

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

## LMA TRANSFER AGREEMENT (~~DISTRESSED~~/BANK DEBT)

**TRANSFEROR:**

Date:

**TRANSFeree:**

This Transfer Agreement is entered into pursuant to the agreed terms agreement (the "Agreed Terms") ~~"Sale Agreement"~~) evidenced by the Confirmation ~~[dated \_\_\_\_\_]~~ ~~with a trade date of [\_\_\_\_\_]~~ between the Transferor and the Transferee.

On the ~~Transfer Effective~~Settlement Date, the transfer by way of novation of the Novated Assets and Novated Obligations from the Transferor to the Transferee on the terms set out in this Transfer Agreement ~~herein~~ and in the attached form of Consent shall become effective subject to:

- ~~(a)~~ (a) the Agreed Terms~~Sale Agreement~~ and the terms and conditions incorporated in the Agreed Terms~~Sale Agreement~~;
- ~~(b)~~ (b) the terms and conditions to this Transfer Agreement~~annexed hereto~~; and
- ~~(c)~~ (c) the schedule to this Transfer Agreement~~annexed hereto~~,

all of which are incorporated in this Transfer Agreement ~~herein by reference~~.

**The Transferor**

**The Transferee**

[ \_\_\_\_\_ ]

[ \_\_\_\_\_ ]

By:

By:

## The Schedule

### Credit Agreement Details

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

### Novation Details:

*Novated Tranches:*

Name of Tranche/Facility: \_\_\_\_\_  
Nature (Revolving, Term, Acceptances  
Guarantee/Letter of Credit, Other): \_\_\_\_\_

~~Traded Portion (amount)<sup>1</sup>: Final~~ \_\_\_\_\_

~~Maturity:~~

~~Transferor's Commitment:<sup>2,3</sup>~~ \_\_\_\_\_

~~Drawn Amount (details below):<sup>4</sup>~~ \_\_\_\_\_

~~);<sup>1,2</sup>~~

~~Undrawn Amount:<sup>5,1</sup>~~ \_\_\_\_\_

~~Traded Portion (amount):<sup>2</sup>~~

~~Drawn Amount (details below):<sup>1,2</sup>~~ \_\_\_\_\_

~~Undrawn Amount:<sup>1</sup>~~ \_\_\_\_\_

~~Transfer Effective Settlement~~ Date: \_\_\_\_\_

### Details of outstanding

~~Credits<sup>6</sup>: Credits<sup>1,2</sup>~~

Specify in respect of each Credit:

~~Drawn Amount:<sup>7,2</sup>~~ \_\_\_\_\_

~~Traded Portion (amount)<sup>8</sup>: )<sup>2</sup>~~ \_\_\_\_\_

~~Tranche/Facility:~~ \_\_\_\_\_

~~Nature:~~  Term  Revolver  Acceptance  Guarantee/

<sup>1</sup> Including PIK Interest that has been capitalised on or after the Trade Date and prior to the Transfer Effective Date.

<sup>2</sup> As at the date of the Transfer Agreement.

<sup>3</sup> Including PIK Interest that has been capitalised on or after the Trade Date and prior to the Settlement Date.

<sup>4</sup> As at the date of the Transfer Agreement and including PIK Interest that has been capitalised on or after the Trade Date and prior to the Transfer Effective Date.

<sup>5</sup> As at the date of the Transfer Agreement.

<sup>6</sup> As at the date of the Transfer Agreement and including PIK Interest that has been capitalised on or after the Trade Date and prior to the Transfer Effective Date.

<sup>7</sup> Including PIK Interest that has been capitalised on or after the Trade Date and prior to the Transfer Effective Date.

<sup>8</sup> Including PIK Interest that has been capitalised on or after the Trade Date and prior to the Transfer Effective Date.

Letter of Credit     Other (specify) \_\_\_\_\_

Drawn Amount<sup>9</sup>: ~~2~~ \_\_\_\_\_

Traded Portion (amount)<sup>10</sup>: ~~2~~ \_\_\_\_\_

Tranche/Facility: \_\_\_\_\_

Nature:                     Term     Revolver     Acceptance     Guarantee/  
Letter of Credit     Other (specify) \_\_\_\_\_

Details of other Credits are set out on the attached sheet

**Administration Details**

Transferor<sup>12</sup>'s Receiving Account: \_\_\_\_\_

Transferor<sup>12</sup>'s Receiving Account: \_\_\_\_\_

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<sup>9</sup> Including PIK Interest that has been capitalised on or after the Trade Date and prior to the Transfer Effective Date.

<sup>10</sup> Including PIK Interest that has been capitalised on or after the Trade Date and prior to the Transfer Effective Date.

**Addresses**

Transferor

[ ]

Address:

Telephone:

Facsimile:

Attn/Ref:

Transferee

[ ]

Address:

Telephone:

Facsimile:

Attn/Ref:

## TERMS AND CONDITIONS

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

### 1. INTERPRETATION

#### 1.1 Definitions

In these Terms and Conditions words and expressions shall (unless otherwise expressly defined in these Terms and Conditions) ~~have herein~~ bear the meaning given to them in the Transfer Agreement or in the Agreed Terms Sale Agreement and:

"Acceptance" means the Transferor's acceptance on a Bill.;

"Bill" means a bill of exchange drawn or to be drawn by a Borrower and accepted by the Transferor or any other person in connection with the Credit Agreement under or in respect of which the Transferor has any liability whatsoever.;

"Consent" means the consent of all relevant parties to the Credit Documentation to the Novation ~~hereunder~~ in the form set out in the Annex Exhibit;

"Credit" means each Acceptance, Credit Support, Letter of Credit, Letter of Credit Obligation, Loan and any other form of credit or facility provided under the Credit Agreement.;

"Credit Support" means a guarantee, indemnity, bond or other similar assurance against financial loss (other than a Letter of Credit) entered into or issued by the Transferor or any other person in connection with the Credit Agreement under or in respect of which the Transferor has any liability whatsoever.;

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

"Issuing Bank" means, in the case of a Letter of Credit Obligation, the bank which issued the letter of credit the subject of that Letter of Credit Obligation.;

"Letter of Credit" means a standby letter of credit or a documentary letter of credit issued by the Transferor or by any other person in connection with the Credit Agreement under or in respect of which the Transferor has any liability whatsoever.;

"Letter of Credit Obligation" means the Transferor's obligations in respect of its issuance or confirmation of a documentary Letter of Credit.;

"Loan" means the principal amount of any loan made to a Borrower which is currently owed to the Transferor under the Credit Agreement (~~including which shall include~~ PIK Interest that has been capitalised from time to time) or the principal amount outstanding of that borrowing.;

"Novated Assets" means, subject to Clause 2.4 (Pro Rata Interest Settlement), all of the rights and benefits of the Transferor under or in respect of the Credit Documentation corresponding to the Traded Portion including, without limitation, the rights and interests of the Transferor in and in respect of: ~~the benefit of any guarantee or other assurance against loss given by any Guarantor and any other security and in respect of any amounts owing to the Transferor under or in respect of each outstanding Credit, in each case corresponding to the Traded Portion. The Novated Assets shall not include the Retained Rights;~~

(a) the benefit of any guarantee or other assurance against loss given by any Guarantor;

(b) the benefit of any other security; and

(c) any amounts owing to the Transferor under the Credit Agreement,

in each case corresponding to the Traded Portion.

"Novated Obligations" means all of the Transferor's obligations (but excluding the Retained Obligations) under or in respect of the Credit Documentation corresponding to the Traded Portion including, without limitation, any commitment under the Credit Documentation to make or issue a Credit and any obligations under any outstanding Credit, in each case corresponding to the Traded Portion.;

"Novation" means the novation to be effected pursuant to the Transfer Agreement and the Consent on the terms set out in these Terms and Conditions herein, in the Agreed Terms Sale Agreement and in the Consent.;

"Party" means a party to the Transfer Agreement.;

"Receiving Account" means; the account of each Party designated as its Receiving Account as specified in the Schedule.

"Transfer Effective Agreement; and

"Settlement Date" means the date specified as such in the Schedule or such later date as is determined in accordance with the second paragraph of the Consent.

## 1.2 Construction

1.2.1(a) In the Transfer Agreement and these Terms and Conditions, unless the contrary intention appears, a reference to:

(a)(i) a Clause or the Annex Exhibit is a reference to a clause of, or annex exhibit to, these Terms and Conditions;

(b)(ii) the Schedule is a reference to the schedule to the Transfer Agreement; and

(c)(iii) a "Party" or any other a person includes its successors in title, permitted and assigns and permitted transferees.

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

~~1.2.3(b)~~ If there is any inconsistency between these Terms and Conditions and the Sale Agreement, the Sale Agreement shall prevail.

~~1.2.4(c)~~ References to any document shall be references to the same as amended, varied, supplemented, replaced or restated in any manner from time to time.

~~(d)~~ A provision of law is a reference to that provision as amended or re-enacted.

### 1.3 **Agreed Terms prevail**

If there is any inconsistency between these Terms and Conditions and the Agreed Terms, the Agreed Terms shall prevail.

### ~~1.3~~1.4 **Third Party Rights**

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

## 2. **TRANSFER BY NOVATION**

### 2.1 **Consents**

~~2.1.1(a)~~ The obligation of the Transferor to procure the transfer by novation of the Novated Assets and the Novated Obligations is subject to the Transferor having confirmed to the Transferee that it has received all necessary consents or other documents (including, without limitation, the Consent) required to allow the Novation to be effected (including, if required, without limitation, the consent of the Issuing Bank in respect of any Letter of Credit Obligation, the consent of any other Obligor and the consent of the beneficiary of any Credit Support or Letter of Credit).

~~2.1.2(b)~~ Each of the Transferor and Transferee shall execute the Consent on the date of the Transfer Agreement~~hereof~~ and the Transferor shall use its~~a~~ reasonable endeavours to procure that the other persons expressed to be parties to the Consent execute it as soon as reasonably practicable after such~~the~~ date ~~hereof~~.

### 2.2 **Undertaking and Payment**

~~2.2.1(a)~~ The Transferee agrees:

~~(a)~~(i) that, on the Transfer Effective~~Settlement~~ Date, it shall accept the transfer by novation of the Novated Assets; and

~~(b)~~(ii) that, on and from the Transfer Effective~~Settlement~~ Date, it shall assume, perform and comply with the Novated Obligations under the Credit Documentation as if originally named as an original party in the Credit Documentation.

~~2.2.2(b)~~ Each Party agrees to pay to the other Party the Settlement Amount on the ~~Transfer Effective~~~~Settlement~~ Date, to the extent so specified in the Pricing Letter.

### 2.3 **Completion**

Subject to compliance with all of the other conditions set out in the Transfer Agreement, herein, in the Consent and in the Agreed Terms~~Sale Agreement~~, completion of the Novation shall take effect on the ~~Transfer Effective~~~~Settlement~~ Date on receipt by the Transferor (or, as the case may be, the Transferee) of the Settlement Amount.

### 2.4 **Pro Rata Interest Settlement**

If under the terms of the Credit Documentation in relation to the transaction the Transferor is to retain the right to receive its portion of any interest or fees accrued up to, but excluding the Transfer Effective Date, and which are expressed to accrue by reference to the lapse of time ("Accrued Amounts"), the Novated Assets will not include the Accrued Amounts. Any Accrued Amount will continue, under the Credit Documentation, to be for the account of the Transferor but will be subject to Clause 2.5 (Excluded Rights).

#### 2.4.5 **Excluded Rights**

~~2.4.1(a)~~ The Agreed Terms regulate~~Sale Agreement regulates~~ the allocation of and entitlement to payments under the Credit Agreement.

~~2.4.2(b)~~ If any amount to which the Transferee is entitled pursuant to the Agreed Terms~~Sale Agreement~~ is received or recovered by the Transferor, the Transferor shall forthwith pay that amount to the Transferee for same day value together with interest on it from the date of receipt of the amount to the date of payment, calculated at the overnight rate charged to the Transferee's<sup>2</sup> Receiving Account in respect of each day of that period if the account is, or would be, in debit and, pending such payment, the Transferor shall hold that amount on trust for the Transferee.

~~2.4.3(c)~~ If any amount to which the Transferor is entitled pursuant to the Agreed Terms~~Sale Agreement~~ is received or recovered by the Transferee, the Transferee shall forthwith pay that amount to the Transferor for same day value together with interest on it from the date of receipt of the amount to the date of payment, calculated at the overnight rate charged to the Transferor's<sup>2</sup> Receiving Account in respect of each day of that period if the account is, or would be, in debit and, pending such payment, the Transferee shall hold that amount on trust for the Transferor.

#### 2.5.2.6 **Ancillary Rights and Claims ~~and Retained Rights~~**

Nothing in the Transfer Agreement shall affect, or is with prejudice, to the sale, assignment and conveyance of the Ancillary Rights and Claims ~~and, if applicable, the Retained Rights, by the Transferor to the Transferee~~ pursuant to the Agreed Terms~~Sale Agreement~~.



### 3. **PAYMENTS**

#### 3.1 **Place**

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

#### 3.2 **Funds**

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

#### ~~Transferee's Acknowledgments~~

~~The Transferor notifies the Transferee and the Transferee acknowledges that, except as otherwise specified in the Sale Agreement:~~

~~the Transferor shall have no obligation to repurchase or reacquire all or any part of the Novated Assets or the Novated Obligations from the Transferee or to support any losses directly or indirectly sustained or incurred by the Transferee for any reason whatsoever, including the non performance by any Obligor under the Credit Documentation of its obligations thereunder; and~~

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

#### ~~Assignment of Rights~~

~~The Transfer Agreement shall be binding upon and enure to the benefit of each Party and its successors and permitted assigns provided that neither Party may assign or transfer its rights hereunder without the prior written consent of the other Party.~~

### 6.4. **GOVERNING LAW AND JURISDICTION**

#### 4.1 **Governing law**

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

#### 4.2 **Jurisdiction**

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

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

~~EXHIBIT (to Terms and Conditions of Transfer)~~

**ANNEX Form Of Consent**

To: [The Borrower(s)]  
[The Guarantor(s)]  
[The Agent Bank]  
[The Lenders]  
[The Issuing BankBanks]  
[Other appropriate persons]

From: [Transferor] (the "Transferor") and  
[Transferee] (the "Transferee")

Dear Sirs,

[Details of Credit Documentation] (the "Credit Documentation")

1. ~~The~~We hereby give you notice that the Transferor intends to transfer by novation the following Novated Assets and Novated Obligations to the Transferee:

[Specify Details].

2. On [~~Transfer Effective~~Settlement Date] or, if later, the first date upon which all the persons to whom this Consent is addressed have executed and delivered a duplicate of this Consenthereof to the Transferor:

(a) to the extent of the Novated Assets and the Novated Obligations identified above each of the other parties to the Credit Documentation and the Transferor shall be released from further obligations towards one another under the Credit Documentationthereunder and their respective rights against one another shall be cancelled (the "discharged rights and obligations");

(b) each of the other parties to the Credit Documentation and the Transferee shall assume obligations towards one another and/or acquire rights against one another which differ from such discharged rights and obligations only insofar as the Transferee has been substituted for the Transferor in relation thereto; and

(c) the Transferee shall, to the extent of the Novated Assets and the Novated Obligations, be substituted for the Transferor as a party to the Credit Documentation.

3. The details of the Transferee's facility office are as follows:

Address:  
Telephone:  
Facsimile:  
[Telex:]  
Attn/Ref:

4. The details of the Transferee's account for payments under the Credit Documentation are as follows:

[specify account details]

5. Please confirm your consent to ~~thesueh~~ novation described in this Consent by signing and returning to the Transferor the attached duplicate of this letter.
6. Terms defined in the Credit Documentation shall ~~havebear~~ the same meanings when used in this Consent~~herein~~.
7. This Consent and any non-contractual obligations arising out of or in connection with it shall be governed by English law~~the laws of England~~.
8. The courts of England have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Consent (including a dispute relating to any non-contractual obligation arising out of or in connection with this Consent).

Yours faithfully

**[The Transferor]**

**[The Transferee]**

We confirm our consent to the novation described in this Consent

.....  
**[for and on behalf of the Borrower(s)]**

.....  
**[date]**

.....  
**[for and on behalf of the Guarantor(s)]**

.....  
**[date]**

.....  
**[for and on behalf of the Agent Bank]**

.....  
**[date]**

.....  
**[for and on behalf of each LenderBank]**

.....  
**[date]**

.....  
**[for and on behalf of the Issuing Bank]**

.....  
**[date]**

.....  
**[for and on behalf of [ ]]**

.....  
**[date]**