Periods*)): | [                   ] | |
| Periods capable of selection as Interest Periods (paragraph (d) of Clause 10.1 (*Selection of Interest Periods*)): | [                   ] | |
| ***Reporting Times*** |  | |
| [Deadline for Lenders to report market disruption in accordance with Clause 11.4 (*Market disruption*) | [Close of business in London on the Reporting Day for the relevant Loan.]][[205]](#footnote-206) | |
| [Deadline for Lenders to report their cost of funds in accordance with Clause 11.5 (*Cost of funds*) | Close of business on the date falling [     ] Business Days after the Reporting Day for the relevant Loan (or, if earlier, on the date falling [     ] Business Days before the date on which interest is due to be paid in respect of the Interest Period for that Loan).][[206]](#footnote-207) | |

* 1. Swiss Francs[[207]](#footnote-208)

|  |  |  |  |
| --- | --- | --- | --- |
| **CURRENCY:** | Swiss francs. | | |
| ***Cost of funds as a fallback*** |  | |
| Cost of funds [will]/[will not][[208]](#footnote-209) apply as a fallback.[[209]](#footnote-210) | | |
| ***Definitions*** |  | | |
| **Additional Business Days:** | An RFR Banking Day. | |
| **[Backstop Rate Switch Date:]** | [[ ].][[210]](#footnote-211) | |
| **Break Costs:** | 1. [None Specified]/[      ].[[211]](#footnote-212) | | |
| **Business Day Conventions (definition of "Month" and Clause 10.3 (*Non-Business Days*)):** | * 1. If any period is expressed to accrue by reference to a Month or any number of Months then, in respect of the last Month of that period: | | |
|  | * + 1. subject to paragraph (iii) below, if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day; | | |
|  | * + 1. 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 | | |
|  | * + 1. 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. | | |
|  | * 1. 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).[[212]](#footnote-213) | | |
| **Central Bank Rate:** | The policy rate of the Swiss National Bank as published by the Swiss National Bank from time to time. | | |
| **Central Bank Rate Adjustment:** | [None specified]/[      ].[[213]](#footnote-214) | | |
| **Credit Adjustment Spread:** | [ ].[[214]](#footnote-215) | | |
| **Daily Rate:** | 1. The "**Daily Rate**" for any RFR Banking Day is: | | |
|  | * 1. the RFR[[215]](#footnote-216) for that RFR Banking Day; or | | |
|  | * 1. if the RFR is not available for that RFR Banking Day, [the percentage rate per annum which is the aggregate of:]      1. the Central Bank Rate for that RFR Banking Day [; and      2. the applicable Central Bank Rate Adjustment][; or | | |
|  | * 1. if paragraph (b) above applies but the Central Bank Rate for that RFR Banking Day is not available, [the percentage rate per annum which is the aggregate of:]      1. the most recent Central Bank Rate for a day which is no more than [ ] RFR Banking Days before that RFR Banking Day[; and      2. the applicable Central Bank Rate Adjustment]],   rounded, in either case, to four decimal places[[216]](#footnote-217) [and if, in either case, the aggregate of that rate and the applicable Credit Adjustment Spread is less than zero, the Daily Rate shall be deemed to be such a rate that the aggregate of the Daily Rate and the applicable Credit Adjustment Spread is zero.][[217]](#footnote-218) [[218]](#footnote-219). | | |
| **Lookback Period:** | [Five] RFR Banking Days. [[219]](#footnote-220) | | |
| **Market Disruption Rate:** | 1. [The percentage rate per annum which is the aggregate of:    1. the Cumulative Compounded RFR Rate for the Interest Period of the relevant Loan; and    2. the applicable Credit Adjustment Spread.] /   **OR**  [None specified.][[220]](#footnote-221) | | |
| **Relevant Market:** | The Swiss francs overnight repo market. |
| **Reporting Day:** | The day which is the Lookback Period[[221]](#footnote-222) prior to the last day of the Interest Period or, if that day is not a Business Day, the immediately following Business Day. | | |
| **RFR:** | The SARON (Swiss Average Rate Overnight) reference rate administered by SIX (or any other person which takes over the administration of that rate) as at the close of trading on the SIX Swiss Exchange on the relevant day displayed on page SARON.S of the Thomson Reuters screen under the heading CLSFIX.[[222]](#footnote-223) | | |
| **RFR Banking Day:** | A day (other than a Saturday or Sunday) on which banks are open for the settlement of payments and foreign exchange transactions in Zurich. | | |
| **[*RFR Contingency Period*]** | [                   ] | | |
| ***Interest Periods*** |  | | |
| Length of Interest Period in absence of selection (paragraph (c) of Clause 10.1 (*Selection of Interest Periods*)): | [                   ] | | |
| Periods capable of selection as Interest Periods (paragraph (d) of Clause 10.1 (*Selection of Interest Periods*)): | [                   ] | | |
| ***Reporting Times*** |  | | |
| [Deadline for Lenders to report market disruption in accordance with Clause 11.4 (*Market disruption*) | [Close of business in London on the Reporting Day for the relevant Loan.]][[223]](#footnote-224) | | |
| [Deadline for Lenders to report their cost of funds in accordance with Clause 11.5 (*Cost of funds*) | Close of business on the date falling [     ] Business Days after the Reporting Day for the relevant Loan (or, if earlier, on the date falling [     ] Business Days before the date on which interest is due to be paid in respect of the Interest Period for that Loan).][[224]](#footnote-225) | | |

* 1. [Euro] [[225]](#footnote-226)

|  |  |  |
| --- | --- | --- |
| [**CURRENCY:** | Euro. | |
| ***Cost of funds as a fallback*** |  | | |
| Cost of funds [will]/[will not][[226]](#footnote-227) apply as a fallback.[[227]](#footnote-228) | | | |
| ***Definitions*** |  | |
| **Additional Business Days** | An RFR Banking Day. | |
| **Backstop Rate Switch Date:** | [None specified] / [ ]. | |
| **Break Costs:** | 1. [None Specified]/[       ].[[228]](#footnote-229) | |
| **Business Day Conventions (definition of "Month" and Clause 10.3 (*Non-Business Days*)):** | * 1. If any period is expressed to accrue by reference to a Month or any number of Months then, in respect of the last Month of that period: | | | |
|  | * + 1. subject to paragraph (iii) below, if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day; | | | |
|  | * + 1. 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 | | | |
|  | * + 1. 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. | | | |
|  | * 1. 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).[[229]](#footnote-230) | | | |
| **Central Bank Rate:** | [The fixed rate for the main refinancing operations of the European Central Bank, or, if that rate is not published, the minimum bid rate for the main refinancing operations of the European Central Bank, each as published by the European Central Bank from time to time.]/ **OR**  [The rate for the marginal lending facility of the European Central Bank, as published by the European Central Bank from time to time.] / **OR**  [The rate for the deposit facility of the central banking system of the Participating Member States, as published by the European Central Bank from time to time].[[230]](#footnote-231) | | | |
| **Central Bank Rate Adjustment:** | [None specified]/[          ].[[231]](#footnote-232) | | | |
| **Credit Adjustment Spread:** | [ ].[[232]](#footnote-233) | | | |
| **Daily Rate**: | 1. The "**Daily Rate**" for any RFR Banking Day is: | | | |
|  | * 1. the RFR[[233]](#footnote-234) for that RFR Banking Day; [or] | | | |
|  | * 1. if the RFR is not available for that RFR Banking Day, [the percentage rate per annum which is the aggregate of:]      1. the Central Bank Rate for that RFR Banking Day [; and      2. the applicable Central Bank Rate Adjustment][; or | | | |
|  | * 1. if paragraph (b) above applies but the Central Bank Rate for that RFR Banking Day is not available, [the percentage rate per annum which is the aggregate of:]      1. the most recent Central Bank Rate for a day which is no more than [ ] RFR Banking Days before that RFR Banking Day[; and      2. the applicable Central Bank Rate Adjustment]],   rounded, in either case, to four decimal places[[234]](#footnote-235) [and if, in either case, the aggregate of that rate and the applicable Credit Adjustment Spread is less than zero, the Daily Rate shall be deemed to be such a rate that the aggregate of the Daily Rate and the applicable Credit Adjustment Spread is zero][[235]](#footnote-236) [[236]](#footnote-237). | | | |
| **Lookback Period:** | [Five] RFR Banking Days. [[237]](#footnote-238) | | | |
| **Market Disruption Rate:** | 1. [The percentage rate per annum which is the aggregate of:    1. the Cumulative Compounded RFR Rate for the Interest Period of the relevant Loan; and    2. the applicable Credit Adjustment Spread.] /   **OR**  [None specified.][[238]](#footnote-239) | | | |
| **Relevant Market:** | The euro wholesale market. | |
| **Reporting Day:** | The day which is the Lookback Period[[239]](#footnote-240) prior to the last day of the Interest Period or, if that day is not a Business Day, the immediately following Business Day. | |
| **RFR:** | The euro short-term rate (€STR) administered by the European Central Bank (or any other person which takes over the administration of that rate) published by the European Central Bank (or any other person which takes over publication of that rate).[[240]](#footnote-241) | | | |
| **RFR Banking Day:** | A day (other than a Saturday or a Sunday) which is a TARGET Day. | |
| [***RFR Contingency Period***] | [                  ] |
| ***Interest Periods*** |  | |
| Length of Interest Period in absence of selection (paragraph (c) of Clause 10.1 (*Selection of Interest Periods*)): | [                  ] | |
| Periods capable of selection as Interest Periods (paragraph (d) of Clause 10.1 (*Selection of Interest Periods*)): | [                  ] | |
| ***Reporting Times*** |  | |
| [Deadline for Lenders to report market disruption in accordance with Clause 11.4 (*Market disruption*): | Close of business in London on the Reporting Day for the relevant Loan.][[241]](#footnote-242) | |
| [Deadline for Lenders to report their cost of funds in accordance with Clause 11.5 (*Cost of funds*): | Close of business on the date falling [  ] Business Days after the Reporting Day for the relevant Loan (or, if earlier, on the date falling [  ] Business Days before the date on which interest is due to be paid in respect of the Interest Period for that Loan).][[242]](#footnote-243)] | |

1. Daily Non-Cumulative Compounded RFR Rate[[243]](#footnote-244)

The "**Daily Non-Cumulative Compounded RFR Rate**" for any RFR Banking Day "**i**" during an Interest Period for a Compounded Rate Loan is the percentage rate per annum (without rounding, to the extent reasonably practicable for the Finance Party performing the calculation, taking into account the capabilities of any software used for that purpose)[[244]](#footnote-245) calculated as set out below:[[245]](#footnote-246)

where:

"**UCCDRi**"means the Unannualised Cumulative Compounded Daily Rate for that RFR Banking Day "**i**";

"**UCCDRi-1**"means, in relation to that RFR Banking Day "**i**", the Unannualised Cumulative Compounded Daily Rate for the immediately preceding RFR Banking Day (if any) during that Interest Period;

"**dcc**"means 360 or, in any case where market practice in the Relevant Market is to use a different number for quoting the number of days in a year, that number;[[246]](#footnote-247)

"**ni**" means the number of calendar days from, and including, that RFR Banking Day "**i**" up to, but excluding, the following RFR Banking Day;[[247]](#footnote-248) and

the "**Unannualised Cumulative Compounded Daily Rate**" for any RFR Banking Day (the "**Cumulated RFR Banking Day**") during that Interest Period 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)[[248]](#footnote-249) calculated as set out below:[[249]](#footnote-250)

where:

"**ACCDR**" means the Annualised Cumulative Compounded Daily Rate for that Cumulated RFR Banking Day;

"**tni**" means the number of calendar days from, and including, the first day of the Cumulation Period to, but excluding, the RFR Banking Day which immediately follows the last day of the Cumulation Period;

"**Cumulation Period**" means the period from, and including, the first RFR Banking Day of that Interest Period to, and including, that Cumulated RFR Banking Day;

"**dcc**"has the meaning given to that term above; and

the "**Annualised Cumulative Compounded Daily Rate**" for that Cumulated RFR Banking Day is the percentage rate per annum (rounded to [ ] decimal places)[[250]](#footnote-251) calculated as set out below:[[251]](#footnote-252)

where:

"**d0**" means the number of RFR Banking Days in the Cumulation Period; [[252]](#footnote-253)

"**Cumulation Period**" has the meaning given to that term above;

"**i**" means a series of whole numbers from one to d0, each representing the relevant RFR Banking Day in chronological order in the Cumulation Period;

"**DailyRatei-LP**" means, for any RFR Banking Day "**i**" in the Cumulation Period, the Daily Rate for the RFR Banking Day which is the applicable Lookback Period[[253]](#footnote-254) prior to that RFR Banking Day "**i**";[[254]](#footnote-255)

"**ni**" means, for any RFR Banking Day "**i**" in the Cumulation Period, the number of calendar days from, and including, that RFR Banking Day "**i**" up to, but excluding, the following RFR Banking Day;[[255]](#footnote-256)

"**dcc**"has the meaning given to that term above; and

"**tni**" has the meaning given to that term above.

1. Cumulative Compounded RFR Rate

The "**Cumulative Compounded RFR Rate**" for any Interest Period for a Compounded Rate 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 16 (*Daily Non-Cumulative Compounded RFR Rate*))[[256]](#footnote-257) calculated as set out below:[[257]](#footnote-258)

where:

"**d0**" means the number of RFR Banking Days during the Interest Period;[[258]](#footnote-259)

"**i**" means a series of whole numbers from one to d**0**, each representing the relevant RFR Banking Day in chronological order during the Interest Period;

"**DailyRatei-LP**" means for any RFR Banking Day "**i**" during the Interest Period, the Daily Rate for the RFR Banking Day which is the applicable Lookback Period[[259]](#footnote-260) prior to that RFR Banking Day "**i**";

"**ni**" means, for any RFR Banking Day "**i**", the number of calendar days from, and including, that RFR Banking Day "**i**" up to, but excluding, the following RFR Banking Day;[[260]](#footnote-261)

"**dcc**" means 360 or, in any case where market practice in the Relevant Market is to use a different number for quoting the number of days in a year, that number;[[261]](#footnote-262) and

"**d**" means the number of calendar days during that Interest Period.

1. The package of documents constituting the £RFR Working Group Conventions is available through the [website of the £RFR Working Group.](https://www.bankofengland.co.uk/markets/transition-to-sterling-risk-free-rates-from-libor) Unless otherwise indicated, a reference in the footnotes to this document to a recommendation or statement of the £RFR Working Group is a reference to a recommendation or statement contained in the [£RFR Working Group Conventions](https://www.bankofengland.co.uk/-/media/boe/files/markets/benchmarks/rfr/statement-on-behalf-of-rfrwg-recommendations-for-sonia-loan-market-conventions.pdf?la=en&hash=074583D7080993CE84B6A381B554BEFD6594C076). [↑](#footnote-ref-2)
2. Readers should note that whilst the Statement on behalf of the Working Group on Sterling Risk-Free Reference Rates – Recommendations for SONIA Loan Market Convention*s* provides only that "*daily non-cumulative compounded rate….may be an option*" the accompanying Supporting Slides provide that "*It is recommended to adopt Non‑Cumulative Compounded Rate method*". [↑](#footnote-ref-3)
3. The LMA publishes a version of this document which incorporates a Lookback with Observation Shift. That document is available through the LMA website. [↑](#footnote-ref-4)
4. Whilst there are obvious advantages of operational simplicity and ease of comprehension associated with the adoption of a single uniform set of conventions this will require balancing against any commercial or other desire for consistency with each set of recommendations. [↑](#footnote-ref-5)
5. Other than in relation to day-count conventions where this document reflects the convention in the wholesale money markets that interest in respect of the majority of major currencies other than sterling is calculated on an actual/360 basis. [↑](#footnote-ref-6)
6. The ARRC Conventions (together with a supporting technical reference document) are available through the website of [the Alternative Reference Rates Committee](https://www.newyorkfed.org/arrc). [↑](#footnote-ref-7)
7. The NWG Recommendation is available through the website of [the National Working Group on Swiss Franc Reference Rates](https://www.snb.ch/en/ifor/finmkt/fnmkt_benchm/id/finmkt_reformrates). [↑](#footnote-ref-8)
8. The Backstop Rate Switch Date is the latest date on which Loans in a Rate Switch Currency will switch to use of the relevant Compounded Reference Rate in place of the relevant Term Reference Rate. It is intended to be specified by reference to a specified date.

   This document envisages that this date will be specified on a currency-specific basis in Schedule 15 (*Compounded Rate Terms*) or otherwise in any Compounded Rate Terms agreed subsequently.

   The optional paragraph (a) of the definition of "*Backstop Rate Switch Date*" allows users to specify one single Backstop Rate Switch Date for all LIBOR-referencing Rate Switch Currencies. Its inclusion or otherwise will depend on the extent to which this approach is appropriate in the context of the relevant transaction. If that optional paragraph (a) is included the Backstop Rate Switch Date for those currencies should not be specified in Schedule 15 (*Compounded Rate Terms*).

   Readers should note that there may be other considerations or conditions (e.g. operational readiness) that may need to be taken into account when determining the Backstop Rate Switch Date. See the Commentary. [↑](#footnote-ref-9)
9. Readers should note that inclusion of this optional wording will affect the level of the rate of interest payable to the Lenders in the event of: (i) the published Screen Rate for the relevant interest rate benchmark being negative; or (ii) the Screen Rate being unavailable and any of the specified fallbacks being used and producing a negative figure. For further commentary on this option readers should refer to the discussion of the definitions of "*Benchmark Rate*", "*EURIBOR*" and "*LIBOR*" in the LMA Users Guide to the recommended form of Primary Documents (available through the LMA website). [↑](#footnote-ref-10)
10. Readers should refer to the Commentary in relation to this definition and its applicability to Compounded Rate Loans. [↑](#footnote-ref-11)
11. Insert the consent level that is appropriate in the context of the lending group. [↑](#footnote-ref-12)
12. Insert the consent level that is appropriate in the context of the lending group. [↑](#footnote-ref-13)
13. Readers should note that it is possible that a methodology specified for a Credit Adjustment Spread may be capable of producing a negative result depending upon the movement and relative positions of the relevant rates and metrics referenced in any such methodology. Readers may wish to consider the extent to which it may be appropriate to provide that the Credit Adjustment Spread may never be less than zero to address this possibility. [↑](#footnote-ref-14)
14. Readers should refer to the Commentary in relation to this definition. [↑](#footnote-ref-15)
15. If the Company is not listed consideration may need to be given to adding any holding companies of the Company as non-Eligible Institutions. [↑](#footnote-ref-16)
16. Readers should note that inclusion of this optional wording will affect the level of the rate of interest payable to the Lenders in the event of: (i) the published Screen Rate for the relevant interest rate benchmark being negative; or (ii) the Screen Rate being unavailable and any of the specified fallbacks being used and producing a negative figure. For further commentary on this option readers should refer to the discussion of the definitions of "*Benchmark Rate*", "*EURIBOR*" and "*LIBOR*" in the LMA Users Guide to the recommended form of Primary Documents (available through the LMA website). [↑](#footnote-ref-17)
17. If using Historic Screen Rates as a fallback option readers should consider the length of this period in the context of (a) the maturities for which the applicable Screen Rates are quoted and (b) the period of time for which the use of a Historic Screen Rate is considered appropriate. [↑](#footnote-ref-18)
18. Insert the appropriate reference point for the applicable GAAP (see footnote 19 below). [↑](#footnote-ref-19)
19. IFRS 16 will require most leases to appear as balance sheet liabilities in relation to accounting periods from 1 January 2019. Similar changes are expected to be made in other accounting regimes. Insert this exclusion if the commercial agreement is to exclude the effect of old "operating leases" appearing as balance sheet liabilities and insert the appropriate reference point for the applicable GAAP. For example, the reference point of 1 January 2019 is **only** suitable if the applicable GAAP is IFRS. If the Agreement is entered into before the accounting change under the applicable GAAP takes effect, a reference to GAAP in force "*as at* *the date of this Agreement*" may be an appropriate reference point. [↑](#footnote-ref-20)
20. If specifying the rounding convention readers may wish to consider altering this suggested convention to that used in any corresponding hedging product. [↑](#footnote-ref-21)
21. Readers should note that ICE LIBOR (formerly known as BBA LIBOR) is produced for a limited range of tenors and currencies. See the Intercontinental Exchange Group website for more information. [↑](#footnote-ref-22)
22. Readers should note that inclusion of this optional wording will affect the level of the rate of interest payable to the Lenders in the event of: (i) the published Screen Rate for the relevant interest rate benchmark being negative; or (ii) the Screen Rate being unavailable and any of the specified fallbacks being used and producing a negative figure. For further commentary on this option readers should refer to the discussion of the definitions of "*Benchmark Rate*", "*EURIBOR*" and "*LIBOR*" in the LMA Users Guide to the recommended form of Primary Documents (available through the LMA website). [↑](#footnote-ref-23)
23. Readers should note that this document assumes that a specified credit adjustment spread will be used as the means of addressing the issue of potential transfer of economic value from one party to another as a result of a switch to the use of a Compounded Reference Rate pursuant to the switch mechanics in Clause 9A (*Rate Switch*) and will be structured as a separate component of the interest rate calculation for Compounded Rate Loans. Consequently the document assumes that there will be no change in Margin associated with the switch to the use of a Compounded Reference Rate and does not provide the mechanics to effect such a change in Margin as part of that switch. Readers should refer to the discussion of the Credit Adjustment Spread in the Commentary. [↑](#footnote-ref-24)
24. Insert details of any currency that is, or may be, available under the Agreement for which the interest rate is not intended to be determined initially by reference to LIBOR or EURIBOR. The details in ‎Schedule 13 (*Other Benchmarks*) must be completed for each Non-LIBOR Currency. [↑](#footnote-ref-25)
25. Insert if the interest rate for Loans in euro is to be determined by reference to EURIBOR. [↑](#footnote-ref-26)
26. Readers should note that there may be other considerations or conditions (e.g. operational readiness) that may need to be taken into account when determining the Rate Switch Date. See the Commentary. [↑](#footnote-ref-27)
27. Paragraph (b) of the definition of "*Rate Switch Date*" allows for the specification of a suitable Rate Switch Date for a currency in circumstances in which (a) Compounded Rate Terms for that currency are agreed subsequent to entering into the Agreement and (b) the definition of "*Rate Switch Date*" in paragraph (a) is, for whatever reason, unsuitable. This might be the case, for example, if a currency is agreed as an Optional Currency subsequent to this Agreement. If no Rate Switch Date is provided for in the Compounded Rate Terms for that currency the definition in paragraph (a) will continue to apply to that currency. [↑](#footnote-ref-28)
28. Readers should note that a Rate Switch Trigger Event that applies to one tenor only of the Screen Rate for a currency will trigger a switch to the use of a Compounded Reference Rate for that currency generally. Readers should note that this contrasts with the position under Clause 35.4 (*Changes to reference rates*). See the footnote to Clause 35.4 (*Changes to reference rates*) and the Commentary. [↑](#footnote-ref-29)
29. Insert appropriate interest rate benchmark (and corresponding currency/ies) if this trigger is to be limited to specified interest rate benchmarks only. [↑](#footnote-ref-30)
30. Paragraph (b) of the definition of "*Rate Switch Trigger Event*" contains what is often referred to as a "*pre-cessation trigger*".

    The FCA (the supervisor of LIBOR's administrator) has published a [statement](https://www.fca.org.uk/markets/transition-libor/libor-contractual-triggers) on how it would make announcements that would activate LIBOR contractual triggers in contracts. This clarifies, among other things, that any announcement would relate only to LIBOR and that any announcement relating to the non-representativeness of LIBOR would be made in awareness that it will engage certain contractual triggers and would be clear about the LIBOR currencies and tenors to which it relates.

    The parameter set out in paragraph (b)(ii) of the definition of "*Rate Switch Trigger Event*" is optional. It is intended to reflect the FCA's clarification in that [statement](https://www.fca.org.uk/markets/transition-libor/libor-contractual-triggers) that any announcement made by the FCA:

    "*will be clear that it is being made in the awareness that it will engage certain contractual triggers that are activated by pre-cessation or cessation announcements made by [the FCA*]."

    Readers should note that:

    (a) ISDA's fallbacks supplement to the 2006 definitions contains a similar (but not identical) pre-cessation trigger; and

    (b) the pre-cessation trigger in ISDA's fallbacks supplement to the 2006 definitions applies to LIBOR only and not to any other interest rate benchmark,

    and should refer to the Commentary for further discussion. [↑](#footnote-ref-31)
31. An "*RFR Banking Day*" describes a day for which a risk-free reference rate for a currency is, according to data currently published by the administrator of that risk-free reference rate, scheduled to be available. [↑](#footnote-ref-32)
32. The potential for subsequent intra-day correction, recalculation or republication of an originally published Screen Rate can raise difficult issues that should be considered carefully to ensure that the parties achieve the desired commercial outcome. Readers should carefully consider the extent to which excluding the effects of any such correction, recalculation or republication is suitable for the transaction in question. See the LMA note entitled "*ICE LIBOR and EURIBOR refixing policies and LMA facility documentation*" (available through the LMA website). [↑](#footnote-ref-33)
33. This definition is intended to have the effect of referencing (a) the LIBOR rate which is currently known as ICE LIBOR and (b) the euro interbank offered rate which is currently known as Euribor, irrespective of any change of administrator or publisher occurring after the date of the Agreement. It may not be suitable if this effect does not represent the commercial agreement. Readers should note that changes to this definition may have implications under associated interest rate hedging arrangements. [↑](#footnote-ref-34)
34. Readers should refer to the Commentary in relation to this definition. [↑](#footnote-ref-35)
35. Readers should consider carefully the appropriate currency definition(s) in the context of the transaction and should consider defining any other currency referred to in the Agreement. [↑](#footnote-ref-36)
36. Insert agreed time period. [↑](#footnote-ref-37)
37. Any guarantees provided under this Agreement may not in all jurisdictions continue to guarantee the increased Commitment or be for the benefit of the Increase Lender. It is the responsibility of the Increase Lender to ascertain whether any other documents or other formalities are required to confirm the guarantees in any jurisdiction and/or for it to benefit from such guarantees and, if so, to arrange for execution of those documents and completion of those formalities. [↑](#footnote-ref-38)
38. When specifying a pre-approved Optional Currency readers should consider the extent to which that currency should be listed as a Non-LIBOR Currency and the agreed Screen Rate (and related terms) included in ‎Schedule 13 (*Other Benchmarks*) at the time of signing. If Clause ‎4.3 (*Conditions relating to Optional Currencies*) is amended to allow for subsequent approval of Optional Currencies with less than all Lender consent, readers should consider providing for a mechanic to agree a suitable Screen Rate (and related terms) at the same time.

    When specifying a pre-approved Optional Currency readers should also consider the extent to which an automatic switch to the use of a Compounded Reference Rate under Clause 9A (*Rate Switch*) is intended to occur for that currency and, if so the extent to which ‎Schedule 15 (*Compounded Rate Terms*) should be populated with terms for that currency at the time of signing.

    Readers should consider the extent to which it is appropriate that availability of any given currency should be, or become, contingent on the existence of specified Compounded Rate Terms for that currency such that such currency will be subject to an automatic switch to the use of a Compounded Reference Rate under Clause ‎9A (*Rate Switch*). [↑](#footnote-ref-39)
39. Include this wording if the optional cashless rollover language is included in Clause ‎7.2 (*Repayment of Facility B Loans*). [↑](#footnote-ref-40)
40. Include this wording if the optional cashless rollover language is included in Clause ‎7.2 (*Repayment of Facility B Loans*). [↑](#footnote-ref-41)
41. The Specified Time to be inserted in ‎Schedule 11 (*Timetables*) for the purposes of this paragraph ‎(b) is the Business Day on which the Agent originally calculated the Base Currency Amount. [↑](#footnote-ref-42)
42. Readers should refer to the Commentary in relation to the voluntary prepayment of Compounded Rate Loans. [↑](#footnote-ref-43)
43. See above footnote. [↑](#footnote-ref-44)
44. This reflects the £RFR Working Group's recommendation "…*for proportional* *accrued interest to be paid at the time of prepayment on any amounts of principal prepaid*." [↑](#footnote-ref-45)
45. Insert if Clause ‎8.2 (*Change of control*) provides for mandatory prepayment of all Loans and the cancellation of the Total Commitments. [↑](#footnote-ref-46)
46. Readers should refer to the Commentary in relation to the rate switch provisions. [↑](#footnote-ref-47)
47. Note that the effect of Clause 9.3 (*Payment of interest*) means that accrued interest will be payable on the Rate Switch Date. [↑](#footnote-ref-48)
48. Clause ‎9.2 (*Calculation of interest – Compounded Rate Loans*); the definitions of "*Compounded Reference Rate*" and "*Daily Non-Cumulative Compounded RFR Rate*"; and Clause ‎32.3 (*Day count convention and interest calculation*) reflect the £RFR Working Group's statement that:

    "*Given the need for the calculation of daily interest accruals to support distribution of interest impacted by intra-period activity such as prepayments and secondary trading, daily non-cumulative compounded rate ('NCCR') derived from the cumulative compounded rate may be an option.*

    *NCCR for a given day is the cumulative compounded rate for the prior day subtracted from the cumulative compounded rate for that given day.*" [↑](#footnote-ref-49)
49. These provisions also reflect the £RFR Working Group's recommendation in its [[Supporting Slides](https://www.bankofengland.co.uk/-/media/boe/files/markets/benchmarks/rfr/uk-loan-conventions-supporting-slides.pdf?la=en&hash=9190F626C8B4E58A1FD6AA6BB48AFCA830CAF56C)](https://www.bankofengland.co.uk/-/media/boe/files/markets/benchmarks/rfr/uk-loan-conventions-supporting-slides.pdf?la=en&hash=9190F626C8B4E58A1FD6AA6BB48AFCA830CAF56C) that: "*It is recommended to adopt Non‑Cumulative Compounded Rate method*". [↑](#footnote-ref-50)
50. This reflects the £RFR Working Group's recommendation that "*…margin should be added after rate compounding (i.e. margin is not compounded)*". [↑](#footnote-ref-51)
51. Readers should refer to the Commentary for a discussion of the Compounded Reference Rate. [↑](#footnote-ref-52)
52. The application to a Compounded Rate Loan of a single percentage rate per annum consisting of the aggregate of: (a) the Daily Non-Cumulative Compounded RFR Rate; (b) the applicable Credit Adjustment Spread; and (c) the Margin is consistent with the £RFR Working Group's recommendation that: "*To ensure the total accrued interest amount calculated using the cumulative and non-cumulative compounded rate is always the same, the Working Group's recommendation is for…the daily compounded RFR interest component calculated using the non-cumulative compounded rate not to be rounded (so that the total accrued interest calculated as the sum of these daily compounded RFR interest components does not carry forward rounded amounts)….*"

    Readers should note that if the Daily Non-Cumulative Compounded RFR Rate, the applicable Credit Adjustment Spread and the Margin are applied separately to a Compounded Rate Loan and the resulting amounts aggregated then (for consistency with both (a) the £RFR Working Group's recommendation described above and (b) the requirement of Clause 9.2 (*Calculation of interest – Compounded Rate Loans*) that a single aggregated percentage rate per annum is applied) those resulting amounts themselves should not be rounded. The aggregate of those resulting amounts itself should be rounded as set out in Clause ‎32.3 (*Day count convention and interest calculation*). [↑](#footnote-ref-53)
53. This reflects that Step 4 of the recommended non-cumulative compounding methodology described in the section entitled "*Recommended Convention Lookback without Observation Shift*" of the £RFR Working Group's [[Supporting Slides](https://www.bankofengland.co.uk/-/media/boe/files/markets/benchmarks/rfr/uk-loan-conventions-supporting-slides.pdf?la=en&hash=9190F626C8B4E58A1FD6AA6BB48AFCA830CAF56C)](https://www.bankofengland.co.uk/-/media/boe/files/markets/benchmarks/rfr/uk-loan-conventions-supporting-slides.pdf?la=en&hash=9190F626C8B4E58A1FD6AA6BB48AFCA830CAF56C) requires the rate of interest attributable to any non-RFR Banking Day to be that applicable to the previous RFR Banking Day. [↑](#footnote-ref-54)
54. The requirement in paragraph ‎(b) of Clause ‎9.4 (*Default interest*) that default interest on an accelerated Loan accrues initially on the basis of the rate of interest applicable to the Interest Period in which the acceleration occurred is expressed to apply only to Term Rate Loans. As a result default interest on an accelerated Compounded Rate Loan accrues initially on the basis of the rate of interest applicable to a period selected by the facility agent beginning on the date of acceleration and disregards the basis of the rate of interest applicable to the Interest Period in which the acceleration occurred. This reflects the fact that the framework for Compounded Rate Loans is not predicated on any particular funding practice by the Lenders. [↑](#footnote-ref-55)
55. Readers should refer to the Commentary in relation to Clause ‎9.5 (*Notifications*). [↑](#footnote-ref-56)
56. The effect of paragraph ‎(b) of Clause ‎9.5 (*Notifications*) is that the Agent is **not** obliged to notify any party of the applicable Daily Non-Cumulative Compounded RFR Rate on a daily basis. See the Commentary. [↑](#footnote-ref-57)
57. This Agreement envisages the use of one Screen Rate only per currency for Term Rate Loans. Readers should consider the extent to which available Interest Periods for Term Rate Loans should be restricted to tenors for which Screen Rates are available or can be interpolated from those Screen Rates. [↑](#footnote-ref-58)
58. The length of selectable Interest Periods is a matter for commercial agreement. Readers should consider the impact of permitting the potential selection of longer Interest Periods for Compounded Rate Loans and the extent to which such Interest Periods may cause operational and other difficulties in the context of the potential for rate movements over such a period. [↑](#footnote-ref-59)
59. This document restricts the length of Interest Periods for Compounded Rate Loans to six Months. This is because (a) Clause ‎9.3 (*Payment of interest*) reflects longstanding market practice by requiring an interim payment of interest in the case of any Interest Period longer than six Months and (b) the calculation methodology for the Daily Non-Cumulative Compounded RFR Rate does not envisage the making of an interim payment of interest during an Interest Period. See the Commentary. [↑](#footnote-ref-60)
60. Readers should refer to the Commentary in relation to this provision. [↑](#footnote-ref-61)
61. Clause ‎10.3 (*Non-Business Days*), Clause ‎29.7 (*Business Days*) and the definitions of "*Business Day conventions*" in ‎Schedule 15 (*Compounded Rate Terms*) reflect that the £RFR Working Group's recommendation for business day conventions for payments is ""*Modified Following Business Day Convention". This means payments of interest that would fall to be made on a day that is a non-Business Day are adjusted to the next succeeding Business Day, unless that Business Day falls in the next calendar month, in which case the interest payment date is the preceding Business Day*." [↑](#footnote-ref-62)
62. Clause ‎11.1 (*Unavailability of Screen Rate* *prior to Rate Switch Date*) provides for a waterfall of fallbacks if a Screen Rate is unavailable. Two (alternative) forms of Clause ‎11.1 (*Unavailability of Screen Rate prior to Rate Switch Date*) are provided. The first form should be used if the commercial agreement is that Historic Screen Rates are to be used as an intermediate fallback before the use of Reference Banks or cost of funds. The second form should be used if the commercial agreement is that Historic Screen Rates are not to be used as such an intermediate fallback. [↑](#footnote-ref-63)
63. Readers should note that this option contains manual numbering and that cross-references to it are also manual. If this option is selected, automatic numbering should be reapplied to it, those cross-references will require automating and the table of contents will require updating accordingly. [↑](#footnote-ref-64)
64. The timings in Clause 11.2 (*Calculation of Reference Bank Rate*) are suggestions only and may need adjustment to accord with the Agent's and Reference Banks' operational requirements. [↑](#footnote-ref-65)
65. Readers should refer to the Commentary in relation to the use of cost of funds as a fallback for Compounded Rate Loans. [↑](#footnote-ref-66)
66. This document envisages that the applicability (or otherwise) of the use of cost of funds as a fallback for Compounded Rate Loans is addressed in ‎Schedule 15 (*Compounded Rate Terms*). This allows for the use of a currency specific approach to the extent to which cost of funds is to apply as a fallback for Compounded Rate Loans. If it is the case in the context of a particular transaction that the commercial agreement is that cost of funds is not to apply as a fallback to any Compounded Rate Loan in any currency then Clause 11.3 (*Interest calculation if no RFR or Central Bank Rate*) and the corresponding section in each part of ‎Schedule 15 (*Compounded Rate Terms*) may be deleted. [↑](#footnote-ref-67)
67. Consider whether the Company's rights under Clause ‎8.6 (*Right of replacement or repayment and cancellation in relation to a single Lender*) should be extended to apply to a Lender making a notification to the Agent under Clause 11.4 (*Market disruption*). [↑](#footnote-ref-68)
68. Readers should refer to the Commentary in relation to market disruption and Compounded Rate Loans. [↑](#footnote-ref-69)
69. Consider whether Clause 11.5 (*Cost of funds*) should be amended to allow the relevant Borrower to revoke the Utilisation Request relating to a Term Rate Loan which falls to be priced on a cost of funds basis. Note that such an amendment is not suitable for Compounded Rate Loans as the applicability of Clause 11.5 (*Cost of funds*) will be known only after the Loan is utilised. [↑](#footnote-ref-70)
70. Include if cost of funds is not calculated on a weighted average basis. [↑](#footnote-ref-71)
71. Include if cost of funds is calculated on a weighted average basis. [↑](#footnote-ref-72)
72. Readers should refer to the Commentary in relation to Break Costs and Compounded Rate Loans. [↑](#footnote-ref-73)
73. Clause ‎13 (*Tax gross-up and indemnities*) is drafted on the assumption that payments made by the Obligor(s) may be subject to withholding tax (if any) under United Kingdom law and not under the law of any other jurisdiction. If this is not the case and the Obligor(s) is/are to gross-up payments, Clause ‎13 (*Tax gross-up and indemnities*) will need to be modified, in particular, paragraphs ‎(d), ‎(g), ‎(h), ‎(i), ‎(j), ‎(k) and ‎(l) of Clause ‎13.2 (*Tax gross-up*) and the related definitions. If the "Treaty Lender" concept is used, always check the wording of relevant Treaties.

    Clause ‎13 (*Tax gross-up and indemnities*) and in particular the definition of "Qualifying Lender", should always be considered on a case-by-case basis. Consideration should also be given as to whether the representation in Clause ‎19.7 (*Deduction of Tax)* requires amendment. [↑](#footnote-ref-74)
74. This may not be appropriate for all circumstances (for instance for some emerging market financings). For further information see the LMA *2014 Summary Note on FATCA* (available through the LMA website). [↑](#footnote-ref-75)
75. This is a complex area and in each case relevant treaties should be reviewed and, if appropriate, additional wording inserted to apportion risk as agreed by the Parties. [↑](#footnote-ref-76)
76. If UK Non-Bank Lenders are to be envisaged and this definition is, therefore, included but no Original Lender is a UK Non-Bank Lender:

    (a) delete this paragraph (a);

    (b) delete ‎Part III of ‎Schedule 1 (*The Original Parties*); and

    (c) delete the words "other than UK Non-Bank Lenders" from the heading of ‎Part II of ‎Schedule 1 (*The Original Parties*).

    **Do not**, however, delete this definition, as a UK Non‑Bank Lender may become a Lender after the date of this Agreement. [↑](#footnote-ref-77)
77. This may not be appropriate for all circumstances (for instance for some emerging market financings). For further information see the LMA *2014 Summary Note on FATCA* (available through the LMA website). [↑](#footnote-ref-78)
78. This provision does not operate in an international context, so where there is an international context, this wording should be reviewed and updated accordingly. [↑](#footnote-ref-79)
79. This provision does not operate for the benefit of non-Finance Parties and whether this is correct should be considered on a case by case basis. [↑](#footnote-ref-80)
80. Paragraphs ‎(e), ‎(f), ‎(g) and ‎(h) of Clause ‎13.8 (*FATCA information*)may be used for loans entered into with US borrowers (or loans where a US borrower may become an Additional Borrower). [↑](#footnote-ref-81)
81. Clause ‎13.9 (*FATCA Deduction*) may not be appropriate for all circumstances (for instance for some emerging market financings). For further information see the LMA *2014 Summary Note on FATCA* (available through the LMA website). [↑](#footnote-ref-82)
82. The form of increased costs clause in this Agreement is drafted in deliberately wide terms in an attempt to cover all circumstances which could increase a Lender's costs as a result of a change in law or regulation. The European legislation (often referred to as "**CRD IV**") (and a package of subsequent amendments often referred to as "**CRD V**") which implements the Basel Committee on Banking Supervision's proposed new standards for bank capital and liquidity requirements (labelled "**Basel III**") has come into force and potentially involves greater costs than those envisaged by Basel III. Readers may wish to consider whether to supplement the clause to address expressly the extent to which both Basel III costs, CRD IV / CRD V costs (and, at the end of the transition period under the EU / UK Withdrawal Agreement, costs under the UK's equivalent regime) are intended to be within, or outside, the scope of the clause. [↑](#footnote-ref-83)
83. Basel II was finalised in 2004 and implemented in Europe during 2007 and so it may not be necessary to include a Basel II carve out from the increased costs clause where the syndicate consists of European Lenders. If it is agreed by the parties to exclude Basel II from the increased costs clause, and for example this may be relevant where there are US Lenders in the syndicate as Basel II has not been fully implemented in the US, then readers should note that elements of the Basel III papers amend the Basel II paper and so care needs to be taken with the drafting of the carve out. The following provision may be inserted at the end of this paragraph ‎(a) of Clause ‎14.3 (*Exceptions*) to address this point:

    "(vi) attributable to the implementation or application of or compliance with the "International Convergence of Capital Measurement and Capital Standards, a Revised Framework" published by the Basel Committee on Banking Supervision in June 2004 in the form existing on the date of this Agreement (but excluding any amendment arising out of Basel III) ("**Basel II**") or any other law or regulation which implements Basel II (whether such implementation, application or compliance is by a government, regulator, Finance Party or any of its Affiliates)."

    The following definition should be added to paragraph ‎(b) of Clause ‎14.1 (*Increased costs*):

    ""**Basel III**" means:

    (A) the agreements on capital requirements, a leverage ratio and liquidity standards contained in "Basel III: A global regulatory framework for more resilient banks and banking systems", "Basel III: International framework for liquidity risk measurement, standards and monitoring" and "Guidance for national authorities operating the countercyclical capital buffer" published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;

    (B) the rules for global systemically important banks contained in "Global systemically important banks: assessment methodology and the additional loss absorbency requirement – Rules text" published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and

    (C) any further guidance or standards published by the Basel Committee on Banking Supervision relating to "Basel III"."

    Readers should note that this definition of Basel III is deliberately wide and includes future Basel III publications. It is, therefore, unlikely to be suitable to describe Basel III in the context of **excluding** Basel III costs from the scope of the increased costs clause generally. [↑](#footnote-ref-84)
84. This may not be appropriate for all circumstances (for instance for some emerging market financings). For further information see the LMA *2014 Summary Note on FATCA* (available through the LMA website). [↑](#footnote-ref-85)
85. Consider allocation of responsibility for the costs and expenses relating to any amendment or waiver contemplated by the optional Clause ‎35.4 (*Changes to reference rates*). [↑](#footnote-ref-86)
86. Lenders may wish to consider amendments, as appropriate, to reflect sanctions laws and regulations that may affect them depending on their jurisdiction of incorporation or business, for example US, EU and UK sanctions (which may prohibit Lenders from advancing funds to be made available to targets of any relevant sanctions authority, as well as other restrictions). In addition, Lenders in some jurisdictions should take advice in relation to possible conflict of laws issues that may impact on their ability to include clauses of this nature. For further information see LMA Guidance Note: United States and European Union Sanctions (available through the LMA website).

    If any clauses of this nature are included, readers should note that some Lenders may have particular sensitivities to the amendment or waiver of any such clause. Readers should consider the extent to which Clause ‎35.2 (*All Lender matters*) should be supplemented to require all Lender consent for such amendment or waiver. [↑](#footnote-ref-87)
87. This representation should be considered on a case-by-case basis and modified, or deleted, as appropriate. If tax other than UK tax may be relevant, this should be taken into account. [↑](#footnote-ref-88)
88. Include if paragraph (a)(ii) of the definition of Qualifying Lender is included in Clause ‎13.1 (*Definitions*). [↑](#footnote-ref-89)
89. Include if paragraph (b) of the definition of Qualifying Lender is included in Clause ‎13.1 (*Definitions*). [↑](#footnote-ref-90)
90. If the Company is not listed, consideration should be given to the inclusion of changes in the composition of the shareholders of an Obligor (or of a Holding Company of an Obligor) in this provision. If the Company is listed but the Agreement does not give each Lender an individual right to require prepayment on a change of control of the Company, consideration should be given to the inclusion of a change of control of the Company in this provision. [↑](#footnote-ref-91)
91. Lenders may wish to consider amendments, as appropriate, to reflect sanctions laws and regulations that may affect them depending on their jurisdiction of incorporation or business, for example US, EU and UK sanctions (which may prohibit Lenders from advancing funds to be made available to targets of any relevant sanctions authority, as well as other restrictions). In addition, Lenders in some jurisdictions should take advice in relation to possible conflicts of laws issues that may impact on their ability to include clauses of this nature. For further information see LMA Guidance Note: United States and European Union Sanctions (available through the LMA website).

    If any clauses of this nature are included, readers should note that some Lenders may have particular sensitivities to the amendment or waiver of any such clause. Readers should consider the extent to which Clause ‎35.2 (*All Lender matters*) should be supplemented to require all Lender consent for such amendment or waiver. [↑](#footnote-ref-92)
92. Readers should consider whether they wish to expressly address the extent to which transfers to members of the Group are permitted or restricted. The LMA Leveraged Facilities Agreement contains wording alternatively regulating or prohibiting transfers to members of the Group and which can be adapted for use in the LMA Primary Documents. [↑](#footnote-ref-93)
93. If the Assignment Agreement is used in place of a Transfer Certificate in order to avoid a novation of rights/obligations for reasons relevant to a civil jurisdiction, local law advice should be sought to check the suitability of the Assignment Agreement due to the assumption of obligations referred to in paragraph ‎(c)‎(iii) of Clause ‎24.7 (*Procedure for assignment*). [↑](#footnote-ref-94)
94. This facilitates (and is consistent with) the £RFR Working Group's recommendation that "*the 'pro-rata' method of distributing interest across syndicated lenders is used. This means interest paid by a borrower for a given day (business or otherwise) would be earned by a lender based on its pro-rata share of the principal amount of the loan owned for that day. If a lender sells out of a loan completely, they are owed interest based on the time they held part of the loan but do not earn further interest after they leave, regardless of the fact that they will not be paid until the end of the interest period. If a new lender buys into a loan during the interest period, their interest is calculated using the compounded rate as of that day in the interest period (and will not start to compound separately from the date they buy) i.e. non‑cumulative compounded rate for that day can be used*." [↑](#footnote-ref-95)
95. Only include words in brackets if the optional Clause ‎29.10 (*Disruption to payment systems etc.*) has been included. [↑](#footnote-ref-96)
96. Readers should consider including this wording if the optional Clause ‎29.10 (*Disruption to payment systems etc.*) has been included. [↑](#footnote-ref-97)
97. Include words in brackets if the optional Clause ‎29.10 (*Disruption to payment systems etc.*) has been included. [↑](#footnote-ref-98)
98. This document assumes that the Agent is located in the United Kingdom. Accordingly readers should consider the potential taxation and operational consequences involved if the requirement that a successor Affiliate be acting through an office in the United Kingdom is to be altered. [↑](#footnote-ref-99)
99. See footnote 98 above. [↑](#footnote-ref-100)
100. If Clause ‎26.19 (*Third party Reference Banks*) is included, the second option in Clause ‎1.4 (*Third party rights*) should be used. [↑](#footnote-ref-101)
101. Clause ‎10.3 (*Non-Business Days*), Clause ‎29.7 (*Business Days*) and the definitions of "*Business Day conventions*" in ‎Schedule 15 (*Compounded Rate Terms*) reflect that the £RFR Working Group's recommendation for business day conventions for payments is "*"Modified Following Business Day Convention". This means payments of interest that would fall to be made on a day that is a non-Business Day are adjusted to the next succeeding Business Day, unless that Business Day falls in the next calendar month, in which case the interest payment date is the preceding Business Day*." [↑](#footnote-ref-102)
102. Clause ‎32.3 (*Day count convention and interest calculation*), together with the definitions of "*Daily Non-Cumulative Compounded RFR Rate*" and "*Cumulative Compounded RFR Rate*", reflects that the £RFR Working Group's recommendation for day count "…*is ACT/365 (fixed*)". The market practice override in these provisions operates to apply ACT/365 (fixed) for sterling. [↑](#footnote-ref-103)
103. This reflects:

     (a) the £RFR Working Group's recommendations that:

     (i) "*The Working Group's recommendation is for…sterling amounts be rounded to two decimal points.*"; and

     (ii) "*To ensure the total accrued interest amount calculated using the cumulative and non-cumulative compounded rate is always the same*, *the Working Group's recommendation is for…the sterling amount of total accrued interest (i.e. compounded RFR component + margin + Credit Adjustment Spread (if applicable)), whether generated using the cumulative compounded rate or the sum of daily amounts calculated using the non-cumulative compounded rate, to be rounded to two decimal places."*;and

     (b) that Step 4 of the recommended non-cumulative compounding methodology described in the section entitled "*Recommended Convention Lookback without Observation Shift*" of the £RFR Working Group's [[Supporting Slides](https://www.bankofengland.co.uk/-/media/boe/files/markets/benchmarks/rfr/uk-loan-conventions-supporting-slides.pdf?la=en&hash=9190F626C8B4E58A1FD6AA6BB48AFCA830CAF56C)](https://www.bankofengland.co.uk/-/media/boe/files/markets/benchmarks/rfr/uk-loan-conventions-supporting-slides.pdf?la=en&hash=9190F626C8B4E58A1FD6AA6BB48AFCA830CAF56C) requires that the interest amount "*should be rounded to 2 decimal point daily*". [↑](#footnote-ref-104)
104. This reflects that Step 4 of the recommended non-cumulative compounding methodology described in the section entitled "*Recommended Convention Lookback without Observation Shift*" of the £RFR Working Group's [[Supporting Slides](https://www.bankofengland.co.uk/-/media/boe/files/markets/benchmarks/rfr/uk-loan-conventions-supporting-slides.pdf?la=en&hash=9190F626C8B4E58A1FD6AA6BB48AFCA830CAF56C)](https://www.bankofengland.co.uk/-/media/boe/files/markets/benchmarks/rfr/uk-loan-conventions-supporting-slides.pdf?la=en&hash=9190F626C8B4E58A1FD6AA6BB48AFCA830CAF56C) provides that the requirement for the interest amount to be "*rounded to 2 decimal point daily*" is applied collectively to any period of days consisting of an RFR Banking Day followed by a public holiday or weekend.

     Readers should note that whilst the principle of the approach to rounding in the £RFR Working Group's recommendations is clear, it is recognised that systems may have differing capabilities which might result in very small differences. The requirement in this document that the calculation be carried out 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*" is intended to reflect the potential for any such differing system capabilities. [↑](#footnote-ref-105)
105. Include if the optional Clause ‎24.10 (*Pro rata interest settlement*) is included. [↑](#footnote-ref-106)
106. If Clause ‎8.2 (*Change of control*) gives each Lender the unilateral right to require prepayment on a change of control, readers should consider the extent to which this right should be protected by making amendments and waivers to that Clause subject to all Lender consent. [↑](#footnote-ref-107)
107. Readers should consider this language in the context of similar provisions for related transactions in other markets (for example, related hedging transactions) and amend as necessary to ensure that they co-exist without inconsistency. In this Agreement, "Screen Rate" and "RFR" are defined terms which set out and define each relevant benchmark e.g. LIBOR. [↑](#footnote-ref-108)
108. Readers should note that Clause ‎35.4 (*Changes to reference rates*) provides that a Published Rate Replacement Event that applies to only one tenor of a Screen Rate will lead to the facilitation of the replacement of the Screen Rate for that tenor only and not to the facilitation of the replacement of that Screen Rate for all tenors. Readers should note that this position contrasts with that under Clause 9A (*Rate Switch*). See the footnote to the definition of "*Rate Switch Trigger Event*" and the Commentary. [↑](#footnote-ref-109)
109. Include if it is appropriate that the provisions of Clause ‎35.4 (*Changes to reference rates*) operate upon the occurrence of a trigger event. [↑](#footnote-ref-110)
110. Readers should consider whether there might be situations in which parties may want flexibility to retain the ability to use either the existing Published Rate or the Replacement Benchmark on transactions. If this is the case, delete "that" and substitute "(or in addition to) the affected" here. [↑](#footnote-ref-111)
111. Include if it is appropriate that the provisions of Clause ‎35.4 (*Changes to reference rates*) operate upon the occurrence of a trigger event. [↑](#footnote-ref-112)
112. Readers should be aware of the issues described in the LMA note entitled "*LMA Revised Replacement of Screen Rate Clause and considerations in respect of credit adjustment spreads*" (available through the LMA website) in relation to this paragraph (E). [↑](#footnote-ref-113)
113. Insert the consent level that is appropriate in the context of the composition of the lending group. [↑](#footnote-ref-114)
114. Insert the consent level that is appropriate in the context of the composition of the lending group. [↑](#footnote-ref-115)
115. Readers should consider the extent to which inclusion of paragraph ‎(b) of Clause ‎35.4 (*Changes to reference rates*) is appropriate. See the Commentary. [↑](#footnote-ref-116)
116. Insert a time period here that reflects the time which it will take Lenders to consider and respond to the request. [↑](#footnote-ref-117)
117. Insert the consent level that is appropriate in the context of the composition of the lending group. [↑](#footnote-ref-118)
118. Insert appropriate rate(s) if this trigger is to be limited to certain Screen Rates only. [↑](#footnote-ref-119)
119. Paragraph (b)(v) of the definition of "*Published Rate Replacement Even*t" contains what is often referred to as a "*pre-cessation trigger*".

     The FCA (the supervisor of LIBOR's administrator) has published a [statement](https://www.fca.org.uk/markets/transition-libor/libor-contractual-triggers) on how it would make announcements that would activate LIBOR contractual triggers in contracts. This clarifies, among other things, that any announcement would relate only to LIBOR and that any announcement relating to the non-representativeness of LIBOR would be made in awareness that it will engage certain contractual triggers and would be clear about the LIBOR currencies and tenors to which it relates.

     The parameter set out in paragraph (b)(v)(B) is optional. It is intended to reflect the FCA's clarification in that [statement](https://www.fca.org.uk/markets/transition-libor/libor-contractual-triggers) that any announcement made by the FCA:

     "*will be clear that it is being made in the awareness that it will engage certain contractual triggers that are activated by pre-cessation or cessation announcements made by [the FCA].*" [↑](#footnote-ref-120)
120. Insert the consent level that is appropriate in the context of the composition of the lending group. [↑](#footnote-ref-121)
121. The Screen Rate administrators (for LIBOR and EURIBOR) have reduced submissions/fallback policies which could be triggered if fewer than the usually required number of banks contributed submissions for the calculation of the relevant rate. These policies generally prescribe that their use would be published by the administrator either on the relevant screen page or (in the case of LIBOR) as the administrator deems appropriate. [↑](#footnote-ref-122)
122. Insert the consent level that is appropriate in the context of the composition of the lending group. [↑](#footnote-ref-123)
123. Insert details of any specified pre-agreed replacement benchmark. [↑](#footnote-ref-124)
124. Insert the consent level that is appropriate in the context of the composition of the lending group. [↑](#footnote-ref-125)
125. Insert the consent level that is appropriate in the context of the composition of the lending group. [↑](#footnote-ref-126)
126. Include if optional Clause ‎24.9 (*Security over Lenders' rights*) is included. [↑](#footnote-ref-127)
127. Include this reference if the optional paragraph ‎(b)‎(vii) of Clause ‎36.2 (*Disclosure of Confidential Information*) is included. [↑](#footnote-ref-128)
128. Term/Revolver etc. [↑](#footnote-ref-129)
129. This wording has been included to ensure that disclosure is made only for the purposes of enabling a numbering service provider to allocate an identification number to a syndicated facility agreement, one or more facilities made available under such facility agreement or any Obligor party to such facility agreement. The purpose of disclosure is not therefore to enable products that are directly or indirectly related to a facility agreement, its facilities or its Obligors to be allocated an identification number. [↑](#footnote-ref-130)
130. The information listed in paragraph ‎(a) reflects the information that is likely to be required to enable a numbering service provider ("**NSP**") to assign identification numbers/codes to this Agreement, the Facilities and their ranking. Disclosure has been restricted to descriptive information about the Facility Agreement (including changes to that information) for two main reasons. Firstly, because once delivered to the NSP that information will not be subject to any confidentiality obligations on the part of the NSP or subscribers to the NSP. It has been assumed that as the NSP needs to disclose the information to its subscribers they would not be prepared to sign up to a confidentiality undertaking or require their subscribers to do so to protect Borrower confidential information. However, no dialogue has been had with NSP's in this regard.

     The second reason for restricting the information that can be disclosed to NSP's is to limit the risk of that information being unpublished price-sensitive or inside-information (meaning, if it were known to the public it would be likely to have an effect on the price of securities issued by the relevant Borrower that are publicly traded). If unpublished price-sensitive or inside information were disclosed to a NSP (with or without the consent of the Borrower) by a Lender in circumstances where that information will be disclosed only to subscribers of the NSP (and not to the public), that Lender and the individuals concerned could be guilty of an offence under the insider dealing/market abuse regime in the UK. Restricting the information that can be disclosed by Lenders to NSP's to relatively anodyne and descriptive information helps to minimise the risk that the information will be unpublished price-sensitive or inside information.

     However, because of the potential seriousness of this issue, because it is possible to envisage circumstances where all or part of the information specified in paragraph ‎(a) may be unpublished price-sensitive or inside information and because only the Obligors can know with certainty whether any of that information is unpublished price-sensitive or inside information, the permission also requires the Obligors to represent to the Lenders that none of that information is unpublished price-sensitive information. The representation is contained in paragraph ‎(c) as a means of ensuring reasonable steps have been taken to avoid inside or price-sensitive information being selectively disclosed with no confidentiality restrictions.

     In most cases where the relevant Obligor has publicly traded securities, the information that is listed in paragraph ‎(a) would, in any event, need to be disclosed by that Obligor in accordance with the UK disclosure requirements on issuers of listed securities and so the representation should not be onerous for such Obligors. [↑](#footnote-ref-131)
131. This requirement has been limited to the Agent on the assumption that if the Agent requests an identification number, it will, in any event, require all Parties to use that number in communications etc. If this is not the case, paragraph (d) of Clause ‎36.3 (*Disclosure to numbering service providers*) can be deleted. [↑](#footnote-ref-132)
132. This wording is intended to make non-contractual obligations arising out of or in connection with the agreement subject to English law. However, if the document is used in a cross-border transaction where different transaction documents are governed by different governing laws, consider whether it is appropriate, in the context of that transaction, for English law to apply to non-contractual obligations arising out of or in connection with the transaction documents which are not governed by English law. [↑](#footnote-ref-133)
133. Consider the extent to which Clause ‎40.1 (*Jurisdiction*) may require amendment in light of the decision of the French *Cour de cassation* in *Mme X v Rothschild*. For a discussion of the issues involved, see the LMA note entitled "*Jurisdiction Clauses in LMA facility documentation*" (available through the LMA website).

     Also consider, in the context of the UK's withdrawal from the EU, the potential enforceability of a judgment of an English Court in any relevant EU member state and the extent to which Clause ‎40.1 (*Jurisdiction*) may require amendment in light of those considerations. For a discussion of the issues involved see the LMA note entitled "*Documentary implications of Brexit for LMA facility documentation – Supplement 2 – jurisdiction provisions in LMA facility documentation*" (available through the LMA website). [↑](#footnote-ref-134)
134. To the extent that the square bracketed wording relating to non-contractual obligations in Clause ‎39 (*Governing law*) is included, this wording should be included in paragraph ‎(a) of Clause ‎40.1 (*Jurisdiction*). [↑](#footnote-ref-135)
135. If no Original Lender is a UK Non-Bank Lender, delete the words in square brackets from the heading of this Part. [↑](#footnote-ref-136)
136. Each of these must be included if the Original Lender holds a passport under the HMRC DT Treaty Passport scheme and wishes that scheme to apply to the Agreement. [↑](#footnote-ref-137)
137. If no Original Lender is a UK Non-Bank Lender, delete this part of the Schedule and all references to it in the body of the Agreement. [↑](#footnote-ref-138)
138. \* Delete as appropriate. [↑](#footnote-ref-139)
139. Include if the optional paragraph ‎(b) to Clause ‎7.2 (*Repayment of Facility B Loans*) is included. [↑](#footnote-ref-140)
140. Include if the optional paragraph ‎(b) to Clause ‎7.2 (*Repayment of Facility B Loans*) is not included. [↑](#footnote-ref-141)
141. \* Insert details of all Facility A Loans in the same currency which have an Interest Period ending on the same date. [↑](#footnote-ref-142)
142. \*\* Use this option if division of Loans is requested. [↑](#footnote-ref-143)
143. \*\*\* Use this option if sub-division is not required. [↑](#footnote-ref-144)
144. Delete as applicable. Each New Lender is required to confirm which of these three categories it falls within. [↑](#footnote-ref-145)
145. Include if New Lender comes within paragraph (a)(ii) of the definition of Qualifying Lender in Clause ‎13.1 (*Definitions*) [↑](#footnote-ref-146)
146. Insert jurisdiction of tax residence. [↑](#footnote-ref-147)
147. Include if New Lender holds a passport under the HMRC DT Treaty Passport scheme and wishes that scheme to apply to the Agreement. [↑](#footnote-ref-148)
148. This clause should follow the approach adopted as regards non-contractual obligations in Clause ‎39 (*Governing law*). This should be done (and this footnote deleted) before the Facility Agreement is signed. [↑](#footnote-ref-149)
149. If the Assignment Agreement is used in place of a Transfer Certificate in order to avoid a novation of rights/obligations for reasons relevant to a civil jurisdiction, local law advice should be sought to check the suitability of the Assignment Agreement due to the assumption of obligations contained in paragraph ‎2‎(c). This issue should be addressed at primary documentation stage. [↑](#footnote-ref-150)
150. Delete as applicable - Each New Lender is required to confirm which of these three categories it falls within. [↑](#footnote-ref-151)
151. Include only if New Lender is a UK Non-Bank Lender - i.e. falls within paragraph (a)(ii) of the definition of Qualifying Lender in Clause ‎13.1 (*Definitions*). [↑](#footnote-ref-152)
152. Insert jurisdiction of tax residence. [↑](#footnote-ref-153)
153. Include if New Lender holds a passport under the HMRC DT Treaty Passport scheme and wishes that scheme to apply to the Agreement. [↑](#footnote-ref-154)
154. This clause should follow the approach adopted as regards non-contractual obligations in Clause ‎39 (*Governing law*). This should be done (and this footnote deleted) before the Facility Agreement is signed. [↑](#footnote-ref-155)
155. Include in the case of an Additional Borrower. [↑](#footnote-ref-156)
156. This clause should follow the approach adopted as regards non-contractual obligations in Clause ‎39 (*Governing law*). This should be done (and this footnote deleted) before the Facility Agreement is signed. [↑](#footnote-ref-157)
157. \* Insert any other conditions required by the Facility Agreement. [↑](#footnote-ref-158)
158. This clause should follow the approach adopted as regards non-contractual obligations in Clause ‎39 (*Governing law*). This should be done (and this footnote deleted) before the Facility Agreement is signed. [↑](#footnote-ref-159)
159. \* If this statement cannot be made, the Compliance Certificate should identify any Default that is continuing and the steps, if any, being taken to remedy it. [↑](#footnote-ref-160)
160. \*\* To be agreed with the Company's auditors and the Lenders prior to signing the Agreement. [↑](#footnote-ref-161)
161. \*\*\* Only applicable if the Compliance Certificate accompanies the audited financial statements and is to be signed by the auditors. To be agreed with the Company's auditors prior to signing the Agreement. [↑](#footnote-ref-162)
162. The current form of LMA Confidentiality Letter (Seller) or Confidentiality Letter (Purchaser) for the secondary trading of loans should be included in this Schedule. In the case where primary syndication takes place after the Facility Agreement is signed, the current LMA Confidentiality and Front Running Letter should also be included to avoid confusion over which form of confidentiality letter is appropriate. [↑](#footnote-ref-163)
163. This should be determined by reference to the Business Day on which the Agent calculated the Base Currency Amount of the Facility A Loan for the purposes of the initial Utilisation of that Facility A Loan. [↑](#footnote-ref-164)
164. Delete as applicable. Each Increase Lender is required to confirm which of these three categories it falls within. [↑](#footnote-ref-165)
165. Include only if Increase Lender is a UK Non-Bank Lender i.e. falls within paragraph ‎(a)‎(ii) of the definition of Qualifying Lender in Clause ‎13.1 (*Definitions*). [↑](#footnote-ref-166)
166. \* Insert jurisdiction of tax residence. [↑](#footnote-ref-167)
167. \*\* This confirmation must be included if the Increase Lender holds a passport under the HMRC DT Treaty Passport scheme and wishes that scheme to apply to the Agreement. [↑](#footnote-ref-168)
168. This clause should follow the approach adopted as regards non-contractual obligations in Clause ‎39 (*Governing law*). This should be done (and this footnote deleted) before the Agreement is signed. [↑](#footnote-ref-169)
169. Complete a separate Part of this Schedule for each Non-LIBOR Currency. [↑](#footnote-ref-170)
170. Include this ‎Part I of ‎Schedule 15 (*Compounded Rate Terms*) if dollars are to be, or may be, made available under the Agreement and are to be a Rate Switch Currency such that the use of a Term Reference Rate for the calculation of interest will be automatically replaced by use of a Compounded Reference Rate pursuant to Clause 9A (*Rate Switch*). [↑](#footnote-ref-171)
171. Delete as applicable. [↑](#footnote-ref-172)
172. This document envisages that the applicability (or otherwise) of the use of cost of funds as a fallback for Compounded Rate Loans is addressed in ‎Schedule 15 (*Compounded Rate Terms*). This allows for the use of a currency specific approach to the extent to which cost of funds is to apply as a fallback for Compounded Rate Loans. If it is the case in the context of a particular transaction that the commercial agreement is that cost of funds is not to apply as a fallback to any Compounded Rate Loan in any currency then Clause 11.3 (*Interest calculation if no RFR or Central Bank Rate*) and the corresponding section in each part of ‎Schedule 15 (*Compounded Rate Terms*) may be deleted. [↑](#footnote-ref-173)
173. See the footnote to the definition of "*Backstop Rate Switch Date*". [↑](#footnote-ref-174)
174. Readers should refer to the Commentary in relation to Break Costs. [↑](#footnote-ref-175)
175. Clause ‎10.3 (*Non-Business Days*), Clause ‎29.7 (*Business Days*) and the definitions of "*Business Day conventions*" in ‎Schedule 15 (*Compounded Rate Terms*) reflect that the £RFR Working Group's recommendation for business day conventions for payments is "*"Modified Following Business Day Convention". This means payments of interest that would fall to be made on a day that is a non-Business Day are adjusted to the next succeeding Business Day, unless that Business Day falls in the next calendar month, in which case the interest payment date is the preceding Business Day*." [↑](#footnote-ref-176)
176. Readers should refer to the Commentary in relation to this definition. [↑](#footnote-ref-177)
177. Readers should refer to the Commentary in relation to this definition. [↑](#footnote-ref-178)
178. Readers should refer to the Commentary in relation to this definition. [↑](#footnote-ref-179)
179. This reflects the £RFR Working Group's recommendation: "*…that if a corrected rate is published, it is used in place of the original, uncorrected, rate*." [↑](#footnote-ref-180)
180. This reflects the £RFR Working Group's recommendation "…*for SONIA to be rounded (and not truncated) to 4 decimal poin*ts…". [↑](#footnote-ref-181)
181. Include to the extent that the optional zero floor wording is included for the Term Reference Rate applicable to Term Rate Loans in dollars. [↑](#footnote-ref-182)
182. This reflects the £RFR Working Group's recommendations that:

     *(a) "If an interest rate floor is included in a facility agreement, it is recommended that the floor be calculated daily (rather than at the end of an interest period) because loans accrue interest daily. The floor can then be applied to the applicable daily SONIA for the relevant interest period."; and*

     *(b) "For legacy contracts containing a floor, where the aggregate of SONIA plus the credit adjustment spread is less than the legacy floor value, the Working Group's recommendation is for the credit adjustment spread to remain unchanged, with SONIA adjusted to ensure that the aggregate of SONIA plus the credit adjustment spread is equal to the legacy floor value. However, the Working Group recognises that an alternative method, where the credit spread is adjusted, may be preferred by some market participants."* [↑](#footnote-ref-183)
183. Together with the definition of "*Daily Non-Cumulative Compounded RFR Rate*", this reflects the £RFR Working Group's recommendations that:

     (a) "*Use of a* ***Five Banking Days Lookback without Observation Shift*** *is recommended as the standard approach by the Working Group*. *This aligns with the approach recommended by the Alternative Reference Rate Committee for US dollar loan markets and in the Working Group's view is most likely to be made rapidly available*."; and

     (b) "*A Lookback period allows for payment certainty for borrowers when using an 'in arrears' rate. While a standard Lookback period of 5 Business Days is recommended, the Lookback period can vary based on borrower/lender needs. Lookback without Observation Shift (also known as Lag) is recommended as the standard approach by the Working Group. Here, the SONIA rate is derived from the reference period but weighted according to the days in the interest period.*" [↑](#footnote-ref-184)
184. Readers should refer to the Commentary in relation to the market disruption provisions. [↑](#footnote-ref-185)
185. Readers should note that the "Lookback Period" is simply a number of days and is not a period starting on one day and ending on another day. "Lookback Period" is defined as "*[Five] RFR Banking Days*".

     Deconstructed this provision reads: "The Business Day which follows the day which is **[five] RFR Banking Days** prior to the last day of the Interest Period." [↑](#footnote-ref-186)
186. This definition reflects that a final SOFR for any RFR Banking Day will become available at 19:30 (London time) on the following RFR Banking Day.

     (This is because the SOFR for any RFR Banking Day will become available at 08:00 (New York time) on the following RFR Banking Day and remains subject to correction up until 14:30 (New York time) on that following RFR Banking Day. See the Commentary for further discussion.) [↑](#footnote-ref-187)
187. The effect of any subsequent correction, recalculation or republication of an originally published SOFR is not excluded from this definition. This means that in the case of any such correction, recalculation or republication the definition will operate to reference the subsequently corrected, recalculated or republished SOFR.

     This reflects the £RFR Working Group's recommendation: "*…that if a corrected rate is published, it is used in place of the original, uncorrected, rate.*"

     See also the footnote to each definition of "*Daily Rate*" in this Schedule 15. [↑](#footnote-ref-188)
188. Insert if Clause 11.4 (*Market disruption*) is to apply to Compounded Rate Loans in dollars. [↑](#footnote-ref-189)
189. Insert if either: (a) Clause 11.4 (*Market disruption*) is to apply to Compounded Rate Loans in dollars; or (b) "*Cost of funds will apply as a fallback*" is specified for Compounded Rate Loans in dollars. [↑](#footnote-ref-190)
190. Include this ‎Part II of ‎Schedule 15 (*Compounded Rate Terms*) if sterling is to be, or may be, made available under the Agreement and is to be a Rate Switch Currency such that the use of a Term Reference Rate for the calculation of interest will be automatically replaced by use of a Compounded Reference Rate pursuant to Clause 9A (*Rate Switch*). [↑](#footnote-ref-191)
191. Delete as applicable. [↑](#footnote-ref-192)
192. This document envisages that the applicability of the use of cost of funds as a fallback for Compounded Rate Loans is addressed in ‎Schedule 15 (*Compounded Rate Terms*). This allows for the use of a currency specific approach to the extent to which cost of funds is to apply as a fallback for Compounded Rate Loans. If it is the case in the context of a particular transaction that the commercial agreement is that cost of funds is not to apply as a fallback to any Compounded Rate Loan in any currency then Clause 11.3 (*Interest calculation if no RFR or Central Bank Rate*) and the corresponding section in each part of ‎Schedule 15 (*Compounded Rate Terms*) may be deleted. [↑](#footnote-ref-193)
193. See the footnote to the definition of "*Backstop Rate Switch Date*". [↑](#footnote-ref-194)
194. Readers should refer to the Commentary in relation to Break Costs. [↑](#footnote-ref-195)
195. Clause ‎10.3 (*Non-Business Days*), Clause ‎29.7 (*Business Days*) and the definitions of "*Business Day conventions*" in ‎Schedule 15 (*Compounded Rate Terms*) reflect that the £RFR Working Group's recommendation for business day conventions for payments is "*"Modified Following Business Day Convention". This means payments of interest that would fall to be made on a day that is a non-Business Day are adjusted to the next succeeding Business Day, unless that Business Day falls in the next calendar month, in which case the interest payment date is the preceding Business Day.*" [↑](#footnote-ref-196)
196. Readers should refer to the Commentary in relation to this definition. [↑](#footnote-ref-197)
197. This reflects the £RFR Working Group's recommendation that: "*SONIA for each London business day is published at 9.00 am the following London business day. While the rate is subject to correction, the Lookback permits users to select the corrected rate were a correction to occur. The Working Group recommends that if a corrected rate is published, it is used in place of the original, uncorrected, rate*." [↑](#footnote-ref-198)
198. This reflects the £RFR Working Group's recommendation: "*…for SONIA to be rounded (and not truncated) to 4 decimal points*". [↑](#footnote-ref-199)
199. Include to the extent that the optional zero floor wording is included for the Term Reference Rate applicable to Term Rate Loans in sterling. [↑](#footnote-ref-200)
200. This reflects the £RFR Working Group's recommendations that:

     (a) *"If an interest rate floor is included in a facility agreement, it is recommended that the floor be calculated daily (rather than at the end of an interest period) because loans accrue interest daily. The floor can then be applied to the applicable daily SONIA for the relevant interest period."; and*

     (b) *"For legacy contracts containing a floor, where the aggregate of SONIA plus the credit adjustment spread is less than the legacy floor value, the Working Group's recommendation is for the credit adjustment spread to remain unchanged, with SONIA adjusted to ensure that the aggregate of SONIA plus the credit adjustment spread is equal to the legacy floor value. However, the Working Group recognises that an alternative method, where the credit spread is adjusted, may be preferred by some market participants."* [↑](#footnote-ref-201)
201. Together with the definition of "*Daily Non-Cumulative Compounded RFR Rate*", this reflects the £RFR Working Group's recommendations that:

     (a) "*Use of a* ***Five Banking Days Lookback without Observation Shift*** *is recommended as the standard approach by the Working Group*. *This aligns with the approach recommended by the Alternative Reference Rate Committee for US dollar loan markets and in the Working Group's view is most likely to be made rapidly available*."; and

     (b) "*A Lookback period allows for payment certainty for borrowers when using an 'in arrears' rate. While a standard Lookback period of 5 Business Days is recommended, the Lookback period can vary based on borrower/lender needs. Lookback without Observation Shift (also known as Lag) is recommended as the standard approach by the Working Group. Here, the SONIA rate is derived from the reference period but weighted according to the days in the interest period.*" [↑](#footnote-ref-202)
202. Readers should refer to the Commentary in relation to the market disruption provisions. [↑](#footnote-ref-203)
203. Readers should note that the "Lookback Period" is simply a number of days and is not a period starting on one day and ending on another day. "Lookback Period" is defined as "[Five] RFR Banking Days".

     Deconstructed, this provision reads: "The day which is **[five] RFR Banking Days** prior to the last day of the Interest Period or, if that day is not a Business Day, the immediately following Business Day.". [↑](#footnote-ref-204)
204. The effect of any subsequent correction, recalculation or republication of an originally published SONIA is not excluded from this definition. This means that in the case of any such correction, recalculation or republication the definition will operate to reference the subsequently corrected, recalculated or republished SONIA.

     This reflects the £RFR Working Group's recommendation that: "*SONIA for each London business day is published at 9.00 am the following London business day. While the rate is subject to correction, the Lookback permits users to select the corrected rate were a correction to occur. The Working Group recommends that if a corrected rate is published, it is used in place of the original, uncorrected, rate.*"

     See also the footnote to each definition of "*Daily Rate*" in this Schedule 15. [↑](#footnote-ref-205)
205. Insert if Clause 11.4 (*Market disruption*) is to apply to Compounded Rate Loans in sterling. [↑](#footnote-ref-206)
206. Insert if either: (a) Clause 11.4 (*Market disruption*) is to apply to Compounded Rate Loans in sterling; or (b) "*Cost of funds will apply as a fallback*" is specified for Compounded Rate Loans in sterling. [↑](#footnote-ref-207)
207. Include this ‎Part III of ‎Schedule 15 (*Compounded Rate Terms*) if Swiss francs are to be, or may be, made available under the Agreement and are to be a Rate Switch Currency such that the use of a Term Reference Rate for the calculation of interest will be automatically replaced by use of a Compounded Reference Rate pursuant to Clause 9A (*Rate Switch*). [↑](#footnote-ref-208)
208. Delete as applicable. [↑](#footnote-ref-209)
209. This document envisages that the applicability of the use of cost of funds as a fallback for Compounded Rate Loans is addressed in ‎Schedule 15 (*Compounded Rate Terms*). This allows for the use of a currency specific approach to the extent to which cost of funds is to apply as a fallback for Compounded Rate Loans. If it is the case in the context of a particular transaction that the commercial agreement is that cost of funds is not to apply as a fallback to any Compounded Rate Loan in any currency then Clause 11.3 (*Interest calculation if no RFR or Central Bank Rate*) and the corresponding section in each part of ‎Schedule 15 (*Compounded Rate Terms*) may be deleted. [↑](#footnote-ref-210)
210. See the footnote to the definition of "*Backstop Rate Switch Date*". [↑](#footnote-ref-211)
211. Readers should refer to the Commentary in relation to Break Costs. [↑](#footnote-ref-212)
212. Clause ‎10.3 (*Non-Business Days*), Clause ‎29.7 (*Business Days*) and the definitions of "*Business Day conventions*" in ‎Schedule 15 (*Compounded Rate Terms*) reflect that the £RFR Working Group's recommendation for Business day conventions for payments is "*"Modified Following Business Day Convention". This means payments of interest that would fall to be made on a day that is a non-Business Day are adjusted to the next succeeding Business Day, unless that Business Day falls in the next calendar month, in which case the interest payment date is the preceding Business Day.*" [↑](#footnote-ref-213)
213. Readers should refer to the Commentary in relation to this definition. [↑](#footnote-ref-214)
214. Readers should refer to the Commentary in relation to this definition. [↑](#footnote-ref-215)
215. This reflects the £RFR Working Group's recommendation: "*…that if a corrected rate is published, it is used in place of the original, uncorrected, rate*." [↑](#footnote-ref-216)
216. This reflects the £RFR Working Group's recommendation: "…*for SONIA to be rounded (and not truncated) to 4 decimal points*". [↑](#footnote-ref-217)
217. Include to the extent that the optional zero floor wording is included for the Term Reference Rate applicable to Term Rate Loans in Swiss francs. [↑](#footnote-ref-218)
218. This reflects the £RFR Working Group's recommendations that:

     (a) "*If an interest rate floor is included in a facility agreement, it is recommended that the floor be calculated daily (rather than at the end of an interest period) because loans accrue interest daily. The floor can then be applied to the applicable daily SONIA for the relevant interest period*."; and

     (b) "*For legacy contracts containing a floor, where the aggregate of SONIA plus the credit adjustment spread is less than the legacy floor value, the Working Group's recommendation is for the credit adjustment spread to remain unchanged, with SONIA adjusted to ensure that the aggregate of SONIA plus the credit adjustment spread is equal to the legacy floor value. However, the Working Group recognises that an alternative method, where the credit spread is adjusted, may be preferred by some market participants*." [↑](#footnote-ref-219)
219. Together with the definition of "*Daily Non-Cumulative Compounded RFR Rate*", this reflects the £RFR Working Group's recommendations that:

     (a) "*Use of a* ***Five Banking Days Lookback without Observation Shift*** *is recommended as the standard approach by the Working Group*. *This aligns with the approach recommended by the Alternative Reference Rate Committee for US dollar loan markets and in the Working Group's view is most likely to be made rapidly available*."; and

     (b) "*A Lookback period allows for payment certainty for borrowers when using an 'in arrears' rate. While a standard Lookback period of 5 Business Days is recommended, the Lookback period can vary based on borrower/lender needs. Lookback without Observation Shift (also known as Lag) is recommended as the standard approach by the Working Group. Here, the SONIA rate is derived from the reference period but weighted according to the days in the interest period.*" [↑](#footnote-ref-220)
220. Readers should refer to the Commentary in relation to the market disruption provisions. [↑](#footnote-ref-221)
221. Readers should note that the "Lookback Period" is simply a number of days and is not a period starting on one day and ending on another day. "Lookback Period" is defined as "[Five] RFR Banking Days".

     Deconstructed, this provision reads: "The day which is **[five] RFR Banking Days** prior to the last day of the Interest Period or, if that day is not a Business Day, the immediately following Business Day." [↑](#footnote-ref-222)
222. The effect of any subsequent correction, recalculation or republication of an originally published SARON is not excluded from this definition. This means that in the case of any such correction, recalculation or republication the definition will operate to reference the subsequently corrected, recalculated or republished SARON.

     This reflects the £RFR Working Group's recommendation: "…*that if a corrected rate is published, it is used in place of the original, uncorrected, rate.*"

     See also the footnote to each definition of "*Daily Rate*" in this Schedule 15. [↑](#footnote-ref-223)
223. Insert if Clause 11.4 (*Market disruption*) is to apply to Compounded Rate Loans in Swiss francs. [↑](#footnote-ref-224)
224. Insert if either: (a) Clause 11.4 (*Market disruption*) is to apply to Compounded Rate Loans in Swiss francs; or (b) "*Cost of funds will apply as a fallback*" is specified for Compounded Rate Loans in Swiss francs. [↑](#footnote-ref-225)
225. Include this ‎Part IV of ‎Schedule 15 (*Compounded Rate Terms*) if euros are to be, or may be, made available under the Agreement and are to be a Rate Switch Currency such that the use of a Term Reference Rate for the calculation of interest will be automatically replaced by use of a Compounded Reference Rate pursuant to Clause ‎9A (*Rate Switch*). Readers should note that EMMI Euribor is not currently scheduled to be discontinued and that particular consideration should be given in the context of the relevant transaction as to the extent to which it is considered appropriate for the rate switch mechanics to apply to Loans in euro for which the Term Reference Rate is EMMI Euribor. See the Commentary for further discussion. [↑](#footnote-ref-226)
226. Delete as applicable. [↑](#footnote-ref-227)
227. This document envisages that the applicability of the use of cost of funds as a fallback for Compounded Rate Loans is addressed in ‎Schedule 15 (*Compounded Rate Terms*). This allows for the use of a currency specific approach to the extent to which cost of funds is to apply as a fallback for Compounded Rate Loans. If it is the case in the context of a particular transaction that the commercial agreement is that cost of funds is not to apply as a fallback to any Compounded Rate Loan in any currency then Clause 11.3 (*Interest calculation if no RFR or Central Bank Rate*) and the corresponding section in each part of ‎Schedule 15 (*Compounded Rate Terms*) may be deleted. [↑](#footnote-ref-228)
228. Readers should refer to the Commentary in relation to Break Costs. [↑](#footnote-ref-229)
229. Clause ‎10.3 (*Non-Business Days*), Clause ‎29.7 (*Business Days*) and the definitions of "*Business Day conventions*" in ‎Schedule 15 (*Compounded Rate Terms*) reflect that the £RFR Working Group's recommendation for business day conventions for payments is "*"Modified Following Business Day Convention". This means payments of interest that would fall to be made on a day that is a non-Business Day are adjusted to the next succeeding Business Day, unless that Business Day falls in the next calendar month, in which case the interest payment date is the preceding Business Day.*" [↑](#footnote-ref-230)
230. Readers should refer to the Commentary in relation to this definition. [↑](#footnote-ref-231)
231. Readers should refer to the Commentary in relation to this definition. [↑](#footnote-ref-232)
232. Readers should refer to the Commentary in relation to this definition. [↑](#footnote-ref-233)
233. This reflects the £RFR Working Group's recommendation: "*…that if a corrected rate is published, it is used in place of the original, uncorrected, rate*." [↑](#footnote-ref-234)
234. This reflects the £RFR Working Group's recommendation: "*…for SONIA to be rounded (and not truncated) to 4 decimal points*". [↑](#footnote-ref-235)
235. Include to the extent that the optional zero floor wording is included for the Term Reference Rate applicable to Term Rate Loans in euro. [↑](#footnote-ref-236)
236. This reflects the £RFR Working Group's recommendations that:

     (a) "*If an interest rate floor is included in a facility agreement, it is recommended that the floor be calculated daily (rather than at the end of an interest period) because loans accrue interest daily. The floor can then be applied to the applicable daily SONIA for the relevant interest period*."; and

     (b) "*For legacy contracts containing a floor, where the aggregate of SONIA plus the credit adjustment spread is less than the legacy floor value, the Working Group's recommendation is for the credit adjustment spread to remain unchanged, with SONIA adjusted to ensure that the aggregate of SONIA plus the credit adjustment spread is equal to the legacy floor value. However, the Working Group recognises that an alternative method, where the credit spread is adjusted, may be preferred by some market participants*." [↑](#footnote-ref-237)
237. Together with the definition of "*Daily Non-Cumulative Compounded RFR Rate*", this reflects the £RFR Working Group's recommendations that:

     (a) "*Use of a* ***Five Banking Days Lookback without Observation Shift*** *is recommended as the standard approach by the Working Group*. *This aligns with the approach recommended by the Alternative Reference Rate Committee for US dollar loan markets and in the Working Group's view is most likely to be made rapidly available*."; and

     (b) "*A Lookback period allows for payment certainty for borrowers when using an 'in arrears' rate. While a standard Lookback period of 5 Business Days is recommended, the Lookback period can vary based on borrower/lender needs. Lookback without Observation Shift (also known as Lag) is recommended as the standard approach by the Working Group. Here, the SONIA rate is derived from the reference period but weighted according to the days in the interest period.*" [↑](#footnote-ref-238)
238. Readers should refer to the Commentary in relation to the market disruption provisions. [↑](#footnote-ref-239)
239. Readers should note that the "Lookback Period" is simply a number of days and is not a period starting on one day and ending on another day. "Lookback Period" is defined as "*[Five] RFR Banking Days*".

     Deconstructed, this provision reads: "The day which is **[five] RFR Banking Days** prior to the last day of the Interest Period or, if that day is not a Business Day, the immediately following Business Day." [↑](#footnote-ref-240)
240. The effect of any subsequent correction, recalculation or republication of an originally published €STR is not excluded from this definition. This means that in the case of any such correction, recalculation or republication the definition will operate to reference the subsequently corrected, recalculated or republished €STR.

     This reflects the £RFR Working Group's recommendation: "…*that if a corrected rate is published, it is used in place of the original, uncorrected, rate.*"

     See also the footnote to each definition of "*Daily Rate*" in this Schedule 15. [↑](#footnote-ref-241)
241. Insert if Clause 11.4 (*Market disruption*) is to apply to Compounded Rate Loans in euro. [↑](#footnote-ref-242)
242. Insert if either: (a) Clause 11.4 (*Market disruption*) is to apply to Compounded Rate Loans in euro; or (b) "*Cost of funds will apply as a fallback*" is specified for Compounded Rate Loans in euro. [↑](#footnote-ref-243)
243. This formula is intended to reflect the recommended non-cumulative compounding methodology described in the section entitled "*Recommended Convention Lookback without Observation Shift*" of the £RFR Working Group's [[Supporting Slides](https://www.bankofengland.co.uk/-/media/boe/files/markets/benchmarks/rfr/uk-loan-conventions-supporting-slides.pdf?la=en&hash=9190F626C8B4E58A1FD6AA6BB48AFCA830CAF56C)](https://www.bankofengland.co.uk/-/media/boe/files/markets/benchmarks/rfr/uk-loan-conventions-supporting-slides.pdf?la=en&hash=9190F626C8B4E58A1FD6AA6BB48AFCA830CAF56C) (the "**WG methodology**"). [↑](#footnote-ref-244)
244. This reflects the £RFR Working Group's recommendation that: "*To ensure the total accrued interest amount calculated using the cumulative and non-cumulative compounded rate is always the same, the Working Group's recommendation is for…* *the non-cumulative compounded rate derived from the daily cumulative compounded rate not to be rounded…*" and also reflects Step 3 for the non‑cumulative compounded rate calculation in the WG methodology which specifies that the non‑cumulative compounded RFR "*should not be rounded*."

     Readers should note that whilst the principle of the approach to rounding in the £RFR Working Group's recommendations is clear, it is recognised that systems may have differing capabilities which might result in very small differences. The requirement in this document that the calculation be carried out 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*" is intended to reflect the potential for any such differing system capabilities. [↑](#footnote-ref-245)
245. This is Step 3 for the non‑cumulative compounded rate calculation in the WG methodology. [↑](#footnote-ref-246)
246. This, together with the definition of "*Cumulative Compounded RFR Rate*" and Clause ‎32.3 (*Day count convention and interest calculation*), reflects that the £RFR Working Group's recommendation for day count "…*is ACT/365 (fixed*)". The market practice override in these provisions operates to apply ACT/365 (fixed) for sterling. [↑](#footnote-ref-247)
247. This means that on most days, "ni" will be one, but that on a Friday it will generally be three, and that it will also be larger than one on the RFR Banking Day before a public holiday. [↑](#footnote-ref-248)
248. This reflects Step 2 for the non‑cumulative compounded rate calculation in the WG methodology which specifies that the unannualised cumulative compounded RFR "*should not be rounded*".

     Readers should note that whilst the principle of the approach to rounding in the £RFR Working Group's recommendations is clear, it is recognised that systems may have differing capabilities which might result in very small differences. The requirement in this document that the calculation be carried out 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*" is intended to reflect the potential for any such differing system capabilities. [↑](#footnote-ref-249)
249. This is Step 2 for the non‑cumulative compounded rate calculation in the WG methodology. [↑](#footnote-ref-250)
250. This reflects the £RFR Working Group's recommendation that: "*To ensure the total accrued interest amount calculated using the cumulative and non-cumulative compounded rate is always the same, the Working Group's recommendation is for the cumulative compounded rate to be rounded on a daily basis (based on the number of decimal points stated in the credit agreement)*…" and also reflects Step 1 for the non‑cumulative compounded rate calculation in the WG methodology which specifies that the annualised cumulative compounded RFR "*should be rounded daily to x decimal point (as defined in the credit agreement)*." [↑](#footnote-ref-251)
251. This is Step 1 for the non‑cumulative compounded rate calculation in the WG methodology. [↑](#footnote-ref-252)
252. This reflects the £RFR Working Group's recommendations that: "*Interest is compounded on banking days only*" and that: "*In multi-currency contracts, interest can be compounded on banking days for the drawn currency and ignore the banking/ non-banking days of other currencie*s." [↑](#footnote-ref-253)
253. Readers should note that the "Lookback Period" is simply a number of days and is not a period starting on one day and ending on another day. "Lookback Period" is defined as "[Five] RFR Banking Days".

     Deconstructed, this provision reads "…*the Daily Rate for the RFR Banking Day which is* ***[five] RFR Banking Days*** *prior to that RFR Banking Day "****i****"*". [↑](#footnote-ref-254)
254. Together with the definitions of "*Lookback Period*", this reflects the £RFR Working Group's recommendations that:

     (a) "*Use of a* ***Five Banking Days Lookback without Observation Shift*** *is recommended as the standard approach by the Working Group*. *This aligns with the approach recommended by the Alternative Reference Rate Committee for US dollar loan markets and in the Working Group's view is most likely to be made rapidly available*."; and

     (b) "*A Lookback period allows for payment certainty for borrowers when using an 'in arrears' rate. While a standard Lookback period of 5 Business Days is recommended, the Lookback period can vary based on borrower/lender needs. Lookback without Observation Shift (also known as Lag) is recommended as the standard approach by the Working Group. Here, the SONIA rate is derived from the reference period but weighted according to the days in the interest period.*" [↑](#footnote-ref-255)
255. This means that on most days, "ni" will be one, but that on a Friday it will generally be three, and that it will also be larger than one on the RFR Banking Day before a public holiday. It reflects the £RFR Working Group's recommendation that "…*for each calendar day which is a weekend or holiday, the immediately preceding banking day's rate is applied, weighted by the number of calendar days until the next banking day*." [↑](#footnote-ref-256)
256. This reflects the £RFR Working Group's recommendation that: "*To ensure the total accrued interest amount calculated using the cumulative and non-cumulative compounded rate is always the same, the Working Group's recommendation is for the cumulative compounded rate to be rounded on a daily basis (based on the number of decimal points stated in the credit agreement)*…" and also reflects Step 1 for the cumulative compounded rate calculation in the WG methodology which specifies that the final cumulative compounded RFR "*should be rounded daily to x decimal point (as defined in the credit agreement*)." [↑](#footnote-ref-257)
257. This reflects the £RFR Working Group's recommendation that: "*To the extent* *compounding the rate is selected, the method for calculating the cumulative compounded rate should be based on ISDA's formula for Compound RFR.*" [↑](#footnote-ref-258)
258. This reflects the £RFR Working Group's recommendations that: "*Interest is compounded on banking days only*" and that: "*In multi-currency contracts, interest can be compounded on banking days for the drawn currency and ignore the banking/ non-banking days of other currencie*s." [↑](#footnote-ref-259)
259. Readers should note that the "Lookback Period" is simply a number of days and is not a period starting on one day and ending on another day. "Lookback Period" is defined as "[Five] RFR Banking Days".

     Deconstructed, this provision reads "*…the Daily Rate for the RFR Banking Day which is* ***[five] RFR Banking Days*** *prior to that RFR Banking Day "****i****"*". [↑](#footnote-ref-260)
260. This means that on most days, "ni" will be one, but that on a Friday it will generally be three, and that it will also be larger than one on the RFR Banking Day before a public holiday. [↑](#footnote-ref-261)
261. This, together with the definition of "*Daily Non-Cumulative Compounded RFR Rate*" and Clause 32.3 (*Day count convention and interest calculation*), reflects that the £RFR Working Group's recommendation for day count "…*is ACT/365 (fixed*)". The market practice override in these provisions operates to apply ACT/365 (fixed) for sterling. [↑](#footnote-ref-262)