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.

SENIOR MULTICURRENCY TERM AND REVOLVING FACILITIES AGREEMENT
FOR LEVERAGED ACQUISITION FINANCE TRANSACTIONS
(SENIOR/MEZZANINE)

[amount in numbers]

SENIOR FACILITIES AGREEMENT
dated [ ]

for

[NAMES OF PRINCIPAL COMPANY]

arranged by

[NAMES OF MANDATED LEAD ARRANGER[S]]
as Mandated Lead Arranger[s]

with

[NAMES OF AGENT]
acting as Agent

[NAMES OF ISSUING BANK]
acting as Issuing Bank

and

[NAMES OF SECURITY AGENT]
acting as Security Agent
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THIS AGREEMENT is dated [_____] and made between:

(1) [_____] (the "Parent");

(2) THE SUBSIDIARIES of the Parent listed in Part I of Schedule 1 (The Original Parties) as original borrowers (the "Original Borrowers");

(3) THE SUBSIDIARIES of the Parent listed in Part I of Schedule 1 (The Original Parties) as original guarantors (together with the Parent, 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 (The Original Parties) as lenders (the "Original Lenders");

[(6) / [(7)] [_____] as agent of the [other Finance Parties] (the "Agent");

[(7)] / [(8)] [_____] as security trustee for the Secured Parties (the "Security Agent"); and

[(8)] / [(9)] [_____] [and [_____] (the "Original Issuing Bank[s]").

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1 Delete if no Hedge Counterparties are party to this Agreement at signing.

2 The Agreement assumes that various amounts are held in accounts with the Agent (e.g. a Holding Account). If the Agent is not able to maintain such accounts amendments will be needed.

3 The Agreement does not contain provisions for appointment of the Security Agent or other trust provisions. It is assumed these are contained in the Intercreditor Agreement. (The LMA recommended form of Intercreditor Agreement for Leveraged Acquisition Finance Transactions (Senior/Mezzanine) contains such trust provisions). Note that if security is granted over assets subject to non-English law a trustee arrangement may not be appropriate.
IT IS AGREED as follows:

SECTION 1
INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"Acceptable Bank" means:

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

(b) any other bank or financial institution approved by the Agent.

"Accession Deed" means a document substantially in the form set out in Schedule 6 (Form of Accession Deed).

"Accountants' Report" means the report by [ ] dated [ ] relating to [the Target and its Subsidiaries and the Target Assets] and addressed to, and/or capable of being relied upon, by the Reliance Parties.

"Accounting Principles" means [generally accepted accounting principles in [ ], including IFRS]/ [IFRS].

"Accounting Reference Date" means [ ].

"Acquisition" means the acquisition by the Company of the [Target Shares] [[and] the Target Assets] on the terms of the Acquisition Documents.

"Acquisition Agreement" means the [ ] agreement dated [ ] relating to the sale and purchase of [the Target Shares] [[and] the Target Assets] and made between [the Company and the Vendor].

"Acquisition Costs" means all fees, costs and expenses, stamp, registration and other Taxes incurred by the Company or any other member of the Group in connection with the Acquisition or the Transaction Documents.

"Acquisition Documents" means the Acquisition Agreement [, the Disclosure Letter], [ ], [ ] and any other document designated as an "Acquisition Document" by the Agent and the Parent.

["Acquisition Purpose" means [any of] the purpose[s] set out in paragraph[s] (a)(i) [and [ ]] of Clause 3.1 (Purpose).]
"Additional Borrower" means a company which becomes an Additional Borrower in accordance with Clause 32 (Changes to the Obligors).

"Additional Guarantor" means a company which becomes an Additional Guarantor in accordance with Clause 32 (Changes to the Obligors).

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

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

"Agent's Spot Rate of Exchange" means:

(a) the Agent's spot rate of exchange; or

(b) (if the Agent does not have an available spot rate of exchange) any other publicly available spot rate of exchange selected by the Agent (acting reasonably),

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

["Aggregate Total Incremental Facility Commitments" means, at any time, the aggregate of the Total Incremental Facility Commitments relating to each Incremental Facility.]

["Aggregate Yield" has the meaning given to that term in Clause 10.5 (Restrictions on Incremental Facility Terms and fees).]

["Agreed Security Principles" means the principles set out in Schedule 13 (Agreed Security Principles).]

["Amortising Incremental Facility" means an Incremental Facility under which Clause 11.1 (Repayment of Term Loans) requires the aggregate Incremental Facility Loans to be repaid in instalments.]

["Amortising Incremental Facility Loan" means a loan made or to be made under an Amortising Incremental Facility or the principal amount outstanding for the time being of that loan.]

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

"Ancillary Commitment" means, in relation to an Ancillary Lender and an Ancillary Facility, the maximum Base Currency Amount which that Ancillary Lender has agreed

4 Users should note that if the Facilities Agreement is amended to envisage a Term Facility with a nominal amortisation (and the potential to establish an Incremental Facility with a similar amortisation structure is envisaged) this definition should be amended and Clause 11 (Repayment), Clause 12 (Illegality, voluntary prepayment and cancellation), and Clause 13 (Mandatory prepayment and cancellation) (and related provisions) adapted to address the appropriate treatment of such Incremental Facilities.
(whether or not subject to satisfaction of conditions precedent) to make available from
time to time under an Ancillary Facility and which has been authorised as such under
Clause 9 (Ancillary Facilities), to the extent that amount is not cancelled or reduced
under this Agreement or the Ancillary Documents relating to that Ancillary Facility.

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

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

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

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

(a) the principal amount under each overdraft facility and on-demand short term
    loan facility (net of any Available Credit Balance);

(b) the face amount of each guarantee, bond and letter of credit under that Ancillary
    Facility; and

(c) the amount fairly representing the aggregate exposure (excluding interest and
    similar charges) of that Ancillary Lender under each other type of
    accommodation provided under that Ancillary Facility,

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

"Annual Financial Statements" has the meaning given to that term in Clause 26
(Information Undertakings).

"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 provided that if that other form does not contain the
undertaking set out in the form set out in Schedule 5 (Form of Assignment Agreement)
it shall not be a Creditor Accession Undertaking as defined in, and for the purposes of,
the Intercreditor Agreement.

["Audit Laws" means the EU Regulation (537/2014) on specific requirements
regarding statutory audit of public-interest entities and repealing Commission Decision
statutory audits of annual accounts and consolidated accounts and any law or regulation
which implements that EU Directive (2014/56/EU).]  

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

(a) in relation to Facility A, Facility B and Facility C, the period from and including the date of this Agreement to and including [ ]; [and]

(b) in relation to the Revolving Facility, the period from and including the date of this Agreement to and including [ ]; and

(c) in relation to any Incremental Facility, the period specified as such in the Incremental Facility Notice relating to that Incremental Facility.

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

(a) the Base Currency Amount of its participation in any outstanding Utilisations under that Facility and, in the case of the Revolving Facility only, the Base Currency Amount of the aggregate of its [(and its Affiliate's)] Ancillary Commitments; and

(b) in relation to any proposed Utilisation, the Base Currency Amount of its participation in any other Utilisations that are due to be made under that Facility on or before the proposed Utilisation Date and, in the case of the Revolving Facility only, the Base Currency Amount of its [(and its Affiliate's)] Ancillary Commitment in relation to any new Ancillary Facility that is due to be made available on or before the proposed Utilisation Date.

For the purposes of calculating a Lender's Available Commitment in relation to any proposed Utilisation under the Revolving Facility only, the following amounts shall not be deducted from that Lender's Revolving Facility Commitment:

(i) that Lender's participation in any Revolving Facility Utilisations that are due to be repaid or prepaid on or before the proposed Utilisation Date; and

(ii) that Lender's [(and its Affiliate's)] Ancillary Commitments to the extent that they are due to be reduced or cancelled on or before the proposed Utilisation Date.

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

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

"Base Case Model" means [the financial model including profit and loss, balance sheet and cashflow projections in agreed form relating to the Group (for these purposes assuming completion of the Acquisition) together with the written business plan in agreed form, each prepared by [ ]].
"Base Currency" means [ ].

"Base Currency Amount" means:

(a) in relation to a Utilisation, the amount specified in the Utilisation Request delivered by a Borrower for that Utilisation (or, if the amount requested is not denominated in the Base Currency, that amount converted into the Base Currency at the Agent's Spot Rate of Exchange on the date which is three Business Days before the Utilisation Date or, if later, on the date the Agent receives the Utilisation Request in accordance with the terms of this Agreement) and, in the case of a Letter of Credit, as adjusted under Clause 6.8 (Revaluation of Letters of Credit); and

(b) in relation to an Ancillary Commitment, the amount specified as such in the notice delivered to the Agent by the Parent pursuant to Clause 9.2 (Availability) (or, if the amount specified is not denominated in the Base Currency, that amount converted into the Base Currency at the Agent's Spot Rate of Exchange on the date which is three Business Days before the Ancillary Commencement Date for that Ancillary Facility or, if later, the date the Agent receives the notice of the Ancillary Commitment in accordance with the terms of this Agreement), as adjusted to reflect any repayment, prepayment, consolidation or division of a Utilisation, or (as the case may be) cancellation or reduction of an Ancillary Facility.

["Benchmark Rate" means, in relation to any Loan in a Non-LIBOR Currency:

(a) 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

(b) as otherwise determined pursuant to Clause 17.1 (Unavailability of Screen Rate),

and if, in either case, that rate is less than zero, the Benchmark Rate shall be deemed to be zero][55].

"Borrower" means an Original Borrower or an Additional Borrower unless it has ceased to be a Borrower in accordance with Clause 32 (Changes to the Obligors) [and, in respect of an Ancillary Facility only, any Affiliate of a Borrower that becomes a borrower of that Ancillary Facility with the approval of the relevant Lender pursuant to Clause 9.9 (Affiliates of Borrowers)].

"Borrowings" has the meaning given to that term in Clause 27.1 (Financial definitions).

55 Users 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 users 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).
"**Break Costs**" means the amount (if any) by which:

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

exceeds:

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

["**Budget**" means:

(a) in relation to the period beginning on [ ] and ending on [ ], the [Base Case Model in agreed form] to be delivered by the Parent to the Agent pursuant to Clause 4.1 (Initial conditions precedent); and

(b) in relation to any other period, any budget delivered by the Parent to the Agent in respect of that period pursuant to Clause 26.4 (Budget).]

["**Bullet Incremental Facility**" means an Incremental Facility under which Clause 11.1 (Repayment of Term Loans) requires the aggregate Incremental Facility Loans to be repaid in full in a single instalment on the Termination Date.]

["**Bullet Incremental Facility Loan**" means a loan made or to be made under a Bullet Incremental Facility or the principal amount outstanding for the time being of that loan.]

"**Business Day**" means a day (other than a Saturday or Sunday) on which banks are open for general business in London, [ ], [ ] and:

(a) (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; [or]

(b) (in relation to any date for payment or purchase of euro) any TARGET Day [; or

(c) (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 17 (Other Benchmarks)].

"**Capital Expenditure**" has the meaning given to that term in Clause 27.1 (Financial definitions).

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

(a) that cash is repayable [on demand]/[within [ ] days after the relevant date of calculation];

(b) repayment of that cash is not contingent on the prior discharge of any other indebtedness of any member of the Group or of any other person whatsoever or on the satisfaction of any other condition;

(c) there is no Security over that cash except for Transaction Security or any Permitted Security constituted by a netting or set-off arrangement entered into by members of the Group in the ordinary course of their banking arrangements; and

(d) the cash is freely and [(except as mentioned in paragraph (a) above)] immediately available to be applied in repayment or prepayment of the Facilities.

"Cash Equivalent Investments" means at any time:

(a) certificates of deposit maturing within [one year] after the relevant date of calculation and issued by an Acceptable Bank;

(b) any investment in marketable debt obligations issued or guaranteed by the government of [the United States of America, the United Kingdom, [any member state of the European Economic Area or any Participating Member State]] or by an instrumentality or agency of any of them having an equivalent credit rating, maturing within [one year] after the relevant date of calculation and not convertible or exchangeable to any other security;

(c) commercial paper not convertible or exchangeable to any other security:

   (i) for which a recognised trading market exists;

   (ii) issued by an issuer incorporated in [the United States of America, the United Kingdom, [any member state of the European Economic Area or any Participating Member State]];

   (iii) which matures within [one year] after the relevant date of calculation; and

   (iv) which has a credit rating of either A-1 or higher by Standard & Poor's Rating Services or F1 or higher by Fitch Ratings Ltd or P-1 or higher by Moody's Investors Service Limited, or, if no rating is available in respect of the commercial paper, the issuer of which has, in respect of its long-term unsecured and non-credit enhanced debt obligations, an equivalent rating;

(d) [sterling bills of exchange eligible for rediscount at the Bank of England and accepted by an Acceptable Bank (or their dematerialised equivalent):]
(e) any investment in money market funds which:

(i) have a credit rating of either A-1 or higher by Standard & Poor's Rating Services or F1 or higher by Fitch Ratings Ltd or P-1 or higher by Moody's Investors Service Limited; and

(ii) invest substantially all their assets in securities of the types described in paragraphs (a) to (d) above,

\[
\text{to the extent that investment can be turned into cash on not more than [30] days' notice; or}
\]

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

in each case, [denominated in [specify acceptable currencies] and] to which any [Obligor]/[member of the Group] is alone (or together with other [Obligors]/[members of the Group]) beneficially entitled at that time and which is not issued or guaranteed by any member of the Group or subject to any Security (other than Security arising under the Transaction Security Documents).\(^6\)

"Cashflow" has the meaning given to that term in Clause 27.1 (Financial definitions).

["Certain Funds Period" means the period commencing on [the date of this Agreement] and ending on [ ]].

["Certain Funds Utilisation" means a [Loan]/[Utilisation] made or to be made under a [Term] Facility during the Certain Funds Period where such [Loan]/[Utilisation] is to be made solely for an Acquisition Purpose.]

["Certificate of Title" means a certificate of title, prepared by English legal counsel for the [Company] relating to the Property/ies and addressed to, and/or capable of being relied upon by, the Reliance Parties.]

["Change of Control" means [initial investors] or any funds controlled by [initial investors] cease directly or indirectly to:

(a) [have the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:

(i) cast, or control the casting of, more than [ ]% of the maximum number of votes that might be cast at a general meeting of the Parent;

(ii) appoint or remove all, or the majority, of the directors or other equivalent officers of the Parent; or

(iii) give directions with respect to the operating and financial policies of the Parent with which the directors or other equivalent officers of the Parent are obliged to comply;]

\(^6\) This definition should be tailored to the commercial requirements on a transaction specific basis.
(b) hold beneficially more than [ ]% of the issued share capital of the Parent (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or

(c) hold beneficially more than [ ]% of the aggregate principal amount of the Loan Notes;] / OR

"Change of Control" means any person or group of persons acting in concert gains direct or indirect control of the Parent. [For the purposes of this definition:

(a) "control" of the Parent means:

(i) the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:

(A) cast, or control the casting of, more than [one-half] of the maximum number of votes that might be cast at a general meeting of the Parent;

(B) appoint or remove all, or the majority, of the directors or other equivalent officers of the Parent; or

(C) give directions with respect to the operating and financial policies of the Parent with which the directors or other equivalent officers of the Parent are obliged to comply;

(ii) the holding beneficially of more than [ ]% of the issued share capital of the Parent (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or

(iii) the holding beneficially of more than [ ]% of the aggregate principal amount of the Loan Notes; and

(b) "acting in concert" means, a group of persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate, through the acquisition [directly or indirectly] of shares in the Parent [or the Loan Notes] by any of them, either directly or indirectly, to obtain or consolidate control of the Parent].]

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

["Clean-Up Default" means an Event of Default referred to in Clauses [ ].]  
["Clean-Up Period" means the Initial Clean-Up Period [or a Permitted Acquisition Clean-Up Period].]  
["Clean-Up Representation" means any of the representations and warranties under Clauses [ ].]  
["Clean-Up Undertaking" means any of the undertakings specified in Clauses [ ].]
"Closing Date" means the date on which Completion occurs.


"Commitment" means a Facility A Commitment, Facility B Commitment, Facility C Commitment[, Incremental Facility Commitment] or Revolving Facility Commitment.

"Company" means [Newco].

"Completion" means the completion of the Acquisition in accordance with clause [ ] of the Acquisition Agreement [and [steps [ ] to [ ] of the Structure Memorandum]].

"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].

"Confidential Information" means all information relating to the Parent, any Obligor, the Group, the Target 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:

(a) any member of the Group, the Target Group or any of its advisers; or

(b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group or the Target 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:

(i) information that:

(A) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 43 (Confidential Information); or

(B) is identified in writing at the time of delivery as non-confidential by any member of the Group or the Target Group or any of its advisers; or

(C) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group or the Target 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

(ii) any Funding Rate [or Reference Bank Quotation].
"Confidentiality Undertaking" means a confidentiality undertaking substantially in a recommended form of the LMA as set out in Schedule 9 (LMA Form of Confidentiality Undertaking) or in any other form agreed between the Parent and the Agent.

"Constitutional Documents" means [describe constitutional documents of the Parent].

["Contribution Notice" means a contribution notice issued by the Pensions Regulator under section 38 or section 47 of the Pensions Act 2004.]

"CTA" means the Corporation Tax Act 2009.

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

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

any Commitment or amount outstanding under this Agreement [or any commitment or amount outstanding under the Mezzanine Facility Agreement].

"Default" means an Event of Default or any event or circumstance specified in Clause 29 (Events of Default) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

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

(a) which has failed to make its participation in a Loan available (or has notified the Agent or the Parent (which has notified the Agent) that it will not make its participation in a Loan available) by the Utilisation Date of that Loan in accordance with Clause 5.4 (Lenders' participation) or which has failed to provide cash collateral (or has notified the Issuing Bank or the Parent (which has notified the Agent) that it will not provide cash collateral) in accordance with Clause 7.4 (Cash collateral by Non-Acceptable L/C Lender and Borrower's option to provide cash cover);

(b) which has otherwise rescinded or repudiated a Finance Document; [or]

(c) which is an Issuing Bank which has failed to issue a Letter of Credit (or has notified the Agent or the Parent (which has notified the Agent) that it will not issue a Letter of Credit) in accordance with Clause 6.5 (Issue of Letters of Credit) or which has failed to pay a claim (or has notified the Agent or the Parent (which has notified the Agent) that it will not pay a claim) in accordance with (and as defined in) Clause 7.2 (Claims under a Letter of Credit) [; or

(d) with respect to which an Insolvency Event has occurred and is continuing],
unless, in the case of paragraphs (a) and (c) above:

(i) its failure to pay, or to issue a Letter of Credit, is caused by:

(A) administrative or technical error; or

(B) a Disruption Event, and

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

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

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

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

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

["Disclosure Letter" has the meaning given to that term in the Acquisition Agreement.]

"Disposal" has the meaning given to that term in Clause 13.2 (Disposal, Insurance and Acquisition Proceeds and Excess Cashflow).

"Disruption Event" means either or both of:

(a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facilities (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or

(b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:

(i) from performing its payment obligations under the Finance Documents; or

(ii) from communicating with other Parties in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.
"Dormant Subsidiary" means a member of the Group which does not trade (for itself or as agent for any person) and does not own, legally or beneficially, assets (including, without limitation, indebtedness owed to it) which in aggregate have a value of [ ] or more or its equivalent in other currencies.

"EBITDA" has the meaning given to that term in Clause 27.1 (Financial definitions).

"Eligible Institution" means any Lender or other bank, financial institution, trust, fund or other entity selected by the Parent [and which, in each case, is not [a Sponsor Affiliate or] a member of the Group].

"Environment" means humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media:

(a) air (including, without limitation, air within natural or man-made structures, whether above or below ground);

(b) water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and

(c) land (including, without limitation, land under water).

"Environmental Claim" means any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law.

"Environmental Law" means any applicable law or regulation which relates to:

(a) the pollution or protection of the Environment;

(b) the conditions of the workplace; or

(c) the generation, handling, storage, use, release or spillage of any substance which, alone or in combination with any other, is capable of causing harm to the Environment, including, without limitation, any waste.

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

"Environmental Report" means an environmental report prepared by [ ] and dated [ ] relating to the Acquisition and addressed to, and/or capable of being relied upon by, the Reliance Parties.

["Establishment Date" means, in relation to an Incremental Facility, the later of:

(a) the proposed Establishment Date specified in the relevant Incremental Facility Notice; and

(b) the date on which the Agent executes the relevant Incremental Facility Notice.]
"EURIBOR" means, in relation to any Loan in euro:

(a) 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

(b) as otherwise determined pursuant to Clause 17.1 (Unavailability of Screen Rate),

and if, in either case, that rate is less than zero, EURIBOR shall be deemed to be zero.

"Event of Default" means any event or circumstance specified as such in Clause 29 (Events of Default).

"Excess Cashflow" has the meaning given to that term in Clause 27.1 (Financial definitions).

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

"Facility" means a Term Facility or the Revolving Facility.

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

"Facility A Commitment" means:

(a) 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 2.3 (Increase); and

(b) 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 2.3 (Increase),

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

"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.

"Facility A Repayment Date" means [insert dates]/[each date set out in paragraph (a) of Clause 11.1 (Repayment of Term Loans)].

Users 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 users 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).
"Facility B" means the term loan facility made available under this Agreement as described in paragraph (a)(ii) of Clause 2.1 (The Facilities).

"Facility B Commitment" means:

(a) 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 2.3 (Increase); and

(b) 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 2.3 (Increase),

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

"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.

"Facility B Repayment Date" means [insert dates]/[each date set out in paragraph [(b)]/[[(c)] of Clause 11.1 (Repayment of Term Loans)].

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

"Facility C Commitment" means:

(a) in relation to an Original Lender, the amount in the Base Currency set opposite its name under the heading "Facility C Commitment" in Part II or Part III of Schedule 1 (The Original Parties) and the amount of any other Facility C Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.3 (Increase); and

(b) in relation to any other Lender, the amount in the Base Currency of any Facility C Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.3 (Increase),

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

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

"Facility C Repayment Date" means [insert dates]/[each date set out in paragraph [(d)]/[[(e)] of Clause 11.1 (Repayment of Term Loans)].

"Facility Office" means:

(a) in respect of a Lender or Issuing Bank, the office or offices notified by that Lender or Issuing Bank to the Agent in writing on or before the date it becomes a Lender or the Issuing Bank (or, following that date, by not less than five
Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement; or

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

"Fallback Interest Period" means [ ] or, if the Loan is in a Non-LIBOR Currency, the period specified as such in respect of that currency in Schedule 17 (Other Benchmarks)].

"FATCA" means:

(a) sections 1471 to 1474 of the Code or any associated regulations;

(b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or

(c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

"FATCA Application Date" means:

(a) in relation to a "withholdable payment" described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014; or

(b) in relation to a "passthru payment" described in section 1471(d)(7) of the Code not falling within paragraph (a) above, the first date from which such payment may become subject to a deduction or withholding required by FATCA.

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

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

"Fee Letter" means:

(a) any letter or letters dated on or about the date of this Agreement between the Arranger and the Parent (or the Agent and the Parent or the Security Agent and the Parent) setting out any of the fees referred to in Clause 18 (Fees); [and]

(b) any agreement setting out fees payable to a Finance Party referred to in [paragraph (i) of Clause 2.3 (Increase),] Clause 18.5 (Fees payable in respect

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8 If using Historic Screen Rates as a fallback option users 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.
of Letters of Credit) or Clause 18.6 (Interest, commission and fees on Ancillary Facilities) or under any other Finance Document; and

(c) any agreement setting out fees payable in respect of an Incremental Facility referred to in Clause 10.9 (Incremental Facility fees).

"Finance Document" means this Agreement, [the Mandate Letter,] any Accession Deed, any Ancillary Document, any Compliance Certificate, any Fee Letter, any Hedging Agreement, [any Incremental Facility Notice,] the Intercreditor Agreement, any Resignation Letter, any Selection Notice, any Transaction Security Document, any Utilisation Request and any other document designated as a "Finance Document" by the Agent and the Parent provided that where the term "Finance Document" is used in, and construed for the purposes of, this Agreement or the Intercreditor Agreement, a Hedging Agreement shall be a Finance Document only for the purposes of:

(a) the definition of "Default";

(b) the definition of "Material Adverse Effect";

(c) paragraph (a) of the definition of "Permitted Transaction";

(d) the definition of "Transaction Document";

(e) the definition of "Transaction Security Document";

(f) paragraph (a)(iv) of Clause 1.2 (Construction);

(g) Clause 24 (Guarantee and Indemnity); and

(h) Clause 29 (Events of Default) (other than paragraph (b) of Clause 29.16 (Repudiation and rescission of agreements) and Clause 29.20 (Acceleration)).

"Finance Lease" has the meaning given to that term in Clause 27.1 (Financial definitions).

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

(a) the definition of "Secured Parties";

(b) paragraph (a)(i) of Clause 1.2 (Construction);

(c) paragraph (c) of the definition of "Material Adverse Effect";

(d) Clause 24 (Guarantee and Indemnity);

(e) Clause 28.39 (Further assurance); and

(f) Clause 34 (Conduct of business by the Finance Parties).
"Financial Indebtedness" means any indebtedness for or in respect of:

(a) moneys borrowed and debit balances at banks or other financial institutions;

(b) any acceptance under any acceptance credit or bill discounting facility (or dematerialised equivalent);

(c) any note purchase facility or the issue of bonds [(but not Trade Instruments)], notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of Finance Leases;

(e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis [and meet any requirement for de-recognition under the Accounting Principles]);

(f) any Treasury Transaction (and, when calculating the value of that Treasury Transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that Treasury Transaction, that amount) shall be taken into account);

(g) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution in respect of [(i)] an underlying liability [(but not, in any case, Trade Instruments)] of an entity which is not a member of the Group which liability would fall within one of the other paragraphs of this definition [or (ii) any liabilities of any member of the Group relating to any post-retirement benefit scheme];

(h) any amount raised by the issue of shares which are redeemable (other than at the option of the issuer) before the [insert final repayment date of Facilities] or are otherwise classified as borrowings under the Accounting Principles;

(i) any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind entering into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question or (ii) the agreement is in respect of the supply of assets or services and payment is due more than [ ] days after the date of supply;

(j) [ ];

(k) any amount raised under any other transaction (including any forward sale or purchase, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing [or otherwise classified as borrowings under the Accounting Principles]; and

(l) the amount of any liability in respect of any guarantee for any of the items referred to in paragraphs (a) to [(k)] above.

"Financial Quarter" has the meaning given to that term in Clause 27.1 (Financial definitions).
"Financial Support Direction" means a financial support direction issued by the
Pensions Regulator under section 43 of the Pensions Act 2004.]

"Financial Year" has the meaning given to that term in Clause 27.1 (Financial
definitions).

"Funding Rate" means any individual rate notified by a Lender to the Agent pursuant
to paragraph (a)(ii) of Clause 17.4 (Cost of funds).

"Funds Flow Statement" means a funds flow statement in agreed form.

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

"Group" means the Parent[, the Target] and each of [its]/[their respective] Subsidiaries
for the time being.

"Group Structure Chart" means the group structure chart in the agreed form.

"Guarantor" means an Original Guarantor or an Additional Guarantor, unless it has
ceased to be a Guarantor in accordance with Clause 32 (Changes to the Obligors).

"Hedge Counterparty" means:

(a) [any Original Hedge Counterparty; and]

(b) any entity which has become a Party as a "Hedge Counterparty" in accordance
with Clause 30.9 (Accession of Hedge Counterparties)

which, in each case, is or has become, a party to the Intercreditor Agreement as a Hedge
Counterparty in accordance with the provisions of the Intercreditor Agreement.

"Hedging Agreement" means any master agreement, confirmation, schedule or other
agreement [in agreed form] entered into or to be entered into by [insert name of
Borrower of Term Facilities] and a Hedge Counterparty for the purpose of hedging the
types of liabilities and/or risks in relation to the Term Facilities (or the Refinancing
Term Facilities) [and the Mezzanine Facility] which the Hedging Letter (by reference
to its form at the time that agreement is entered into) either requires or had required, to
be hedged.

"Hedging Letter" means the letter dated on or before the date of this Agreement and
made between the [Agent]/[Arranger] and the Parent describing the hedging
arrangements to be entered into in respect of the interest rate liabilities and/or the

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9 Delete if no Hedge Counterparties are Party to this Agreement at signing.
exchange rate risks of the Borrowers of, and in relation to, the Term Facilities (or any Refinancing Term Facilities) [and the Mezzanine Facility].

["Historic Screen Rate" means, in relation to any 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.]

"Holding Account" means an account:

(a) held in [ ] by a member of the Group with the Agent or Security Agent;

(b) identified in a letter between the Parent and the Agent as a Holding Account; and

(c) subject to Security in favour of the Security Agent which Security is in form and substance satisfactory to the Security Agent,

(as the same may be redesignated, substituted or replaced from time to time).

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

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

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

(a) it has failed to make (or has notified a Party that it will not make) a payment required to be made by it under the Finance Documents by the due date for payment;

(b) the Agent otherwise rescinds or repudiates a Finance Document;

(c) (if the Agent is also a Lender) it is a Defaulting Lender under paragraph (a), (b) or (c) of the definition of "Defaulting Lender"; or

(d) an Insolvency Event has occurred and is continuing with respect to the Agent;

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

(i) its failure to pay is caused by:

(A) administrative or technical error; or

(B) a Disruption Event; and

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10 This Agreement assumes that the Hedging Letter is prepared using the recommended form of LMA Hedging Letter for Leveraged Acquisition Finance Transactions (Senior/Mezzanine). Users should consider the extent to which the hedging strategy documented in the Hedging Letter should (or should not) require hedging of interest rate and/or exchange rate risks in relation to any Incremental Facility.
payment is made within [ ] Business Days of its due date; or

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

"Increase Confirmation" means a confirmation substantially in the form set out in Schedule 14 (Form of Increase Confirmation).

"Increase Lender" has the meaning given to that term in Clause 2.3 (Increase).

["Incremental Facility" means any term loan facility that may be established and made available under this Agreement as described in Clause 10 (Establishment of Incremental Facilities).]

["Incremental Facility Commitment" means:

(a) in relation to a Lender which is an Incremental Facility Lender, the amount in the Base Currency set opposite its name under the heading "Incremental Facility Commitment" in the relevant Incremental Facility Notice and the amount of any other Incremental Facility Commitment relating to the relevant Incremental Facility transferred to it under this Agreement or assumed by it in accordance with Clause 2.3 (Increase); and

(b) in relation to an Incremental Facility and any other Lender, the amount in the Base Currency of any Incremental Facility Commitment relating to that Incremental Facility transferred to it under this Agreement or assumed by it in accordance with Clause 2.3 (Increase),

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

["Incremental Facility Conditions Precedent" means, in relation to an Incremental Facility:

(a) any document and other evidence specified as such in the relevant Incremental Facility Notice[; and

(b) any applicable Incremental Facility Supplemental Security]11.

["Incremental Facility Lender" means, in relation to an Incremental Facility, any entity which is listed as such in the relevant Incremental Facility Notice.]

["Incremental Facility Lender Certificate" means a document substantially in the form set out in Schedule 19 (Form of Incremental Facility Lender Certificate).]

11 Users should consider the extent to which such a separate condition precedent independent of paragraph (a)(iv) of Clause 10.6 (Conditions to establishment) should automatically apply to every Incremental Facility for the benefit of the relevant Incremental Facility Lenders or whether the extent to which such a separate condition precedent is required should be agreed by the relevant Incremental Facility Lenders and the Parent in the relevant Incremental Facility Notice.
["Incremental Facility Loan" means, in relation to an Incremental Facility, a loan made or to be made under that Incremental Facility or the principal amount outstanding for the time being of that loan.]

["Incremental Facility Majority Lenders" means, in relation to an Incremental Facility, a Lender or Lenders whose Incremental Facility Commitments relating to that Incremental Facility aggregate more than \( \frac{2}{3} \) per cent. of the Total Incremental Facility Commitments relating to that Incremental Facility (or, if those Total Incremental Facility Commitments have been reduced to zero, aggregated more than \( \frac{2}{3} \) per cent. of those Total Incremental Facility Commitments immediately prior to that reduction).]

["Incremental Facility Notice" means a notice substantially in the form set out in Schedule 18 (Form of Incremental Facility Notice).]

["Incremental Facility Repayment Date" means, in relation to an Amortising Incremental Facility, any date specified as a Repayment Date in the Incremental Facility Notice relating to that Incremental Facility.]

["Incremental Facility Supplemental Security" means, in relation to an Incremental Facility, such documents (if any) as are reasonably necessary to provide the Incremental Facility Lenders under that Incremental Facility with the benefit of Security, guarantees, indemnities and other assurance against loss equivalent to the Security, guarantees, indemnities and other assurance against loss provided to the Lenders under each other Term Facility pursuant to the Finance Documents (other than any lack of equivalence directly consequent to:

(a) being provided later in time; [or]

(b) [(if the relevant Obligor's original obligation to grant the relevant Security, guarantee, indemnity or other assurance against loss in respect of the relevant Term Facility was expressly subject to the Agreed Security Principles), any difference in Borrowers and resulting different application of those Agreed Security Principles]; or]

(c) [any difference in Borrowers and resulting different application of any relevant guarantee limitation]).]

["Incremental Facility Terms" means, in relation to an Incremental Facility:

(a) the currency;

(b) the Total Incremental Facility Commitments;

(c) the Margin;

(d) the level of commitment fee payable pursuant to Clause 18.1 (Commitment fee) in respect of that Incremental Facility;

(e) the Borrower(s) to which that Incremental Facility is to be made available;]
(f) the purpose(s) for which all amounts borrowed under that Incremental Facility shall be applied pursuant to Clause 3.1 (Purpose);

(g) the Availability Period;

(h) any Incremental Facility Conditions Precedent;

(i) the repayment terms for that Incremental Facility for the purposes of Clause 11.1 (Repayment of Term Loans) [and the effect of cancellation and prepayment of the Incremental Facility for the purposes of Clause 11.4 (Effect of cancellation and prepayment on scheduled repayments and reductions)];

(j) [in the case of a Bullet Incremental Facility, whether the Lenders under that Incremental Facility are permitted to elect to waive prepayments of that Incremental Facility pursuant to Clause 14.8 (Prepayment elections)]; and

(k) the Termination Date,

each as specified in the Incremental Facility Notice relating to that Incremental Facility.]

"Information Memorandum" means the document in the form approved by the Parent concerning the [Original Obligors] [and the Target Group] which, at the request of [the Original Obligors]/[Company] and on [their]/[its] behalf [was prepared in relation to this transaction and distributed by the Arranger [during [ ]]/[before the date of this Agreement]/[is to be prepared in relation to this transaction, approved by the Parent and distributed by the Arranger prior to the Syndication Date in connection with the syndication of the Facilities].

"Information Package" means the Reports, the Base Case Model [and [ ]].

["Initial Clean-Up Period" means the period beginning on the date of this Agreement and ending on the date falling [ ] days after the Closing Date.]

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

(a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);

(b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;

(c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;

(d) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official;
(e) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition is instituted or presented by a person or entity not described in paragraph (d) above and:

(i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or

(ii) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof;

(f) [has exercised in respect of it one or more of the stabilisation powers pursuant to Part 1 of the Banking Act 2009 and/or has instituted against it a bank insolvency proceeding pursuant to Part 2 of the Banking Act 2009 or a bank administration proceeding pursuant to Part 3 of the Banking Act 2009;]

(g) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);

(h) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets (other than, for so long as it is required by law or regulation not to be publicly disclosed, any such appointment which is to be made, or is made, by a person or entity described in paragraph (d) above);

(i) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter;

(j) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to [(h)]13/[(i)]14 above; or

(k) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts15.

"Insurance Report" means an insurance report prepared by [   ] and dated [   ] and addressed to, and/or capable of being relied upon by, the Reliance Parties.

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12 Users should note that the Banking Act 2009 allows for the effectiveness of this limb to be disapplied in certain circumstances and that it is possible that, in some contexts, regulators may constrain borrowers from agreeing to its inclusion.

13 Insert if paragraph (f) is not included.

14 Insert if paragraph (f) is included.

15 This definition (other than paragraph (f) and the carve-out to paragraph (h)) is based on the Bankruptcy event of default definition contained in ISDA Master Agreement documentation.
"Intellectual Property" means:

(a) any patents, trade marks, service marks, designs, business names, copyrights, database rights, design rights, domain names, moral rights, inventions, confidential information, knowhow and other intellectual property rights and interests (which may now or in the future subsist), whether registered or unregistered; and

(b) the benefit of all applications and rights to use such assets of each [member of the Group]/[Obligor] (which may now or in the future subsist).

"Intercreditor Agreement" means the intercreditor agreement dated [the same date as this Agreement] and made between, among others, the Parent, the Company, the Debtors (as defined in the Intercreditor Agreement), [ ] as Security Agent, [ ] as senior agent, [ ] as mezzanine agent, the Lenders (as Senior Lenders), the Arranger (as Senior Arranger[s]), the Ancillary Lenders (as Senior Lenders), [the Hedge Counterparties]¹⁶, the Mezzanine Lenders, the Mezzanine Arranger[s] (each as defined in the Intercreditor Agreement), [the Investors], [the Vendor] and the Intra-Group Lenders (as defined in the Intercreditor Agreement).¹⁷

"Interest Period" means, in relation to a Loan, each period determined in accordance with Clause 16 (Interest Periods) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 15.3 (Default interest).

["Interpolated Historic Screen Rate" means, in relation to any 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:

(a) 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

(b) 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.]

"Interpolated Screen Rate" means, in relation to any Loan, the rate [(rounded to the same number of decimal places as the two relevant Screen Rates)]¹⁸ which results from interpolating on a linear basis between:

(a) 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

¹⁶ Delete if no Hedge Counterparties will be party to the Intercreditor Agreement at signing.

¹⁷ This Agreement assumes that the Intercreditor Agreement is prepared using the recommended form of LMA Intercreditor Agreement for Leveraged Acquisition Finance Transactions (Senior/Mezzanine).

¹⁸ If specifying the rounding convention users may wish to consider altering this suggested convention to that used in any corresponding hedging product.
(b) 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.

"Investors" mean [initial investors] and their or any subsequent successors or assigns or transferees.

"Issuing Bank" means:

(a) [the] / [any] Original Issuing Bank; and

(b) any Lender which has become a Party as an "Issuing Bank" pursuant to Clause 6.10 (Appointment of additional Issuing Banks),

(and if there is more than one such Issuing Bank, such Issuing Banks shall be referred to, whether acting individually or together, as the "Issuing Bank") provided that, in respect of a Letter of Credit issued or to be issued pursuant to the terms of this Agreement, the "Issuing Bank" shall be the Issuing Bank which has issued or agreed to issue that Letter of Credit.


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

["Key-man Policy" means a key-man life assurance policy (in form and substance reasonably satisfactory to the Agent and with such insurer as the Agent may reasonably approve) taken out and maintained by [the Parent]/[the Company] in respect of the death or disability [or critical illness] of the following individuals and in not less than the following respective amounts:

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

"Legal Due Diligence Report" means the legal due diligence report dated [ ] prepared by [ ] relating to the Acquisition and addressed to, and/or capable of being relied upon by, the Reliance Parties.

"Legal Opinion" means any legal opinion delivered to the Agent under Clause 4.1 (Initial conditions precedent) or Clause 32 (Changes to the Obligors).
"Legal Reservations" means:

(a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;

(b) the time barring of claims under the Limitation Acts, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim; [and]

(c) similar principles, rights and defences under the laws of any Relevant Jurisdiction; [and]

(d) any other matters which are set out as qualifications or reservations as to matters of law of general application in the Legal Opinions].

"Lender" means:

(a) any Original Lender; and

(b) any bank, financial institution, trust, fund or other entity which has become a Party as a "Lender" in accordance with Clause 2.3 (Increase), Clause 10 (Establishment of Incremental Facilities) or Clause 30 (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.

"Letter of Credit" means:

(a) a letter of credit, substantially in the form set out in Schedule 11 (Form of Letter of Credit) or in any other form requested by the Parent and agreed by the Agent with the prior consent of the Majority Lenders and the Issuing Bank; or

(b) any guarantee, indemnity or other instrument in a form requested by a Borrower (or the Parent on its behalf) and agreed by the Agent with the prior consent of the Majority Lenders and the Issuing Bank.

"LIBOR" means, in relation to any Loan:

(a) 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

(b) as otherwise determined pursuant to Clause 17.1 (Unavailability of Screen Rate),

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19 Users 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.
and if, in either case, that rate is less than zero, LIBOR shall be deemed to be zero.]


"LMA" means the Loan Market Association.

"Loan" means a Term Loan or a Revolving Facility Loan.

["Loan Note Documents" means the Loan Notes and Loan Note Instrument in agreed form and any other documents entered into pursuant to any of them.]

["Loan Note Instrument" means the instrument pursuant to which the Loan Notes are, or are to be, constituted.]

["Loan Notes" means the £ unsecured subordinated loan notes due of [the Parent].]

["Major Default" means:

(a) with respect to the Parent or the Company only, any circumstances constituting a Default under any of [Clause 29.1 (Non-payment), Clause 29.3 (Other obligations) insofar as it relates to a breach of Clauses [ ], Clause 29.4 (Misrepresentation) insofar as it relates to a breach of any Major Representation, Clause 29.6 (Insolvency), Clause 29.7 (Insolvency proceedings), Clause 29.8 (Creditors' process), Clause 29.9 (Unlawfulness and invalidity), Clause 29.15 (Expropriation) or Clause 29.16 (Repudiation and rescission of agreements)]; or

(b) the occurrence of [refer to any relevant termination event under the Acquisition Agreement].

["Major Representation" means a representation or warranty with respect to the Parent or the Company only under any of Clause 25.2 (Status) to Clause 25.6 (Validity and admissibility in evidence) inclusive [and ]].

"Majority Lenders" means:

(a) [(for the purposes of paragraph (a) of Clause 42.2 (Required consents) in the context of a waiver in relation to a proposed Utilisation of the Revolving Facility (other than a Utilisation on the Closing Date) of the condition in Clause 4.2 (Further conditions precedent)), a Lender or Lenders whose Revolving Facility

20 Users 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 users 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).

21 Events (such as the occurrence of material adverse change) under the Acquisition Agreement which may prevent Completion occurring may be included here.
Commitments aggregate more than \( \frac{66}{3} \) per cent. of the Total Revolving Facility Commitments; [and]

(b) [(for the purposes of paragraph (a) of Clause 42.2 (Required consents) in the context of a waiver in relation to a proposed Utilisation of an Incremental Facility [(other than a Utilisation on the Closing Date)] of the condition in Clause 4.2 (Further conditions precedent)), the Incremental Facility Majority Lenders under that Incremental Facility; and]

(c) (in any other case), a Lender or Lenders whose Commitments aggregate more than \( \frac{66}{3} \) per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than \( \frac{66}{3} \) per cent. of the Total Commitments immediately prior to that reduction].)

["Mandate Letter" means the letter dated [ ] between the Arranger and [ ].]

["Mandatory Cost" means the percentage rate per annum calculated by the Agent in accordance with Schedule 4 (Mandatory Cost formula).]

"Mandatory Prepayment Account" means an interest-bearing account:

(a) held in [ ] by a Borrower with the Agent or Security Agent;

(b) identified in a letter between the Parent and the Agent as a Mandatory Prepayment Account;

(c) subject to Security in favour of the Security Agent which Security is in form and substance satisfactory to the Agent and Security Agent; and

(d) from which no withdrawals may be made by any members of the Group except as contemplated by this Agreement,

(as the same may be redesignated, substituted or replaced from time to time).

"Margin" means:

(a) in relation to any Facility A Loan [ ] per cent. per annum;

(b) in relation to any Facility B Loan [ ] per cent. per annum;

(c) in relation to any Facility C Loan [ ] per cent. per annum;

(d) [in relation to any Incremental Facility Loan, the percentage rate per annum specified as such in the Incremental Facility Notice relating to the Incremental Facility under which that Incremental Facility Loan is made or is to be made;]

(e) in relation to any Revolving Facility Loan [ ] per cent. per annum;

(f) in relation to any Unpaid Sum relating or referable to a Facility, the rate per annum specified above for that Facility; and

(g) in relation to any other Unpaid Sum, the highest rate specified above.
[but if:

(h) no [Default]/[Event of Default] has occurred and is continuing;

(i) a period of at least [12 Months] has expired since the Closing Date; and

(j) [Interest Cover]/[Senior [Adjusted] Leverage]/[[Adjusted] Leverage] in respect of the most recently completed Relevant Period is within a range set out below, then the Margin for each Loan under Facility A and the Revolving Facility will be the percentage per annum set out below in the column for that Facility opposite that range:

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<td>[Greater than or equal to [ ]] / [Less than or equal to [ ]]</td>
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</tr>
<tr>
<td>[Less than [ ] but greater than or equal to [ ]] / [Greater than [ ] but less than or equal to [ ]]</td>
<td></td>
<td></td>
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<tr>
<td>[Less than [ ]] / [Greater than [ ]]</td>
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However:

(i) any increase or decrease in the Margin for a Loan shall take effect on the date (the "reset date") which is [[ ]] Business Days after]/[the first day of the next Interest Period for that Loan following] receipt by the Agent of the Compliance Certificate for that Relevant Period pursuant to Clause 26.2 (Provision and contents of Compliance Certificate);

(ii) [if the effect of the above would be to cause the Margin to reduce by more than one level on any reset date then the Margin will decrease by one level only on that reset date;]

(iii) if, following receipt by the Agent of the Compliance Certificate related to the relevant Annual Financial Statements, that Compliance Certificate does not confirm the basis for a reduced Margin, then paragraph (b) of Clause 15.2 (Payment of interest) shall apply and the Margin for that Loan shall be the percentage per annum determined using the table above and the revised ratio of [Interest Cover]/[Senior [Adjusted] Leverage]/[[Adjusted] Leverage] calculated using the figures in that Compliance Certificate;

(iv) while [a Default]/[an Event of Default] is continuing, the Margin for each Loan under Facility A and the Revolving Facility shall be the highest percentage per annum set out above for a Loan under that Facility; and
(v) for the purpose of determining the Margin, [Interest Cover]/[Senior [Adjusted] Leverage]/[[Adjusted]Leverage] and Relevant Period shall be determined in accordance with Clause 27.1 (Financial definitions).]

"Market Report" means a market report prepared by [ ] and dated [ ] and addressed to, and/or capable of being relied upon by, the Reliance Parties.

"Material Adverse Effect" means [in the reasonable opinion of the Majority Lenders] a material adverse effect on:

(a) [the business, operations, property, condition (financial or otherwise) or prospects of the Group taken as a whole; or
(b) [the ability of an Obligor to perform [its obligations under the Finance Documents]/[its payment obligations under the Finance Documents and/or its obligations under Clause 27.2 (Financial condition)]/[the ability of the Obligors (taken as a whole) to perform [their obligations under the Finance Documents]/[their payment obligations under the Finance Documents and/or their obligations under Clause 27.2 (Financial condition)]]; or
(c) the validity or enforceability of, or the effectiveness or ranking of any Security granted or purporting to be granted pursuant to any of, the Finance Documents or the rights or remedies of any Finance Party under any of the Finance Documents.]

["Material Company" means, at any time:

(a) an Obligor; or
(b) a wholly-owned member of the Group that holds shares in an Obligor; or
(c) a Subsidiary of the Parent which:

(i) is listed in Schedule 12 (Material Companies); or
(ii) has [earnings before interest, tax, depreciation and amortisation calculated on the same basis as EBITDA representing [ ] per cent. or more of EBITDA or has] gross assets, net assets or turnover (excluding intra-group items) representing [ ] per cent. or more of the gross assets, net assets or turnover of the Group, calculated on a consolidated basis.

Compliance with the conditions set out in paragraph (c)(ii) above shall be determined by reference to the most recent Compliance Certificate supplied by the Parent and/or the latest audited financial statements of that Subsidiary (consolidated in the case of a Subsidiary which itself has Subsidiaries) and the latest audited consolidated financial statements of the Group. [However, if a Subsidiary has been acquired since the date as at which the latest audited consolidated financial statements of the Group were prepared, the financial statements shall be deemed to be adjusted in order to take into account the acquisition of that Subsidiary [(that adjustment being certified by the Parent's Auditors as representing an accurate reflection of the revised [EBITDA], gross assets, net assets or turnover of the Group)].]
[A report by the [Parent's Auditors]/[Monitoring Accountants]/[Parent's Auditors or, if required pursuant to Clause 26.5 (Group companies), Monitoring Accountants] that a Subsidiary is or is not a Material Company shall, in the absence of manifest error, be conclusive and binding on all Parties.]

"Mezzanine Facility" means the mezzanine loan facility made available under the Mezzanine Facility Agreement.

"Mezzanine Facility Agreement" means the mezzanine facility agreement dated [the same date as this Agreement] and made between [____] as parent, [____] as company, [____] as original guarantor[s], [____] as the mezzanine agent, [____] as the mezzanine arranger[s], [____] as Security Agent and the persons named in that mezzanine facility agreement as [Lenders].

"Mezzanine Finance Documents" means [the Mezzanine Facility Agreement, any accession deed under the Mezzanine Facility Agreement, [any Mezzanine Security Document,] the Intercreditor Agreement, the Warrant Documents, any fee letters setting out any of the fees referred to in the Mezzanine Facility Agreement, any utilisation request or request relating to the selection of an interest period for a utilisation under the Mezzanine Facility Agreement and any other document which is designated a "Mezzanine Finance Document" or "Finance Document" by the Parent, the mezzanine agent under the Mezzanine Facility Agreement and the Agent].

"Mezzanine Finance Party" means a Finance Party under and as defined in the Mezzanine Facility Agreement.

["Mezzanine Security Documents" means each of the following documents:

(a) [____]; and

(b) any other document entered into by any [member of the Group]/[Obligor] (as defined in the Mezzanine Facility Agreement) creating or expressed to create Security over all or any part of its assets in respect of the obligations of any of the [Obligors] (as defined in the Mezzanine Facility Agreement) under any of the Mezzanine Finance Documents.]

["Monitoring Accountants" means [____] or any other firm approved in advance by the Majority Lenders (such approval not to be unreasonably withheld or delayed).]22

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

(a) [other than where paragraph (b) below applies:]

(i) (subject to paragraph (iii) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;

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22 See the LMA Memorandum on "Auditor choice provisions in LMA facility documentation" which is available through the LMA website for further information.
(ii) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and

(iii) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end; and

(b) 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 for which there are rules specified as Business Day Conventions in respect of that currency in Schedule 17 (Other Benchmarks), those rules shall apply].

The [above] rules [in paragraph (a) above] will only apply to the last Month of any period.

"Multi-account Overdraft" means an Ancillary Facility which is an overdraft facility comprising more than one account.

"Net Outstandings" means, in relation to a Multi-account Overdraft, the Ancillary Outstandings of that Multi-account Overdraft.

"New Lender" has the meaning given to that term in Clause 30 (Changes to the Lenders).

"Non-acceptable L/C Lender" means a Lender under the Revolving Facility which:

(a) is not an Acceptable Bank within the meaning of paragraph (a) of the definition of "Acceptable Bank" (other than a Lender which each Issuing Bank has agreed is acceptable to it notwithstanding that fact);

(b) is a Defaulting Lender; or

(c) has failed to make (or has notified the Agent that it will not make) a payment to be made by it under Clause 7.3 (Indemnities) or Clause 33.11 (Lenders' indemnity to the Agent) or any other payment to be made by it under the Finance Documents to or for the account of any other Finance Party in its capacity as Lender by the due date for payment [unless the failure to pay falls within the description of any of those items set out at paragraphs (i) and (ii) of the definition of "Defaulting Lender"].

"Non-Consenting Lender" has the meaning given to that term in Clause 42.8 (Replacement of Lender).

["Non-LIBOR Currency" means [ ].]23

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23 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 by reference to LIBOR or EURIBOR. The details in Schedule 17 (Other Benchmarks) must be completed for each Non-LIBOR Currency.
"Notifiable Debt Purchase Transaction" has the meaning given to that term in paragraph (b) of Clause 31.2 (Disenfranchisement of Sponsor Affiliates).

"Obligor" means a Borrower or a Guarantor.

"Obligors' Agent" means [], appointed to act on behalf of each Obligor in relation to the Finance Documents pursuant to Clause 2.5 (Obligors' Agent).

"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).

"Original Financial Statements" means:

(a) in relation to the Parent, [ ];
(b) in relation to Target, its consolidated audited financial statements for its Financial Year ended [ ];
(c) in relation to each Original Obligor other than the Parent, its audited financial statements for its Financial Year ended [ ];
(d) in relation to any other Obligor, its audited financial statements delivered to the Agent as required by Clause 32 (Changes to the Obligors); and
(e) [others].

"Original Jurisdiction" means, in relation to an Obligor, the jurisdiction under whose laws that Obligor is incorporated as at the date of this Agreement or, in the case of an Additional Obligor, as at the date on which that Additional Obligor becomes Party as a Borrower or a Guarantor (as the case may be).

"Original Obligor" means an Original Borrower or an Original Guarantor.

"Parent's Auditors" means [[name of current auditors of the Parent] or any other firm appointed by the Parent to act as its statutory auditors24] / OR [[ ] or any other firm approved in advance by the Majority Lenders (such approval not to be unreasonably withheld or delayed)25].26

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24 Option 1 as described in footnote 26 below.
25 Option 2 as described in footnote 26 below.
26 Provisions allowing Lenders to control an entity's choice of auditor are prohibited under EU legislation. Two alternative formulations are provided. The first is intended for use where the EU legislation is applicable to the Parent. It does not seek to control the Parent's choice of auditor. The second is intended for use where the EU legislation is not applicable to the Parent. It allows Lenders to control the Parent's choice of auditor. Users will need to consider the options carefully (and see the LMA Memorandum on "Auditor choice provisions in LMA facility documentation" which is available through the LMA website for further information). If the EU legislation is applicable to the Parent but is not applicable to one or more significant members of the Group it may be appropriate to amend these provisions to allow Lenders to control those Group members' choice of auditor.
"Parent Document" means any agreement evidencing the terms of any Structural Intra-Group Loan in respect of which the Parent is the creditor.

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

"Party" means a party to this Agreement.

["Pensions Regulator" means the body corporate called the Pensions Regulator established under Part I of the Pensions Act 2004.]

"Pensions Report" means the pensions report prepared by [ ] and dated [ ] and addressed to, and/or capable of being relied upon by, the Reliance Parties.

["Permitted Acquisition" means:

(a) the Acquisition;

(b) an acquisition by a member of the Group of an asset sold, leased, transferred or otherwise disposed of by another member of the Group in circumstances constituting a Permitted Disposal;

(c) an acquisition of shares or securities pursuant to a Permitted Share Issue;

(d) an acquisition of securities which are Cash Equivalent Investments so long as those Cash Equivalent Investments become subject to the Transaction Security as soon as is reasonably practicable;

(e) [the incorporation of a company which on incorporation becomes a member of the Group, but only if:

(i) that company is incorporated in [ ] with limited liability; and

(ii) if the shares in the company are owned by an Obligor, Security over the shares of that company, in form and substance satisfactory to the Agent, is created in favour of the Security Agent within 30 days of the date of its incorporation;]

(f) [an acquisition (not being an acquisition by the Parent or the Company), [for cash consideration,] of (A) [all of] the issued share capital of a limited liability company or (B) (if the acquisition is made by a limited liability company whose sole purpose is to make the acquisition) a business or undertaking carried on as a going concern, but only if:

(i) no Default is continuing on the closing date for the acquisition or would occur as a result of the acquisition;

(ii) the acquired company, business or undertaking is [incorporated or established, and carries on its principal business in], [the European Union, the United Kingdom or the United States of America] [and is]
engaged in a business substantially the same as that carried on by the Group;  

(iii) the consideration (including associated costs and expenses) for the acquisition and any Financial Indebtedness or other assumed actual or contingent liability, in each case remaining in the acquired company (or any such business) at the date of acquisition (when aggregated with the consideration (including associated costs and expenses) for any other Permitted Acquisition and any Financial Indebtedness or other assumed actual or contingent liability, in each case remaining in any such acquired companies or businesses at the time of acquisition (the "Total Purchase Price") together with the amount of any investment in any Permitted Joint Venture) does not in any Financial Year of the Parent exceed in aggregate [ ] or its equivalent; [and]

(iv) [Others - e.g. Positive EBITDA; financial covenant look-forward; cap on individual acquisitions; provision to the Agent of satisfactory tax, accounting, legal, environmental or other due diligence reports etc.,] and only if such acquisition is not funded by a Revolving Facility Utilisation.]

[Any acquisition will only be permitted under paragraph (f) above if the Parent has delivered to the Agent not later than [ ] Business Days before legally committing to make such acquisition a certificate signed by two directors of the Parent to which is attached a copy of the latest audited accounts (or if not available, management accounts) of the target company or business.  

Such certificate must give calculations showing in reasonable detail that the Parent would have remained in compliance with its obligations under Clause 27 (Financial Covenants) if the covenant tests were recalculated for the Relevant Period ending on the most recent Quarter Date consolidating the financial statements of the target company (consolidated if it has Subsidiaries) or business with the financial statements of the Group for such period on a pro forma basis and as if the consideration for the proposed acquisition had been paid at the start of that Relevant Period.]]

["Permitted Acquisition Clean-Up Period" means, in relation to a Permitted Acquisition permitted pursuant to paragraph (f) of the definition of "Permitted Acquisition", the period beginning on the closing date for that acquisition and ending on the date falling [ ] days after that closing date or on such other date agreed by the Majority Lenders.]

["Permitted Disposal" means any sale, lease, licence, transfer or other disposal [which, except in the case of paragraph [(b)], is on arm's length terms]:

(a) of trading stock or cash made by any member of the Group in the ordinary course of trading of the disposing entity;
of any asset by a member of the Group (the "Disposing Company") to another member of the Group (the "Acquiring Company"), but if:

(i) the Disposing Company is an Obligor, the Acquiring Company must also be an Obligor;

(ii) the Disposing Company had given Security over the asset, the Acquiring Company must give equivalent Security over that asset; and

(iii) the Disposing Company is a Guarantor, the Acquiring Company must be a Guarantor guaranteeing at all times an amount no less than that guaranteed by the Disposing Company;

(c) of assets [(other than shares, businesses, Real Property/Intellectual Property)] 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);

(d) of obsolete or redundant vehicles, plant and equipment for cash;

(e) of Cash Equivalent Investments for cash or in exchange for other Cash Equivalent Investments;

(f) constituted by a licence of intellectual property rights permitted by Clause 28.31 (Intellectual Property);

(g) to a Joint Venture, to the extent permitted by Clause 28.10 (Joint ventures);

(h) arising as a result of any Permitted Security;

(i) [ ]; and

(j) of assets [(other than shares)] for cash where the higher of the [market]/[book] value and net consideration receivable (when aggregated with the higher of the [market]/[book] value and net consideration receivable for any other sale, lease, licence, transfer or other disposal not allowed under the preceding paragraphs [or as a Permitted Transaction]) does not exceed [ ] (or its equivalent) in total during the term of this Agreement and does not exceed [ ] (or its equivalent) in any Financial Year of the Parent.]²⁷

["Permitted Distribution" means:

(a) [the payment of a dividend on the Preference Shares in accordance with the Articles of Association of the Parent provided that such payment is not in breach of the Intercreditor Agreement:]²⁸

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²⁷ NB If there are assets subject to fixed charges under any Transaction Security Document consider excluding them from these paragraphs due to risk of fixed charges being characterised as floating charges.

²⁸ To the extent that there are to be further restrictions on payments of dividends on the Preference Shares these should be set out in the Intercreditor Agreement.
(b) the payment of a dividend to the Company or any of its wholly-owned Subsidiaries;

(c) the payment of a dividend by the Company to the Parent to enable the Parent to make payments of [ ] provided that the payment is:

(i) made when no Default is continuing or would occur immediately after the making of the payment; and

(ii) not in breach of the Intercreditor Agreement; and

(d) [ ].

"Permitted Financial Indebtedness" means Financial Indebtedness:

(a) arising under any of the Mezzanine Finance Documents, [the Shareholders' Agreement,] [the Loan Note Documents,] [the Vendor Note Documents], in each case as in force on the date of this Agreement and subject always to the terms of this Agreement and the Intercreditor Agreement;

(b) to the extent covered by a Letter of Credit or other letter of credit, guarantee or indemnity issued under an Ancillary Facility;

(c) arising under a foreign exchange transaction for spot or forward delivery entered into in connection with protection against fluctuation in currency rates where that foreign exchange exposure arises in the ordinary course of trade or in respect of Utilisations made in Optional Currencies, but not a foreign exchange transaction for investment or speculative purposes;

(d) arising under a Permitted Loan or a Permitted Guarantee or as permitted by Clause 28.35 (Treasury Transactions);

(e) of any person acquired by a member of the Group after the Closing Date which is incurred under arrangements in existence at the date of acquisition, but not incurred or increased or having its maturity date extended in contemplation of, or since, that acquisition, and outstanding only for a period of [three months] following the date of acquisition;

(f) under Finance Leases of vehicles, plant, equipment or computers, provided that the aggregate capital value of all such items so leased under outstanding leases by members of the Group does not exceed [ ] (or its equivalent in other currencies) at any time; and

(g) not permitted by the preceding paragraphs or as a Permitted Transaction and the outstanding [principal] amount of which does not exceed [ ] (or its equivalent) in aggregate for the Group at any time.]

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29 To the extent that there are to be further restrictions on payments of these dividends these should be set out in the Intercreditor Agreement.
"Permitted Gross Outstandings" means, in relation to a Multi-account Overdraft, any amount, not exceeding its Designated Gross Amount, which is the amount of the Gross Outstandings of that Multi-account Overdraft.

["Permitted Guarantee" means:

(a) the endorsement of negotiable instruments in the ordinary course of trade;
(b) any performance or similar bond guaranteeing performance by a member of the Group under any contract entered into in the ordinary course of trade;
(c) any guarantee of a Joint Venture to the extent permitted by Clause 28.10 (Joint Ventures);
(d) any guarantee permitted under Clause 28.24 (Financial Indebtedness);
(e) any guarantee given in respect of the netting or set-off arrangements permitted pursuant to paragraph (b) of the definition of "Permitted Security";
(f) [any indemnity given in the ordinary course of the documentation of an acquisition or disposal transaction which is a Permitted Acquisition or Permitted Disposal which indemnity is in a customary form and subject to customary limitations;] or
(g) [ ].

["Permitted Joint Venture" means any investment in any Joint Venture where:

(a) the Joint Venture is [a limited liability corporation and is] incorporated [, or established, and carries on its principal business], in [the European Union, the United Kingdom or the United States of America];
(b) the Joint Venture is engaged in a business substantially the same as that carried on by the Group; and
(c) in any financial year of the Company, the aggregate (the "Joint Venture Investment") of:

(i) all amounts subscribed for shares in, lent to, or invested in all such Joint Ventures by any member of the Group;
(ii) the contingent liabilities of any member of the Group under any guarantee given in respect of the liabilities of any such Joint Venture; and
(iii) the [book value/market value] of any assets transferred by any member of the Group to any such Joint Venture,

when aggregated with the Total Purchase Price in respect of Permitted Acquisitions in that Financial Year permitted pursuant to paragraph (f) of the definition of "Permitted Acquisition" does not exceed [ ] (or its equivalent in other currencies); [and]
["Permitted Loan" means:

(a) [any trade credit extended by any member of the Group to its customers on normal commercial terms and in the ordinary course of its trading activities;]

(b) [Financial Indebtedness which is referred to in the definition of, or otherwise constitutes, Permitted Financial Indebtedness (except under paragraph (d) of that definition);]

(c) a loan made to a Joint Venture to the extent permitted under Clause 28.10 (Joint ventures);

(d) a loan made by an Obligor (other than the Parent) to another Obligor (other than the Parent) or made by a member of the Group which is not an Obligor to another member of the Group (other than the Parent);

(e) any loan made by [an Obligor (other than the Parent) to a member of the Group which is not an Obligor] so long as the aggregate amount of the Financial Indebtedness under any such loans does not exceed [ ] (or its equivalent) at any time;

(f) any Structural Intra-Group Loan made by the Parent to the Company;

(g) a loan made by a member of the Group to an employee or director of any member of the Group if the amount of that loan when aggregated with the amount of all loans to employees and directors by members of the Group does not exceed [ ] (or its equivalent) at any time; [and

(h) [any loan (other than a loan made by a member of the Group to another member of the Group) so long as the aggregate amount of the Financial Indebtedness under any such loans does not exceed [ ] (or its equivalent) at any time],

[so long as in the case of paragraphs (d), (e) and (f) above:

(i) the creditor of such Financial Indebtedness shall (if it is an Obligor) grant security over its rights in respect of such Financial Indebtedness in favour of the Secured Parties on terms acceptable to the Agent (acting on the instructions of the Majority Lenders); and

(j) to the extent required by the Intercreditor Agreement, the creditor and (if the debtor is a member of the Group) the debtor of such Financial Indebtedness are or become party to the Intercreditor Agreement as an Intra-Group Lender and a Debtor (as defined, in each case, in the Intercreditor Agreement) respectively.]]

"Permitted Payment" means:

(a) a scheduled interest payment under the Mezzanine Facility Agreement;

(b) a scheduled [interest payment][and/or][principal repayment] under [specify relevant Structural Intra-Group Loans];
(c) any payment made by a member of the Group (other than the Parent) to enable the Company to make payments of any fees or other charges due under [ ];

(d) a payment by the Company to the Parent under the relevant Structural Intra-Group Loan to enable the Parent to make payments of [ ]; and

(e) [ ],

provided that such payment is made when (i) (except in the case of paragraph (a) above) no Default is continuing or would occur immediately after the making of the payment; and (ii) such payment is not in breach of the Intercreditor Agreement [and [ ]].

"Permitted Security" means:

(a) any lien arising by operation of law and in the ordinary course of trading and not as a result of any default or omission by any member of the Group;

(b) any netting or set-off arrangement entered into by any member of the Group [with [ ]] in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances of members of the Group (including a Multi-account Overdraft) but only so long as (i) such arrangement does not permit credit balances of Obligors to be netted or set off against debit balances of members of the Group which are not Obligors and (ii) such arrangement does not give rise to other Security over the assets of Obligors in support of liabilities of members of the Group which are not Obligors [except, in the case of (i) and (ii) above, to the extent such netting, set-off or Security relates to, or is granted in support of, a loan permitted pursuant to paragraph (e) of the definition of "Permitted Loan"];

(c) any payment or close out netting or set-off arrangement pursuant to any Treasury Transaction or foreign exchange transaction entered into by a member of the Group which constitutes Permitted Financial Indebtedness, excluding any Security or Quasi-Security under a credit support arrangement;

(d) any Security or Quasi-Security over or affecting any asset acquired by a member of the Group after the Closing Date if:

(i) the Security or Quasi-Security was not created in contemplation of the acquisition of that asset by a member of the Group;

(ii) 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

(iii) the Security or Quasi-Security is removed or discharged within [ ] months of the date of acquisition of such asset;

(e) any Security or Quasi-Security over or affecting any asset of any company which becomes a member of the Group after the Closing Date, where the Security or Quasi-Security is created prior to the date on which that company becomes a member of the Group if:
(i) the Security or Quasi-Security was not created in contemplation of the acquisition of that company;

(ii) the principal amount secured has not increased in contemplation of or since the acquisition of that company; and

(iii) the Security or Quasi-Security is removed or discharged within [ ] months of that company becoming a member of the Group;

(f) 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;

(g) any Security or Quasi-Security (existing as at the date of this Agreement) over assets of any member of the Target Group so long as the Security or Quasi-Security is irrevocably removed or discharged by no later than the Closing Date;

(h) any Quasi-Security arising as a result of a disposal which is a Permitted Disposal;

(i) any Security or Quasi-Security arising as a consequence of any Finance Lease permitted pursuant to paragraph (f) of the definition of "Permitted Financial Indebtedness";

(j) [ ]; or

(k) any Security securing indebtedness the outstanding principal amount of which (when aggregated with the outstanding principal amount of any other indebtedness which has the benefit of Security given by any member of the Group other than any permitted under paragraphs (a) to (j) above) does not exceed [ ] (or its equivalent in other currencies).]

["Permitted Share Issue" means an issue of:

(a) ordinary shares by the Parent to the Investors, paid for in full in cash upon issue and which by their terms are not redeemable and where (i) such shares are of the same class and on the same terms as those initially issued by the Parent and (ii) such issue does not lead to a Change of Control of the Parent;

(b) shares by a member of the Group which is a Subsidiary to its immediate Holding Company [for non-cash consideration] where (if the existing shares of the Subsidiary are the subject of the Transaction Security) the newly-issued shares also become subject to the Transaction Security on the same terms;

(c) [share capital by the [Company/Parent] under and in accordance with the Warrant Documents;] or

NB If there are assets subject to fixed charges under any Transaction Security Document consider excluding them from these paragraphs due to risk of fixed charges being characterised as floating charges.]
(d) [ ]

"Permitted Transaction" means:

(a) any disposal required, Financial Indebtedness incurred, guarantee, indemnity or Security or Quasi-Security given, or other transaction arising, under the Finance Documents;

(b) the solvent liquidation or reorganisation of any member of the Group which is not an Obligor so long as any payments or assets distributed as a result of such liquidation or reorganisation are distributed to other members of the Group;

(c) transactions (other than (i) any sale, lease, license, transfer or other disposal and (ii) the granting or creation of Security or the incurring or permitting to subsist of Financial Indebtedness) conducted in the ordinary course of trading on arm's length terms; or

(d) [any payments or other transactions contemplated by the Structure Memorandum.]

"Pre-Approved New Lender List" means the list of entities agreed in writing on or before the date of this Agreement by or on behalf of the Parent and the Arranger.

"Preference Shares" means the [ ] shares of £[ ] each of the Parent.

"Properties" means each of the properties listed in [the debenture/relevant document] and any other Real Property acquired by [an Obligor] after the date of this Agreement. A reference to a "Property" is a reference to any of the Properties.

"Qualifying Lender" has the meaning given to that term in Clause 19 (Tax gross-up and indemnities).

"Quarter Date" means the last day of a Financial Quarter.

"Quasi-Security" has the meaning given to that term in Clause 28.16 (Negative pledge).

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

(a)

(i) (if the currency is sterling) the first day of that period;

(ii) [(if the currency is euro) two TARGET Days before the first day of that period;]31 or

(iii) (for any other currency [(other than a Non-LIBOR Currency)]), two Business Days before the first day of that period,

31 Insert if the interest rate for euro is determined by reference to EURIBOR.
(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

(b) (if the currency is a Non-LIBOR Currency) the day specified as such in respect of that currency in Schedule 17 (Other Benchmarks)).

"Real Property" means:

(a) any freehold, leasehold or immovable property; and

(b) any buildings, fixtures, fittings, fixed plant or machinery from time to time situated on or forming part of that freehold, leasehold or immovable property.

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

"Reduction Date" means [ ].

"Reduction Instalment" means [ ].

"Reference Bank Quotation" means any quotation supplied to the Agent by a Reference Bank.

"Reference Bank Rate" means:

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

(i) in relation to LIBOR as either:

(A) 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

(B) 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

(ii) in relation to EURIBOR:

(A) (other than where paragraph (B) below applies) as the rate at which the relevant Reference Bank believes one prime bank is

"Real Property" means:

(a) any freehold, leasehold or immovable property; and

(b) any buildings, fixtures, fittings, fixed plant or machinery from time to time situated on or forming part of that freehold, leasehold or immovable property.

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

(i) in relation to LIBOR as either:

(A) 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

(B) 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

(ii) in relation to EURIBOR:

(A) (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

(B) 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

(b) 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 17 (Other Benchmarks)].

"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 17 (Other Benchmarks)] or[, in each case,] such other entities as may be appointed by the Agent in consultation with the Parent.]

"Refinancing Term Facilities" means the term facilities made available to the Borrowers pursuant to any Qualifying Senior Facilities Refinancing (as defined in the Intercreditor Agreement).

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

"Relevant Jurisdiction" means, in relation to an Obligor:

(a) its Original Jurisdiction;

(b) any jurisdiction where any asset subject to or intended to be subject to the Transaction Security to be created by it is situated;

(c) any jurisdiction where it conducts its business; and

(d) [the jurisdiction whose laws govern the perfection of any of the Transaction Security Documents entered into by it].

"Relevant Market" means[, in relation to euro, the European interbank market] [, in relation to a Non-LIBOR Currency, the market specified as such in respect of that currency in Schedule 17 (Other Benchmarks)] [and, in relation to any other currency,] the London interbank market.

"Relevant Period" has the meaning given to that term in Clause 27.1 (Financial definitions).
"Reliance Parties" means the Agent, the Arranger, the Security Agent, the Issuing Bank, each Hedge Counterparty, each Ancillary Lender, each Original Lender and each person which becomes a Lender as part of the primary syndication of the Facilities.

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

["Repayment Date" means a Facility A Repayment Date, a Facility B Repayment Date, a Facility C Repayment Date, [any Incremental Facility Repayment Date] or the last day of an Interest Period for a Revolving Facility Loan.]

["Repayment Instalment" means [ ], [and, in relation to an Amortising Incremental Facility, any instalment for repayment specified as a Repayment Instalment in the Incremental Facility Notice relating to that Incremental Facility].]

"Repeating Representations" means [each of the representations set out in Clause 25.2 (Status) to Clause 25.7 (Governing law and enforcement), Clause 25.11 (No default), paragraph (g) of Clause 25.12 (No misleading information), Clause 25.13 (Financial Statements), Clause 25.20 (Ranking) to Clause 25.22 (Legal and beneficial ownership) and Clause 25.29 (Centre of main interests and establishments)].

["Report on Title" means a report on title prepared by English legal counsel for the [Company] relating to the Property/ties and addressed to, and/or capable of being relied upon by, the Reliance Parties.]

"Reports" means the [Accountants' Report, the Legal Due Diligence Report, the Environmental Report, the Insurance Report, the Market Report, the Pensions Report, the [Certificates of Title]/[Reports on Title], and the Structure Memorandum].

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

"Resignation Letter" means a letter substantially in the form set out in Schedule 7 (Form of Resignation Letter).

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

"Revolving Facility Commitment" means:

(a) in relation to an Original Lender, the amount in the Base Currency set opposite its name under the heading "Revolving Facility Commitment" in Part II or Part III of Schedule 1 (The Original Parties) and the amount of any other Revolving Facility Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.3 (Increase); and

(b) in relation to any other Lender, the amount in the Base Currency of any Revolving Facility Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.3 (Increase),

to the extent not cancelled, reduced or transferred by it under this Agreement.
"Revolving Facility Loan" means a loan made or to be made under the Revolving Facility or the principal amount outstanding for the time being of that loan.

"Revolving Facility Utilisation" means a Revolving Facility Loan or a Letter of Credit.

"Rollover Loan" means one or more Revolving Facility Loans:

(a) made or to be made on the same day that:
   (i) a maturing Revolving Facility Loan is due to be repaid; or
   (ii) a demand by the Agent pursuant to a drawing in respect of a Letter of Credit is due to be met;

(b) the aggregate amount of which is equal to or less than the amount of the maturing Revolving Facility Loan or the relevant claim in respect of that Letter of Credit;

(c) in the same currency as the maturing Revolving Facility Loan (unless it arose as a result of the operation of Clause 8.2 (Unavailability of a currency)) or the relevant claim in respect of that Letter of Credit; and

(d) made or to be made to the same Borrower for the purpose of:
   (i) refinancing that maturing Revolving Facility Loan; or
   (ii) satisfying the relevant claim in respect of that Letter of Credit.

"Screen Rate" means:\[32\]

(a) 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

(b) [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).]
or[, in each case,] on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters. 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 Parent33[; and

(c) in relation to a Benchmark Rate, the rate specified as such in respect of the relevant currency in Schedule 17 (Other Benchmarks)].

"Secured Parties" means each Finance Party from time to time party to this Agreement, any Receiver or Delegate, and each agent, arranger and lender from time to time party to the Mezzanine Facility Agreement.

"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.

"Selection Notice" means a notice substantially in the form set out in Part II of Schedule 3 (Requests and Notices) given in accordance with Clause 16 (Interest Periods) in relation to a Term Facility.

["Senior Management" means each and all of [ ].]

["Separate Loan" has the meaning given to that term in Clause 11.2 (Repayment of Revolving Facility Loans).]

["Service Contract" means a service contract of each member of Senior Management in agreed form.]

"Shareholders’ Agreement" means the [subscription and shareholders' agreement] dated [the same date as this Agreement] and made between [ ].

"Specified Time" means a day or time determined in accordance with Schedule 10 (Timetables).

"Sponsor Affiliate" means [SPONSOR MANAGEMENT COMPANY] ("[XCo]"), each of its Affiliates, any trust of which [XCo] or any of its Affiliates is a trustee, any partnership of which [XCo] or any of its Affiliates is a partner and any trust, fund or other entity which is managed by, or is under the control of, [XCo] or any of its Affiliates provided that any such trust, fund or other entity which has been established for at least [6] months solely for the purpose of making, purchasing or investing in loans or debt securities and which is managed or controlled independently from all other trusts, funds or other entities managed or controlled by [XCo] or any of its Affiliates

33 This definition is intended to have the effect of referencing (i) the LIBOR rate which is currently known as ICE LIBOR and (ii) 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. Users should note that changes to this definition may have implications under associated interest rate hedging arrangements.
which have been established for the primary or main purpose of investing in the share capital of companies shall not constitute a Sponsor Affiliate⁹⁴.

"Structural Intra-Group Loans" means a loan by the Parent to the Company, [ ] [and loans made by one member of the Group to another member of the Group specified in the Structure Memorandum.]

["Structure Memorandum" means the structure paper entitled [ ] and dated [ ] describing the Group and the Acquisition and prepared by [ ] in the agreed form and addressed to, and/or capable of being relied upon by, the Reliance Parties.]

"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].

["Super Majority Lenders" means a Lender or Lenders whose Commitments aggregate more than [—_] per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than [—_] per cent. of the Total Commitments immediately prior to that reduction.)]

"Syndication Date" means [the day which is [ ] Months after the date of this Agreement or such earlier date specified by the relevant Arranger][the day on which the relevant Arranger confirms that the primary syndication of the Facilities has been completed].

"Target" means [ ], a company incorporated under the laws of [England and Wales] with registered number [ ].

["Target Assets" means [ ] [as defined in the Acquisition Agreement].]

["Target Group" means the Target and its Subsidiaries.]

["Target Shares" means all of the shares in Target [and all warrants [and options] in respect of the share capital of Target].]

"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.

"TARGET Day" means any day on which TARGET2 is open for the settlement of payments in euro.

"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).

⁹⁴ The proviso is aimed at excluding CDOs of sponsors which are run independently to their private equity business.

⁹⁵ Insert if the Super Majority concept is used in Clause 42.6 (Structural Adjustment)
"Term" means each period determined under this Agreement for which the Issuing Bank is under a liability under a Letter of Credit.

"Term Facility" means Facility A, Facility B or Facility C [or any Incremental Facility].

"Term Loan" means a Facility A Loan, a Facility B Loan or a Facility C Loan [or an Incremental Facility Loan].

"Termination Date" means:

(a) in relation to Facility A [ ];
(b) in relation to Facility B [ ];
(c) in relation to Facility C [ ];
(d) [in relation to an Incremental Facility, the date specified as such in the Incremental Facility Notice relating to that Incremental Facility:] and
(e) in relation to the Revolving Facility [ ].

"Total Commitments" means the aggregate of the Total Facility A Commitments, the Total Facility B Commitments, the Total Facility C Commitments[,] the Aggregate Total Incremental Facility Commitments] and the Total Revolving Facility Commitments, being [ ] at the date of this Agreement.

"Total Facility A Commitments" means the aggregate of the Facility A Commitments, being [ ] at the date of this Agreement.

"Total Facility B Commitments" means the aggregate of the Facility B Commitments, being [ ] at the date of this Agreement.

"Total Facility C Commitments" means the aggregate of the Facility C Commitments, being [ ] at the date of this Agreement.

["Total Incremental Facility Commitments" means, in relation to an Incremental Facility, the aggregate of the Incremental Facility Commitments relating to that Incremental Facility.]

"Total Revolving Facility Commitments" means the aggregate of the Revolving Facility Commitments, being [ ] at the date of this Agreement.

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

"Transaction Documents" means the Finance Documents, the Mezzanine Finance Documents, the Acquisition Documents, the Shareholders’ Agreement[, the Loan Note Documents, the Vendor Note Documents and the Constitutional Documents].

"Transaction Security" means the Security created or expressed to be created in favour of the Security Agent pursuant to the Transaction Security Documents.
"Transaction Security Documents" means each of the documents listed as being a Transaction Security Document in paragraph 3(h) of Part I A of Schedule 2 (Conditions precedent), each of the documents listed as being a Transaction Security Document in paragraph 2(c) of Part I B of Schedule 2 (Conditions precedent) and any document required to be delivered to the Agent under paragraph 14 of Part I I of Schedule 2 (Conditions precedent) together with any other document entered into by any Obligor creating or expressed to create any Security over all or any part of its assets in respect of the obligations of any of the Obligors under any of the Finance Documents or the Mezzanine Finance Documents.

"Transfer Certificate" means a certificate substantially in the form set out in Schedule 5 Schedule 4 (Form of Transfer Certificate) or any other form agreed between the Agent and the Parent.

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

(a) the proposed Transfer Date specified in the relevant Assignment Agreement or Transfer Certificate; and
(b) the date on which the Agent executes the relevant Assignment Agreement or Transfer Certificate.

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

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

"US" means the United States of America.

"US Tax Obligor" means:

(a) a Borrower which is resident for tax purposes in the US; or
(b) an Obligor some or all of whose payments under the Finance Documents are from sources within the US for US federal income tax purposes.

"Utilisation" means a Loan or a Letter of Credit.

"Utilisation Date" means the date of a Utilisation, being the date on which the relevant Loan is to be made or the relevant Letter of Credit is to be issued.

"Utilisation Request" means a notice substantially in the relevant form set out in Part I of Schedule 3 (Requests and Notices).

"VAT" means:

(a) 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
(b) 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.

"Vendor" means [ ].

["Vendor Note Documents" means the Vendor Notes and the Vendor Note Instrument in agreed form and any documents entered into pursuant to any of them.]

["Vendor Note Instrument" means the instrument pursuant to which the Vendor Notes are, or are to be, constituted.]

["Vendor Notes" means the £[ ] [unsecured subordinated] loan notes due [ ] of the Parent.]

["Waivable Bullet Incremental Facility" means a Bullet Incremental Facility in respect of which the relevant Incremental Facility Notice specifies that Lenders are permitted to elect to waive prepayments of that Bullet Incremental Facility pursuant to Clause 14.8 (Prepayment elections).]

["Warrant Documents" means the [warrant instrument dated [the same date as this Agreement] between the Parent and [ ] (as [original Mezzanine Lender]) in agreed form and any other document or agreement entered into or executed in connection with that instrument or the rights set out in that instrument.]

1.2 Construction

(a) Unless a contrary indication appears, a reference in this Agreement to:

(i) the "Agent", the "Arranger", any "Finance Party", any "Hedge Counterparty", any "Issuing Bank", any "Lender", any "Obligor", any "Party", any "Secured Party", the "Security Agent" or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with the Finance Documents;

(ii) a document in "agreed form" is a document which is previously agreed in writing by or on behalf of the Parent and the Agent or, if not so agreed, is in the form specified by the Agent;

(iii) "assets" includes present and future properties, revenues and rights of every description;

(iv) a "Finance Document" or a "Transaction Document" or any other agreement or instrument is a reference to that Finance Document or Transaction Document or other agreement or instrument as amended, novated, supplemented, extended or restated;

(v) a "group of Lenders" includes all the Lenders;
(vi) "guarantee" means (other than in Clause 24 (Guarantee and Indemnity)) any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;

(vii) "indebtedness" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;

(viii) the "Interest Period" of a Letter of Credit shall be construed as a reference to the Term of that Letter of Credit;

(ix) a Lender's "participation" in relation to a Letter of Credit, shall be construed as a reference to the relevant amount that is or may be payable by a Lender in relation to that Letter of Credit;

(x) 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);

(xi) 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;

(xii) a Utilisation made or to be made to a Borrower includes a Letter of Credit issued on its behalf;

(xiii) a provision of law is a reference to that provision as amended or re-enacted from time to time; and

(xiv) a time of day is a reference to London time.

(b) 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.

(c) Section, Clause and Schedule headings are for ease of reference only.

(d) 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.

(e) A Borrower providing "cash cover" for a Letter of Credit or an Ancillary Facility means a Borrower paying an amount in the currency of the Letter of
Credit (or, as the case may be, Ancillary Facility) to an interest-bearing account in the name of the Borrower and the following conditions being met:

(i) either:

(ii) the account is in the name of the Borrower and is with the Issuing Bank or Ancillary Lender for which that cash cover is to be provided;

(ii)(A) and subject to paragraph (b) of Clause 7.6 (Regulation and consequences of cash cover provided by Borrower), until no amount is or may be outstanding under that Letter of Credit or Ancillary Facility, withdrawals from the account may only be made to pay the relevant Finance Party amounts due and payable to it under this Agreement in respect of that Letter of Credit or Ancillary Facility; and

(B) the account is in the name of the Issuing Bank or Ancillary Lender for which that cash cover is to be provided; and

(iii) the Borrower has executed a security document over that account, documentation in form and substance satisfactory to the Finance Party with for which that account cash cover is held to be provided, creating a first ranking security interest over or other collateral arrangement, in respect of the amount of that account cash cover.

(f) 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].\(^\text{36}\)

(g) A Borrower "repaying" or "prepaying" a Letter of Credit or Ancillary Outstandings means:

(i) that Borrower providing cash cover for that Letter of Credit or in respect of the Ancillary Outstandings;

(ii) the maximum amount payable under the Letter of Credit or Ancillary Facility being reduced or cancelled in accordance with its terms; or

(iii) the Issuing Bank or Ancillary Lender being satisfied that it has no further liability under that Letter of Credit or Ancillary Facility,

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

(h) An amount borrowed includes any amount utilised by way of Letter of Credit or under an Ancillary Facility.

\(^{36}\) Note that some Lenders take the view that once an Event of Default has occurred it should be continuing unless the Lenders have waived it in accordance with Clause 42 (Amendments and Waivers).
(i) A Lender funding its participation in a Utilisation includes a Lender participating in a Letter of Credit.

(j) Amounts outstanding under this Agreement include amounts outstanding under or in respect of any Letter of Credit.

(k) An outstanding amount of a Letter of Credit at any time is the maximum amount that is or may be payable by the relevant Borrower in respect of that Letter of Credit at that time.

(l) A Borrower's obligation on Utilisations becoming "due and payable" includes the Borrower repaying any Letter of Credit in accordance with paragraph (g) above.

1.3 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]/[ ].37

1.4 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 enjoy the benefit of any term of this Agreement]. / OR

(a) [Unless expressly provided to the contrary in a Finance Document a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "Third Parties Act") to enforce or enjoy the benefit of any term of this Agreement.

(b) [Subject to paragraph (a) of Clause 42.4 (Other exceptions) but otherwise] 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.]

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37 Users 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.
SECTION 2
THE FACILITIES

2. THE FACILITIES

2.1 The Facilities

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

   (i) a Base Currency term loan facility in an aggregate amount equal to the Total Facility A Commitments;

   (ii) a Base Currency term loan facility in an aggregate amount equal to the Total Facility B Commitments;

   (iii) a Base Currency term loan facility in an aggregate amount equal to the Total Facility C Commitments; and

   (iv) a multicurrency revolving credit facility in an aggregate amount the Base Currency Amount of which is equal to the Total Revolving Facility Commitments.

(b) Facility A, Facility B and Facility C will be available to the relevant Borrowers as specified in the [Funds Flow Statement]/[Structure Memorandum] and the Revolving Facility will be available to [all the Borrowers].

(c) Subject to the terms of this Agreement and the Ancillary Documents, an Ancillary Lender may make all or part of its Revolving Facility Commitment available to any Borrower as an Ancillary Facility.

2.2 [Incremental Facilities]

One [or more] Incremental Facility[ies] may be established and made available pursuant to Clause 10 (Establishment of Incremental Facilities).

2.3 Increase

(a) The Parent may by giving prior notice to the Agent [by no later than the date falling [ ]38 after the effective date of a cancellation of:

   (i) the Available Commitments of a Defaulting Lender in accordance with Clause 12.7 (Right of cancellation in relation to a Defaulting Lender); or

   (ii) the Commitments of a Lender in accordance with:

      (A) Clause 12.1 (Illegality); or

38 Insert agreed time period.
(B) paragraph (a) of Clause 12.6 (Right of cancellation and repayment in relation to a single Lender or Issuing Bank),

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 Available Commitments or Commitments relating to that Facility so cancelled as follows:

(iii) the increased Commitments will be assumed by one or more Eligible Institutions (each an “Increase Lender”) each of which confirms in writing (whether in the relevant Increase Confirmation or otherwise) its willingness to assume and does assume all the obligations of a Lender corresponding to that part of the increased Commitments which it is to assume, as if it had been an Original Lender in respect of those Commitments;

(iv) 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;

(v) each Increase Lender shall become a Party as a “Lender” and any Increase Lender and each of the other Finance Parties shall assume obligations towards one another and acquire rights against one another as that Increase Lender and those Finance Parties would have assumed and/or acquired had the Increase Lender been an Original Lender in respect of that part of the increased Commitments which it is to assume;

(vi) the Commitments of the other Lenders shall continue in full force and effect; and

(vii) any increase in the Commitments relating to a Facility shall, subject to the conditions set out in paragraphs (d) and (e) below, take effect on the date specified by the Parent in the notice referred to above or any later date on which the Agent executes an otherwise duly completed Increase Confirmation delivered to it by the relevant Increase Lender.

(b) The Agent shall, subject to paragraph (c) below, as soon as reasonably practicable after receipt by it of a duly completed Increase Confirmation appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Increase Confirmation.

39 The Transaction Security and guarantees provided under this Agreement may not in all jurisdictions continue to secure or 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 Transaction Security/guarantees in any jurisdiction and/or for it to benefit from such Transaction Security and/or guarantees and, if so, to arrange for execution of those documents and completion of those formalities.
(c) The Agent shall only be obliged to execute an Increase Confirmation delivered to it by an Increase Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assumption of the increased Commitments by that Increase Lender.

(d) An increase in the Commitments relating to a Facility will only be effective if the Increase Lender enters into the documentation required for it to accede as a party to the Intercreditor Agreement.

(e) The consent of the Issuing Bank is required for an increase in the Total Revolving Facility Commitments.

(f) 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.

(g) [The Parent shall promptly on demand pay the Agent and the Security Agent the amount of all costs and expenses (including legal fees) reasonably incurred by either of them and, in the case of the Security Agent, by any Receiver or Delegate in connection with any increase in Commitments under this Clause 2.3.]

(h) [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 30.4 (Assignment or transfer fee) if the increase was a transfer pursuant to Clause 30.6 (Procedure for transfer) and if the Increase Lender was a New Lender.]

(i) [The Parent may pay to the Increase Lender a fee in the amount and at the times agreed between the Parent and the Increase Lender in a Fee Letter.]

(j) 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.

(k) Clause 30.5 (Limitation of responsibility of Existing Lenders) shall apply mutatis mutandis in this Clause 2.3 in relation to an Increase Lender as if references in that Clause to:

(i) an "Existing Lender" were references to all the Lenders immediately prior to the relevant increase;

(ii) the "New Lender" were references to that "Increase Lender"; and

(iii) a "re-transfer" and "re-assignment" were references to respectively a "transfer" and "assignment".
2.4 **Finance Parties' rights and obligations**

(a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.

(b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and 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.

(c) A Finance Party may, except as specifically provided in the Finance Documents, separately enforce its rights under or in connection with the Finance Documents.

2.5 **Obligors' Agent**

(a) Each Obligor (other than the Parent) by its execution of this Agreement or an Accession Deed irrevocably appoints the Parent (acting through one or more authorised signatories) to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:

(i) the Parent on its behalf to supply all information concerning itself contemplated by this Agreement to the Finance Parties and to give all notices and instructions (including, in the case of a Borrower, Utilisation Requests), [to agree any Incremental Facility Terms and to deliver any Incremental Facility Notice,] to make such agreements and to effect the relevant amendments, supplements and variations capable of being given, made or effected by any Obligor notwithstanding that they may affect the Obligor, without further reference to or the consent of that Obligor; and

(ii) each Finance Party to give any notice, demand or other communication to that Obligor pursuant to the Finance Documents to the Parent, and

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

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

3. **PURPOSE**

3.1 **Purpose**

(a) Each Borrower shall apply all amounts borrowed by it under Facility A, Facility B and Facility C towards:

(i) payment to the Vendor of the purchase price for the [Target Shares] [and] [Target Assets] under the Acquisition Agreement; and

(ii) payment of the Acquisition Costs (other than periodic fees); and

(iii) refinancing certain Financial Indebtedness of the Target and its Subsidiaries to third parties,

as described in the Funds Flow Statement.

(b) [Each Borrower shall apply all amounts borrowed by it under the Revolving Facility towards the general corporate and working capital purposes of the Group (but not towards [acquisitions of companies, businesses or undertakings or] prepayment of any Term Loan or, in the case of any utilisation of any Ancillary Facility, towards prepayment of any Revolving Facility Utilisation).]

(c) [Each Borrower shall apply all amounts borrowed by it under an Incremental Facility for the purpose(s) specified in the Incremental Facility Notice relating to that Incremental Facility.]

3.2 **Monitoring**

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

4. **CONDITIONS OF UTILISATION**

4.1 **Initial conditions precedent**

(a) The Lenders will only be obliged to comply with Clause 5.4 (*Lenders’ participation*) in relation to any Utilisation if on or before the Utilisation Date for that Utilisation, the Agent has received all of the documents and other

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The funding of acquisitions may fall within the scope of general corporate purposes depending on the company's objects (which may be restricted by its Constitutional Documents) and, therefore, should be expressly excluded if the Revolving Facility is not intended to be used to fund acquisitions.
evidence listed in Part IA and Part IB of Schedule 2 (*Conditions precedent*) in form and substance satisfactory to the Agent. The Agent shall notify the Parent and the Lenders promptly upon being so satisfied.

(b) 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.

(c) [The Lenders will only be obliged to comply with Clause 5.4 (*Lenders’ participation*) in relation to any Incremental Facility Loan if on or before the Utilisation Date for that Loan, the Agent has received all of the Incremental Facility Conditions Precedent relating to the relevant Incremental Facility (if any) in form and substance satisfactory to the Agent. The Agent shall notify the Parent and the Lenders promptly upon being so satisfied.]

(d) [Other than to the extent that the Incremental Facility Majority Lenders under the relevant Incremental Facility notify the Agent in writing to the contrary before the Agent gives a notification described in paragraph (c) 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.]

### 4.2 Further conditions precedent

Subject to Clause 4.1 (*Initial conditions precedent*), the Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) [in relation to a Utilisation other than one to which Clause 4.5 (*Utilisations during the Certain Funds Period*) applies], if on the date of the Utilisation Request and on the proposed Utilisation Date:

(a) [other than in the case of a Rollover Loan][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 Utilisation,] no Default is continuing or would result from the proposed Utilisation; and

(b) in relation to any Utilisation on the Closing Date, all the representations and warranties in Clause 25 (*Representations*) or, in relation to any other Utilisation, the Repeating Representations to be made by each Obligor are true [in all material respects].

### 4.3 Conditions relating to Optional Currencies

(a) A currency will constitute an Optional Currency in relation to a Revolving Facility Utilisation if:

(i) it is readily available in the amount required and freely convertible into the Base Currency in the wholesale market for that currency on the Quotation Day and the Utilisation Date for that Utilisation; and
(ii) 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 for that Utilisation.\(^{41}\)

(b) If the Agent has received a written request from the Parent for a currency to be approved under paragraph (a)(ii) above, the Agent will confirm to the Parent by the Specified Time:

(i) whether or not the Lenders have granted their approval; and

(ii) if approval has been granted, the minimum amount for any subsequent Utilisation in that currency.

4.4 **Maximum number of Utilisations**

(a) A Borrower (or the Parent) may not deliver a Utilisation Request if as a result of the proposed Utilisation:

(i) [ ] or more Term Loans [(other than Incremental Facility Loans)] would be outstanding; [or]

(ii) [ ] or more Revolving Facility Utilisations would be outstanding[; or]

(iii) [ ] or more Incremental Facility Loans would be outstanding].

(b) A Borrower (or the Parent) may not request that a Facility A Loan [or an Incremental Facility Loan] be divided if, as a result of the proposed division, [ ] or more Facility A Loans [or [ ] or more Incremental Facility Loans] would be outstanding.

(c) [A Borrower (or the Parent) may not request that a Facility B Loan or a Facility C Loan be divided.]

(d) Any Loan made by a single Lender under Clause 8.2 (*Unavailability of a currency*) shall not be taken into account in this Clause 4.4.

(e) [Any Separate Loan shall not be taken into account in this Clause 4.4.]

(f) A Borrower (or the Parent) may not request that a Letter of Credit be issued under the Revolving Facility if, as a result of the proposed Utilisation, [ ] or more Letters of Credit would be outstanding.

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\(^{41}\) When specifying a pre-approved Optional Currency users 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 17 (*Other Benchmarks*).
4.5 [Utilisations during the Certain Funds Period]

(a) Subject to Clause 4.1 (Initial conditions precedent), during the Certain Funds Period, the Lenders will only be obliged to comply with Clause 5.4 (Lenders' participation) in relation to a Certain Funds Utilisation if, on the date of the Utilisation Request and on the proposed Utilisation Date:

(i) no Major Default is continuing or would result from the proposed Utilisation; and

(ii) all the Major Representations are true [in all material respects].

(b) During the Certain Funds Period (save in circumstances where, pursuant to paragraph (a) above, a Lender is not obliged to comply with Clause 5.4 (Lenders' participation) and subject as provided in Clause 12.1 (Illegality) and Clause 13.1 (Exit)), none of the Finance Parties shall be entitled to:

(i) cancel any of its Commitments to the extent to do so would prevent or limit the making of a Certain Funds Utilisation;

(ii) rescind, terminate or cancel this Agreement or any of the [Term Facilities] or exercise any similar right or remedy or make or enforce any claim under the Finance Documents it may have to the extent to do so would prevent or limit the making of a Certain Funds Utilisation;

(iii) refuse to participate in the making of a Certain Funds Utilisation;

(iv) exercise any right of set-off or counterclaim in respect of a Utilisation to the extent to do so would prevent or limit the making of a Certain Funds Utilisation; or

(v) cancel, accelerate or cause repayment or prepayment of any amounts owing under this Agreement or under any other Finance Document to the extent to do so would prevent or limit the making of a Certain Funds Utilisation,

provided that immediately upon the expiry of the Certain Funds Period all such rights, remedies and entitlements shall be available to the Finance Parties notwithstanding that they may not have been used or been available for use during the Certain Funds Period.]
SECTION 3
UTILISATION

5. UTILISATION - LOANS

5.1 Delivery of a Utilisation Request

A Borrower (or the Parent on its behalf) may utilise a Facility by delivery to the Agent of a duly completed Utilisation Request not later than the Specified Time.

5.2 Completion of a Utilisation Request for Loans

(a) Each Utilisation Request for a Loan is irrevocable and will not be regarded as having been duly completed unless:

(i) it identifies the Facility to be utilised;

(ii) the proposed Utilisation Date is a Business Day within the Availability Period applicable to that Facility;

(iii) the currency and amount of the Utilisation comply with Clause 5.3 (Currency and amount); and

(iv) the proposed Interest Period complies with Clause 16 (Interest Periods).

(b) Multiple Utilisations may be requested in a Utilisation Request where the proposed Utilisation Date is the Closing Date. Only one Utilisation may be requested in each subsequent Utilisation Request.

5.3 Currency and amount

(a) The currency specified in a Utilisation Request must be:

(i) in relation to a Term Facility, the Base Currency; and

(ii) in relation to the Revolving Facility, the Base Currency or an Optional Currency.

(b) The amount of the proposed Utilisation must be:

(i) an amount equal to [ ] for Facility A or, if less, the Available Facility; or

(ii) an amount equal to [ ] for Facility B or, if less, the Available Facility; or

(iii) an amount equal to [ ] for Facility C or, if less, the Available Facility; or

(iv) for the Revolving Facility:

(A) if the currency selected is the Base Currency, a minimum of [ ] or, if less, the Available Facility; or
(B) if the currency selected is [ ], a minimum of [ ] or, if less, the Available Facility; or

(C) if the currency selected is an Optional Currency [other than [ ]], the minimum amount specified by the Agent pursuant to paragraph (b)(ii) of Clause 4.3 (Conditions relating to Optional Currencies) or, if less, the Available Facility; or

(v) an amount equal to [ ] for any Incremental Facility or, if less, the Available Facility.

5.4 Lenders' participation

(a) If the conditions set out in this Agreement have been met, and subject to Clause 11.2 (Repayment of Revolving Facility Loans), each Lender shall make its participation in each Loan available by the Utilisation Date through its Facility Office.

(b) Other than as set out in paragraph (c) below, 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.

(c) If a Revolving Facility Utilisation is made to repay Ancillary Outstandings, each Lender's participation in that Utilisation will be in an amount (as determined by the Agent) which will result as nearly as possible in the aggregate amount of its participation in the Revolving Facility Utilisations then outstanding bearing the same proportion to the aggregate amount of the Revolving Facility Utilisations then outstanding as its Revolving Facility Commitment bears to the Total Revolving Facility Commitments.

(d) The Agent shall determine the Base Currency Amount of each Revolving Facility Loan which is to be made in an Optional Currency and notify each Lender of the amount, currency and the Base Currency Amount of each Loan, the amount of its participation in that Loan and, if different, the amount of that participation to be made available in accordance with Clause 36.1 (Payments to the Agent) by the Specified Time.

5.5 Limitations on Utilisations

(a) The Revolving Facility shall not be utilised unless each of Facility A, Facility B and Facility C have been utilised.

(b) Each of Facility A, Facility B and Facility C may only be utilised on the Closing Date and only if each of those Facilities are utilised pro rata on that date.

(c) The maximum aggregate Base Currency Amount of all Letters of Credit shall not exceed [ ].

(d) The maximum aggregate amount of the Ancillary Commitments of all the Lenders shall not at any time exceed [ ].
(e) [No Incremental Facility shall be utilised unless each of Facility A, Facility B and Facility C has been utilised.]

5.6 Cancellation of Commitment

(a) The Facility A Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period for Facility A.

(b) The Facility B Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period for Facility B.

(c) The Facility C Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period for Facility C.

(d) The Revolving Facility Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period for the Revolving Facility.

(e) [The Incremental Facility Commitments relating to an Incremental Facility which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period for that Incremental Facility.]

5.7 Clean down

The Parent shall ensure that the aggregate of the Base Currency Amounts of:

(a) all Revolving Facility Loans;

(b) [any cash loan element of the Ancillary Outstandings under all the Ancillary Facilities]; and

(c) (to the extent not included within paragraph[s] (a) [and (b)] above), any cash loans covered by a Letter of Credit or a letter of credit or guarantee issued under an Ancillary Facility as contemplated by the definition of Permitted Financial Indebtedness; LESS

(d) any amount of cash (other than cash held in a Holding Account or Mandatory Prepayment Account) or Cash Equivalent Investments held by wholly-owned members of the Group,

(as confirmed in a certificate signed by [two authorised signatories]/[a director] of the Parent provided to the Agent within [ ] Business Days after the end of each [Financial Year]/[six-month period]) shall not exceed [ ] for a period of not less than [ ] successive days in [each of its Financial Years]/[any six-month period]. Not less than [ ] month[s] shall elapse between two such periods.]

6. UTILISATION - LETTERS OF CREDIT

6.1 The Revolving Facility

(a) The Revolving Facility may be utilised by way of Letters of Credit.
(b) Other than Clause 5.5 (Limitations on Utilisations) and Clause 5.7 (Clean down), Clause 5 (Utilisation - Loans) does not apply to utilisations by way of Letters of Credit.

(c) In determining the amount of the Available Facility and a Lender’s L/C Proportion of a proposed Letter of Credit for the purposes of this Agreement the Available Commitment of a Lender will be calculated ignoring any cash cover provided for outstanding Letters of Credit.

6.2 Delivery of a Utilisation Request for Letters of Credit

A Borrower (or the Parent on its behalf) may request a Letter of Credit to be issued by delivery to the Agent of a duly completed Utilisation Request not later than the Specified Time.

6.3 Completion of a Utilisation Request for Letters of Credit

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

(a) it specifies that it is for a Letter of Credit;
(b) it identifies the Borrower of the Letter of Credit;
(c) it identifies the Issuing Bank which has agreed to issue the Letter of Credit;
(d) the proposed Utilisation Date is a Business Day within the Availability Period applicable to the Revolving Facility;
(e) the currency and amount of the Letter of Credit comply with Clause 6.4 (Currency and amount);
(f) the form of Letter of Credit is attached;
(g) [the Expiry Date of the Letter of Credit falls on or before the Termination Date applicable to the Revolving Facility;]
(h) [the Term of the Letter of Credit is [   ] Months or less;]
(i) the delivery instructions for the Letter of Credit are specified; and
(j) the identity of the beneficiary of the Letter of Credit is [   ] or any other beneficiary approved by the Issuing Bank [and [all the Lenders]/[the Majority Lenders]].

6.4 Currency and amount

(a) The currency specified in a Utilisation Request must be [   ]/[the Base Currency or an Optional Currency].
(b) Subject to paragraph (c) of Clause 5.5 (*Limitations on Utilisations*), the amount of the proposed Letter of Credit must be an amount whose Base Currency Amount is not more than the Available Facility and which is:

(i) [if the currency selected is the Base Currency, a minimum of [ ] or, if less, the Available Facility; or]

(ii) [if the currency selected is [ ], a minimum of [ ] or, if less, the Available Facility; or]

(iii) if the currency selected is an Optional Currency [other than [ ]], the minimum amount specified by the Agent pursuant to paragraph (b)(ii) of Clause 4.3 (*Conditions relating to Optional Currencies*) or, if less, the Available Facility.

6.5 **Issue of Letters of Credit**

(a) If the conditions set out in this Agreement have been met, the Issuing Bank shall issue the Letter of Credit on the Utilisation Date.

(b) Subject to Clause 4.1 (*Initial conditions precedent*), the Issuing Bank will only be obliged to comply with paragraph (a) above [in relation to a Letter of Credit other than one to which paragraph (c) below applies], if on the date of the Utilisation Request [or Renewal Request] and on the proposed Utilisation Date:

(i) [other than in the case of a Letter of Credit to be renewed in accordance with Clause 6.6 (*Renewal of a Letter of Credit*),] [in the case of a Letter of Credit to be renewed in accordance with Clause 6.6 (*Renewal of a Letter of Credit*) no Event of Default is continuing or would result from the proposed Utilisation and, in the case of any other Utilisation,] no Default is continuing or would result from the proposed Utilisation; and

(ii) in relation to any Utilisation on the Closing Date, all the representations and warranties in Clause 25 (*Representations*) or, in relation to any other Utilisation, the Repeating Representations to be made by each Obligor are true [in all material respects].

(c) [Subject to Clause 4.1 (*Initial conditions precedent*), during the Certain Funds Period, the Issuing Bank will only be obliged to comply with paragraph (a) above in relation to a Letter of Credit which is a Certain Funds Utilisation, if on the date of the Utilisation Request and on the proposed Utilisation Date:

(i) no Major Default is continuing or would result from the issue of the proposed Letter of Credit; and

(ii) all the Major Representations are true [in all material respects].

(d) During the Certain Funds Period (save in circumstances where, pursuant to paragraph (c) above, the Issuing Bank is not obliged to comply with paragraph (a) above and subject as provided in Clause 12.2 (*Illegality in relation to Issuing Bank*) [and] Clause 13.1 (*Exit*) [and Clause 6.7 (*Reduction of a Letter of Credit*)]), the Issuing Bank shall not be entitled to:
(i) rescind, terminate or cancel this Agreement or the Revolving Facility or exercise any similar right or remedy or make or enforce any claim under the Finance Documents it may have to the extent to do so would prevent or limit the issuing of a Letter of Credit which is a Certain Funds Utilisation;

(ii) refuse to issue a Letter of Credit which is a Certain Funds Utilisation;

(iii) exercise any right of set-off or counterclaim in respect of a Letter of Credit to the extent to do so would prevent or limit the making of a Letter of Credit which is a Certain Funds Utilisation; or

(iv) cause repayment or prepayment of any amounts owing under this Agreement or under any other Finance Document to the extent to do so would prevent or limit the making of a Letter of Credit which is a Certain Funds Utilisation,

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

(e) The amount of each Lender's participation in each Letter of Credit will be equal to its L/C Proportion.

(f) The Agent shall determine the Base Currency Amount of each Letter of Credit which is to be issued in an Optional Currency and shall notify the Issuing Bank and each Lender of the details of the requested Letter of Credit and its participation in that Letter of Credit by the Specified Time.

(g) The Issuing Bank has no duty to enquire of any person whether or not any of the conditions set out in paragraph[s] (b) [or (c)] above have been met. The Issuing Bank may assume that those conditions have been met unless it is expressly notified to the contrary by the Agent. The Issuing Bank will have no liability to any person for issuing a Letter of Credit based on such assumption.

(h) The Issuing Bank is solely responsible for the form of the Letter of Credit that it issues. The Agent has no duty to monitor the form of that document.

(i) Subject to paragraph (i) of Clause 33.7 (Rights and discretions), each of the Issuing Bank and the Agent shall provide the other with any information reasonably requested by the other that relates to a Letter of Credit and its issue.

(j) The Issuing Bank may issue a Letter of Credit in the form of a SWIFT message or other form of communication customary in the relevant market but has no obligation to do so.

6.6 [Renewal of a Letter of Credit]

(a) A Borrower (or the Parent on its behalf) may request that any Letter of Credit issued on behalf of that Borrower be renewed by delivery to the Agent of a
Renewal Request in substantially similar form to a Utilisation Request for a Letter of Credit by the Specified Time.

(b) The Finance Parties shall treat any Renewal Request in the same way as a Utilisation Request for a Letter of Credit except that the condition set out in paragraph (f) of Clause 6.3 (Completion of a Utilisation Request for Letters of Credit) shall not apply.

(c) The terms of each renewed Letter of Credit shall be the same as those of the relevant Letter of Credit immediately prior to its renewal, except that:

(i) its amount may be less than the amount of the Letter of Credit immediately prior to its renewal; and

(ii) its Term shall start on the date which was the Expiry Date of the Letter of Credit immediately prior to its renewal, and shall end on the proposed Expiry Date specified in the Renewal Request.

(d) Subject to paragraph (e) below, if the conditions set out in this Agreement have been met, the Issuing Bank shall amend and re-issue any Letter of Credit pursuant to a Renewal Request.

(e) Where a new Letter of Credit is to be issued to replace by way of renewal an existing Letter of Credit, the Issuing Bank is not required to issue that new Letter of Credit until the Letter of Credit being replaced has been returned to the Issuing Bank or the Issuing Bank is satisfied either that it will be returned to it or otherwise that no liability can arise under it.

6.7 Reduction of a Letter of Credit

(a) If, on the proposed Utilisation Date of a Letter of Credit, any Lender under the Revolving Facility is a Non-Acceptable L/C Lender and:

(i) that Lender has failed to provide cash collateral to the Issuing Bank in accordance with Clause 7.4 (Cash collateral by Non-Acceptable L/C Lender and Borrower’s option to provide cash cover); and

(ii) the Borrower of that proposed Letter of Credit has not exercised its right to provide cash cover to the Issuing Bank in accordance with paragraph (g) of Clause 7.4 (Cash collateral by Non-Acceptable L/C Lender and Borrower’s option to provide cash cover),

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

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

6.8 Revaluation of Letters of Credit

(a) If any Letters of Credit are denominated in an Optional Currency, the Agent shall [at six monthly intervals after the date of this Agreement,]/[at six monthly intervals after the date of the Letter of Credit,]/[[ ] days after the end of [each of its Financial Years]/[each half of each of its Financial Years]] recalculate the Base Currency Amount of each Letter of Credit by notionally converting into the Base Currency the outstanding amount of that Letter of Credit on the basis of the Agent's Spot Rate of Exchange on the date of calculation.

(b) The Parent shall, if requested by the Agent within [ ] days of any calculation under paragraph (a) above, ensure that within three Business Days sufficient Revolving Facility Utilisations are prepaid to prevent the Base Currency Amount of the Revolving Facility Utilisations exceeding the Total Revolving Facility Commitments (after deducting the total Ancillary Commitments) following any adjustment to a Base Currency Amount under paragraph (a) above.

6.9 Reduction or expiry of Letter of Credit

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

6.10 Appointment of additional Issuing Banks

Any Lender which has agreed to the Parent's request to be an Issuing Bank for the purposes of this Agreement shall become a Party as an "Issuing Bank" upon notifying the Agent and the Parent that it has so agreed to be an Issuing Bank.

7. LETTERS OF CREDIT

7.1 Immediately payable

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

7.2 Claims under a Letter of Credit

(a) Each Borrower irrevocably and unconditionally authorises the Issuing Bank to pay any claim made or purported to be made under a Letter of Credit requested by it (or requested by the Parent on its behalf) and which appears on its face to be in order (in this Clause 7, a "claim").

(b) Each Borrower shall immediately on demand pay to the Agent for the Issuing Bank an amount equal to the amount of any claim.
(c) Each Borrower acknowledges that the Issuing Bank:

(i) is not obliged to carry out any investigation or seek any confirmation from any other person before paying a claim; and

(ii) deals in documents only and will not be concerned with the legality of a claim or any underlying transaction or any available set-off, counterclaim or other defence of any person.

(d) The obligations of a Borrower under this Clause 7 will not be affected by:

(i) the sufficiency, accuracy or genuineness of any claim or any other document; or

(ii) any incapacity of, or limitation on the powers of, any person signing a claim or other document.

7.3 **Indemnities**

(a) Each Borrower shall immediately on demand indemnify the Issuing Bank against any cost, loss or liability incurred by the Issuing Bank (otherwise than by reason of the Issuing Bank's gross negligence or wilful misconduct) in acting as the Issuing Bank under any Letter of Credit requested by (or on behalf of) that Borrower.

(b) Each Lender shall (according to its L/C Proportion) immediately on demand indemnify the Issuing Bank against any cost, loss or liability incurred by the Issuing Bank (otherwise than by reason of the Issuing Bank's gross negligence or wilful misconduct) in acting as the Issuing Bank under any Letter of Credit (unless the Issuing Bank has been reimbursed by an Obligor pursuant to a Finance Document).

(c) The Borrower which requested (or on behalf of which the Parent requested) a Letter of Credit shall immediately on demand reimburse any Lender for any payment it makes to the Issuing Bank under this Clause 7.3 in respect of that Letter of Credit.

(d) The obligations of each Lender or Borrower under this Clause 7 are continuing obligations and will extend to the ultimate balance of sums payable by that Lender or Borrower in respect of any Letter of Credit, regardless of any intermediate payment or discharge in whole or in part.

(e) If a Borrower has provided cash cover in respect of a Lender's participation in a Letter of Credit, the Issuing Bank shall seek reimbursement from that cash cover before making a demand of that Lender under paragraph (b) above. Any recovery made by an Issuing Bank pursuant to that cash cover will reduce that Lender's liability under paragraph (b) above.

(f) The obligations of any Lender or Borrower under this Clause will not be affected by any act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under this Clause (without limitation and whether or not known to it or any other person) including:
(i) any time, waiver or consent granted to, or composition with, any Obligor, any beneficiary under a Letter of Credit or any other person;

(ii) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor or any member of the Group;

(iii) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor, any beneficiary under a Letter of Credit or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;

(iv) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor, any beneficiary under a Letter of Credit or any other person;

(v) any amendment (however fundamental) or replacement of a Finance Document, any Letter of Credit or any other document or security;

(vi) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document, any Letter of Credit or any other document or security or

(vii) any insolvency or similar proceedings.

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

(a) If, at any time, a Lender under the Revolving Facility is a Non-Acceptable L/C Lender, the Issuing Bank may, by notice to that Lender, request that Lender to pay and that Lender shall pay, on or prior to the date falling \[ \text{Business Days after the request by the Issuing Bank}, \]

and in the currency of that Letter of Credit to an interest-bearing account held either:

(A) in the name of that Lender with the Issuing Bank; or

(B) in the name of the Issuing Bank. 43

42 Consider in light of *Triodos Bank NV v. Ashley Charles Dobbs.*

43 Lenders may wish to consider any credit risk connected with depositing an amount in an account with the Issuing Bank.
(b) The Non-Acceptable L/C Lender to whom a request has been made in accordance with paragraph (a) above shall enter into a security document or other form of collateral arrangement over the account, in form and substance satisfactory to the Issuing Bank, as collateral for any amounts due and payable under this Agreement by that Lender to the Issuing Bank in respect of that Letter of Credit.

(c) Subject to paragraph (f) below, withdrawals from such an account may only be made to pay the Issuing Bank amounts due and payable to it under this Agreement by the Non-Acceptable L/C Lender in respect of that Letter of Credit until no amount is or may be outstanding under that Letter of Credit.

(d) Each Lender under the Revolving Facility shall notify the Agent and the Parent:

(i) on the date of this Agreement or on any later date on which it becomes such a Lender in accordance with Clause 2.3 (Increase) or Clause 30 (Changes to the Lenders) whether it is a Non-Acceptable L/C Lender; and

(ii) as soon as practicable upon becoming aware of the same, that it has become a Non-Acceptable L/C Lender,

and an indication in Schedule 1 (The Original Parties), in a Transfer Certificate, in an Assignment Agreement or in an Increase Confirmation to that effect will constitute a notice under paragraph (i) above to the Agent and, upon delivery in accordance with Clause 30.8 (Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Parent), to the Parent.

(e) Any notice received by the Agent pursuant to paragraph (d) above shall constitute notice to the Issuing Bank of that Lender's status and the Agent shall, upon receiving each such notice, promptly notify the Issuing Bank of that Lender's status as specified in that notice.

(f) Notwithstanding paragraph (c) above, a Lender which has provided cash collateral in accordance with this Clause 7.4 may, by notice to the Issuing Bank, request that an amount equal to the amount provided by it as collateral in respect of the relevant Letter of Credit (together with any accrued interest) be returned to it:

(i) to the extent that such cash collateral has not been applied in satisfaction of any amount due and payable under this Agreement by that Lender to the Issuing Bank in respect of the relevant Letter of Credit;

(ii) if:

(A) it ceases to be a Non-Acceptable L/C Lender;

(B) its obligations in respect of the relevant Letter of Credit are transferred to a New Lender in accordance with the terms of this Agreement; or
(C) an Increase Lender has agreed to undertake that Lender's obligations in respect of the relevant Letter of Credit in accordance with the terms of this Agreement; and

(iii) if no amount is due and payable by that Lender in respect of a Letter of Credit,

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

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

7.5 **Requirement for cash cover from Borrower**

If:

(a) a Non-Acceptable L/C Lender fails to provide cash collateral (or notifies the Issuing Bank that it will not provide cash collateral) in accordance with Clause 7.4 (*Cash collateral by Non Acceptable L/C Lender and Borrower's option to provide cash cover*) in respect of a Letter of Credit that has been issued;

(b) the Issuing Bank notifies the Parent (with a copy to the Agent) that it requires the Borrower of the relevant Letter of Credit to provide cash cover to an account with the Issuing Bank in an amount equal to that Lender's L/C Proportion of the outstanding amount of that Letter of Credit; and

(c) that Borrower has not already provided such cash cover which is continuing to stand as collateral,

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

7.6 **Regulation and consequences of cash cover provided by Borrower**

(a) Any cash cover provided by a Borrower pursuant to Clause 7.4 (*Cash collateral by Non-Acceptable L/C Lender and Borrower's option to provide cash cover*)

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44 Users should ensure that the time period given for a Non-Acceptable L/C Lender to provide cash collateral under paragraph (a) and the amount of notice to be given by a Borrower when requesting the issue of a Letter of Credit are such that if a Lender is a Non-Acceptable L/C Lender at the time the Issuing Bank is informed of a proposed Letter of Credit: (i) the Non-Acceptable L/C Lender will be obliged to provide cash collateral prior to the relevant Utilisation Date; and (ii) the Borrower will have time in which to elect to provide cash cover itself if necessary.
or Clause 7.5 (Requirement for cash cover from Borrower) may be funded out of a Revolving Facility Loan.

(b) Notwithstanding paragraph (e) of Clause 1.2 (Construction), the relevant Borrower may request that an amount equal to the cash cover (together with any accrued interest) provided by it pursuant to Clause 7.4 (Cash collateral by Non-Acceptable L/C Lender and Borrower’s option to provide cash cover) or Clause 7.5 (Requirement for cash cover from Borrower) be returned to it:

(i) to the extent that such cash cover has not been applied in satisfaction of any amount due and payable under this Agreement by that Borrower to the Issuing Bank in respect of a Letter of Credit;

(ii) if:

(A) the relevant Lender ceases to be a Non-Acceptable L/C Lender;

(B) the relevant Lender’s obligations in respect of the relevant Letter of Credit are transferred to a New Lender in accordance with the terms of this Agreement; or

(C) an Increase Lender has agreed to undertake the relevant Lender’s obligations in respect of the relevant Letter of Credit in accordance with the terms of this Agreement; and

(iii) if no amount is due and payable by the relevant Lender in respect of the relevant Letter of Credit,

and the Issuing Bank shall pay that amount to that Borrower within [   ] Business Days of that Borrower’s request. 45

(c) To the extent that a Borrower has provided cash cover pursuant to Clause 7.4 (Cash collateral by Non-Acceptable L/C Lender and Borrower’s option to provide cash cover) or Clause 7.5 (Requirement for cash cover from Borrower), the relevant Lender’s L/C Proportion in respect of that Letter of Credit will remain (but that Lender’s obligations in relation to that Letter of Credit may be satisfied in accordance with paragraph (e)(iii) of Clause 1.2 (Construction)). However the relevant Borrower’s obligation to pay any Letter of Credit fee in relation to the relevant Letter of Credit to the Agent (for the account of that Lender) in accordance with paragraph (b) of Clause 18.5 (Fees payable in respect of Letters of Credit) will be reduced proportionately as from the date on which it provides that cash cover (and for so long as the relevant amount of cash cover continues to stand as collateral).

(d) The relevant Issuing Bank shall promptly notify the Agent of the extent to which a Borrower provides cash cover pursuant to Clause 7.4 (Cash collateral by Non-Acceptable L/C Lender and Borrower’s option to provide cash cover) or

45 Users should be aware that giving Obligors rights of withdrawal involves a risk that any fixed security interest might be recharacterised as a floating security interest.
Clause 7.5 (Requirement for cash cover from Borrower) and of any change in the amount of cash cover so provided.

7.7 Rights of contribution

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

8. OPTIONAL CURRENCIES

8.1 Selection of currency

A Borrower (or the Parent on its behalf) shall select the currency of a Revolving Facility Utilisation in a Utilisation Request.

8.2 Unavailability of a currency

If before the Specified Time on any Quotation Day:

(a) a Lender notifies the Agent that the Optional Currency requested is not readily available to it in the amount required; or

(b) 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 [or Parent] to that effect by the Specified Time on that day. In this event, any Lender that gives notice pursuant to this Clause 8.2 will be required to participate in the Loan in 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.

8.3 Agent's calculations

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

9. ANCILLARY FACILITIES

9.1 Type of Facility

An Ancillary Facility may be by way of:

(a) an overdraft facility;

(b) a guarantee, bonding, documentary or stand-by letter of credit facility;

(c) a short term loan facility;

(d) a derivatives facility;
(e) a foreign exchange facility; or

(f) any other facility or accommodation required in connection with the business of the Group and which is agreed by the Parent with an Ancillary Lender.

9.2 Availability

(a) If the Parent and a Lender agree and except as otherwise provided in this Agreement, the Lender may provide all or part of its Revolving Facility Commitment as an Ancillary Facility.

(b) An Ancillary Facility shall not be made available unless, not later than [ ] Business Days prior to the Ancillary Commencement Date for an Ancillary Facility, the Agent has received from the Parent:

(i) a notice in writing of the establishment of an Ancillary Facility and specifying:

(A) the proposed Borrower(s) [(or Affiliate[s] of a Borrower)] which may use the Ancillary Facility;

(B) the proposed Ancillary Commencement Date and expiry date of the Ancillary Facility;

(C) the proposed type of Ancillary Facility to be provided;

(D) the proposed Ancillary Lender;

(E) the proposed Ancillary Commitment, the maximum amount of the Ancillary Facility and, in the case of a Multi-account Overdraft, its Designated Gross Amount and its Designated Net Amount; and

(F) the proposed currency of the Ancillary Facility (if not denominated in the Base Currency); and

(ii) any other information which the Agent may reasonably request in connection with the Ancillary Facility.

(c) The Agent shall promptly notify the Ancillary Lender and the other Lenders of the establishment of an Ancillary Facility.

(d) Subject to compliance with paragraph (b) above:

(i) the Lender concerned will become an Ancillary Lender; and

(ii) the Ancillary Facility will be available,

with effect from the date agreed by the Parent and the Ancillary Lender.
9.3 Terms of Ancillary Facilities

(a) Except as provided below, the terms of any Ancillary Facility will be those agreed by the Ancillary Lender and the Parent.

(b) Those terms:

(i) must be based upon normal commercial terms at that time (except as varied by this Agreement);

(ii) may allow only Borrowers [(or Affiliates of Borrowers nominated pursuant to Clause 9.9 (Affiliates of Borrowers))] to use the Ancillary Facility;

(iii) may not allow the Ancillary Outstandings to exceed the Ancillary Commitment;

(iv) may not allow a Lender's Ancillary Commitment to exceed that Lender's Available Commitment relating to the Revolving Facility (before taking into account the effect of the Ancillary Facility on that Available Commitment); and

(v) must require that the Ancillary Commitment is reduced to zero, and that all Ancillary Outstandings are repaid not later than the Termination Date applicable to the Revolving Facility (or such earlier date as the Revolving Facility Commitment of the relevant Ancillary Lender (or its Affiliate) is reduced to zero).

(c) If there is any inconsistency between any term of an Ancillary Facility and any term of this Agreement, this Agreement shall prevail except for:

(i) Clause 39.3 (Day count convention) which shall not prevail for the purposes of calculating fees, interest or commission relating to an Ancillary Facility;

(ii) an Ancillary Facility comprising more than one account where the terms of the Ancillary Documents shall prevail [to the extent required to permit the netting of balances on those accounts]; and

(iii) where the relevant term of this Agreement would be contrary to, or inconsistent with, the law governing the relevant Ancillary Document, in which case that term of this Agreement shall not prevail.

(d) Interest, commission and fees on Ancillary Facilities are dealt with in Clause 18.6 (Interest, commission and fees on Ancillary Facilities).

9.4 Repayment of Ancillary Facility

(a) An Ancillary Facility shall cease to be available on the Termination Date applicable to the Revolving Facility or such earlier date on which its expiry date occurs or on which it is cancelled in accordance with the terms of this Agreement.
(b) If an Ancillary Facility expires in accordance with its terms the Ancillary Commitment of the Ancillary Lender shall be reduced to zero.

(c) No Ancillary Lender may demand repayment or prepayment of any Ancillary Outstandings prior to the expiry date of the relevant Ancillary Facility unless:

(i) [required to reduce [the Permitted Gross Outstandings of a Multi-account Overdraft to or towards an amount equal to its Designated Net Amount]/[the Gross Outstandings of a Multi-account Overdraft to or towards an amount equal to its Net Outstandings]];\(^{46}\)

(ii) the Total Revolving Facility Commitments have been cancelled in full or all outstanding Utilisations under the Revolving Facility have become due and payable in accordance with the terms of this Agreement;

(iii) it becomes unlawful in any applicable jurisdiction for the Ancillary Lender to perform any of its obligations as contemplated by this Agreement or to fund, issue or maintain its participation in its Ancillary Facility [(or it becomes unlawful for any Affiliate of the Ancillary Lender for the Ancillary Lender to do so)]; or

(iv) both:

(A) the Available Commitments relating to the Revolving Facility; and

(B) the notice of the demand given by the Ancillary Lender,

would not prevent the relevant Borrower funding the repayment of those Ancillary Outstandings in full by way of Revolving Facility Utilisation.

(d) If a Revolving Facility Utilisation is made to repay Ancillary Outstandings in full, the relevant Ancillary Commitment shall be reduced to zero.

9.5 Limitation on Ancillary Outstandings

Each Borrower shall procure that:

(a) the Ancillary Outstandings under any Ancillary Facility shall not exceed the Ancillary Commitment applicable to that Ancillary Facility; and

\(^{46}\) For use where provisions are included to facilitate Ancillary Lenders reporting Ancillary Facilities comprising group overdraft facilities "net" to the UK regulator. Use the first option if the commercial agreement is that such Ancillary Lenders are permitted to demand repayment only within prescribed limits. Use the second option if the commercial agreement is that Ancillary Lenders are not subject to such limits. Users should note that the option chosen is likely to affect the extent to which such Ancillary Lenders are able to report group overdraft facilities on a "net" basis. It is assumed that users will obtain regulatory advice in relation to the ability to report such facilities "net".
(b) in relation to a Multi-account Overdraft:

(i) the Ancillary Outstandings shall not exceed the Designated Net Amount applicable to that Multi-account Overdraft; and

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

9.6 [Adjustment for Ancillary Facilities upon acceleration]

(a) In this Clause 9.6:

(i) "Revolving Outstandings" means, in relation to a Lender, the aggregate of the equivalent in the Base Currency of:

(A) its participation in each Revolving Facility Utilisation then outstanding (together with the aggregate amount of all accrued interest, fees and commission owed to it as a Lender under the Revolving Facility); and

(B) if the Lender is also an Ancillary Lender, the Ancillary Outstandings in respect of Ancillary Facilities provided by that Ancillary Lender [(or by its Affiliate)] (together with the aggregate amount of all accrued interest, fees and commission owed to it [(or to its Affiliate)] as an Ancillary Lender in respect of the Ancillary Facility); and

(ii) "Total Revolving Outstandings" means the aggregate of all Revolving Outstandings.

(b) If the Agent exercises any of its rights under Clause 29.20 (Acceleration) (other than declaring Utilisations to be due on demand), each Lender and each Ancillary Lender shall [(subject to paragraph (g) below)] promptly adjust (by making or receiving (as the case may be) corresponding transfers of rights and obligations under the Finance Documents relating to Revolving Outstandings) their claims in respect of amounts outstanding to them under the Revolving Facility and each Ancillary Facility to the extent necessary to ensure that after such transfers the Revolving Outstandings of each Lender bear the same proportion to the Total Revolving Outstandings as such Lender's Revolving Facility Commitment bears to the Total Revolving Facility Commitments, each as at the date the Agent exercises the relevant right(s) under Clause 29.20 (Acceleration).

(c) If an amount outstanding under an Ancillary Facility is a contingent liability and that contingent liability becomes an actual liability or is reduced to zero after the original adjustment is made under paragraph (b) above, then each Lender and Ancillary Lender will make a further adjustment (by making or receiving (as the case may be) corresponding transfers of rights and obligations under the Finance Documents relating to Revolving Outstandings to the extent necessary) to put themselves in the position they would have been in had the
original adjustment been determined by reference to the actual liability or, as the case may be, zero liability and not the contingent liability.

(d) Any transfer of rights and obligations relating to Revolving Outstandings made pursuant to this Clause 9.6 shall be made for a purchase price in cash, payable at the time of transfer, in an amount equal to those Revolving Outstandings [(less any accrued interest, fees and commission to which the transferor will remain entitled to receive notwithstanding that transfer, pursuant to Clause 30.11 (Pro rata interest settlement))].

(e) [Prior to the application of the provisions of paragraph (b) above, an Ancillary Lender that has provided a Multi-account Overdraft shall set-off any Available Credit Balance on any account comprised in that Multi-account Overdraft.]

(f) All calculations to be made pursuant to this Clause 9.6 shall be made by the Agent based upon information provided to it by the Lenders and Ancillary Lenders and the Agent's Spot Rate of Exchange.

(g) [This Clause 9.6 shall not oblige any Lender to accept the transfer of a claim relating to an amount outstanding under an Ancillary Facility which is not denominated (pursuant to the relevant Finance Document) in either the Base Currency, a currency which has been an Optional Currency for the purpose of any Revolving Facility Utilisation or in another currency which is acceptable to that Lender.]

9.7 Information

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

9.8 [Affiliates of Lenders as Ancillary Lenders]

(a) Subject to the terms of this Agreement, an Affiliate of a Lender may become an Ancillary Lender. In such case, the Lender and its Affiliate shall be treated as a single Lender whose Revolving Facility Commitment is the amount set out opposite the relevant Lender's name in Part II or Part III of Schedule 1 (The Original Parties) and/or the amount of any Revolving Facility Commitment transferred to or assumed by that Lender under this Agreement, to the extent (in each case) not cancelled, reduced or transferred by it under this Agreement.

(b) The Parent shall specify any relevant Affiliate of a Lender in any notice delivered by the Parent to the Agent pursuant to paragraph (b)(i) of Clause 9.2 (Availability).

47 Loss sharing may not be appropriate in all circumstances. Where it is considered to be appropriate it may be necessary to discuss whether sharing arrangements between the Lenders and Ancillary Lenders in relation to remuneration are also appropriate.
(c) An Affiliate of a Lender which becomes an Ancillary Lender shall accede to the Intercreditor Agreement as an Ancillary Lender and any person which so accedes to the Intercreditor Agreement shall, at the same time, become a Party as an “Ancillary Lender” in accordance with clause [22.11] (Creditor Accession Undertaking) of the Intercreditor Agreement.

(d) [If a Lender assigns all of its rights and benefits or transfers all of its rights and obligations to a New Lender, its Affiliate shall cease to have any obligations under this Agreement or any Ancillary Document.]

(e) Where this Agreement or any other Finance Document imposes an obligation on an Ancillary Borrower and the relevant Ancillary Lender is an Affiliate of a Lender which is not a party to that document, the relevant Lender shall ensure that the obligation is performed by its Affiliate.]

9.9 [Affiliates of Borrowers]

(a) Subject to the terms of this Agreement, an Affiliate incorporated in [ ] of a Borrower may with the approval of the relevant Lender become a borrower with respect to an Ancillary Facility.

(b) The Parent shall specify any relevant Affiliate of a Borrower in any notice delivered by the Parent to the Agent pursuant to paragraph (b)(i) of Clause 9.2 (Availability).

(c) If a Borrower ceases to be a Borrower under this Agreement in accordance with Clause 32.3 (Resignation of a Borrower), its Affiliate shall cease to have any rights under this Agreement or any Ancillary Document.

(d) Where this Agreement or any other Finance Document imposes an obligation on a Borrower under an Ancillary Facility and the relevant Borrower is an Affiliate of a Borrower which is not a party to that document, the relevant Borrower shall ensure that the obligation is performed by its Affiliate.

(e) Any reference in this Agreement or any other Finance Document to a Borrower being under no obligations (whether actual or contingent) as a Borrower under such Finance Document shall be construed to include a reference to any Affiliate of a Borrower being under no obligations under any Finance Document or Ancillary Document.]

9.10 Revolving Facility Commitment amounts

Notwithstanding any other term of this Agreement, each Lender shall ensure that at all times its Revolving Facility Commitment is not less than:

(a) its Ancillary Commitment; or

(b) the Ancillary Commitment of its Affiliate.
9.11 **Amendments and Waivers – Ancillary Facilities**

No amendment or waiver of a term of any Ancillary Facility shall require the consent of any Finance Party other than the relevant Ancillary Lender unless such amendment or waiver itself relates to or gives rise to a matter which would require an amendment of or under this Agreement (including, for the avoidance of doubt, under this Clause 9). In such a case, Clause 42 (Amendments and Waivers) will apply.

10. **[ESTABLISHMENT OF INCREMENTAL FACILITIES]**

10.1 **[Selection of Incremental Facility Lenders]**

(a) *Definitions:* In this Agreement:

"**Further Incremental Facility Shortfall**" means, in relation to a Proposed Facility Size, any amount by which that Proposed Facility Size exceeds the aggregate of the proposed Incremental Facility Commitments offered by the Participating Lenders following the operation of paragraph (f) below.

"**Incremental Facility Proportion**" means, in relation to a Proposed Facility Size, the proportion borne from time to time by a Participating Lender's proposed Incremental Facility Commitment to that Proposed Facility Size.

"**Incremental Facility Proposal**" means a notice from the Parent addressed to each Lender which:

(a) invites each Lender to participate in a proposed Incremental Facility; and

(b) sets out the proposed Incremental Facility Terms applicable to that Incremental Facility and any fee or commission proposed to be payable to lenders under that proposed Incremental Facility.

"**Incremental Facility Shortfall**" means, in relation to a Proposed Facility Size, any amount by which that Proposed Facility Size exceeds the aggregate of the proposed Incremental Facility Commitments offered by the Participating Lenders pursuant to paragraph (c) below (as adjusted, if applicable, pursuant to paragraph (e) below).

"**Incremental Facility Solicitation Period**" means, in relation to an Incremental Facility Proposal, the period of time starting on the date of that Incremental Facility Proposal and ending on the date which falls [ ] Business Days after the date of that Incremental Facility Proposal.

"**Participating Lender**" means, in relation to an Incremental Facility Proposal, any Lender which makes an offer in respect of the Incremental Facility proposed in that Incremental Facility Proposal pursuant to paragraph (c) below.

"**Proposed Facility Size**" means, in relation to an Incremental Facility Proposal, the proposed Total Incremental Facility Commitments set out in that Incremental Facility Proposal.
(b) *Invitation to all Lenders:* The Parent shall solicit potential Incremental Facility Lenders for any proposed Incremental Facility by delivery of an Incremental Facility Proposal to the Agent and each Lender.

(c) *Lender's offer:* Any Lender which wishes to become an Incremental Facility Lender in respect of an Incremental Facility proposed in an Incremental Facility Proposal shall notify the Parent and the Agent of the proposed Incremental Facility Commitment that it unconditionally offers to make available in respect of that proposed Incremental Facility no later than 5:00 p.m. on the last day of the Incremental Facility Solicitation Period relating to that Incremental Facility Proposal.

(d) *Expiry of Lender's offer:* Each Participating Lender's offer under paragraph (c) above (as adjusted, if applicable, pursuant to paragraphs (e) or (f) below) in respect of an Incremental Facility proposed in an Incremental Facility Proposal shall, unless otherwise agreed by all the Participating Lenders under that Incremental Facility Proposal, expire on the earlier of:

(i) the day falling [ ] Business Days after the last day of the Incremental Facility Solicitation Period relating to that Incremental Facility Proposal; and

(ii) the date of any Incremental Facility Notice delivered in respect of that proposed Incremental Facility.

(e) *Scaleback of Lenders' offers:* If the aggregate amount of the proposed Incremental Facility Commitments offered by the Participating Lenders pursuant to paragraph (c) above in respect of an Incremental Facility proposed in an Incremental Facility Proposal exceeds the Proposed Facility Size set out in that Incremental Facility Proposal, those proposed Incremental Facility Commitments shall be reduced to the extent necessary such that each such Participating Lender's Incremental Facility Proportion relating to that Proposed Facility Size is no greater than the proportion borne by the aggregate of its Commitments to the aggregate of the Commitments of all of the Lenders which are Participating Lenders in respect of that Incremental Facility Proposal.

(f) *Invitation to Participating Lenders if shortfall:* If there is an Incremental Facility Shortfall relating to a Proposed Facility Size set out in an Incremental Facility Proposal (whether resulting from the operation of paragraph (e) above or otherwise), the Parent shall invite each Participating Lender under that Incremental Facility Proposal to increase the proposed Incremental Facility Commitment offered by it in respect of the Incremental Facility proposed in that Incremental Facility Proposal by an amount no greater than its Incremental Facility Proportion of that Incremental Facility Shortfall.

(g) *Deadline for Participating Lenders to offer increase:* Each Participating Lender under an Incremental Facility Proposal shall notify the Parent and the Agent of its offer of an increased proposed Incremental Facility Commitment (if any) pursuant to paragraph (f) above no later than 5:00 p.m. on the day falling [ ] Business Days after the last day of the Incremental Facility Solicitation Period relating to that Incremental Facility Proposal.]
(h) **Wider invitation if further shortfall:** If there is a Further Incremental Facility Shortfall relating to a Proposed Facility Size set out in an Incremental Facility Proposal, the Parent may, in any manner, invite any Eligible Institutions to offer proposed Incremental Facility Commitments in respect of the Incremental Facility proposed in that Incremental Facility Proposal in a maximum aggregate amount no greater than that Further Incremental Facility Shortfall.

(i) **Participating Lender’s Incremental Facility Commitment:** Each Participating Lender’s Incremental Facility Commitment specified in any Incremental Facility Notice delivered in respect of an Incremental Facility proposed in an Incremental Facility Proposal shall, unless that Participating Lender agrees to be allocated an Incremental Facility Commitment in a lower amount, be in an amount equal to the amount of the proposed Incremental Facility Commitment offered by that Participating Lender in response to that Incremental Facility Proposal (as adjusted, if applicable, pursuant to paragraphs (e) or (f) above).

(j) **Incremental Facility Terms:** The Incremental Facility Terms specified in any Incremental Facility Notice delivered in respect of an Incremental Facility and any fee or commission payable to Incremental Facility Lenders under that Incremental Facility shall be the same as those set out in the Incremental Facility Proposal relating to that Incremental Facility.

(k) **Amendment and withdrawal:** The Parent shall not amend any Incremental Facility Proposal but may withdraw an Incremental Facility Proposal at any time.

(l) **Effect of withdrawal:** Withdrawal of an Incremental Facility Proposal shall terminate the process set out in this Clause 10.1 in respect of the Incremental Facility proposed in that Incremental Facility Proposal and that Incremental Facility shall not be established.

**OR**

[10.1 **Incremental Facility Lenders**

Only an entity which is an Eligible Institution may be an Incremental Facility Lender.]

10.2 **Delivery of Incremental Facility Notice**

(a) [On completion of the solicitation process set out in Clause 10.1 (Selection of Incremental Facility Lenders), the] 49 / [The] Parent and each relevant Incremental Facility Lender may request the establishment of an Incremental Facility by the Parent delivering to the Agent a duly completed Incremental Facility Notice.

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48 Two (alternative) forms of Clause 10.1 are provided. The first option (entitled "Selection of Incremental Facility Lenders") requires that existing Lenders are given the right of first refusal to participate on a pro rata basis in any proposed Incremental Facility. The second option (entitled "Incremental Facility Lenders") allows the Parent to select any entity to participate in a proposed Incremental Facility provided that such entity is, optionally, not a Sponsor Affiliate or a member of the Group. The two forms of Clause 10.1 are mutually exclusive. Accordingly, it is NOT recommended that users include both forms in the same Agreement. The Agreement envisages that one of the two alternative forms of Clause 10.1 is included in the Agreement.

49 Include if the first form of Clause 10.1 (entitled "Selection of Incremental Facility Lenders") is used.
10.3 **Completion of an Incremental Facility Notice**

(a) Each Incremental Facility Notice is irrevocable and will not be regarded as having been duly completed unless:

(i) it sets out the Incremental Facility Terms applicable to the Incremental Facility to which it relates;

(ii) each of:

(A) the Incremental Facility Terms applicable to that Incremental Facility;

(B) the Aggregate Yield applicable to that Incremental Facility; and

(C) any fees payable to the arranger of that Incremental Facility,

comply with Clause 10.5 (Restrictions on Incremental Facility Terms and fees); and

(iii) the Incremental Facility Lenders [and the Incremental Facility Commitments]\(^{50}\) set out in that Incremental Facility Notice [have been selected and allocated in accordance with Clause 10.1 (Selection of Incremental Facility Lenders)]\(^{51}\) / [comply with Clause 10.1 (Incremental Facility Lenders)]\(^{52}\).

(b) Only one Incremental Facility may be requested in an Incremental Facility Notice.

10.4 **Maximum number of Incremental Facilities**

The Parent may not deliver an Incremental Facility Notice if as a result of the establishment of the proposed Incremental Facility [ ] or more Incremental Facilities would have been established under this Agreement.

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\(^{50}\) Include if the first form of Clause 10.1 (entitled "Selection of Incremental Facility Lenders") is used.

\(^{51}\) Include if the first form of Clause 10.1 (entitled "Selection of Incremental Facility Lenders") is used.

\(^{52}\) Include if the second form of Clause 10.1 (entitled "Incremental Facility Lenders") is used.
10.5 **Restrictions on Incremental Facility Terms and fees**

(a) **Currency:** Any Incremental Facility shall be denominated in the Base Currency.

(b) **Size:** [The Aggregate Total Incremental Facility Commitments shall not, at any time, exceed \[\].]

(c) **Aggregate Yield:**

(i) [The Aggregate Yield applicable to any Incremental Facility shall not exceed the Aggregate Yield applicable to [Facility A, Facility B and Facility C (or, if the Commitments under Facility A, Facility B and Facility C have been reduced to zero, Facility A, Facility B and Facility C immediately prior to that reduction) on a weighted average basis across those Facilities)/[Facility A]/[B]/[C] (or if the Commitments under that Facility have been reduced to zero, Facility [A]/[B]/[C] immediately prior to that reduction))] by more than \[\] per cent. per annum] / [Insert details of other agreed yield restrictions].

(ii) In this Agreement:

"Aggregate Yield" means in relation to a Facility, the aggregate of:

(A) the highest Margin applicable to that Facility;

(B) any fee or commission (other than any fee payable pursuant to Clause 18.1 \((Commitment fee)\)) payable to the Lenders (in their capacity as such) under that Facility (amortised (on a straight line basis) over a period of \[\] years); and

(C) the aggregate of any Primary Syndication OID relating to that Facility (amortised (on a straight line basis) over a period of \[\] years).

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53 Users should note that restrictions on the terms of Incremental Facilities should be considered on a transaction specific basis. Users should consider which, if any, of the optional restrictions for which drafting is provided in Clause 10.5 (Restrictions on Incremental Facility Terms and fees) are appropriate in the context of the transaction.

54 Users should note that changes will be required to this Agreement and the LMA Intercreditor Agreement (Senior/Mezzanine) if an Incremental Facility is capable of being denominated in any currency other than the Base Currency.

55 This Agreement restricts the quantum of the Incremental Facilities by reference to a fixed numerical limit. Users should note that the extent to which this is appropriate should be considered on a transaction specific basis.
"Primary Syndication OID" means, in relation to a Facility and a person which enters into a Debt Purchase Transaction in relation to that Facility as part of primary syndication of that Facility:

(A) in the case of such a Debt Purchase Transaction relating to a funded amount of the Commitment and participations in Utilisations under that Facility, the difference between:

(1) the funded amount of that Commitment and those participations; and

(2) the amount payable by that person in consideration for that Debt Purchase Transaction; and

(B) in the case of such a Debt Purchase Transaction relating to an unfunded amount of the Commitment and participations in Utilisations under that Facility, the amount payable to that person in consideration for that Debt Purchase Transaction.]

(d) [Commitment fee: The percentage rate per annum according to which the fee payable under Clause 18.1 (Commitment fee) in respect of an Incremental Facility is computed shall not exceed [ ] per cent. per annum]/[that applicable to Facility A, Facility B and Facility C (on a weighted average basis across those Facilities)]/[ ]).

(e) [Arrangement fee: The aggregate of any fees payable to any arrangers of any Incremental Facility shall not exceed [ ][per Incremental Facility]/[in aggregate across each Incremental Facility]].

(f) [Borrowers: Any Incremental Facility shall be available only to [a Borrower of Facility A, Facility B or Facility C.]]

(g) [Purpose: The purpose applicable to any Incremental Facility pursuant to Clause 3.1 (Purpose) shall [insert details of any applicable restriction].]

(h) [Availability: The Availability Period for any Incremental Facility shall [insert details of any applicable restriction].]

(i) [No procurement of breach: Satisfaction of any Incremental Facility Conditions Precedent shall not breach any term of any Finance Document.]

(j) [Maturity of Bullet Incremental Facilities: Clause 11 (Repayment) shall not provide for the scheduled repayment of any Bullet Incremental Facility before [ ]/[the Termination Date applicable to Facility [A]/[B]/[C]].]

(k) Average Life of Amortising Incremental Facilities:

(i) [The Average Life applicable to an Amortising Incremental Facility shall be [equal to or] greater than the Average Life then applicable to Facility [A]/[B]/[C].]
(ii) [Clause 11.4 (Effect of cancellation and prepayment on scheduled repayments and reductions) shall not shorten the Average Life of an Amortising Incremental Facility to a greater extent than it shortens the Average Life of Facility [A]/[B]/[C].]

(iii) In this Agreement "Average Life" means, when applied to the amount of principal outstanding under a Facility at any date, the number of years obtained by dividing:

(A) the sum of the products of:

(1) each required repayment of principal in respect of that outstanding amount; and

(2) the number of years (calculated to the nearest \(\frac{1}{12}\)) that will elapse between that date and the date on which that repayment is required to be made; by

(B) the amount of principal outstanding under that Facility as at that date.

(iv) For the purposes only of assessing compliance with paragraph (i) above it shall be assumed that the amount of principal that will be outstanding under the Incremental Facility as at its Establishment Date is equal to the Total Incremental Facility Commitments relating to that Incremental Facility.

(l) [Maturity of Amortising Incremental Facilities: The Termination Date applicable to any Amortising Incremental Facility shall not fall before [ ]/the Termination Date applicable to Facility [A]/[B]/[C].]

(m) [Other restrictions]

10.6 Conditions to establishment

(a) The establishment of an Incremental Facility will only be effected in accordance with Clause 10.7 (Establishment of Incremental Facility) if:

(i) on the date of the Incremental Facility Notice and on the Establishment Date:

(A) no [Default]/[Event of Default] is continuing or would result from the establishment of the proposed Incremental Facility; and

(B) the Repeating Representations to be made by each Obligor are true [in all material respects];

(ii) each Incremental Facility Lender enters into the documentation required for it to accede as a party to the Intercreditor Agreement;

(iii) each Incremental Facility Lender delivers an Incremental Facility Lender Certificate to the Agent and the Parent; [and]
the Agent has received in form and substance satisfactory to it:

(A) such documents (if any) as are reasonably necessary as a result of the establishment of that Incremental Facility to maintain the effectiveness of the Security, guarantees, indemnities and other assurance against loss provided to the Finance Parties pursuant to the Finance Documents; and

(B) any applicable Incremental Facility Supplemental Security[; and

(v) [Insert other agreed conditions to establishment of an Incremental Facility].

(b) [Paragraph (a)(iv)(A) above shall be subject to the Agreed Security Principles to the same extent that the relevant Obligor's obligation to grant the relevant Security, guarantee, indemnity or other assurance against loss was subject to the Agreed Security Principles.]

(c) The Agent shall notify the Parent and the Lenders promptly upon being satisfied under paragraph (a)(iv) above.

(d) 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 (c) 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.

10.7 Establishment of Incremental Facility

(a) If the conditions set out in this Agreement have been met the establishment of an Incremental Facility is effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Incremental Facility Notice. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Incremental Facility Notice appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Incremental Facility Notice.

(b) The Agent shall only be obliged to execute an Incremental Facility Notice delivered to it by the Parent 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 establishment of the relevant Incremental Facility.

(c) On the Establishment Date:

(i) subject to the terms of this Agreement the Incremental Facility Lenders make available a Base Currency term loan facility in an aggregate amount equal to the Total Incremental Facility Commitments specified in the Incremental Facility Notice which will be available to the Borrowers specified in the Incremental Facility Notice;
(ii) each Incremental Facility Lender shall assume all the obligations of a Lender corresponding to the Incremental Facility Commitment (the "Assumed Incremental Facility Commitment") specified opposite its name in the Incremental Facility Notice as if it had been an Original Lender in respect of that Incremental Facility Commitment;

(iii) each of the Obligors and each Incremental Facility Lender shall assume obligations towards one another and/or acquire rights against one another as the Obligors and that Incremental Facility Lender would have assumed and/or acquired had that Incremental Facility Lender been an Original Lender in respect of the Assumed Incremental Facility Commitment;

(iv) each Incremental Facility Lender and each of the other Finance Parties shall assume obligations towards one another and acquire rights against one another as that Incremental Facility Lender and those Finance Parties would have assumed and/or acquired had the Incremental Facility Lender been an Original Lender in respect of the Assumed Incremental Facility Commitment; and

(v) each Incremental Facility Lender shall become a Party as a "Lender".

10.8 Notification of establishment

The Agent shall, as soon as reasonably practicable after the establishment of an Incremental Facility notify the Parent and the Lenders of that establishment and the Establishment Date of that Incremental Facility.

10.9 [Incremental Facility fees]

(a) [The Parent shall[, on the date on which the establishment of an Incremental Facility becomes effective,] pay to the Agent (for its own account) a fee [of [ ]/[in the amount [and at the time] agreed in a Fee Letter].]

(b) [Subject to Clause 10.5 (Restrictions on Incremental Facility Terms and fees) the Parent may:

(i) [pay to any Incremental Facility Lender under an Incremental Facility a fee in the amount and at the times agreed between the Parent and that Incremental Facility Lender in a Fee Letter; and]

(ii) [pay to any arranger of any Incremental Facility a fee in the amount and at the times agreed between the Parent and that arranger in a Fee Letter.]]

10.10 [Incremental Facility costs and expenses]

The Parent shall promptly on demand pay the Agent and the Security Agent the amount of all costs and expenses (including legal fees) reasonably incurred by either of them and, in the case of the Security Agent, by any Receiver or Delegate in connection with the establishment of an Incremental Facility under this Clause 10.]

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10.11 **Prior amendments binding**

Each Incremental Facility Lender, by executing an Incremental Facility Notice, 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 establishment of the Incremental Facility requested in that Incremental Facility Notice became 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.

10.12 **Limitation of responsibility**

Clause 30.5 (*Limitation of responsibility of Existing Lenders*) shall apply *mutatis mutandis* in this Clause 10 in relation to any Incremental Facility Lender as if references in that Clause to:

(a) an "Existing Lender" were references to all the Lenders immediately prior to the Establishment Date;

(b) the "New Lender" were references to an "Incremental Facility Lender"; and

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

]
SECTION 4
REPAYMENT, PREPAYMENT AND CANCELLATION

11. REPAYMENT

11.1 Repayment of Term Loans

(a) The Borrowers under Facility A shall repay the aggregate Facility A Loans
[in full on the Termination Date.]

[in instalments by repaying on each Facility A Repayment Date an amount
which reduces the Base Currency Amount of the outstanding aggregate Facility
A Loans by an amount equal to [ ] per cent. of all the Facility A Loans borrowed
by the Borrowers as at close of business in [London] on the last day of the
Availability Period in relation to Facility A.]

[in instalments by repaying on each Facility A Repayment Date an amount
which reduces the Base Currency Amount of the outstanding aggregate Facility
A Loans by the amount set out opposite that Facility A Repayment Date below:

<table>
<thead>
<tr>
<th>Facility A Repayment Date</th>
<th>Repayment Instalment</th>
</tr>
</thead>
<tbody>
<tr>
<td>[ ]</td>
<td>[ ]</td>
</tr>
</tbody>
</table>

[in instalments by repaying on each Facility A Repayment Date an amount
which reduces the Base Currency Amount of the outstanding aggregate Facility
A Loans by an amount equal to the relevant percentage of all the Facility A
Loans borrowed by the Borrowers as at the close of business in [London] on the
last day of the Availability Period in relation to Facility A as set out in the table
below:

<table>
<thead>
<tr>
<th>Facility A Repayment Date</th>
<th>Repayment Instalment</th>
</tr>
</thead>
<tbody>
<tr>
<td>[ ]</td>
<td>[insert percentage]</td>
</tr>
</tbody>
</table>

[(b)] If, in relation to a Facility A Repayment Date, the aggregate amount of the
Facility A Loans made to the Borrowers exceeds the Repayment Instalment to
be repaid by the Borrowers, the Parent may, if it gives the Agent not less than
five Business Days' prior notice, select which of those Facility A Loans will be
wholly or partially repaid so that such Repayment Instalment is repaid on the
relevant Repayment Date in full. The Parent may not make a selection if as a
result more than one Facility A Loan will be partially repaid.]

[(b)][(c)] The Borrowers under Facility B shall repay the aggregate Facility B Loans
[in full on the Termination Date.]

[in instalments by repaying on each Facility B Repayment Date an amount
which reduces the Base Currency Amount of the outstanding aggregate Facility
B Loans by an amount equal to [ ] per cent. of all the Facility B Loans borrowed
by the Borrowers as at close of business in [London] on the last day of the
Availability Period in relation to Facility B as set out in the table below:

<table>
<thead>
<tr>
<th>Facility B Repayment Date</th>
<th>Repayment Instalment</th>
</tr>
</thead>
<tbody>
<tr>
<td>[ ]</td>
<td>[ ]</td>
</tr>
</tbody>
</table>
by the Borrowers as at close of business in [London] on the last day of the Availability Period in relation to Facility B.

[in instalments by repaying on each Facility B Repayment Date an amount which reduces the Base Currency Amount of the outstanding aggregate Facility B Loans by the amount set out opposite that Facility B Repayment Date below:

<table>
<thead>
<tr>
<th>Facility B Repayment Date</th>
<th>Repayment Instalment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

[in instalments by repaying on each Facility B Repayment Date an amount which reduces the Base Currency Amount of the outstanding aggregate Facility B Loans by an amount equal to the relevant percentage of all the Facility B Loans borrowed by the Borrowers as at the close of business in [London] on the last day of the Availability Period in relation to Facility B as set out in the table below:

<table>
<thead>
<tr>
<th>Facility B Repayment Date</th>
<th>Repayment Instalment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>[insert percentage]</td>
</tr>
</tbody>
</table>

[(c)]/[[(d)] If, in relation to a Facility B Repayment Date, the aggregate amount of the Facility B Loans made to the Borrowers exceeds the Repayment Instalment to be repaid by the Borrowers, the Parent may, if it gives the Agent not less than five Business Days' prior notice, select which of those Facility B Loans will be wholly or partially repaid so that such Repayment Instalment is repaid on the relevant Repayment Date in full. The Parent may not make a selection if as a result more than one Facility B Loan will be partially repaid.]

[(d)]/[[(e)] The Borrowers under Facility C shall repay the aggregate Facility C Loans in full on the Termination Date.

[in instalments by repaying on each Facility C Repayment Date an amount which reduces the Base Currency Amount of the outstanding aggregate Facility C Loans by an amount equal to ] per cent. of all the Facility C Loans borrowed by the Borrowers as at close of business in [London] on the last day of the Availability Period in relation to Facility C.]

[(d)]/[[(e)] The Borrowers under Facility C shall repay the aggregate Facility C Loans in instalments by repaying on each Facility C Repayment Date an amount which reduces the Base Currency Amount of the outstanding aggregate Facility C Loans by the amount set out opposite that Facility C Repayment Date below:

<table>
<thead>
<tr>
<th>Facility C Repayment Date</th>
<th>Repayment Instalment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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</tbody>
</table>

[in instalments by repaying on each Facility C Repayment Date an amount which reduces the Base Currency Amount of the outstanding aggregate Facility C Loans by an amount equal to the relevant percentage of all the Facility C Loans borrowed by the Borrowers as at the close of business in [London] on the]
last day of the Availability Period in relation to Facility C as set out in the table below:

<table>
<thead>
<tr>
<th>Facility C Repayment Date</th>
<th>Repayment Instalment</th>
</tr>
</thead>
<tbody>
<tr>
<td>[ ]</td>
<td>[insert percentage]</td>
</tr>
</tbody>
</table>

[(e)][(f)] [If, in relation to a Facility C Repayment Date, the aggregate amount of the Facility C Loans made to the Borrowers exceeds the Repayment Instalment to be repaid by the Borrowers, the Parent may, if it gives the Agent not less than five Business Days' prior notice, select which of those Facility C Loans will be wholly or partially repaid so that such Repayment Instalment is repaid on the relevant Repayment Date in full. The Parent may not make a selection if as a result more than one Facility C Loan will be partially repaid.]

[(f)][(g)] [If the Parent fails to deliver a notice to the Agent in accordance with paragraphs (b), (d) or (f) above, the Agent shall select the Facility A Loans, Facility B Loans or, as the case may be, Facility C Loans, to be wholly or partially repaid.]

[(g)][(h)] [The Borrowers under an Incremental Facility shall repay the Incremental Facility Loans under that Incremental Facility in accordance with the repayment terms set out in the Incremental Facility Notice relating to that Incremental Facility.]

[(h)][(i)] The Borrowers may not reborrow any part of a Term Facility which is repaid.

11.2 Repayment of Revolving Facility Loans

(a) [Subject to paragraph (c) below,] [Each] Borrower which has drawn a Revolving Facility Loan shall repay that Loan on the last day of its Interest Period.

(b) Without prejudice to each Borrower's obligation under paragraph (a) above, if:

(i) one or more Revolving Facility Loans are to be made available to a Borrower:

(A) on the same day that a maturing Revolving Facility Loan is due to be repaid by that Borrower;

(B) in the same currency as the maturing Revolving Facility Loan (unless it arose as a result of the operation of Clause 8.2 (Unavailability of a currency)); and

(C) in whole or in part for the purpose of refinancing the maturing Revolving Facility Loan; and

(ii) the proportion borne by each Lender's participation in the maturing Revolving Facility Loan to the amount of that maturing Revolving Facility Loan is the same as the proportion borne by that Lender's
participation in the new Revolving Facility Loans to the aggregate amount of those new Revolving Facility Loans.

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

(A) if the amount of the maturing Revolving Facility Loan exceeds the aggregate amount of the new Revolving Facility Loans:

(1) the relevant Borrower will only be required to make a payment under Clause 36.1 (Payments to the Agent) in an amount in the relevant currency equal to that excess; and

(2) each Lender's participation in the new Revolving Facility 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 Revolving Facility Loan and that Lender will not be required to make a payment under Clause 36.1 (Payments to the Agent) in respect of its participation in the new Revolving Facility Loans; and

(B) if the amount of the maturing Revolving Facility Loan is equal to or less than the aggregate amount of the new Revolving Facility Loans:

(1) the relevant Borrower will not be required to make a payment under Clause 36.1 (Payments to the Agent); and

(2) each Lender will be required to make a payment under Clause 36.1 (Payments to the Agent) in respect of its participation in the new Revolving Facility Loans only to the extent that its participation in the new Revolving Facility Loans exceeds that Lender's participation in the maturing Revolving Facility Loan and the remainder of that Lender's participation in the new Revolving Facility 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 Revolving Facility Loan.

(c) [At any time when a Lender becomes a Defaulting Lender, the maturity date of each of the participations of that Lender in the Revolving Facility Loans then outstanding will be automatically extended to [the last day of the Availability Period applicable to the Revolving Facility]/ [the Termination Date applicable to the Revolving Facility] and will be treated as separate Revolving Facility Loans (the "Separate Loans") denominated in the currency in which the relevant participations are outstanding.]
(d) [If the Borrower makes a prepayment of a Revolving Facility Utilisation pursuant to Clause 12.5 (Voluntary prepayment of Revolving Facility Utilisations),] a Borrower to whom a Separate Loan is outstanding may prepay that Loan by giving not less than [ ] Business Days' prior notice to the Agent. [The proportion borne by the amount of the prepayment of the Separate Loan to the amount of the Separate Loans shall not exceed the proportion borne by the amount of the prepayment of the Revolving Facility Utilisation to the Revolving Facility Utilisations.] The Agent will forward a copy of a prepayment notice received in accordance with this paragraph (d) to the Defaulting Lender concerned as soon as practicable on receipt.

(e) Interest in respect of a Separate Loan will accrue for successive Interest Periods selected by the Borrower by the time and date specified by the Agent (acting reasonably) and will be payable by that Borrower to the Agent (for the account of that Defaulting Lender) on the last day of each Interest Period of that Loan.

(f) The terms of this Agreement relating to Revolving Facility Loans generally shall continue to apply to Separate Loans other than to the extent inconsistent with paragraphs (c) to (e) above, in which case those paragraphs shall prevail in respect of any Separate Loan.]

11.3 [Reduction of Revolving Facility]

11.4 [Effect of cancellation and prepayment on scheduled repayments and reductions]

(a) If the Parent cancels the whole or any part of any Available Commitment in accordance with Clause 12.6 (Right of cancellation and repayment in relation to a single Lender or Issuing Bank) or Clause 12.7 (Right of cancellation in relation to a Defaulting Lender) or if the Available Commitment of any Lender is cancelled under Clause 12.1 (Illegality) then (other than, in any relevant case, to the extent that any part of the relevant Available Commitment(s) so cancelled is subsequently increased pursuant to Clause 2.3 (Increase)):

(i) [in the case of the Facility A Commitments, the amount of the Repayment Instalment for each Repayment Date falling after that cancellation will reduce pro rata by the amount cancelled;]

(ii) [in the case of the Facility B Commitments, the amount of the Repayment Instalment for each Repayment Date falling after that cancellation will reduce pro rata by the amount cancelled;]

56 Users should note that the inclusion of this automatic term-out mechanic in respect of a Defaulting Lender's participation in Revolving Facility Loans may have the result that the Revolving Facility is not always drawn on a pro rata basis and that, accordingly, a Defaulting Lender whose participation in Revolving Facility Loans is termed out in this way may suffer a disproportionate loss if the Borrower defaults when the only Loans outstanding under the Revolving Facility are Separate Loans.

57 Users should note that it may not be necessary to address the effect of cancellations of Commitments on Repayment Instalments where those Repayment Instalments are expressed as a percentage of outstandings.
(iii) [in the case of the Facility C Commitments, the amount of the Repayment Instalment for each Repayment Date falling after that cancellation will reduce pro rata by the amount cancelled;]

(iv) [in the case of the Incremental Facility Commitments relating to an Amortising Incremental Facility, the amount of the Repayment Instalment for each Repayment Date falling after that cancellation will reduce in the manner specified in the Incremental Facility Notice relating to that Incremental Facility;] [and]

(v) [in the case of the Revolving Facility Commitments, the amount of the Reduction Instalment for each Reduction Date falling after that cancellation will reduce pro rata by the amount cancelled].

(b) [If the Parent cancels the whole or any part of any Available Commitment in accordance with Clause 12.3 (Voluntary cancellation) or if the whole or part of any Commitment is cancelled pursuant to Clause 5.6 (Cancellation of Commitment) then:

(i) [in the case of Facility A Commitments, the amount of the Repayment Instalment for each Repayment Date falling after that cancellation will reduce [pro rata] / [in chronological order] / [in inverse chronological order] by the amount cancelled;]

(ii) [in the case of Facility B Commitments, the amount of the Repayment Instalment for each Repayment Date falling after that cancellation will reduce [pro rata] / [in chronological order] / [in inverse chronological order] by the amount cancelled;]

(iii) [in the case of Facility C Commitments, the amount of the Repayment Instalment for each Repayment Date falling after that cancellation will reduce [pro rata] / [in chronological order] / [in inverse chronological order] by the amount cancelled;]

(iv) [in the case of the Incremental Facility Commitments relating to an Amortising Incremental Facility, the amount of the Repayment Instalment for each Repayment Date falling after that cancellation will reduce in the manner specified in the Incremental Facility Notice relating to that Incremental Facility;] [and]

(v) [in the case of Revolving Facility Commitments, the amount of the Reduction Instalment for each Reduction Date falling after that cancellation will reduce [pro rata] / [in chronological order] / [in inverse chronological order] by the amount cancelled].]

(c) If any Term Loan or Revolving Facility Utilisation is repaid or prepaid in accordance with Clause 12.6 (Right of cancellation and repayment in relation to a single Lender or Issuing Bank) or Clause 12.1 (Illegality) then, other than to the extent that any part of the relevant Commitment is subsequently increased pursuant to Clause 2.3 (Increase):
(i) in the case of a Term Loan [(other than an Incremental Facility Loan)], the amount of the Repayment Instalments for the relevant Term Facility for each Repayment Date falling after that repayment or prepayment will reduce pro rata by the amount of the Term Loan repaid or prepaid;

(ii) [in the case of an Amortising Incremental Facility Loan, the amount of the Repayment Instalments for the relevant Incremental Facility for each Repayment Date falling after that repayment or prepayment will reduce in the manner specified in the Incremental Facility Notice relating to that Incremental Facility;] and

(iii) in the case of a Revolving Facility Utilisation, the amount of the Reduction Instalment for each Reduction Date falling after that repayment or prepayment will reduce pro rata by the amount of the Revolving Facility Utilisation repaid or prepaid.

(d) [If any Term Loan or Revolving Facility Utilisation is prepaid in accordance with Clause 12.4 (Voluntary prepayment of Term Loans), Clause 12.5 (Voluntary prepayment of Revolving Facility Utilisations), or Clause 13.2 (Disposal, Insurance and Acquisition Proceeds and Excess Cashflow) then:

(i) [in the case of Facility A, the amount of the Repayment Instalment for each Repayment Date falling after that prepayment will reduce [pro rata] [in chronological order] [in inverse chronological order] by the amount of the Facility A Loan prepaid;]

(ii) [in the case of Facility B, the amount of the Repayment Instalment for each Repayment Date falling after that prepayment will reduce [pro rata] [in chronological order] [in inverse chronological order] by the amount of the Facility B Loan prepaid;]

(iii) [in the case of Facility C, the amount of the Repayment Instalment for each Repayment Date falling after that prepayment will reduce [pro rata] [in chronological order] [in inverse chronological order] by the amount of the Facility C Loan prepaid;]

(iv) [in the case of an Amortising Incremental Facility, the amount of the Repayment Instalment for each Repayment Date falling after that prepayment will reduce in the manner specified in the Incremental Facility Notice relating to that Incremental Facility;][and]

(v) [in the case of a prepayment of the Revolving Facility under Clause 13.2 (Disposal, Insurance and Acquisition Proceeds and Excess Cashflow) only, the amount of the Reduction Instalment for each Reduction Date falling after that prepayment will reduce [pro rata] [in chronological order] [in inverse chronological order] by the amount of the Revolving Facility Loan prepaid].]

58 There may be a different treatment for voluntary and mandatory prepayments in which case this paragraph may need to be split in two.
12. ILLEGALITY, VOLUNTARY PREPAYMENT AND CANCELLATION

12.1 Illegality

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

(a) that Lender shall promptly notify the Agent upon becoming aware of that event;

(b) upon the Agent notifying the Parent, each Available Commitment of that Lender will be immediately cancelled; and

(c) to the extent that the Lender’s participation has not been transferred pursuant to Clause 42.8 (Replacement of Lender), each Borrower shall repay that Lender’s participation in the Utilisations made to that Borrower on the last day of the Interest Period for each Utilisation occurring after the Agent has notified the Parent 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.

12.2 Illegality in relation to Issuing Bank

If it becomes unlawful for an Issuing Bank to issue or leave outstanding any Letter of Credit [or it becomes unlawful for any Affiliate of an Issuing Bank for that Issuing Bank to do so] then:

(a) that Issuing Bank shall promptly notify the Agent upon becoming aware of that event;

(b) upon the Agent notifying the Parent, the Issuing Bank shall not be obliged to issue any Letter of Credit;

(c) the Parent shall procure that [each Obligor/the relevant Borrower] shall use its best endeavours to procure the release of each Letter of Credit issued by that Issuing Bank and outstanding at such time on or before the date specified by the Issuing Bank in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law); and

(d) unless any other Lender is or has become an Issuing Bank pursuant to the terms of this Agreement, the Revolving Facility shall cease to be available for the issue of Letters of Credit.

12.3 Voluntary cancellation

(a) [Subject to paragraph (b) below] The Parent 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 12.3 shall reduce the Commitments of the Lenders rateably under that Facility.
(b) [The Parent shall not cancel any part of the Available Commitment with respect to Facility B or Facility C unless there is no Available Commitment with respect to Facility A]/[The Parent shall not cancel any part of the Available Commitment with respect to a Term Facility [(other than an Incremental Facility)] unless at the same time it cancels a pro rata amount of the Available Commitments for each other Term Facility [(other than any Incremental Facility)].

(c) Any notice of cancellation of the Available Commitments with respect to the Revolving Facility delivered at any time while Loans under any other Facility remain outstanding and/or other Commitments remain uncancelled must be accompanied by evidence, in form and substance satisfactory to the Majority Lenders, that the Group will have sufficient working capital facilities available to it following such cancellation.

12.4 Voluntary prepayment of Term Loans

(a) [Subject to paragraph (c) below] a Borrower to which a Term Loan has been made may, if it or the Parent gives the Agent not less than [ ] Business Days’ (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of that Term Loan (but, if in part, being an amount that reduces the Base Currency Amount of that Term Loan by a minimum amount of [ ]).

(b) A Term Loan may only be prepaid after the last day of the Availability Period for the applicable Facility (or, if earlier, the day on which the applicable Available Facility is zero).

(c) [A Term Loan shall only be prepaid if all the Term Loans are:

(i) prepaid at the same time; and

(ii) prepaid in amounts which reduce the Facility B Loan, the Facility C Loan, the aggregate amount of the Facility A Loans [and the aggregate amount of any Incremental Facility Loans] by the same proportion,

unless a Lender under Facility B or a Lender under Facility C [or a Lender under any Waivable Bullet Incremental Facility] elects to waive its share of the prepayment under Clause 14.8 (Prepayment elections) in which case the [Facility A Loans] [and the Incremental Facility Loans under any Incremental Facility which is not a Waivable Bullet Incremental Facility] shall in addition be reduced pro rata by an aggregate amount equal to that waived prepayment]/

[The Facility B Loan, the Facility C Loan [and any Bullet Incremental Facility Loan] shall only be prepaid if the whole of the Facility A Loans [and the Amortising Incremental Facility Loans] have been prepaid or will be prepaid at the same time. A prepayment of the Facility A Loans [and the Amortising Incremental Facility Loans] shall be applied to reduce pro rata the Facility A Loans and the Amortising Incremental Facility Loans [and a prepayment of the Bullet Incremental Facility Loans shall be applied to reduce pro rata the Bullet Incremental Facility Loans].]
12.5 **Voluntary prepayment of Revolving Facility Utilisations**

A Borrower to which a Revolving Facility Utilisation has been made may, if it or the Parent gives the Agent not less than [ ] Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of a Revolving Facility Utilisation (but if in part, being an amount that reduces the Base Currency Amount of the Revolving Facility Utilisation by a minimum amount of [ ]).

12.6 **Right of cancellation and repayment in relation to a single Lender or Issuing Bank**

(a) If:

(i) any sum payable to any Lender by an Obligor is required to be increased under paragraph (c) of Clause 19.2 (*Tax gross-up*); or

(ii) any Lender or Issuing Bank claims indemnification from the Parent or an Obligor under Clause 19.3 (*Tax indemnity*) or Clause 20.1 (*Increased Costs*),

the Parent may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Agent notice:

(i) (if such circumstances relate to a Lender) of cancellation of the Commitment(s) of that Lender and its intention to procure the repayment of that Lender's participation in the Utilisations; or

(ii) (if such circumstances relate to the Issuing Bank) of repayment of any outstanding Letter of Credit issued by it and cancellation of its appointment as an Issuing Bank under this Agreement in relation to any Letters of Credit to be issued in the future.

(b) On receipt of a notice referred to in paragraph (a) above in relation to a Lender, the *Available Commitment(s)* of that Lender shall *be* immediately reduced to zero.

(c) On the last day of each Interest Period which ends after the Parent has given notice under paragraph (a) above in relation to a Lender (or, if earlier, the date specified by the Parent in that notice), each Borrower to which a Utilisation is outstanding shall repay that Lender's participation in that Utilisation together with all interest and other amounts accrued under the Finance Documents and that Lender's corresponding Commitment(s) shall be immediately cancelled in the amount of the participations repaid.

12.7 **Right of cancellation in relation to a Defaulting Lender**

(a) If any Lender becomes a Defaulting Lender, the Parent may, at any time whilst the Lender continues to be a Defaulting Lender, give the Agent [ ] Business Days' notice of cancellation of each Available Commitment of that Lender.
(b) On the notice referred to in paragraph (a) above becoming effective, each Available Commitment of the Defaulting Lender shall be immediately reduced to zero.

(c) The Agent shall as soon as practicable after receipt of a notice referred to in paragraph (a) above, notify all the Lenders.

13. MANDATORY PREPAYMENT AND CANCELLATION

13.1 Exit

(a) For the purpose of this Clause 13.1:

"FCA" means the Financial Conduct Authority acting in accordance with Part 6 of the Financial Services and Markets Act 2000.

"Flotation" means:

(i) a successful application being made for the admission of any part of the share capital of any member of the Group [(or Holding Company of any member of the Group)] to the Official List maintained by the FCA [or [ ] ] and the admission of any part of the share capital of any member of the Group [(or Holding Company of any member of the Group)] to trading on the London Stock Exchange plc [or [ ] ]; or

(ii) the grant of permission to deal in any part of the issued share capital of any member of the Group [(or Holding Company of any member of the Group)] on the Alternative Investment Market or the Main Board or the Growth Market of the ICAP Securities & Derivatives Exchange (ISDX) or on any recognised investment exchange (as that term is used in the Financial Services and Markets Act 2000) or in or on any exchange or market replacing the same or any other exchange or market in any country.

(b) Upon the occurrence of:

(i) any Flotation; or

(ii) a Change of Control; or

(iii) the sale of all or substantially all of the assets of the Group whether in a single transaction or a series of related transactions,

the Facilities will be immediately cancelled and shall immediately cease to be available for further utilisation and all outstanding Utilisations and Ancillary Outstandings, together with accrued interest, and all other amounts accrued under the Finance Documents, shall become immediately due and payable.
13.2 **Disposal, Insurance and Acquisition Proceeds and Excess Cashflow**

(a) For the purposes of this Clause 13.2, Clause 13.3 (**Application of mandatory prepayments and cancellations**) and Clause 13.4 (**Mandatory Prepayment Accounts and Holding Accounts**):

"**Acquisition Proceeds**" means the proceeds of a claim (a "**Recovery Claim**") against the Vendor or any of its Affiliates (or any employee, officer or adviser) in relation to the Acquisition Documents or against the provider of any Report (in its capacity as a provider of that Report) except for Excluded Acquisition Proceeds, and after deducting:

(i) any reasonable expenses which are incurred by any member of the Group to persons who are not members of the Group; and

(ii) any Tax incurred and required to be paid by a member of the Group (as reasonably determined by the relevant member of the Group on the basis of existing rates and taking into account any available credit, deduction or allowance),

in each case in relation to that Recovery Claim.

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

"**Disposal Proceeds**" means the consideration receivable by any member of the Group (including any amount receivable in repayment of intercompany debt) for any Disposal made by any member of the Group except for Excluded Disposal Proceeds and after deducting:

(i) any reasonable expenses which are incurred by any member of the Group with respect to that Disposal to persons who are not members of the Group; and

(ii) any Tax incurred and required to be paid by the seller in connection with that Disposal (as reasonably determined by the seller, on the basis of existing rates and taking account of any available credit, deduction or allowance).

"**Excluded Acquisition Proceeds**" means any proceeds of a Recovery Claim which the Parent notifies the Agent are, or are to be, applied:

(i) in payment of amounts payable to the Vendor pursuant to the Acquisition Agreement by way of adjustment to the purchase price in respect of the Acquisition (except to the extent relating to a working capital adjustment);

(ii) to satisfy (or reimburse a member of the Group which has discharged) any liability, charge or claim upon a member of the Group by a person which is not a member of the Group; or
(iii) in the replacement, reinstatement and/or repair of assets of members of the Group which have been lost, destroyed or damaged,

in each case as a result of the events or circumstances giving rise to that Recovery Claim, if those proceeds are so applied as soon as possible (but in any event within [ ] days, or such longer period as the Majority Lenders may agree) after receipt.

"Excluded Disposal Proceeds" means [ ].

"Excluded Insurance Proceeds" means any proceeds of an insurance claim which the Parent notifies the Agent are, or are to be, applied:

(i) to meet a third party claim;
(ii) to cover [operating losses in respect of which the relevant insurance claim was made]; or
(iii) in the replacement, reinstatement and/or repair of the assets or otherwise in amelioration of the loss in respect of which the relevant insurance claim was made,

in each case as soon as possible (but in any event within [ ] days, or such longer period as the Majority Lenders may agree) after receipt.

"Insurance Proceeds" means the proceeds of any insurance claim under any insurance maintained by any member of the Group except for Excluded Insurance Proceeds and after deducting any reasonable expenses in relation to that claim which are incurred by any member of the Group to persons who are not members of the Group.

(b) Subject to clause [16.4] (Adjustment of Mandatory Prepayments) of the Intercreditor Agreement, the Parent shall ensure that the Borrowers prepay Utilisations, and cancel Available Commitments, in amounts equal to the following amounts at the times and in the order of application contemplated by Clause 13.3 (Application of mandatory prepayments and cancellations):

(i) the amount of Acquisition Proceeds;
(ii) the amount of Disposal Proceeds;
(iii) the amount of Insurance Proceeds; and
(iv) the amount equal to [ ]% of Excess Cashflow for any Financial Year of the Parent.
13.3 **Application of mandatory prepayments and cancellations**

(a) A prepayment of Utilisations or cancellation of Available Commitments made under Clause 13.2 (Disposal, Insurance and Acquisition Proceeds and Excess Cashflow) shall be applied in the following order:

(i) first, in prepayment of Term Loans as contemplated in paragraphs (b) to (e) inclusive below;

(ii) secondly, in cancellation of Available Commitments under the Revolving Facility (and the Available Commitments of the Lenders under the Revolving Facility will be cancelled rateably);

(iii) thirdly, in prepayment of Revolving Facility Utilisations such that:

   (A) outstanding Revolving Facility Loans shall be prepaid on a pro rata basis; and

   (B) outstanding Revolving Facility Loans shall be prepaid before outstanding Letters of Credit (which shall then be prepaid on a pro rata basis),

and cancellation, in each case, of the corresponding Revolving Facility Commitments; and

(iv) then, in:

   (A) repayment of the Ancillary Outstandings (and cancellation of corresponding Ancillary Commitments); and

   (B) cancellation of Ancillary Commitments

   (on a pro rata basis) and cancellation, in each case, of the corresponding Revolving Facility Commitments.

(b) Unless the Parent makes an election under paragraph (d) below, the Borrowers shall prepay Loans at the following times:

(i) in the case of any prepayment relating to the amounts of Acquisition Proceeds, Disposal Proceeds or Insurance Proceeds, promptly upon receipt of those proceeds; and

(ii) in the case of any prepayment relating to an amount of Excess Cashflow, [within [ ] days of delivery pursuant to Clause 26.1 (Financial statements) of the annual consolidated accounts of the Parent for the relevant Financial Year].

(c) A prepayment under Clause 13.2 (Disposal, Insurance and Acquisition Proceeds and Excess Cashflow) shall prepay the Term Loans as follows:

[(i) in amounts which reduce the Facility A Loans, the Facility B Loan and the Facility C Loan [and the Incremental Facility Loans] by the same proportion]
[unless a Lender under Facility B or a Lender under Facility C [or a Lender under a Waivable Bullet Incremental Facility] elects to waive all or part of its share of the prepayment under Clause 14.8 (Prepayment elections) in which case the Facility A Loans [and the Incremental Facility Loans under any Incremental Facility which is not a Waivable Bullet Incremental Facility] will in addition be reduced pro rata by an aggregate amount equal to the waived prepayment;]/

[(i) in prepayment of the Facility A Loans [and the Amortising Incremental Facility Loans pro rata] and, when all the Facility A Loans [and the Amortising Incremental Facility Loans] have been prepaid in full, prepayment of the Facility B Loan and the Facility C Loan [and the Bullet Incremental Facility Loans] pro rata;] and

(ii) in reducing the relevant Repayment Instalment for each Repayment Date falling after the date of prepayment in the manner contemplated by paragraph (d) of Clause 11.4 (Effect of cancellation and prepayment on scheduled repayments and reductions).

(d) Subject to paragraph (e) below, the Parent may elect that any prepayment under Clause 13.2 (Disposal, Insurance and Acquisition Proceeds and Excess Cashflow) be applied in prepayment of a Loan on the last day of the Interest Period relating to that Loan. If the Parent makes that election then a proportion of the Loan equal to the amount of the relevant prepayment will be due and payable on the last day of its Interest Period.

(e) If the Parent has made an election under paragraph (d) above but a Default has occurred and is continuing, that election shall no longer apply and a proportion of the Loan in respect of which the election was made equal to the amount of the relevant prepayment shall be immediately due and payable (unless the Majority Lenders otherwise agree in writing).

13.4 Mandatory Prepayment Accounts and Holding Accounts

(a) The Parent shall ensure that:

(i) Disposal Proceeds, Insurance Proceeds and Acquisition Proceeds in respect of which the Parent has made an election under paragraph (d) of Clause 13.3 (Application of mandatory prepayments and cancellations) are paid into a Mandatory Prepayment Account as soon as reasonably practicable after receipt by a member of the Group;

(ii) [Insert details of any amounts of Excluded Disposal Proceeds, Excluded Insurance Proceeds and/or Excluded Acquisition Proceeds to be applied in replacement, reinstatement or repair of assets] are paid into a Holding Account as soon as reasonably practicable after receipt by a member of the Group; and

(iii) an amount equal to any Excess Cashflow in respect of which the Parent has made an election under paragraph (d) of Clause 13.3 (Application of
mandatory prepayments and cancellations) is paid into a Mandatory Prepayment Account promptly after such election.

(b) The Parent and each Borrower irrevocably authorise the Agent to apply:

(i) amounts credited to the Mandatory Prepayment Account; and

(ii) amounts credited to the Holding Account [which have not been applied in [ ] within [ ] months of receipt of the relevant proceeds (or such longer time period as the [Agent]/[Majority Lenders] may agree)],

to pay amounts due and payable under Clause 13.3 (Application of mandatory prepayments and cancellations) and otherwise under the Finance Documents. The Parent and each Borrower further irrevocably authorise the Agent to so apply amounts credited to the Holding Account whether or not [ ] months have elapsed since receipt of those proceeds if a Default has occurred and is continuing. [The Parent and each Borrower also irrevocably authorise the Agent to transfer any amounts credited to the Holding Account referred to in this paragraph (b) to the Mandatory Prepayment Account pending payment of amounts due and payable under the Finance Documents (but if all such amounts have been paid any such amounts remaining credited to the Mandatory Prepayment Account may (unless a Default has occurred) be transferred back to the Holding Account).]

(c) Each Finance Party with which a Mandatory Prepayment Account or Holding Account is held acknowledges and agrees that (i) interest shall accrue at normal commercial rates on amounts credited to those accounts and that the account holder shall be entitled to receive such interest (which shall be paid in accordance with the mandate relating to such account) unless a Default is continuing and (ii) each such account is subject to the Transaction Security.

13.5 Excluded proceeds

[Where Excluded Acquisition Proceeds, Excluded Disposal Proceeds and Excluded Insurance Proceeds include amounts which are intended to be used for a specific purpose within a specified period (as set out in the relevant definition of Excluded Acquisition Proceeds, Excluded Disposal Proceeds or Excluded Insurance Proceeds), the Parent shall ensure that those amounts are used for that purpose and [ , if requested to do so by the Agent,] shall promptly deliver a certificate to the Agent at the time of such application and at the end of such period confirming the amount (if any) which has been so applied within the requisite time periods provided for in the relevant definition].

14. RESTRICTIONS

14.1 Notices of cancellation or prepayment

Any notice of cancellation, prepayment, authorisation or other election given by any Party under Clause 12 (Illegality, voluntary prepayment and cancellation), paragraph (d) of Clause 13.3 (Application of Mandatory prepayments and cancellations) or Clause 13.4 (Mandatory Prepayment Accounts and Holding
Accounts) shall (subject to the terms of those Clauses) be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.

14.2 Interest and other amounts

Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.

14.3 No reborrowing of Term Facilities

No Borrower may reborrow any part of a Term Facility which is prepaid.

14.4 Reborrowing of Revolving Facility

Unless a contrary indication appears in this Agreement, any part of the Revolving Facility which is prepaid or repaid may be reborrowed in accordance with the terms of this Agreement.

14.5 Prepayment in accordance with Agreement

No Borrower shall repay or prepay all or any part of the Utilisations or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.

14.6 No reinstatement of Commitments

Subject to Clause 2.3 (Increase), no amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.

14.7 Agent’s receipt of notices

If the Agent receives a notice under Clause 12 (Illegality, voluntary prepayment and cancellation) or an election under paragraph (d) of Clause 13.3 (Application of Mandatory prepayments and cancellations), it shall promptly forward a copy of that notice or election to either the Parent or the affected Lender, as appropriate.

14.8 Prepayment elections

The Agent shall notify the Lenders as soon as possible of any proposed prepayment of any Facility B Loan or any Facility C Loan [or any Bullet Incremental Facility Loan] under Clause 12.4 (Voluntary prepayment of Term Loans) or Clause 13.2 (Disposal, Insurance and Acquisition Proceeds and Excess Cashflow). [A Lender may, if it gives the Agent not less than [ ]\(^59\) Business Days’ prior notice, elect to waive all or a specified part of its share of such a prepayment of Facility B or Facility C [or a Waivable Bullet Incremental Facility] if the amount waived can be applied to reduce [Facility A Loans] [or Incremental Facility Loans under any Incremental Facility which is not a Waivable Bullet Incremental Facility].]
14.9 **Effect of repayment and prepayment on Commitments**

If all or part of any Lender's participation in a Utilisation 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.

14.10 **Application of prepayments**

Any prepayment of a Utilisation (other than a prepayment pursuant to Clause 12.1 (*Illegality*) or Clause 12.6 (*Right of cancellation and repayment in relation to a single Lender or Issuing Bank*)) shall be applied *pro rata* to each Lender's participation in that Utilisation.
SECTION 5
COSTS OF UTILISATION

15. INTEREST

15.1 Calculation of interest

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

(a) Margin; [and]

(b) LIBOR [or, in relation to any Loan in euro, EURIBOR] [or, in relation to any Loan in a Non-LIBOR Currency, the Benchmark Rate for that currency]; and

(c) Mandatory Cost, if any.

15.2 Payment of interest

(a) 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).

(b) [If the Compliance Certificate received by the Agent which relates to the relevant Annual Financial Statements shows that a higher Margin should have applied during a certain period, then the Parent shall (or shall ensure the relevant Borrower shall) promptly pay to the Agent any amounts necessary to put the Agent and the Lenders in the position they would have been in had the appropriate rate of the Margin applied during such period.]

15.3 Default interest

(a) 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 15.3 shall be immediately payable by the Obligor on demand by the Agent.

(b) If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:

(i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
(ii) the rate of interest applying to 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.

(c) 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.

15.4 Notification of rates of interest

(a) The Agent shall promptly notify the relevant Lenders and the relevant Borrower (or the Parent) of the determination of a rate of interest under this Agreement.

(b) The Agent shall promptly notify the relevant Borrower (or the Parent) of each Funding Rate relating to a Loan.

16. INTEREST PERIODS

16.1 Selection of Interest Periods and Terms

(a) A Borrower (or the Parent on behalf of a Borrower) may select an Interest Period for a Loan in the Utilisation Request for that Loan or (if the Loan is a Term Loan and has already been borrowed) in a Selection Notice.

(b) Each Selection Notice for a Term Loan is irrevocable and must be delivered to the Agent by the Borrower (or the Parent on behalf of the Borrower) to which that Term Loan was made not later than the Specified Time.

(c) If a Borrower (or the Parent) fails to deliver a Selection Notice to the Agent in accordance with paragraph (b) above, the relevant Interest Period will, subject to Clause 16.2 (Changes to Interest Periods), be [one] Month[ or, if the Loan is in a Non-LIBOR Currency, the period specified in respect of that currency in Schedule 17 (Other Benchmarks)].

(d) Subject to this Clause 16, a Borrower (or the Parent) may select an Interest Period of [___] or [___] Months [if the Loan is not in a Non-LIBOR Currency or, if the Loan is in a Non-LIBOR Currency, of any period specified in respect of that currency in Schedule 17 (Other Benchmarks)] or[ , in either case,] of any other period agreed between the Parent, the Agent and all the Lenders in relation to the relevant Loan. [In addition a Borrower (or the Parent on its behalf) may select an Interest Period of:

(i) (in relation to Facility [A] [B] [C] [an Amortising Incremental Facility]) a period of less than [one] Month, if necessary to ensure that there are [Facility A Loans] [Facility B Loans] [Facility C Loans] [Loans under that Amortising Incremental Facility] (with an aggregate Base Currency Amount equal to or greater than the Repayment Instalment) which have an Interest Period ending on a Repayment Date relating to the relevant Loan.

This Agreement envisages the use of one Screen Rate only per currency. Users should consider the extent to which available Interest Periods should be restricted to tenors for which Screen Rates are available or can be interpolated from those Screen Rates.
Facility for the Borrowers to make the Repayment Instalment due on that date; or

(ii) (in relation to the Revolving Facility) a period of less than [one] Month, if necessary to ensure that (when aggregated with the Available Facility for the Revolving Facility) there are Revolving Facility 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].

(e) An Interest Period for a Loan shall not extend beyond the Termination Date applicable to its Facility.

(f) Each Interest Period for a Term Loan shall start on the Utilisation Date or (if already made) on the last day of its preceding Interest Period.

(g) A Revolving Facility Loan has one Interest Period only.

(h) Prior to the Syndication Date, Interest Periods shall be one Month [or, in the case of a Loan in a Non-LIBOR Currency, the period specified in respect of that currency in Schedule 17 (Other Benchmarks)] or, in each case, such other period as the Agent and the Parent may agree and any Interest Period which would otherwise end during the Month preceding or extend beyond the Syndication Date shall end on the Syndication Date.

16.2 Changes to Interest Periods

(a) [Prior to determining the interest rate for a [Facility A Loan] [Facility B Loan] [Facility C Loan] [Loan under an Amortising Incremental Facility], the Agent may shorten an Interest Period for any [Facility A Loan] [Facility B Loan] [Facility C Loan] [Loan under that Amortising Incremental Facility] to ensure there are sufficient [Facility A Loans] [Facility B Loans] [Facility C Loans] [Loans under that Amortising Incremental Facility] (with an aggregate Base Currency Amount equal to or greater than the relevant Repayment Instalment) which have an Interest Period ending on the relevant Repayment Date for the Borrowers to make the relevant Repayment Instalment due on that date.]

(b) [Prior to determining the interest rate for a Revolving Facility Loan, the Agent may shorten the Interest Period for any Revolving Facility Loan to ensure that, when aggregated with the Available Facility for the Revolving Facility, there are sufficient Revolving Facility 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.]

(c) If the Agent makes any of the changes to an Interest Period referred to in this Clause 16.2, it shall promptly notify the Parent and the Lenders.

16.3 Non-Business Days

(a) [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).

(b) If the Loan is in a Non-LIBOR Currency and there are rules specified as "Business Day Conventions" for that currency in Schedule 17 (Other Benchmarks), those rules shall apply to each Interest Period for that Loan.

16.4 Consolidation and division of Term Loans

(a) Subject to paragraph (b) below, if two or more Interest Periods:

(i) relate to:

(A) Facility A Loans made to the same Borrower[; or

(B) Incremental Facility Loans made under the same Incremental Facility and to the same Borrower]; and

(ii) end on the same date,

those Facility A Loans [or, as the case may be, Incremental Facility Loans] will, unless that Borrower (or the Parent 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 [or, as the case may be, a single Incremental Facility Loan,] on the last day of the Interest Period.

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

17. CHANGES TO THE CALCULATION OF INTEREST

17.1 Unavailability of Screen Rate

(a) 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.

Clause 17.1 (Unavailability of Screen Rate) provides for a waterfall of fallbacks if a Screen Rate is unavailable. Two (alternative) forms of Clause 17.1 (Unavailability of Screen Rate) 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.
(b) **Shortened Interest Period:** If no Screen Rate is available for LIBOR [or, if applicable, EURIBOR] [or, if applicable, the Benchmark Rate] for:

(i) the currency of a Loan; or

(ii) 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].

(c) **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:

(i) the currency of that Loan; or

(ii) 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.

(d) **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.

(e) **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 17.4 (Cost of funds) shall apply to that Loan for that Interest Period].

(f) **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 17.4 (Cost of funds) shall apply to that Loan for that Interest Period. ///

(f) ///] / OR
17.1 [Unavailability of Screen Rate]

(a) **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.

(b) **Reference Bank Rate:** If no Screen Rate is available for LIBOR [or, if applicable, EURIBOR] [or, if applicable, the Benchmark Rate] for:

(i) the currency of a Loan; or

(ii) 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 17.4 (Cost of funds) shall apply to that Loan for that Interest Period].

(c) **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 17.4 (Cost of funds) shall apply to that Loan for that Interest Period.]

17.2 [Calculation of Reference Bank Rate]

(a) 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.

(b) If at or about:

(i) [noon] on the Quotation Day[; or

(ii) in the case of a Benchmark Rate, the time specified in respect of the relevant currency in Schedule 17 (Other Benchmarks),]

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62 Users 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.

63 The timings in this Clause 17.2 (Calculation of Reference Bank Rate) are suggestions only and may need adjustment to accord with the Agent’s and Reference Banks’ operational requirements.
none or only one of the Reference Banks supplies a quotation, there shall be no Reference Bank Rate for the relevant Interest Period.]

17.3 **Market disruption**

If before:

(a) close of business in London on the Quotation Day for the relevant Interest Period; or

(b) in the case of a Loan in a Non-LIBOR Currency, the time specified in respect of that currency in Schedule 17 (Other Benchmarks),

the Agent receives notifications from a Lender or Lenders (whose participations in a Loan exceed [          ] per cent. of that Loan) that the cost to it of funding its participation in that Loan [from whatever source it may reasonably select] [from the wholesale market for the relevant currency] would be in excess of LIBOR [or, if applicable, EURIBOR] [or, if applicable, the Benchmark Rate] then Clause 17.4 (Cost of funds) shall apply to that Loan for the relevant Interest Period.

17.4 **Cost of funds**

(a) If this Clause 17.4 applies, the rate of interest on [each Lender's share of] the relevant Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:

(i) the Margin; [and]

(ii) [the rate notified to the Agent by that Lender] / [the weighted average of the rates notified to the Agent by each Lender] as soon as practicable and in any event [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), to be that which expresses as a percentage rate per annum the cost to the relevant Lender of funding its participation in that Loan from whatever source it may reasonably select[; and]

(iii) the Mandatory Cost, if any[, applicable to that Lender's participation in the Loan].

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64 Users should consider whether the Parent's rights under Clause 12.6 (Right of cancellation and repayment in relation to a single Lender or Issuing Bank) and Clause 42.8 (Replacement of Lender) should be extended to apply to a Lender making a notification to the Agent under Clause 17.3 (Market disruption).

65 Users should consider whether Clause 17.4 (Cost of funds) should be amended to allow the relevant Borrower to revoke the Utilisation Request relating to a Loan which falls to be priced on a cost of funds basis.

66 Include if cost of funds is not calculated on a weighted average basis.

67 Include if cost of funds is not calculated on a weighted average basis.
(b) If this Clause 17.4 applies and the Agent or the Parent so requires, the Agent and the Parent 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.

(c) Any alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Parent, be binding on all Parties.

(d) If this Clause 17.4 applies pursuant to Clause 17.3 (Market disruption) and:

   (i) 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

   (ii) a Lender does not supply a quotation by the time specified in paragraph (a)(ii) above,

the cost to that Lender of funding 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].

(e) [If this Clause 17.4 applies pursuant to Clause 17.1 (Unavailability of Screen Rate) 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.][68]

17.5 Notification to Parent

If Clause 17.4 (Cost of funds) applies the Agent shall, as soon as is practicable, notify the Parent.

17.6 Break Costs

(a) Each Borrower shall, within three Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by that Borrower on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.

(b) Each Lender shall, as soon as reasonably practicable after a demand by the Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

[68] Include if cost of funds is calculated on a weighted average basis.
18. FEES

18.1 Commitment fee

(a) The Parent shall pay to the Agent (for the account of each Lender) a fee [in the Base Currency] computed at the rate of:

(i) [ ] per cent. per annum on that Lender's Available Commitment under Facility A for the Availability Period applicable to Facility A;

(ii) [ ] per cent. per annum on that Lender's Available Commitment under Facility B for the Availability Period applicable to Facility B;

(iii) [ ] per cent. per annum on that Lender's Available Commitment under Facility C for the Availability Period applicable to Facility C;

(iv) [in relation to an Incremental Facility, the percentage rate per annum specified in the Incremental Facility Notice relating to that Incremental Facility on that Lender's Available Commitment under that Incremental Facility for the Availability Period applicable to that Incremental Facility;] and

(v) [ ] per cent. per annum on that Lender's Available Commitment under the Revolving Facility for the Availability Period applicable to the Revolving Facility.] 69

(b) 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 relevant Availability Period and, if cancelled in full, on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.

(c) [No commitment fee is payable to the Agent (for the account of a Lender) on any Available Commitment of that Lender for any day on which that Lender is a Defaulting Lender.]

18.2 Arrangement fee

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

18.3 Agency fee

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

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69 NB: This does not include commitment fee on any Revolving Facility Commitment blocked for use as an Ancillary Facility. Commitment fees on Ancillary Facilities are to be dealt with in Ancillary Documents.
18.4 **Security Agent fee**

The Parent shall pay to the Security Agent (for its own account) a security agent fee in the amount and at the times agreed in a Fee Letter.

18.5 **Fees payable in respect of Letters of Credit**

(a) [The Parent or] each Borrower shall pay to the Issuing Bank a fronting fee at the rate of [ ] per cent. per annum on the outstanding amount which is counter-indemnified by the other Lenders of each Letter of Credit requested by it for the period from the issue of that Letter of Credit until its Expiry Date.

(b) [The Parent or] each Borrower shall pay to the Agent (for the account of each Lender) a Letter of Credit fee in [the Base Currency] (computed at the rate equal to the Margin applicable to a Revolving Facility Loan) on the outstanding amount of each Letter of Credit requested by it for the period from the issue of that Letter of Credit until its Expiry Date. Subject to paragraph (c) of Clause 7.6 (*Regulation and consequences of cash cover provided by Borrower*), this fee shall be distributed according to each Lender’s L/C Proportion of that Letter of Credit.

(c) The accrued fronting fee and Letter of Credit fee on a Letter of Credit shall be payable on the last day of each successive period of three Months (or such shorter period as shall end on the Expiry Date for that Letter of Credit) starting on [the date of issue of that Letter of Credit] /[the date of this Agreement]. If the outstanding amount of a Letter of Credit is reduced, any fronting fee and Letter of Credit fee accrued in respect of the amount of that reduction shall be payable on the day that that reduction becomes effective.

(d) If a Borrower provides cash cover in respect of any Letter of Credit:

(i) the fronting fee payable to the Issuing Bank and (subject to paragraph (c) of Clause 7.6 (*Regulation and consequences of cash cover provided by Borrower*)), the Letter of Credit fee payable for the account of each Lender shall continue to be payable until the expiry of the Letter of Credit; and

(ii) *each to the extent that interest accrues on that cash cover for that Borrower’s account, that* Borrower shall be entitled to withdraw acess that interest accrued on the cash cover to pay the fees described in paragraph (i) above.

(e) [The Parent or] each Borrower shall pay to the Issuing Bank (for its own account) an issuance/administration fee in the amount and at the times specified in a Fee Letter.]

18.6 **Interest, commission and fees on Ancillary Facilities**

The rate and time of payment of interest, commission, fees and any other remuneration in respect of each Ancillary Facility shall be determined by agreement between the relevant Ancillary Lender and the Borrower of that Ancillary Facility based upon normal market rates and terms.
SECTION 6
ADDITIONAL PAYMENT OBLIGATIONS

19. TAX GROSS-UP AND INDEMNITIES  

19.1 Definitions

In this Agreement:

"Borrower DTTP Filing" means an HM Revenue & Customs’ Form DTTP2 duly completed and filed by the relevant Borrower, which:

(a) (i)—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

(i) (A)—where the Borrower is an Original Borrower, is filed with HM Revenue & Customs within 30 days of the date of this Agreement; or

(ii) (B)—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

(b) (ii)—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

(i) (A)—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

(ii) (B)—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.

"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

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This clause, Clause 19 (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, this clause, Clause 19 (Tax gross-up and indemnities) will need to be modified, in particular paragraphs (d), (g), (h), (i), (j), (k) and (l) of Clause 19.2 (Tax Gross-up) and the related definitions. If the “Treaty Lender” concept is used, always check the wording of relevant Treaties.

This clause, Clause 19 (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 25.10 (Deduction of Tax) requires amendment.
receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document.

"Qualifying Lender" means:?

(a) (i) a Lender which is beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document and is:

(i) (A) a Lender:

(A) (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

(B) (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

(ii) (B) a Lender which is:

(A) (1) a company resident in the United Kingdom for United Kingdom tax purposes;

(B) (2) a partnership each member of which is:

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

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

(C) (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

Users should consider expanding this definition if inclusion of pension funds among the lending syndicate is envisaged. Users should refer to the tax-gross up provisions in the recommended form of LMA Term Facility Agreement for use in Pan-European Private Placements for suitable language. Amendments will need to be made to: (a) the definitions of "Qualifying Lender" and "Tax Confirmation"; (b) paragraphs (d)(ii) and (d)(iii) of Clause 19.2 (Tax gross-up); (c) paragraph (a)(ii) of Clause 25.10 (Deduction of Tax); and (d) the forms of Tax Confirmation set out in Schedule 5 (Form of Transfer Certificate), Schedule 6 (Form of Assignment Agreement), Schedule 15 (Form of Increase Confirmation) and Schedule 19 (Form of Incremental Facility Lender Certificate).
respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company; or]

(ii) ___ (C) — a Treaty Lender; or

(b) ___ (ii) — a Lender which is a building society (as defined for the purposes of section 880 of the ITA) making an advance under a Finance Document].

[“Tax Confirmation” means a confirmation by a Lender that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:

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

(b) ___ (ii) — a partnership each member of which is:

(i) ___ (1) — a company so resident in the United Kingdom; or

(ii) ___ (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

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

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

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

"Tax Payment" means either the increase in a payment made by an Obligor to a Finance Party under Clause 19.2 (Tax gross-up) or a payment under Clause 19.3 (Tax indemnity).

"Treaty Lender" means a Lender which:

(a) ___ (i) — is treated as a resident of a Treaty State for the purposes of the Treaty;

(b) ___ (ii) — 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
"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.

["UK Non-Bank Lender" means:

(a) (i) an Original Lender listed in Part III of Schedule 1 (The Original Parties); and

(b) (ii) 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 19 a reference to "determines" or "determined" means a determination made in the absolute discretion of the person making the determination.

19.2 Tax gross-up

(a) Each Obligor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.

(b) The Parent 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 or Issuing Bank shall notify the Agent on becoming so aware in respect of a payment payable to that Lender or Issuing Bank. If the Agent receives such notification from a Lender or Issuing Bank it shall notify the Parent and that Obligor.

(c) 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.

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72 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.

73 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 (i);
- (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.
(d) 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:

(i) 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

(ii) the relevant Lender is a Qualifying Lender solely by virtue of paragraph (i)(B)(a)(ii) of the definition of "Qualifying Lender" and:

(A) 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 Parent a certified copy of that Direction; and

(B) the payment could have been made to the Lender without any Tax Deduction if that Direction had not been made; or

(iii) the relevant Lender is a Qualifying Lender solely by virtue of paragraph (i)(B)(a)(ii) of the definition of "Qualifying Lender" and:

(A) the relevant Lender has not given a Tax Confirmation to the Parent; and

(B) the payment could have been made to the Lender without any Tax Deduction if the Lender had given a Tax Confirmation to the Parent, on the basis that the Tax Confirmation would have enabled the Parent to have formed a reasonable belief that the payment was an "excepted payment" for the purpose of section 930 of the ITA; or

(iv) 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.

(e) 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.

(f) 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.

(g) 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.

(ii) 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

(B) 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.

(h) If a Lender has confirmed its scheme reference number and its jurisdiction of tax residence in accordance with paragraph (g)(ii) above and:

(i) a Borrower making a payment to that Lender has not made a Borrower DTTP Filing in respect of that Lender; or

(ii) a Borrower making a payment to that Lender has made a Borrower DTTP Filing in respect of that Lender but:

(A) that Borrower DTTP Filing has been rejected by HM Revenue & Customs; or

(B) 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 Filings; or

(C) 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.

(i) 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 Utilisation unless the Lender otherwise agrees.

(j) 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.

(k) [A UK Non-Bank Lender which is an Original Lender gives a Tax Confirmation to the Parent by entering into this Agreement.

(l) A UK Non-Bank Lender shall promptly notify the Parent and the Agent if there is any change in the position from that set out in the Tax Confirmation.]

19.3 Tax indemnity

(a) The Parent shall (within three Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.

(b) Paragraph (a) above shall not apply:

(i) with respect to any Tax assessed on a Finance Party:

(A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or

(B) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or

(ii) to the extent a loss, liability or cost:

(A) is compensated for by an increased payment under Clause 19.2 (Tax gross-up); or

(B) would have been compensated for by an increased payment under Clause 19.2 (Tax gross-up) but was not so compensated solely because one of the exclusions in paragraph (d) of Clause 19.2 (Tax gross-up) applied; or
(C) relates to a FATCA Deduction required to be made by a Party.

(c) A Protected Party making, or intending to make a claim under paragraph (a) above shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Parent.

(d) A Protected Party shall, on receiving a payment from an Obligor under this Clause 19.3, notify the Agent.

19.4 Tax Credit

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

(a) a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and

(b) that Finance Party has obtained and utilised that Tax Credit,

the Finance Party shall pay an amount to the 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.

19.5 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:

(a) not a Qualifying Lender;

(b) a Qualifying Lender (other than a Treaty Lender); or

(c) a Treaty Lender.

If such a Lender fails to indicate its status in accordance with this Clause 19.5 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 Parent). 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 19.5.

19.6 Stamp taxes

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

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):

(i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and

(ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply 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.

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.

Any reference in this Clause 19.7 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).74

(e) In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party’s VAT registration and such other information as is reasonably requested in connection with such Finance Party's VAT reporting requirements in relation to such supply.75

19.8 FATCA information

(a) Subject to paragraph (c) below, each Party shall, within [ten] Business Days of a reasonable request by another Party:

(i) confirm to that other Party whether it is:

(A) a FATCA Exempt Party; or

(B) not a FATCA Exempt Party;

(ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and

(iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.

(b) If a Party confirms to another Party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.

(c) Paragraph (a) above shall not oblige any Finance Party to do anything, and paragraph (a)(iii) above shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:

(i) any law or regulation;

(ii) any fiduciary duty; or

(iii) any duty of confidentiality.

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74 This provision does not operate in an international context, so where there is an international context, this wording should be reviewed and updated accordingly.

75 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.
(d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (a)(i) or (a)(ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.

(e) 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:

(i) where an Original Borrower is a US Tax Obligor and the relevant Lender is an Original Lender, the date of this Agreement;

(ii) where a Borrower is a US Tax Obligor on a date on which any other Lender becomes a Party as a Lender, that date;

(iii) the date a new US Tax Obligor accedes as a Borrower; or

(iv) where a Borrower is not a US Tax Obligor, the date of a request from the Agent,
supply to the Agent:

   (A) a withholding certificate on Form W-8, Form W-9 or any other relevant form; or

   (B) 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.

(f) 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.

(g) 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.

(h) 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 paragraph (e), (f) or (g) above.\textsuperscript{76}

19.9 **FATCA Deduction\textsuperscript{77}**

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

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

20. **INCREASED COSTS**

20.1 **Increased Costs\textsuperscript{78}**

(a) Subject to Clause 20.3 (Exceptions) the Parent 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.

(b) In this Agreement "Increased Costs" means:

(i) a reduction in the rate of return from a Facility or on a Finance Party's (or its Affiliate's) overall capital;

(ii) an additional or increased cost; or

(iii) a reduction of any amount due and payable under any Finance Document,

\textsuperscript{76} Paragraphs (e), (f), (g) and (h) of Clause 19.8 (FATCA information) may be used for loans entered into with US borrowers (or loans where a US borrower may become an Additional Borrower).

\textsuperscript{77} Clause 19.9 (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).

\textsuperscript{78} 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. Users may wish to consider whether to supplement the clause to address expressly the extent to which both Basel III costs and CRD IV costs/ 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.
which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or an Ancillary Commitment or funding or performing its obligations under any Finance Document or Letter of Credit.

20.2 Increased Costs claims

(a) A Finance Party intending to make a claim pursuant to Clause 20.1 (Increased Costs) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Parent.

(b) Each Finance Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount of its Increased Costs.

20.3 Exceptions

(a) Clause 20.1 (Increased Costs) does not apply to the extent any Increased Cost is:

(i) attributable to a Tax Deduction required by law to be made by an Obligor;

79 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 users 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 20.3 (Exceptions) to address this point:

"(v) 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 20.1 (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".

Users 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.
(ii) attributable to a FATCA Deduction required to be made by a Party;

(iii) compensated for by Clause 19.3 (Tax indemnity) (or would have been compensated for under Clause 19.3 (Tax indemnity) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 19.3 (Tax indemnity) applied); or

(iv) [compensated for by the payment of the Mandatory Cost;] or

(v) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.

(b) In this Clause 20.3 reference to a "Tax Deduction" has the same meaning given to the term in Clause 19.1 (Definitions).

21. OTHER INDEMNITIES

21.1 Currency indemnity

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

(i) making or filing a claim or proof against that Obligor; or

(ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

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

(b) 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.

21.2 Other indemnities

(a) The Parent shall (or shall procure that an Obligor will), within three Business Days of demand, indemnify the Arranger and each other Secured Party against any cost, loss or liability incurred by it as a result of:

(i) the occurrence of any Event of Default;

(ii) 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 35 (Sharing among the Finance Parties);
(iii) funding, or making arrangements to fund, its participation in a Utilisation requested by the Parent or 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);

(iv) issuing or making arrangements to issue a Letter of Credit requested by the Parent or a Borrower in a Utilisation Request but not issued by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone); or

(v) a Utilisation (or part of a Utilisation) not being prepaid in accordance with a notice of prepayment given by a Borrower or the Parent.

(b) The Parent shall promptly indemnify each Finance Party, each Affiliate of a Finance Party and each officer or employee of a Finance Party or its Affiliate, against any cost, loss or liability incurred by that Finance Party or its Affiliate (or officer or employee of that Finance Party or Affiliate) in connection with or arising out of the Acquisition or the funding of the Acquisition (including but not limited to those incurred in connection with any litigation, arbitration or administrative proceedings or regulatory enquiry concerning the Acquisition), unless such loss or liability is caused by the gross negligence or wilful misconduct of that Finance Party or its Affiliate (or employee or officer of that Finance Party or Affiliate). Any Affiliate or any officer or employee of a Finance Party or its Affiliate may rely on this Clause 21.2 [subject to Clause 1.4 (Third party rights) and the provisions of the Third Parties Act].

21.3 Indemnity to the Agent

The Parent shall promptly indemnify the Agent against:

(a) any cost, loss or liability incurred by the Agent (acting reasonably) as a result of:

(i) investigating any event which it reasonably believes is a Default;

(ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or

(iii) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement; and

(b) any cost, loss or liability [(including, without limitation, for negligence or any other category of liability whatsoever)]\(^{80}\) incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) [(or, in the case

\(^{80}\) Users should consider including this wording if the optional Clause 36.11 (Disruption to payment systems etc.) has been included.
of any cost, loss or liability pursuant to Clause 36.11 (*Disruption to payment systems etc.*) notwithstanding the Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent)\(^{81}\) in acting as Agent under the Finance Documents.

21.4 **Indemnity to the Security Agent**\(^{82}\)

(a) Each Obligor jointly and severally shall promptly indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability incurred by any of them as a result of:

(i) any failure by the Parent to comply with its obligations under Clause 23 (*Costs and expenses*);

(ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;

(iii) the taking, holding, protection or enforcement of the Transaction Security;

(iv) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent and each Receiver and Delegate by the Finance Documents or by law;

(v) any default by any Obligor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents; or

(vi) acting as Security Agent, Receiver or Delegate under the Finance Documents or which otherwise relates to any of the Charged Property (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).

(b) Each Obligor expressly acknowledges and agrees that the continuation of its indemnity obligations under this Clause 21.4 will not be prejudiced by any release or disposal under clause [14] (*Distressed Disposals and Appropriation*) of the Intercreditor Agreement taking into account the operation of that clause.

(c) The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 21.4 and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all moneys payable to it.

\(^{81}\) Include words in brackets if optional Clause 36.11 (*Disruption to payment systems etc.*) has been included.

\(^{82}\) To the extent that an equivalent indemnity is included in the Intercreditor Agreement the indemnity in this Clause 21.4 (*Indemnity to the Security Agent*) can be removed to avoid unnecessary overlap. (The recommended forms of LMA Intercreditor Agreement for Leveraged Acquisition Finance Transactions (Senior/Mezzanine) contains an equivalent indemnity at clause 24.1 (*Indemnity to the Security Agent*).)
22. MITIGATION BY THE LENDERS

22.1 Mitigation

(a) Each Finance Party shall, in consultation with the Parent, take all reasonable steps to mitigate any circumstances which arise and which would result in any Facility ceasing to be available or any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 12.1 (Illegality) (or, in respect of the Issuing Bank, Clause 12.2 (Illegality in relation to Issuing Bank)), Clause 19 (Tax gross-up and indemnities) or Clause 20 (Increased Costs) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.

(b) Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.

22.2 Limitation of liability

(a) The Parent 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 22.1 (Mitigation).

(b) A Finance Party is not obliged to take any steps under Clause 22.1 (Mitigation) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

23. COSTS AND EXPENSES

23.1 Transaction expenses

The Parent shall, promptly on demand, pay the Agent, the Arranger, the Issuing Bank and the Security Agent the amount of all costs and expenses (including legal fees) reasonably incurred by any of them (and, in the case of the Security Agent, by any Receiver or Delegate) in connection with the negotiation, preparation, printing, execution, syndication and perfection of:

(a) this Agreement and any other documents referred to in this Agreement and the Transaction Security; and

(b) any other Finance Documents executed after the date of this Agreement.

83 To the extent that an equivalent indemnity to the Security Agent is included in the Intercreditor Agreement the Security Agent can be removed from the coverage of the indemnity in Clause 23.1 (Transaction expenses) to avoid unnecessary overlap. (The recommended form of LMA Intercreditor Agreement for Leveraged Acquisition Finance Transactions (Senior/Mezzanine) contains an equivalent indemnity to the Security Agent at clause 23.1 (Transaction expenses)).
23.2 **Amendment costs**

If:

(a) an Obligor requests an amendment, waiver or consent; or

(b) an amendment is required pursuant to Clause 36.10 (Change of currency),

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

23.3 **Security Agent's management time and additional remuneration**

(a) Any amount payable to the Security Agent under Clause 21.4 (Indemnity to the Security Agent) and this Clause 23 shall include the cost of utilising the Security Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Security Agent may notify to the Parent and the Lenders, and is in addition to any other fee paid or payable to the Security Agent.

(b) Without prejudice to paragraph (a) above, in the event of:

(i) a Default;

(ii) the Security Agent being requested by an Obligor or the Majority Lenders to undertake duties which the Security Agent and the Parent agree to be of an exceptional nature or outside the scope of the normal duties of the Security Agent under the Finance Documents; or

(iii) the Security Agent and the Parent agreeing that it is otherwise appropriate in the circumstances,

the Parent shall pay to the Security Agent any additional remuneration that may be agreed between them or determined pursuant to paragraph (c) below.

(c) If the Security Agent and the Parent fail to agree upon the nature of the duties, or upon the additional remuneration referred to in paragraph (b) above or whether additional remuneration is appropriate in the circumstances, any dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Security Agent and approved by the Parent or, failing approval, nominated (on the application of the Security Agent) by the President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Parent) and

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Users may want to consider allocation of responsibility for the costs and expenses relating to any amendment or waiver contemplated by the optional Clause 42.5 (Replacement of Screen Rate).
the determination of any investment bank shall be final and binding upon the Parties. 85

23.4 Enforcement and preservation costs

The Parent shall, within three Business Days of demand, pay to each Secured Party the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of or the preservation of any rights under any Finance Document and the Transaction Security and any proceedings instituted by or against the Security Agent as a consequence of taking or holding the Transaction Security or enforcing these rights.

85 To the extent that an equivalent provision is included in the Intercreditor Agreement this provision can be removed to avoid unnecessary overlap. (The recommended form of LMA Intercreditor Agreement for Leveraged Acquisition Finance Transactions (Senior/Mezzanine) contains an equivalent provision at clause 21.17 (Security Agent’s management time and additional remuneration)).

86 To the extent that an equivalent indemnity to the Security Agent is included in the Intercreditor Agreement, the Security Agent can be removed from the coverage of the indemnity in Clause 23.4 (Enforcement and preservation costs) to avoid unnecessary overlap. (The recommended form of LMA Intercreditor Agreement for Leveraged Acquisition Finance Transactions (Senior/Mezzanine) contains an equivalent indemnity to the Security Agent at clause 23.3 (Enforcement and preservation costs).)
SECTION 7
GUARANTEE

24. GUARANTEE AND INDEMNITY

24.1 Guarantee and indemnity

Each Guarantor irrevocably and unconditionally jointly and severally:

(a) guarantees to each Finance Party punctual performance by each other Obligor of all that Obligor's obligations under the Finance Documents;

(b) undertakes with each Finance Party that whenever another Obligor does not pay any amount when due under or in connection with any Finance Document, that Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and

(c) agrees with each Finance Party that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Finance Party immediately on demand against any cost, loss or liability it incurs as a result of an Obligor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by a Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 24 if the amount claimed had been recoverable on the basis of a guarantee.

24.2 Continuing guarantee

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

24.3 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is made by a Finance Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Guarantor under this Clause 24 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

24.4 Waiver of defences

The obligations of each Guarantor under this Clause 24 will not be affected by an act, omission, matter or thing which, but for this Clause 24, would reduce, release or prejudice any of its obligations under this Clause 24 (without limitation and whether or not known to it or any Finance Party) including:

(a) any time, waiver or consent granted to, or composition with, any Obligor or other person;
(b) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;

(c) 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;

(d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;

(e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of a Finance Document or any other document or security including, without limitation, any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any Finance Document or other document or security;

(f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or

(g) any insolvency or similar proceedings.

24.5 Guarantor intent

Without prejudice to the generality of Clause 24.4 (Waiver of defences), each Guarantor expressly confirms that it intends that this guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

24.6 Immediate recourse

Each Guarantor waives any right it may have of first requiring any Finance Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under this Clause 24. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.
24.7 Appropriations

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

(a) refrain from applying or enforcing any other moneys, security or rights held or received by that Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Guarantor shall be entitled to the benefit of the same; and

(b) hold in an interest-bearing suspense account any moneys received from any Guarantor or on account of any Guarantor's liability under this Clause 24.

24.8 Deferral of Guarantors' rights

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Agent otherwise directs, no Guarantor will exercise 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 24:

(a) to be indemnified by an Obligor;

(b) to claim any contribution from any other guarantor of any Obligor's obligations under the Finance Documents;

(c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Finance Party;

(d) to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which any Guarantor has given a guarantee, undertaking or indemnity under Clause 24.1 (Guarantee and indemnity);

(e) to exercise any right of set-off against any Obligor; and/or

(f) to claim or prove as a creditor of any Obligor in competition with any Finance Party.

If a Guarantor receives any benefit, payment or distribution in relation to 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 36 (Payment mechanics).
24.9 **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:

(a) 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

(b) 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.

24.10 **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.

24.11 **Guarantee limitations**

[This guarantee does not apply to any liability to the extent that it would result in this guarantee constituting unlawful financial assistance within the meaning of sections 678 or 679 of the Companies Act 2006 [or any equivalent and applicable provisions under the laws of the Original Jurisdiction of the relevant Guarantor] and, with respect to any Additional Guarantor, is subject to any limitations set out in the Accession Deed applicable to such Additional Guarantor.]

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87 To the extent that any limitations are to apply to this guarantee, consideration should be given to whether those limitations should be extended to all indemnities and other assurances against loss in the Finance Documents, Hedging Agreements and the Mezzanine Finance Documents.
SECTION 8
REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

25. REPRESENTATIONS

25.1 General

(a) Each Obligor makes the representations and warranties set out in this Clause 25 to each Finance Party.

(b) In relation to the representations and warranties made on the date of this Agreement and any other date on or before the Closing Date, it is assumed that [Completion has occurred and] the Parent has the knowledge [of Senior Management].

25.2 Status

(a) It is a limited liability corporation, duly incorporated and validly existing under the law of its Original Jurisdiction.

(b) Each of its Subsidiaries is a limited liability corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation.

(c) It and each of its Subsidiaries has the power to own its assets and carry on its business as it is being conducted.

25.3 Binding obligations

Subject to the Legal Reservations:

(a) the obligations expressed to be assumed by it in each Transaction Document to which it is a party are legal, valid, binding and enforceable obligations; and

(b) (without limiting the generality of paragraph (a) above), each Transaction Security Document to which it is a party creates the security interests which that Transaction Security Document purports to create and those security interests are valid and effective.

88 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, users should note that some Lenders may have particular sensitivities to the amendment or waiver of any such clause. Users should consider the extent to which Clause 42.3 (All Lender matters) should be supplemented to require all Lender consent for such amendment or waiver.
25.4 **Non-conflict with other obligations**

The entry into and performance by it of, and the transactions contemplated by, the Transaction Documents [and the granting of the Transaction Security] [pursuant to the Agreed Security Principles] do not and will not conflict with:

(a) any law or regulation applicable to it;

(b) the constitutional documents of any member of the Group; or

(c) any agreement or instrument binding upon it or any member of the Group or any of its or any member of the Group's assets or constitute a default or termination event (however described) under any such agreement or instrument.

25.5 **Power and authority**

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

(b) [No limit on its powers will be exceeded as a result of the borrowing, grant of security or giving of guarantees or indemnities contemplated by the Transaction Documents to which it is a party.]

25.6 **Validity and admissibility in evidence**

(a) All Authorisations required or desirable:

(i) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party; and

(ii) to make the Transaction Documents to which it is a party admissible in evidence in its Relevant Jurisdictions, have been obtained or effected and are in full force and effect [except any Authorisation referred to in paragraph (b) of Clause 25.9 (No filing or stamp taxes) [and [ ]], which Authorisation[s] will be promptly obtained or effected after [the date of this Agreement]/[the Closing Date]].

(b) All Authorisations necessary for the conduct of the business, trade and ordinary activities of members of the Group have been obtained or effected and are in full force and effect [if failure to obtain or effect those Authorisations has or is reasonably likely to have a Material Adverse Effect].

25.7 **Governing law and enforcement**

(a) The choice of governing law of the Finance Documents will be recognised and enforced in its Relevant Jurisdictions.
(b) Any judgment obtained in relation to a Finance Document in the jurisdiction of the governing law of that Finance Document will be recognised and enforced in its Relevant Jurisdictions.

25.8 Insolvency

No:

(a) corporate action, legal proceeding or other procedure or step described in paragraph (a) of Clause 29.7 (Insolvency proceedings); or

(b) creditors' process described in Clause 29.8 (Creditors' process),

has been taken or, to the knowledge of the Parent, threatened in relation to a member of the Group; and none of the circumstances described in Clause 29.6 (Insolvency) applies to a member of the Group.

25.9 No filing or stamp taxes

Under the laws of its Relevant Jurisdiction it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents [except:

(a) registration of particulars of [ ] at Companies House in England and Wales under section 859A of the Companies Act 2006 and payment of associated fees;

(b) registration of particulars of [ ] at the Trade Marks Registry at the Patent Office in England and Wales and payment of associated fees; and

(c) registration of [ ] at HM Land Registry or the Land Charges Register in England and Wales and payment of associated fees,

[which registrations, filings[, taxes and fees] will be made [and paid] promptly after the date of the relevant Finance Document] /
25.10 **Deduction of Tax**

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

(a) a Qualifying Lender:

   (i) falling within paragraph (i)(A)(a)(i) of the definition of "Qualifying Lender"; [or]

   (ii) [except where a Direction has been given under section 931 of the ITA in relation to the payment concerned, falling within paragraph (i)(B)(a)(ii) of the definition of "Qualifying Lender"]; or

   (iii) [falling within paragraph (ii)(b) of the definition of "Qualifying Lender" or;]  

(b) 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).

25.11 **No default**

(a) No Event of Default and, on the date of this Agreement and the Closing Date, no Default is continuing or is reasonably likely to result from the making of any Utilisation or the entry into, the performance of, or any transaction contemplated by, any Transaction Document.

(b) No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or termination event (however described) under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or any of its Subsidiaries') assets are subject which has or is reasonably likely to have a Material Adverse Effect.

25.12 **No misleading information**

Save as disclosed in writing to the Agent and the Arranger prior to the date of this Agreement (or, in relation to the Information Memorandum, prior to the date of the Information Memorandum):

(a) any factual information contained in the Information Memorandum or the Information Package was true and accurate in all material respects as at the date

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89 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.

90 Include if paragraph (i)(B)(a)(ii) of the definition of Qualifying Lender is included in Clause 19.1 (Definitions).

91 Include if paragraph (ii)(b) of the definition of Qualifying Lender is included in Clause 19.1 (Definitions).
of the relevant report or document containing the information or (as the case may be) as at the date the information is expressed to be given;

(b) the Base Case Model has been prepared in accordance with the Accounting Principles as applied to the Original Financial Statements, and the financial projections contained in the Base Case Model have been prepared on the basis of recent historical information, are fair and based on reasonable assumptions and have been approved by the board of directors of the Parent;

(c) any financial projection or forecast contained in the Information Memorandum or the Information Package has been prepared on the basis of recent historical information and on the basis of reasonable assumptions and was fair (as at the date of the relevant report or document containing the projection or forecast) and arrived at after careful consideration;

(d) the expressions of opinion or intention provided by or on behalf of an Obligor for the purposes of the Information Memorandum or the Information Package were made after careful consideration and (as at the date of the relevant report or document containing the expression of opinion or intention) were fair and based on reasonable grounds;

(e) no event or circumstance has occurred or arisen and no information has been omitted from the Information Memorandum or the Information Package and no information has been given or withheld that results in the information, opinions, intentions, forecasts or projections contained in the Information Memorandum or the Information Package being untrue or misleading in any material respect;

(f) all material information provided to a Finance Party by or on behalf of the Investors, the Parent or the Company in connection with the Acquisition and/or the Target Group on or before the date of this Agreement and not superseded before that date (whether or not contained in the Information Package) is accurate and not misleading in any material respect and all projections provided to any Finance Party on or before the date of this Agreement have been prepared in good faith on the basis of assumptions which were reasonable at the time at which they were prepared and supplied; and

(g) all other written information provided by any member of the Group (including its advisers) to a Finance Party [or the provider of any Report] was true, complete and accurate in all material respects as at the date it was provided and is not misleading in any respect.

[The representations and warranties made with respect to the Reports are made by each Obligor in this Clause 25.12 only so far as it is aware after making due and careful enquiries.]

25.13 Financial Statements

(a) Its Original Financial Statements were prepared in accordance with the Accounting Principles consistently applied [unless expressly disclosed to the Agent in writing to the contrary] [However in the case of [monthly][and quarterly] statements, normal year-end adjustments were not made].
(b) Its unaudited Original Financial Statements fairly present its financial condition and its results of operations (consolidated in the case of Target) for the relevant [month] [or] [financial quarter][unless expressly disclosed to the Agent in writing to the contrary prior to the date of this Agreement].

(c) Its audited Original Financial Statements fairly present its financial condition and its results of operations (consolidated in the case of Target) during the relevant financial year [unless expressly disclosed to the Agent in writing to the contrary prior to the date of this Agreement].

(d) There has been no material adverse change in its assets, business or financial condition (or the assets, business or consolidated financial condition of the Group, in the case of the Parent) since the date of the [Accountants' Report/Original Financial Statements].

(e) The Original Financial Statements of the Target [and the Parent] do not consolidate the results, assets or liabilities of any person or business which does not form part of the [Target Shares or the Target Assets].

(f) Its most recent financial statements delivered pursuant to Clause 26.1 (Financial statements):

   (i) have been prepared in accordance with the Accounting Principles as applied to the Original Financial Statements [and the Base Case Model]; and

   (ii) fairly present its consolidated financial condition as at the end of, and its consolidated results of operations for, the period to which they relate.

(g) The budgets and forecasts supplied under this Agreement were arrived at after careful consideration and have been prepared in good faith on the basis of recent historical information and on the basis of assumptions which were reasonable as at the date they were prepared and supplied.

(h) Since the date of the most recent financial statements delivered pursuant to Clause 26.1 (Financial statements) there has been no material adverse change in the assets, business or financial condition of the Group.

25.14 No proceedings

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

(b) No judgment or order of a court, arbitral body or agency which is reasonably likely to have a Material Adverse Effect has (to the best of its knowledge and belief (having made due and careful enquiry)) been made against it or any of its Subsidiaries.
25.15 **No breach of laws**

(a) It has not [(and none of its Subsidiaries has)] breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.

(b) No labour disputes are current or, to the best of its knowledge and belief (having made due and careful enquiry), threatened against any member of the Group which have or are reasonably likely to have a Material Adverse Effect.

25.16 **Environmental laws**

(a) Each member of the Group is in compliance with Clause 28.3 (*Environmental compliance*) and to the best of its knowledge and belief (having made due and careful enquiry) no circumstances have occurred which would prevent such compliance in a manner or to an extent which has or is reasonably likely to have a Material Adverse Effect.

(b) No Environmental Claim has been commenced or (to the best of its knowledge and belief (having made due and careful enquiry)) is threatened against any member of the Group where that claim has or is reasonably likely, if determined against that member of the Group, to have a Material Adverse Effect.

(c) The cost to the Group of compliance with Environmental Laws (including Environmental Permits) is (to the best of its knowledge and belief, having made due and careful enquiry) adequately provided for in the [Base Case Model] and the cost of compliance with the recommendations contained in the Environmental Report is adequately provided for in the [Base Case Model].

25.17 **[Taxation]**

(a) It is not (and none of its Subsidiaries is) materially overdue in the filing of any Tax returns and it is not (and none of its Subsidiaries is) overdue in the payment of any amount in respect of Tax of [ ] (or its equivalent in any other currency) or more.

(b) No claims or investigations are being, or are reasonably likely to be, made or conducted against it (or any of its Subsidiaries) with respect to Taxes [such that a liability of, or claim against, any member of the Group of [ ] (or its equivalent in any other currency) or more is reasonably likely to arise].

(c) It is resident for Tax purposes only in its Original Jurisdiction.]

25.18 **Anti-corruption law**

Each member of the Group has conducted its businesses in compliance with applicable anti-corruption laws and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

25.19 **Security and Financial Indebtedness**

(a) No Security or Quasi-Security exists over all or any of the present or future assets of any member of the Group other than as permitted by this Agreement.
(b) No member of the Group has any Financial Indebtedness outstanding other than as permitted by this Agreement.

25.20 **Ranking**

The Transaction Security has or will have [the ranking in priority which it is expressed to have in the Transaction Security Documents]/[first ranking priority] and it is not subject to any prior ranking or *pari passu* ranking Security.

25.21 **Good title to assets**

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

25.22 **Legal and beneficial ownership**

(a) [Subject to paragraph (c) below,] it and each of its Subsidiaries is the sole legal and beneficial owner of the respective assets over which it purports to grant Security.

(b) [Subject to paragraph (c) below,] all the [Target Shares] [and] [Target Assets] are or will be on the Closing Date legally and beneficially owned by [the Company/the members of the Group specified in the Structure Memorandum as owner of those shares and assets] free from any claims, third party rights or competing interests other than Permitted Security permitted under Clause 28.16 (*Negative pledge*).

(c) [The [Target Shares] are beneficially but not legally owned by the purchaser until those shares are registered in the register of shareholders of Target, which registration will be made as soon as possible after the Closing Date].

25.23 **Shares**

The shares of any member of the Group which are subject to the Transaction Security are fully paid and not subject to any option to purchase or similar rights. The constitutional documents of companies whose shares are subject to the Transaction Security do not and could not restrict or inhibit any transfer of those shares on creation or enforcement of the Transaction Security. Except as provided in the Shareholders’ Agreement [and the Warrant Documents], there are no agreements in force which provide for the issue or allotment of, or grant any person the right to call for the issue or allotment of, any share or loan capital of any member of the Group or member of the Target Group (including any option or right of pre-emption or conversion).

25.24 **Intellectual Property**

It [and each of its Subsidiaries]:

(a) is the sole legal and beneficial owner of or has licensed to it [on normal commercial terms] all the Intellectual Property which is material in the context of its business and which is required by it in order to carry on its business as it is being conducted and as contemplated in the Base Case Model;
(b) does not [(nor does any of its Subsidiaries)], in carrying on its businesses, infringe any Intellectual Property of any third party in any respect [which has or is reasonably likely to have a Material Adverse Effect]; and

(c) has taken all formal or procedural actions (including payment of fees) required to maintain any material Intellectual Property owned by it.

25.25 **Group Structure Chart**

(a) Assuming Completion has occurred [and steps [ ] to [ ] of the Structure Memorandum have been completed.] the Group Structure Chart delivered to the Agent pursuant to Part IA of Schedule 2 (*Conditions precedent*) is true, complete and accurate in all material respects and shows the following information:

(i) each member of the Group, including current name and company registration number, its Original Jurisdiction (in the case of an Obligor), its jurisdiction of incorporation (in the case of a member of the Group which is not an Obligor) and/or its jurisdiction of establishment, a list of shareholders and indicating whether a company is a Dormant Subsidiary or is not a company with limited liability; and

(ii) all minority interests in any member of the Group and any person in which any member of the Group holds shares in its issued share capital or equivalent ownership interest of such person.

(b) All necessary intra-Group loans, transfers, share exchanges and other steps resulting in the final Group structure are set out in the Group Structure Chart and have been or will be taken in compliance with all relevant laws and regulations and all requirements of relevant regulatory authorities.

25.26 **Obligors**

(a) [Each Subsidiary of the Parent incorporated in the United Kingdom [(other than a Dormant Subsidiary)] and each Material Company incorporated in any other jurisdiction is or will be an Obligor on the Closing Date.][Each Subsidiary [(other than a Dormant Subsidiary)] is or will be an Obligor on the Closing Date.]

(b) [The aggregate of earnings before interest, tax, depreciation and amortisation (calculated on the same basis as EBITDA)] / [The aggregate gross assets, aggregate net assets and aggregate turnover] of the Guarantors on the Closing Date (calculated on an unconsolidated basis and excluding all intra-Group items and investments in Subsidiaries of any member of the Group) exceeds [ ]% of [EBITDA] / [the consolidated gross assets, consolidated net assets and consolidated turnover of the Group].

25.27 **Accounting Reference Date**

The Accounting Reference Date of each member of the Group is [   ].
25.28 **Acquisition Documents, disclosures and other Documents**

(a) The Acquisition Documents contain all the terms of the Acquisition.

(b) There is no disclosure made [in the Disclosure Letter or any other disclosure] to the Acquisition Documents or the Shareholders’ Agreement which has or may have a [material] adverse effect on any of the information, opinions, intentions, forecasts and projections contained or referred to in the Information Package.

(c) To the best of its knowledge no representation or warranty (as qualified by [the Disclosure Letter]) given by any party to the Acquisition Document[s] is untrue or misleading in any material respect.

(d) The Shareholders' Agreement, the Service Contracts and the constitutional documents of the Parent and the Company (as amended to the extent permitted under this Agreement and the Intercreditor Agreement) contain all the material terms of all the agreements and arrangements between Senior Management and the Investors and between Senior Management, the Parent and any member of the Group.

25.29 **Centre of main interests and establishments**

For the purposes of Regulation (EU) 2015/848 of 20 May 2015 on insolvency proceedings (recast) (the "Regulation"), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in [England and Wales]/[its Original Jurisdiction] [and it has no "establishment" (as that term is used in Article 2(10) of the Regulation) in any other jurisdiction].

25.30 **[Pensions]**

Except for [specify any existing defined benefit pension schemes or those of any employer with which any member of the Group has been "connected" or "associated"]:  

(a) neither it nor any of its Subsidiaries is or has at any time been an employer (for the purposes of sections 38 to 51 of the Pensions Act 2004) of an occupational pension scheme which is not a money purchase scheme (both terms as defined in the Pensions Schemes Act 1993); and

(b) neither it nor any of its Subsidiaries is or has at any time been "connected" with or an "associate" of (as those terms are used in sections 38 and 43 of the Pensions Act 2004) such an employer.]

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This representation should only be included if there are not and never have been any defined benefit occupational pension schemes (i.e. final salary pension schemes) within the Group (other than to the extent disclosed) and the Lenders want this position confirmed by the Obligors at the outset. This representation does not need to be repeated if the undertaking contained in paragraph (b) of Clause 28.27 (Pensions) is included because the undertaking provides the ongoing obligation on the Group not to have such pension schemes.

This representation has been included to take account of the Pensions Act 2004, which effectively makes all members of the Group responsible for the deficits in any defined benefit occupational pension schemes which are operated by any member of the Group.
25.31 **No adverse consequences**

(a) It is not necessary under the laws of its Relevant Jurisdictions:

(i) in order to enable any Finance Party to enforce its rights under any Finance Document; or

(ii) by reason of the execution of any Finance Document or the performance by it of its obligations under any Finance Document,

that any Finance Party should be licensed, qualified or otherwise entitled to carry on business in any of its Relevant Jurisdictions.

(b) No Finance Party is or will be deemed to be resident, domiciled or carrying on business in its Relevant Jurisdictions by reason only of the execution, performance and/or enforcement of any Finance Document.

25.32 **Holding and Dormant Companies**

(a) Except as may arise under the Transaction Documents and for Acquisition Costs, before the Closing Date neither the Parent nor the Company has traded or incurred any liabilities or commitments (actual or contingent, present or future) other than in the case of the Parent acting as a Holding Company of the Company.

(b) Each of [insert list of dormant subsidiaries] is a Dormant Subsidiary.

25.33 **Times when representations made**

(a) All the representations and warranties in this Clause 25 are made by each Original Obligor on the date of this Agreement [except for the representations and warranties set out in paragraphs (a) to (e) of Clause 25.12 (No misleading information) which are deemed to be made by each Obligor (i) with respect to the Information Memorandum, on the date the Information Memorandum is approved by the Parent, (ii) with respect to the Base Case Model, on the date of this Agreement and on the Closing Date and (iii) with respect to the Information Package (other than the Base Case Model), on the date of this Agreement and on any later date on which the Information Package (or part of it) is released to the Arranger[s] for distribution in connection with syndication].

(b) All the representations and warranties in this Clause 25 are deemed to be made by each Obligor on the Closing Date.

(c) The representations and warranties in Clause 25.12 (No misleading information) are deemed to be made by each Obligor on the Syndication Date.

(d)

(i) Subject to paragraph (ii) below, the Repeating Representations are deemed to be made by each Obligor:

(A) on the date of each Utilisation Request;
(B) on each Utilisation Date; [and]

(C) on the first day of each Interest Period;

(D) on the date of each Incremental Facility Notice; [and]

(E) on each Establishment Date;] [and

(F) in the case of those contained in paragraphs (d) and (h) of Clause 25.13 (Financial Statements) and for so long as any amount is outstanding under the Finance Documents or any Commitment is in force, [on each day]/[on the dates falling at [seven day]/[monthly]/[ ] intervals after the date of this Agreement].

(ii) The Repeating Representations contained in paragraphs (a) to (e) of Clause 25.13 (Financial Statements) will cease to be deemed to be made by each Obligor once subsequent financial statements have been delivered under this Agreement.

(e) All the representations and warranties in this Clause 25 except Clause 25.12 (No misleading information), Clause 25.25 (Group Structure Chart), Clause 25.28 (Acquisition Documents, Disclosures and Other Documents) and Clause 25.32 (Holding and Dormant Companies) are deemed to be made by each Additional Obligor on the day on which it becomes (or it is proposed that it becomes) an Additional Obligor.

(f) Each representation or warranty deemed to be made after the date of this Agreement shall be deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made.

26. INFORMATION UNDERTAKINGS

The undertakings in this Clause 26 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

In this Clause 26:

"Annual Financial Statements" means the financial statements for a Financial Year delivered pursuant to paragraph (a) of Clause 26.1 (Financial statements).

"Monthly Financial Statements" means the financial statements delivered pursuant to paragraph (c) of Clause 26.1 (Financial statements).

"Quarterly Financial Statements" means the financial statements delivered pursuant to paragraph (b) of Clause 26.1 (Financial statements).
26.1 **Financial statements**

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

(a) as soon as they are available, but in any event within [ ] days after the end of each of its Financial Years:

   (i) its audited consolidated financial statements for that Financial Year;

   (ii) the audited financial statements (consolidated if appropriate) of each Obligor for that Financial Year; [and

   (iii) the audited financial statements of any other [Material Company]/[Subsidiary] for that Financial Year if requested by the Agent;

(b) [as soon as they are available, but in any event within [ ] days after the end of each Financial Quarter of each of its Financial Years its consolidated financial statements for that Financial Quarter;] and

(c) as soon as they are available, but in any event within [ ] days after the end of each month its financial statements on a consolidated basis for that month (to include cumulative management accounts for the Financial Year to date).

26.2 **Provision and contents of Compliance Certificate**

(a) The Parent shall supply a Compliance Certificate to the Agent with each set of its Annual Financial Statements and each set of its Quarterly Financial Statements.

(b) The Compliance Certificate shall, amongst other things, set out (in reasonable detail) computations as to compliance with Clause 27 (Financial Covenants).

(c) Each Compliance Certificate shall be signed by two directors of the Parent [and, if required to be delivered with the Annual Financial Statements of the Parent, shall be reported on by the [Parent's Auditors]/[Monitoring Accountants]/[Parent's Auditors or, if the Majority Lenders so require, the Monitoring Accountants] in the form agreed by the Parent and the Majority Lenders].

26.3 **Requirements as to financial statements**

(a) The Parent shall procure that each set of Annual Financial Statements, Quarterly Financial Statements and Monthly Financial Statements includes a balance sheet, profit and loss account and cashflow statement. In addition the Parent shall procure that:

   (i) each set of its Annual Financial Statements shall be audited by the Parent's Auditors;93

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93 See the footnote to the definition of "Parent's Auditors".
(ii) each set of Quarterly Financial Statements includes a cashflow forecast in respect of the Group relating to the [ ] month period commencing at the end of the relevant Financial Quarter;

(iii) each set of Monthly Financial Statements is accompanied by a statement by the directors of the Parent commenting on the performance of the Group for the month to which the financial statements relate [and the Financial Year to date] and any material developments or proposals affecting the Group or its business; and

(iv) [specify other requirements].

(b) Each set of financial statements delivered pursuant to Clause 26.1 (Financial statements):

(i) shall be certified by a director of the relevant company as [fairly presenting its financial condition and operations as at the date as at which those financial statements were drawn up and, in the case of the Annual Financial Statements, shall be accompanied by any letter addressed to the management of the relevant company by the auditors of those Annual Financial Statements and accompanying those Annual Financial Statements];

(ii) in the case of consolidated financial statements of the Group, shall be accompanied by a statement by the directors of the Parent comparing actual performance for the period to which the financial statements relate to:

(A) the projected performance for that period set out in the Budget; and

(B) the actual performance for the corresponding period in the preceding Financial Year of the Group; and

(iii) [shall be prepared in accordance with the Accounting Principles./ [shall be prepared using the Accounting Principles, accounting practices and financial reference periods consistent with those applied:

(A) in the case of the Parent, in the preparation of the Base Case Model; and

(B) in the case of any Obligor, in the preparation of the Original Financial Statements for that Obligor,

unless, in relation to any set of financial statements, the Parent notifies the Agent that there has been a change in the Accounting Principles or the accounting practices and the Parent's Auditors (or, if appropriate, the auditors of the Obligor) deliver to the Agent:

(C) a description of any change necessary for those financial statements to reflect the Accounting Principles or accounting practices upon which the Base Case Model or, as the case may
be, that Obligor's Original Financial Statements were prepared; and

(D) sufficient information, in form and substance as may be reasonably required by the Agent, to enable the Lenders to determine whether Clause 27 (Financial covenants) has been complied with, to determine the Margin as set out in the definition of "Margin", to determine the amount of any prepayments to be made from Excess Cashflow under Clause 13.2 (Disposal, Insurance and Acquisition Proceeds and Excess Cashflow) and to make an accurate comparison between the financial position indicated in those financial statements and the Base Case Model (in the case of the Parent) or that Obligor's Original Financial Statements (in the case of an Obligor).

Any reference in this Agreement to any financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Base Case Model or, as the case may be, the Original Financial Statements were prepared.]

(c) If the Agent wishes to discuss the financial position of any member of the Group with the auditors of that member of the Group, the Agent may notify the Parent, stating the questions or issues which the Agent wishes to discuss with those auditors. In this event, the Parent must ensure that those auditors are authorised (at the expense of the Parent):

(i) to discuss the financial position of the relevant member of the Group with the Agent on request from the Agent; and

(ii) to disclose to the Agent for the Finance Parties any information which the Agent may reasonably request.

(d) [Notwithstanding any other term of this Agreement no Event of Default shall occur, or be deemed to occur, as a result of any restriction on the identity of the Parent's Auditors contained in this Agreement being prohibited, unlawful, ineffective, invalid or unenforceable pursuant to the Audit Laws.]

26.4 Budget

(a) The Parent shall supply to the Agent in sufficient copies for all the Lenders, as soon as the same become available but in any event within [ ] days before the start of each of its Financial Years, an annual Budget for that financial year.

(b) The Parent shall ensure that each Budget for a financial year:

(i) is in a form reasonably acceptable to the Agent and includes:

(A) a projected consolidated profit and loss, balance sheet and cashflow statement for the Group;

(B) projected financial covenant calculations; and
(C) [ ],

for that financial year and for each Financial Quarter of that financial year;

(ii) is prepared in accordance with the Accounting Principles and the accounting practices and financial reference periods applied to financial statements under Clause 26.1 (Financial statements); and

(iii) has been approved by the board of directors of the Parent.

(c) If the Company updates or changes the Budget, it shall [promptly][within not more than [ ] days of the update or change being made] deliver to the Agent, in sufficient copies for each of the Lenders, such updated or changed Budget together with a written explanation of the main changes in that Budget.

26.5 Group companies

The Parent shall, at the request of the Agent, supply to the Agent a report issued by the [Parent's Auditors]/[Monitoring Accountants]/[Parent's Auditors or, if the Majority Lenders so require, the Monitoring Accountants] stating [which of its Subsidiaries are Material Companies] [and confirming that [the aggregate of earnings before interest, tax, depreciation and amortisation (calculated on the same basis as EBITDA)] / [the aggregate gross assets, aggregate net assets and aggregate turnover] of the Guarantors (calculated on an unconsolidated basis and excluding all intra-Group items and investments in Subsidiaries of any member of the Group) exceeds [ ]% of [EBITDA]/[the consolidated gross assets, consolidated net assets and consolidated turnover of the Group]].

26.6 Presentations

Once in every Financial Year, [or more frequently if requested to do so by the Agent if the Agent reasonably suspects a Default is continuing or may have occurred or may occur], at least two directors of the Parent (one of whom shall be the chief financial officer) must give a presentation to the Finance Parties about the on-going business and financial performance of the Group.

26.7 Year-end

(a) The Parent shall [not change its Accounting Reference Date]/[procure that the end of each annual accounting period of each member of the Group falls on [ ]].

(b) [The Parent shall procure that its first annual accounting period ends within six months of its date of incorporation.]
26.8  **Information: miscellaneous**

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

(a) at the same time as they are dispatched, copies of all documents [dispatched by the Parent to its shareholders generally (or any class of them) or] dispatched by the Parent or any Obligors to its creditors generally (or any class of them);

(b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group and which, if adversely determined, are reasonably likely to have a Material Adverse Effect [or which would involve a liability, or a potential or alleged liability, exceeding £[ ] (or its equivalent in other currencies)];

(c) promptly upon becoming aware of them, the details of any judgment or order of a court, arbitral body or agency which is made against any member of the Group and which is reasonably likely to have a Material Adverse Effect [or which would involve a liability, or a potential or alleged liability, exceeding £[ ] (or its equivalent in other currencies)];

(d) promptly upon becoming aware of the relevant claim, the details of any claim which is current, threatened or pending against the Vendor or any other person in respect of the Acquisition Documents and details of any disposal or insurance claim which will require a prepayment under Clause 13.2 *(Disposal, Insurance and Acquisition Proceeds and Excess Cashflow)*;

(e) promptly, such information as the Security Agent may reasonably require about the Charged Property and compliance of the Obligors with the terms of any Transaction Security Documents; and

(f) promptly on request, such further information regarding the financial condition, assets and operations of the Group and/or any member of the Group (including any requested amplification or explanation of any item in the financial statements, budgets or other material provided by any Obligor under this Agreement, any changes to [management of the Group]/[Senior Management] and an up to date copy of its shareholders’ register (or equivalent in its Original Jurisdiction)) as any Finance Party through the Agent may reasonably request.

26.9  **Notification of default**

(a) 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).

(b) Promptly upon a request by the Agent, the Parent 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).
26.10 "Know your customer" checks

(a) If:

(i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;

(ii) any change in the status of an Obligor (or of a Holding Company of an Obligor) or the composition of the shareholders of an Obligor (or of a Holding Company of an Obligor) after the date of this Agreement; or

(iii) a proposed assignment or transfer by a Lender of any of its rights and/or obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges the Agent or any Lender (or, in the case of paragraph (iii) above, any prospective new Lender) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, 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.

(b) Each Lender shall promptly upon the request of the Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself) in order for the Agent to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

(c) The Parent 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 32 (Changes to the Obligors).

(d) 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 Parent 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.94

27. **FINANCIAL COVENANTS**

27.1 **Financial definitions**

In this Agreement:

["Adjusted EBITDA" means, in relation to a Relevant Period, EBITDA for that Relevant Period adjusted by:

(a) including the operating profit before interest, tax, depreciation[.]/[and] amortisation [and impairment charges] (calculated on the same basis as EBITDA) of a member of the Group (or attributable to a business [or assets]) acquired during the Relevant Period for that part of the Relevant Period prior to its becoming a member of the Group or (as the case may be) prior to the acquisition of the business [or assets]; and

(b) excluding the operating profit before interest, tax, depreciation[.]/[and] amortisation [and impairment charges] (calculated on the same basis as EBITDA) attributable to any member of the Group (or to any business [or assets]) disposed of during the Relevant Period for that part of the Relevant Period.]

"[Adjusted] Leverage" means, in respect of any Relevant Period, the ratio of Total [Net] Debt on the last day of that Relevant Period to [Adjusted] EBITDA in respect of that Relevant Period.

"Borrowings" means, at any time, the aggregate outstanding principal, capital or nominal amount (and any fixed or minimum premium payable on prepayment or redemption) of any indebtedness of members of the Group for or in respect of:

(a) moneys borrowed and debit balances at banks or other financial institutions;

(b) any acceptances under any acceptance credit or bill discount facility (or dematerialised equivalent);

(c) any note purchase facility or the issue of bonds [(but not Trade Instruments)], notes, debentures, loan stock or any similar instrument;

(d) any Finance Lease;

(e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis [and meet any requirements for de-recognition under the Accounting Principles]);

94 With regard to Original Obligors, it is assumed that "know your customer" identification procedures will be complied with prior to execution of this Agreement.
(f) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument [(but not, in any case, Trade Instruments)] issued by a bank or financial institution in respect of [(i)] an underlying liability of an entity which is not a member of the Group which liability would fall within one of the other paragraphs of this definition [or (ii) any liabilities of any member of the Group relating to any post-retirement benefit scheme];

(g) [any amount raised by the issue of shares which are redeemable (other than at the option of the issuer) before the [insert final repayment date of Facilities] [or are otherwise classified as borrowings under the Accounting Principles]];

(h) any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind the entry into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question or (ii) the agreement is in respect of the supply of assets or services and payment is due more than [ ] days after the date of supply;

(i) any amount raised under any other transaction (including any forward sale or purchase agreement, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing [or otherwise classified as borrowings under the Accounting Principles]; and

(j) (without double counting) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (i) above.

"Business Acquisition" means the acquisition of a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them) or the incorporation of a company.

"Capital Expenditure" means any expenditure or obligation in respect of expenditure [(other than expenditure or obligations in respect of Business Acquisitions)] which, in accordance with the Accounting Principles, is treated as capital expenditure [(and except for the purposes of paragraph (g) of the definition of "Cashflow" where it shall not be included) including the capital element of any expenditure or obligation incurred in connection with a Finance Lease]].

"Cashflow" means, in respect of any Relevant Period, EBITDA for that Relevant Period after:

(a) adding the amount of any decrease (and deducting the amount of any increase) in Working Capital for that Relevant Period;

(b) adding the amount of any cash receipts (and deducting the amount of any cash payments) during that Relevant Period in respect of any Exceptional Items not already taken account of in calculating EBITDA for any Relevant Period [(other than, in the case of cash receipts, Relevant Proceeds)];

95 Consider whether other types of shares/investments which might be classified as debt under the Accounting Principles should be included.
(c) adding the amount of any cash receipts during that Relevant Period in respect of any Tax rebates or credits and deducting the amount actually paid or due and payable in respect of Taxes during that Relevant Period by any member of the Group;

(d) [adding (to the extent not already taken into account in determining EBITDA) the amount of any dividends or other profit distributions received in cash by any member of the Group during that Relevant Period from any entity which is itself not a member of the Group and deducting (to the extent not already deducted in determining EBITDA) the amount of any dividends paid in cash during the Relevant Period to minority shareholders in members of the Group;]*

(e) [adding the amount of any cash paid to a member of the Group in the Relevant Period that represents repayment of any loan made to a Joint Venture;]

(f) adding the amount of any increase in provisions, other non-cash debits and other non-cash charges (which are not Current Assets or Current Liabilities) and deducting the amount of any non-cash credits (which are not Current Assets or Current Liabilities) in each case to the extent taken into account in establishing EBITDA;

(g) deducting the amount of any Capital Expenditure actually made [(or due to be made)] in cash during that Relevant Period by any member of the Group [and the aggregate of any cash consideration paid for, or the cash cost of, any Business Acquisitions and the amount of any Joint Venture Investments] except (in each case) to the extent funded from:

   (i) the proceeds of any Disposal or insurance claims permitted to be retained for this purpose;

   (ii) [Retained Excess Cashflow;]

   (iii) [any Capex/Acquisition Facility];

   (iv) New Shareholder Injections; or

   (v) [other];

(h) [deducting the amount of any cash costs of Pension Items during that Relevant Period to the extent not taken into account in establishing EBITDA;] and

(i) [others],

and so that no amount shall be added (or deducted) more than once [and there shall be excluded the effect of all cash movements associated with the Acquisition and the Acquisition Costs].

96 NB: See paragraph (f) of "EBITDA". If paragraph (f) of "EBITDA" is not included this may need to be amended.
"Cashflow Cover" means the ratio of Cashflow to Debt Service in respect of any Relevant Period.

"Current Assets" means the aggregate (on a consolidated basis) of all inventory, work in progress, trade and other receivables of each member of the Group including prepayments in relation to operating items and sundry debtors (but excluding Cash [and Cash Equivalent Investments]) expected to be realised within twelve months from the date of computation but excluding amounts in respect of:

(a) receivables in relation to Tax;
(b) Exceptional Items and other non-operating items;
(c) insurance claims;[and]
(d) any interest owing to any member of the Group; and
(e) amounts owed by [the Vendor] in connection with the Acquisition.

"Current Liabilities" means the aggregate (on a consolidated basis) of all liabilities (including trade creditors, accruals and provisions) of each member of the Group expected to be settled within twelve months from the date of computation but excluding amounts in respect of:

(a) liabilities for Borrowings and Finance Charges;
(b) liabilities for Tax;
(c) Exceptional Items and other non-operating items;
(d) insurance claims;[and]
(e) liabilities in relation to dividends declared but not paid by the Parent or by a member of the Group in favour of a person which is not a member of the Group; and
(f) amounts owed to [the Vendor] in connection with the Acquisition.

"Debt Service" means, in respect of any Relevant Period, the aggregate of:

(a) [Net] Finance Charges for that Relevant Period;
(b) all scheduled [and mandatory] repayments of Borrowings falling due [and any voluntary prepayments made] during that Relevant Period but excluding:

(i) any amounts falling due under any overdraft or revolving facility [(including, without limitation, the Revolving Facility and any Ancillary

97 See paragraph (b) of "Excess Cashflow". If included in Debt Service here no need to deal separately with voluntary prepayments in "Excess Cashflow". 
and which were available for simultaneous redrawing according to the terms of that facility;

(ii) for the avoidance of doubt, any mandatory prepayment made pursuant to Clause 13.2 (Disposal, Insurance and Acquisition Proceeds and Excess Cashflow);

(iii) any such obligations owed to any member of the Group; and

(iv) any prepayment of Borrowings existing on the Closing Date which is required to be repaid under the terms of this Agreement;

(c) [the amount of any cash dividends or distributions paid or made by the Parent in respect of that Relevant Period;]98 and

(d) the amount of the capital element of any payments in respect of that Relevant Period payable under any Finance Lease entered into by any member of the Group,

and so that no amount shall be included more than once.

"EBITDA" means, in respect of any Relevant Period, the consolidated operating profit of the Group before taxation ([including]/[excluding] the results from discontinued operations):

(a) [before deducting any interest, commission, fees, discounts, prepayment fees, premiums or charges and other finance payments whether paid, payable or capitalised by any member of the Group (calculated on a consolidated basis) in respect of that Relevant Period;]

(b) not including any accrued interest owing to any member of the Group;

(c) after adding back any amount attributable to the amortisation[,]/[or] depreciation [or impairment] of assets of members of the Group [(and taking no account of the reversal of any previous impairment charge made in that Relevant Period)];

(d) before taking into account any Exceptional Items;

(e) before deducting any Acquisition Costs;

(f) [after deducting the amount of any profit (or adding back the amount of any loss) of any member of the Group which is attributable to minority interests;]99

(g) [plus or minus the Group's share of the profits or losses (after finance costs and tax) of Non-Group Entities [after deducting the amount of any profit of any Non-Group Entity to the extent that the amount of the profit included in the

98 See footnote to "Finance Charges". No need to add here if already included there.

99 See footnote to paragraph (d) of "Cashflow".
financial statements of the Group exceeds the amount actually received in cash by members of the Group through distributions by the Non-Group Entity];[100]

(h) \[**before taking into account** any unrealised gains or losses on any [derivative instrument]/[financial instrument] (other than any derivative instrument which is accounted for on a hedge accounting basis)];

(i) \[**before taking into account** any gain [or loss] arising from an upward [or downward] revaluation of any other asset [at any time after [insert date of latest financials]]];

(j) \[**before taking into account** any Pension Items;]

(k) \[excluding the charge to profit represented by the expensing of stock options;]

(l) \[**before taking into account** any gain arising from any Excluded Debt Purchase Transaction;] [101] and

(m) \[**others**],

in each case, to the extent added, deducted or taken into account, as the case may be, for the purposes of determining operating profits of the Group before taxation. [102]

"**Exceptional Items**" means [any exceptional, one off, non-recurring or extraordinary items]/[any material items of an unusual or non-recurring nature which represent gains or losses including those arising on:

(a) the restructuring of the activities of an entity and reversals of any provisions for the cost of restructuring;

(b) disposals, revaluations, write downs or impairment of non-current assets or any reversal of any write down or impairment;

(c) disposals of assets associated with discontinued operations; [and

(d) any other examples of "exceptional items"].

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100 See footnote to paragraph (d) of "Cashflow".

101 The accounting treatment of Debt Purchase Transactions should be addressed only if the Agreement permits Borrowers to enter into Debt Purchase Transactions. See footnote to Clause 31 (Restriction on Debt Purchase Transactions).

102 An increase in EBITDA may result from the reclassification (as depreciation and interest) of expenses relating to old "operating leases" as a result of the introduction of new lease accounting standards under IFRS 16 in relation to accounting periods from 1 January 2019 or under other similar changes under other accounting regimes (see footnote to the definition of "Finance Lease"). Users should consider the impact of any such changes in the context of the Group's business and the Base Case Model and the extent to which any adjustments to this definition or to the relevant financial ratios may be appropriate.
"Excess Cashflow" means, for any period for which it is being calculated, Cashflow for that period less (except to the extent already deducted in calculating Cashflow):

(a) Debt Service for that period;

(b) [the amount of any voluntary prepayments made under the Finance Documents during that period;]³⁰³

(c) [to the extent included in Cashflow, the amount of any New Shareholder Injections made during that period;]³⁰⁴

(d) any [Unused Amount in respect of the immediately preceding Financial Year]/[Permitted Carry Forward Amount in respect of such Financial Year] [less any [Unused Amount]/[Permitted Carry Forward Amount] carried forward to such Financial Year which has not been applied in payment of Capital Expenditure]; [and]

(e) [de minimis amount].

["Excluded Debt Purchase Transaction" means:

(a) any Debt Purchase Transaction; [and

(b) any [Debt Purchase Transaction] (as defined in the Mezzanine Facility Agreement)]³⁰⁵

entered into by a member of the Group.]³⁰⁶

"Finance Charges" means, for any Relevant Period, the aggregate amount of the accrued interest, commission, fees, discounts, prepayment fees, premiums or charges and other finance payments in respect of Borrowings paid [or payable] by any member of the Group (calculated on a consolidated basis) in cash [or capitalised] in respect of that Relevant Period:

(a) [including]/[excluding] any upfront fees or costs [which are included as part of the effective interest rate adjustments];

(b) including the interest (but not the capital) element of payments in respect of Finance Leases;

(c) including any commission, fees, discounts and other finance payments payable by (and deducting any such amounts payable to) any member of the Group under any interest rate hedging arrangement;[and]

³⁰³ NB: See footnote to paragraph (b) of "Debt Service".

³⁰⁴ Include if New Shareholder Injections are included in Exceptional Items or Cashflow.

³⁰⁵ Include if this Agreement does not regulate Mezzanine debt buybacks.

³⁰⁶ The accounting treatment of Debt Purchase Transactions should be addressed only if the Agreement permits Borrowers to enter into Debt Purchase Transactions. See footnote to Clause 31 (Restriction on Debt Purchase Transactions).
(d) **excluding** any Acquisition Costs;

(e) [excluding any interest cost or expected return on plan assets in relation to any post-employment benefit schemes;]

(f) [if a Joint Venture is accounted for on a proportionate consolidation basis, after **adding** the Group's share of the finance costs or interest receivable of the Joint Venture;]

(g) [taking no account of any unrealised gains or losses on any [derivative instruments]/[financial instruments] other than any derivative instruments which are accounted for on a hedge accounting basis;][and]

(h) [excluding (i) any capitalised interest [(other than cash pay interest converted to capitalised interest pursuant to [paragraph (b)(iii)(C) of clause 5.8 (Amendments and Waivers: Mezzanine Lenders)] of the Intercreditor Agreement)] in respect of the loan made under the Mezzanine Facility Agreement [and (ii) interest (capitalised or otherwise) in respect of the Loan Notes [or the Vendor Notes] (and others)].

[together with the amount of any cash dividends or distributions paid or made by the Parent in respect of that Relevant Period] and so that no amount shall be added (or deducted) more than once.

"**Finance Lease**" means any lease or hire purchase contract, a liability under which would, in accordance with the Accounting Principles, be treated as a balance sheet liability [(other than a lease or hire purchase contract which would, in accordance with the Accounting Principles in force [prior to 1 January 2019] / [prior to [ ] ] / [ ]108, have been treated as an operating lease)]

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

"**Financial Year**" means the annual accounting period of the Group [ending on or about [ ] in each year].

"**Interest Cover**" means the ratio of EBITDA to [Net] Finance Charges in respect of any Relevant Period.

["**Net Finance Charges**" means, for any Relevant Period, the Finance Charges for that Relevant Period after **deducting** any interest payable in that Relevant Period to any

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107 NB: If included here may be deleted from paragraph (c) of "Debt Service".

108 Insert the appropriate reference point for the applicable Accounting Principles (see footnote 109 below).

109 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 Accounting Principles. For example, the reference point of 1 January 2019 is only suitable if the applicable Accounting Principles are IFRS. If the Agreement is entered into before the accounting change under the applicable Accounting Principles takes effect, a reference to the Accounting Principles in force "as at the date of this Agreement" may be an appropriate reference point.
member of the Group (other than by another member of the Group) on any Cash or Cash Equivalent Investment."

"New Shareholder Injections" means the aggregate amount subscribed for by any person (other than a member of the Group) for ordinary shares in the [Parent] or for subordinated loan notes or other subordinated debt instruments in the Parent [on substantially the same terms as the Loan Notes or otherwise] on terms acceptable to the Majority Lenders.

"Non-Group Entity" means any investment or entity (which is not itself a member of the Group (including associates and Joint Ventures)) in which any member of the Group has an ownership interest.

["Pension Items" means any income or charge attributable to a post-employment benefit scheme other than the current service costs [and any past service costs and curtailments and settlements] attributable to the scheme.]

["Permitted Carry Forward Amount" has the meaning given to it in Clause 27.2 (Financial condition).]

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

"Relevant Period" means [each period of twelve months[, or[, in the case of paragraph (a) (Cashflow Cover) of Clause 27.2 (Financial condition),] such shorter period commencing on the Closing Date[,] ending on or about the last day of the Financial Year and each period of twelve months ending on or about the last day of each Financial Quarter.]

["Relevant Proceeds" means Acquisition Proceeds, Disposal Proceeds or Insurance Proceeds (each as defined in Clause 13.2 (Disposal, Insurance and Acquisition Proceeds and Excess Cashflow)).]

"Retained Excess Cashflow" means Excess Cashflow which is not required to be applied in making any prepayment under the Finance Documents.

"Senior Interest Cover" means the ratio of EBITDA to Senior [Net] Finance Charges in respect of any Relevant Period.

"Senior [Adjusted] Leverage" means, in respect of any Relevant Period, the ratio of Senior Total [Net] Debt on the last day of that Relevant Period to [Adjusted] EBITDA in respect of that Relevant Period.

["Senior [Net] Finance Charges" means, in respect of any Relevant Period, the [Net] Finance Charges for that Relevant Period less that part of the Finance Charges for that Relevant Period attributable to the Mezzanine Facility [and without taking into account any commissions, fees, discounts and other finance payments receivable or payable under any interest rate hedging in respect of the Mezzanine Facility].]

"Senior Total [Net] Debt" means, at any time, the Total [Net] Debt after deducting that part of Total [Net] Debt attributable to the Mezzanine Facility.
"Total [Net] Debt" means, at any time, the aggregate amount of all obligations of members of the Group for or in respect of Borrowings at that time but:

(a) excluding any such obligations to any other member of the Group;

(b) [excluding any such obligations in respect of the Loan Notes [and, to the extent they constitute Borrowings, any New Shareholder Injections]] [and the Vendor Notes];

(c) including, in the case of Finance Leases only, their capitalised value; and

(d) [deducting the aggregate amount of Cash and Cash Equivalent Investments held by any [member of the Group]/[Obligors] at that time],

and so that no amount shall be included or excluded more than once.

"Unused Amount" has the meaning given to it in Clause 27.2 (Financial condition).

"Working Capital" means, on any date, Current Assets less Current Liabilities.

27.2 Financial condition

The Parent shall ensure that:

(a) Cashflow Cover: Cashflow Cover in respect of any Relevant Period [ending on or after [insert date]] / [specified in column 1 below] shall not be less than [[ ]:1]/[the ratio set out in column 2 below opposite that Relevant Period].

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Relevant Period</td>
<td>Ratio</td>
</tr>
<tr>
<td>Relevant Period expiring [ ]</td>
<td>[ ]:1</td>
</tr>
</tbody>
</table>

(b) Senior Interest Cover: Senior Interest Cover in respect of any Relevant Period specified in column 1 below shall not be less than the ratio set out in column 2 below opposite that Relevant Period.

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Relevant Period</td>
<td>Ratio</td>
</tr>
<tr>
<td>Relevant Period expiring [ ]</td>
<td>[ ]:1</td>
</tr>
</tbody>
</table>

(c) Interest Cover: Interest Cover in respect of any Relevant Period specified in column 1 below shall not be less than the ratio set out in column 2 below opposite that Relevant Period.

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Relevant Period</td>
<td>Ratio</td>
</tr>
<tr>
<td>Relevant Period expiring [ ]</td>
<td>[ ]:1</td>
</tr>
</tbody>
</table>
(d) **Senior [Adjusted] Leverage:** Senior [Adjusted] Leverage in respect of any Relevant Period specified in column 1 below shall not exceed the ratio set out in column 2 below opposite that Relevant Period.

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Relevant Period expiring [ ]</td>
<td>[ ]:1</td>
</tr>
</tbody>
</table>

(e) **[Adjusted] Leverage:** [Adjusted] Leverage in respect of any Relevant Period specified in column 1 below shall not exceed the ratio set out in column 2 below opposite that Relevant Period.

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Relevant Period expiring [ ]</td>
<td>[ ]:1</td>
</tr>
</tbody>
</table>

(f) **Capital Expenditure:** The aggregate Capital Expenditure of the Group (other than Capital Expenditure funded by the retention of the proceeds of [Recovery Claims (as defined in Clause 13.2 *(Disposal, Insurance and Acquisition Proceeds and Excess Cashflow)*)], [Disposals] and insurance claims in accordance with Clause 13.5 *(Excluded Proceeds)* [or from New Shareholder Injections]) in respect of any Financial Year specified in column 1 below shall not exceed the amount set out in column 2 below opposite that Financial Year.

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial Year Ending</td>
<td>Maximum Expenditure</td>
</tr>
</tbody>
</table>

[If in any Financial Year (the "**Original Financial Year**") the amount of the Capital Expenditure is less than the maximum amount permitted for that Original Financial Year (the difference being referred to below as the "**Unused Amount**"), then the maximum expenditure amount set out in column 2 above for the immediately following Financial Year (the "**Carry Forward Year**") shall [for the purpose of that Carry Forward Year only] be increased by an amount (the "**Permitted Carry Forward Amount**") equal to [the Unused Amount]/[the lower/[lowest] of (1) the Unused Amount and (2) [ ]% of the maximum amount permitted for the Original Financial Year, (3) [insert currency and number], and (4) the amount which could have been utilised by way of additional Capital Expenditure in the Original Financial Year without]
causing a breach of paragraph (a) (Cashflow Cover) of Clause 27.2 (Financial condition) during that Original Financial Year.

[In any Carry Forward Year, the original amount specified in column 2 above shall be treated as having been incurred prior to any Permitted Carry Forward Amount carried forward into that Carry Forward Year and no amount carried forward into that Carry Forward Year may be carried forward into a subsequent Financial Year.]

27.3 Financial testing

(a) [Subject to paragraph (b) below,] the financial covenants set out in Clause 27.2 (Financial condition) shall be calculated in accordance with the Accounting Principles and tested by reference to each of the financial statements delivered pursuant to [paragraphs (a)(i) and (b) of] Clause 26.1 (Financial statements) and/or each Compliance Certificate delivered pursuant to Clause 26.2 (Provision and contents of Compliance Certificate).

(b) [For the purpose of the financial covenants in paragraph (d) (Senior [Adjusted] Leverage) and paragraph (e) ([Adjusted] Leverage) of Clause 27.2 (Financial condition) for each of the Relevant Periods ending on a date which is less than 12 months after the Closing Date, EBITDA shall be calculated by reference to the amount of EBITDA as disclosed in the financial statements and/or Compliance Certificates for the Financial Quarters ending after the Closing Date, annualised [on a straight line basis]/[in accordance with the EBITDA seasonality profile for the business of the Group agreed between the Arranger and the Parent on or prior to the date of this Agreement]. [specify other method of pro forma-ing EBITDA]]

28. GENERAL UNDERTAKINGS

The undertakings in this Clause 28 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.

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110 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, users should note that some Lenders may have particular sensitivities to the amendment or waiver of any such clause. Users should consider the extent to which Clause 42.3 (All Lender matters) should be supplemented to require all Lender consent for such amendment or waiver.
**Authorisations and compliance with laws**

28.1 **Authorisations**

Each Obligor shall promptly:

(a) obtain, comply with and do all that is necessary to maintain in full force and effect; and

(b) supply certified copies to the Agent of:

any Authorisation required under any law or regulation of a Relevant Jurisdiction to:

(i) enable it to perform its obligations under the Finance Documents and the Acquisition Documents;

(ii) ensure the legality, validity, enforceability or admissibility in evidence of any Finance Document or Acquisition Document; and

(iii) carry on its business where failure to do so has or is reasonably likely to have a Material Adverse Effect.

28.2 **Compliance with laws**

Each Obligor shall (and the Parent shall ensure that each member of the Group will) comply in all respects with all laws to which it may be subject, if failure so to comply has or is reasonably likely to have a Material Adverse Effect.

28.3 **Environmental compliance**

(a) Each Obligor shall (and the Parent shall ensure that each member of the Group will):

(i) comply with all Environmental Law;

(ii) obtain, maintain and ensure compliance with all requisite Environmental Permits;

(iii) implement procedures to monitor compliance with and to prevent liability under any Environmental Law,

where failure to do so has or is reasonably likely to have a Material Adverse Effect.

(b) [ ].

28.4 **Environmental Claims**

Each Obligor shall (through the Parent), promptly upon becoming aware of the same, inform the Agent in writing of:

(a) any Environmental Claim against any member of the Group which is current, pending or threatened; and
(b) any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced or threatened against any member of the Group,

where the claim, if determined against that member of the Group, has or is reasonably likely to have a Material Adverse Effect.

28.5 Anti-corruption law

(a) No Obligor shall (and the Parent shall ensure that no other member of the Group will) directly or indirectly use the proceeds of the Facilities for any purpose which would breach the Bribery Act 2010, the United States Foreign Corrupt Practices Act of 1977 or other similar legislation in other jurisdictions.

(b) Each Obligor shall (and the Parent shall ensure that each other member of the Group will):

(i) conduct its businesses in compliance with applicable anti-corruption laws; and

(ii) maintain policies and procedures designed to promote and achieve compliance with such laws.

28.6 Taxation

(a) Each Obligor shall (and the Parent shall ensure that each member of the Group will) pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:

(i) such payment is being contested in good faith;

(ii) adequate reserves are being maintained for those Taxes and the costs required to contest them which have been disclosed in its latest financial statements delivered to the Agent under Clause 26.1 (Financial statements); and

(iii) such payment can be lawfully withheld [and failure to pay those Taxes does not have or is not reasonably likely to have a Material Adverse Effect].

(b) No member of the Group may change its residence for Tax purposes.

Restrictions on business focus

28.7 Merger

No Obligor shall (and the Parent shall ensure that no other member of the Group will) enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction [other than a Permitted Transaction or any sale, lease, transfer or other disposal permitted pursuant to Clause 28.17 (Disposals)].
28.8 **Change of business**

The Parent shall procure that no substantial change is made to the general nature of the business of the Parent, the Obligors or the Group taken as a whole from that carried on by the Target Group at the date of this Agreement.

28.9 **Acquisitions**

(a) Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no other member of the Group will):

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

(ii) incorporate a company.

(b) Paragraph (a) above does not apply to an acquisition of a company, of shares, securities or a business or undertaking (or, in each case, any interest in any of them) or the incorporation of a company which is:

(i) a Permitted Acquisition;

(ii) a Permitted Joint Venture; or

(iii) a Permitted Transaction.

28.10 **Joint ventures**

(a) Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no other member of the Group will):

(i) enter into, invest in or acquire (or agree to acquire) any shares, stocks, securities or other interest in any Joint Venture; or

(ii) transfer any assets or lend to or guarantee or give an indemnity for or give Security for the obligations of a Joint Venture or maintain the solvency of or provide working capital to any Joint Venture (or agree to do any of the foregoing).

(b) Paragraph (a) above does not apply to any acquisition of (or agreement to acquire) any interest in a Joint Venture or transfer of assets (or agreement to transfer assets) to a Joint Venture or loan made to or guarantee given in respect of the obligations of a Joint Venture if such transaction is a Permitted Acquisition, a Permitted Disposal, a Permitted Loan or a Permitted Joint Venture.
28.11 **Holding Companies**

Neither the Parent nor the Company shall trade, carry on any business, own any assets or incur any liabilities except for:

(a) the provision of administrative services (excluding treasury services) to other members of the Group of a type customarily provided by a holding company to its Subsidiaries;

(b) ownership of shares in its Subsidiaries, intra-Group debit balances, intra-Group credit balances and other credit balances in bank accounts, cash and Cash Equivalent Investments but only if those shares, credit balances, cash and Cash Equivalent Investments are subject to the Transaction Security;

(c) any liabilities under the Transaction Documents to which it is a party and professional fees and administration costs in the ordinary course of business as a holding company.

28.12 **Dormant subsidiaries**

[No Obligor shall (and the Parent shall ensure no other member of the Group will) cause or permit any member of the Group which is a Dormant Subsidiary to commence trading or cease to satisfy the criteria for a Dormant Subsidiary unless such Dormant Subsidiary becomes an Additional Guarantor in accordance with Clause 32.4 (Additional Guarantors)].

**Restrictions on dealing with assets and Security**

28.13 **Preservation of assets**

Each Obligor shall (and the Parent shall ensure that each other member of the Group will) maintain in good working order and condition (ordinary wear and tear excepted) all of its assets necessary or desirable in the conduct of its business.

28.14 **Pari passu ranking**

Each Obligor shall ensure that at all times any unsecured and unsubordinated claims of a Finance Party against it under the Finance Documents rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies.

28.15 **Acquisition Documents**

(a) The Company shall (and the Parent will procure that the Company will) promptly pay all amounts payable to the Vendor under the Acquisition Documents as and when they become due (except to the extent that any such amounts are being contested in good faith by a member of the Group and where adequate reserves are set aside for any such payment).

(b) The Company shall, (and the Parent will procure that the Company and each relevant member of the Group will), take all reasonable and practical steps to
preserve and enforce its rights (or the rights of any other member of the Group) and pursue any claims and remedies arising under any Acquisition Documents.

28.16 **Negative pledge**

In this Clause 28.16, "**Quasi-Security**" means an arrangement or transaction described in paragraph (b) below.

Except as permitted under paragraph (c) below:

(a) No Obligor shall (and the Parent shall ensure that no other member of the Group will) create or permit to subsist any Security over any of its assets.

(b) No Obligor shall (and the Parent shall ensure that no other member of the Group will):

(i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by an Obligor [or any other member of the Group];

(ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;

(iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or

(iv) enter into any other preferential arrangement having a similar effect, in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

(c) Paragraphs (a) and (b) above do not apply to any Security or (as the case may be) Quasi-Security, which is:

(i) Permitted Security; or

(ii) a Permitted Transaction.

28.17 **Disposals**

(a) Except as permitted under paragraph (b) below, no Obligor shall (and the Parent 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.

(b) Paragraph (a) above does not apply to any sale, lease, transfer or other disposal which is:

(i) a Permitted Disposal (other than a disposal, to another member of the Group, of a creditor's rights under a Structural Intra-Group Loan);
(ii) a Permitted Transaction (other than a disposal, to another member of the Group, of a creditor's rights under a Structural Intra-Group Loan);

(iii) a disposal giving effect to a Liabilities Acquisition which is permitted by, and as defined in, the Intercreditor Agreement; or

(iv) a disposal, to another member of the Group, of a creditor's rights under a Structural Intra-Group Loan where that disposal is made to enable the Company to make payments of any fees or other charges due under [ ] [provided that [(A)] such disposal is made when no Default is continuing or would occur immediately after the making of the disposal; [and] (B) such disposal is not restricted by the Intercreditor Agreement [and [ ]].

28.18 Arm's length basis

(a) Except as permitted by paragraph (b) below, no Obligor shall (and the Parent shall ensure that no other member of the Group will) enter into any transaction with any person except on arm's length terms and for full market value.

(b) The following transactions shall not be a breach of this Clause 28.18:

(i) intra-Group loans permitted under Clause 28.19 (Loans or credit);

(ii) fees, costs and expenses payable under the Transaction Documents in the amounts set out in the Transaction Documents delivered to the Agent under Clause 4.1 (Initial conditions precedent) or agreed by the Agent;

(iii) any Permitted Transaction; and

(iv) any Liabilities Acquisition which is permitted by, and as defined in, the Intercreditor Agreement.

Restrictions on movement of cash – cash out

28.19 Loans or credit

(a) Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no other member of the Group will) be a creditor in respect of any Financial Indebtedness.

(b) Paragraph (a) above does not apply to:

(i) a Permitted Loan; or

(ii) a Permitted Transaction.

28.20 No guarantees or indemnities

(a) Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no other member of the Group will) incur or allow to remain outstanding any guarantee in respect of any obligation of any person.
(b) Paragraph (a) does not apply to a guarantee which is:

(i) a Permitted Guarantee; or

(ii) a Permitted Transaction.

28.21 **Dividends and share redemption**

(a) Except as permitted under paragraph (b) below, the Parent shall not (and will ensure that no other member of the Group will):

(i) declare, make or pay any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital);

(ii) repay or distribute any dividend or share premium reserve;

(iii) pay or allow any member of the Group to pay any management, advisory or other fee to or to the order of any of the shareholders of the Parent; or

(iv) redeem, repurchase, defease, retire or repay any of its share capital or resolve to do so.

(b) Paragraph (a) above does not apply to:

(i) a Permitted Distribution; or

(ii) a Permitted Transaction (other than one referred to in paragraph (c) of the definition of that term).

28.22 **Loan Notes and Vendor Notes**

(a) Except as permitted under paragraph (b) below, the Parent shall not (and will ensure that no other member of the Group will):

(i) repay or prepay any principal amount (or capitalised interest) outstanding under the [Loan Notes]/[Vendor Notes];

(ii) pay any interest, fee or charge accrued or due under the [Loan Note Instrument]/[Vendor Note Instrument]; or

(iii) purchase, redeem, defease or discharge any of the loan notes outstanding under the [Loan Note Instrument]/[Vendor Note Instrument].

(b) Paragraph (a) above does not apply to [ ].
28.23 **Mezzanine Facility and Structural Intra-Group Loans**

(a) Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no other member of the Group will):

(i) repay or prepay any principal amount (or capitalised interest) outstanding under the Mezzanine Facility or the Structural Intra-Group Loans;

(ii) pay any interest or any other amounts payable in connection with the Mezzanine Facility or the Structural Intra-Group Loans; or

(iii) purchase, redeem, defease or discharge any amount outstanding with respect to [the Mezzanine Facility or] the Structural Intra-Group Loans.

(b) Paragraph (a) does not apply to a payment, repayment, prepayment, purchase, redemption, defeasance or discharge which is a Permitted Payment or is otherwise permitted under the Intercreditor Agreement.

**Restrictions on movement of cash – cash in**

28.24 **Financial Indebtedness**

(a) Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no other member of the Group will) incur or allow to remain outstanding any Financial Indebtedness.

(b) Paragraph (a) above does not apply to Financial Indebtedness which is:

(i) Permitted Financial Indebtedness; or

(ii) a Permitted Transaction.

28.25 **Share capital**

No Obligor shall (and the Parent shall ensure that no other member of the Group will) issue any shares except pursuant to:

(a) a Permitted Share Issue; or

(b) a Permitted Transaction.

**Miscellaneous**

28.26 **Insurance**

(a) Each Obligor shall (and the Parent shall ensure that each other member of the Group will) maintain insurances on and in relation to its business and assets

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111 Remove reference to Mezzanine Facility if Mezzanine buyback is covered in the definition of "Debt Purchase Transaction" and related restrictions.
against those risks and to the extent as is usual for companies carrying on the
same or substantially similar business.

(b) All insurances must be with reputable independent insurance companies or
underwriters.

(c) Where insurances and risks have been identified in the Insurance Report, the
Parent shall ensure the insurances maintained are at least in respect of the
business and assets and against the risks and to the extent recommended in the
Insurance Report.

(d) [Within 30 days of the date of this Agreement, the]/[The] Parent shall [obtain
and] maintain [each]/[the] Key-man Policy and procure the renewal or
replacement of [each]/[the] Key-man Policy prior to its expiry.]

(e) [ ].

28.27 Pensions

(a) [The Parent shall ensure that all pension schemes operated by or maintained for
the benefit of members of the Group and/or any of their employees are fully
funded based on the statutory funding objective under sections 221 and 222 of
the Pensions Act 2004 and that no action or omission is taken by any member
of the Group in relation to such a pension scheme which has or is reasonably
likely to have a Material Adverse Effect (including, without limitation, the
termination or commencement of winding-up proceedings of any such pension
scheme or any member of the Group ceasing to employ any member of such a
pension scheme).]

(b) [[Except for [specify any existing defined benefit pension schemes] the Parent
shall ensure that no member of the Group is or has been at any time an employer
(for the purposes of sections 38 to 51 of the Pensions Act 2004) of an
occupational pension scheme which is not a money purchase scheme (both
terms as defined in the Pension Schemes Act 1993) or "connected" with or an
"associate" of (as those terms are used in sections 38 or 43 of the Pensions Act
2004) such an employer].]

(c) The Parent shall deliver to the Agent at such times as those reports are prepared
in order to comply with the then current statutory or auditing requirements (as
applicable either to the trustees of any relevant schemes or to the Parent),

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112 Content of this provision will need to be considered on a case-by-case basis.

113 This provision is of limited value as a scheme can be fully funded but still have a deficit. In the context of
the Pensions Act 2004, what is more important is whether the Group has sufficient reserves/assets to meet the
contingent pension liabilities if those liabilities are crystallised at any time during the life of the loan.

114 This undertaking has been adapted to take account of the Pensions Act 2004. Its purpose is to complement
the pensions representation, to ensure that, other than to the extent disclosed, no Group member has or has
had any connection or association with a defined benefit pension scheme. This undertaking is also intended
to ensure that no company which subsequently becomes a member of the Group has or has had any connection
or association with such a pension scheme. Its purpose is to try to ensure that (other than to the extent
disclosed) there will be no Group liability for defined benefit pension scheme deficits.
actuarial reports in relation to all pension schemes mentioned in paragraph (a) above.

(d) The Parent shall promptly notify the Agent of any material change in the rate of contributions to any pension schemes mentioned in (a) above paid or recommended to be paid (whether by the scheme actuary or otherwise) or required (by law or otherwise).

(e) [Each Obligor shall immediately notify the Agent of any investigation or proposed investigation by the Pensions Regulator which may lead to the issue of a Financial Support Direction or a Contribution Notice to [it/any member of the Group].]¹¹⁵

(f) [Each Obligor shall immediately notify the Agent if it receives a Financial Support Direction or a Contribution Notice from the Pensions Regulator.]

28.28 [People with Significant Control regime]

Each Obligor shall (and the Parent shall ensure that each other member of the Group will):

(a) within the relevant timeframe, comply with any notice it receives pursuant to Part 21A of the Companies Act 2006 from any company incorporated in the United Kingdom whose shares are the subject of the Transaction Security; and

(b) promptly provide the Security Agent with a copy of that notice.¹¹⁶

28.29 Access

[If a [Default]/[Event of Default] is continuing or the Agent reasonably suspects a [Default]/[Event of Default] is continuing or may occur, each]/[Each] Obligor shall, and the Parent shall ensure that each [member of the Group]/[Obligor] will, (not more than once in every Financial Year unless the Agent reasonably suspects a [Default]/[Event of Default] is continuing or may occur) permit the Agent and/or the Security Agent and/or accountants or other professional advisers and contractors of the Agent or Security Agent free access at all reasonable times and on reasonable notice at the risk and cost of the Obligor or Company to (a) the premises, assets, books, accounts and records of each [member of the Group]/[Obligor] and (b) meet and discuss matters with Senior Management.

28.30 Service contracts

(a) [The Parent must ensure that there is in place in respect of each Obligor and each Material Company qualified management with appropriate skills].

¹¹⁵ Paragraphs (e) and (f) of Clause 28.27 (Pensions) should only be included if there is a defined benefit occupational pension scheme within the Group.

¹¹⁶ This undertaking should be included if there is not an equivalent undertaking in the relevant Transaction Security Document.
(b) If any of the Senior Management ceases (whether by reason of death, retirement at normal retiring age or through ill health or otherwise) to perform his or her duties (as required under the Service Contracts), the Parent must as soon as reasonably practicable thereafter:

(i) notify the Agent; and

(ii) [after consultation with the Agent as to the identity of such replacement person, find and appoint an adequately qualified replacement for him or her as promptly as practicable].

(c) [The Parent shall ensure that no member of the Group amends, varies, waives, novates, supplements or replaces any term of a Service Contract in a way which is or is reasonably likely to be materially prejudicial to the interests of the Finance Parties].

28.31 Intellectual Property

(a) Each Obligor shall (and the Parent shall procure that each other member of the Group will):

(i) preserve and maintain the subsistence and validity of the Intellectual Property necessary for the business of the relevant Group member;

(ii) use reasonable endeavours to prevent any infringement in any material respect of the Intellectual Property;

(iii) make registrations and pay all registration fees and taxes necessary to maintain the Intellectual Property in full force and effect and record its interest in that Intellectual Property;

(iv) not use or permit the Intellectual Property to be used in a way or take any step or omit to take any step in respect of that Intellectual Property which may materially and adversely affect the existence or value of the Intellectual Property or imperil the right of any member of the Group to use such property; and

(v) not discontinue the use of the Intellectual Property,

[where failure to do so, in the case of paragraphs (i) and (ii) above, or, in the case of paragraphs (iv) and (v) above, such use, permission to use, omission or discontinuation, is reasonably likely to have a Material Adverse Effect.]

(b) [Failure to comply with any part of paragraph (a) above shall not be a breach of this Clause 28.31 to the extent that any dealing with Intellectual Property which would otherwise be a breach of paragraph (a) above is contemplated by the definition of Permitted Transaction.]

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117 Materiality may not be appropriate where Intellectual Property is a key part of the security package.
28.32 Amendments

(a) No Obligor shall (and the Parent shall ensure that no other member of the Group will) amend, vary, novate, supplement, supersede, waive or terminate any term of a Transaction Document or any other document delivered to the Agent pursuant to Clause 4.1 (Initial conditions precedent) or Clause 32 (Changes to the Obligors) or enter into any agreement with any shareholders of the Parent (other than as set out in the Shareholders’ Agreement or the Loan Note Documents) or any of their Affiliates which is not a member of the Group except in writing:

(i) in accordance with Clause 42 (Amendments and Waivers);

(ii) to the extent that that amendment, variation, novation, supplement, superseding, waiver or termination is permitted by the Intercreditor Agreement;

(iii) prior to or on the Closing Date, with the prior written consent of the Original Lenders; or

(iv) after the Closing Date, in a way which:

(A) could not be reasonably expected materially and adversely to affect the interests of the Lenders; and

(B) would not change the date, amount or method of payment of [interest or principal on the [Loan Notes] [or the Vendor Notes]] [or the dividends on the Preference Shares].

(b) The Parent shall promptly supply to the Agent a copy of any document relating to any of the matters referred to in paragraphs (i) to (iv) above.

28.33 Financial assistance

Each Obligor shall (and the Parent shall procure each other member of the Group will) comply in all respects with sections 678 and 679 of the Companies Act 2006 and any equivalent legislation in other jurisdictions including in relation to the execution of the Transaction Security Documents and payment of amounts due under this Agreement.

28.34 Group bank accounts

The Parent shall ensure that [within [ ] days of the Closing Date ]all bank accounts of the Group shall be opened and maintained with:

(a) a Finance Party (or an Affiliate of a Finance Party); or

(b) in the case of a [Holding Account] or a [Mandatory Prepayment Account] (each under and as defined in the Mezzanine Facility Agreement), a Mezzanine Finance Party (or an Affiliate of a Mezzanine Finance Party),

and are subject to valid Security under the Transaction Security Documents.
28.35 **Treasury Transactions**

No Obligor shall (and the Parent will procure that no other member of the Group will) enter into any Treasury Transaction, other than:

(a) the hedging transactions documented by the Hedging Agreements;

(b) spot and forward delivery foreign exchange contracts entered into in the ordinary course of business and not for speculative purposes; and

(c) any Treasury Transaction entered into for the hedging of actual or projected real exposures arising in the ordinary course of trading activities of a member of the Group for a period of not more than [ ] months and not for speculative purposes.

28.36 **Compliance with Hedging Letter**

The Parent shall ensure that all exchange rate and interest rate hedging arrangements required by the Hedging Letter are implemented in accordance with the terms of the Hedging Letter and that such arrangements are not terminated, varied or cancelled without the consent of the Agent (acting on the instructions of the Majority Lenders), save as permitted by the Intercreditor Agreement.

28.37 **Cash management**

(a) Subject to paragraph (b) below, no Obligor (other than the Parent) shall, and each Obligor will procure that none of its Subsidiaries will, at any time hold cash or Cash Equivalent Investments greater than required for its projected cashflow requirements for the next [ ] days (the amount of such excess being the "Cash Balance") and any such Cash Balance shall be lent by such member of the Group to the Company pursuant to a Structural Intra-Group Loan.

(b) No Obligor shall be obliged at any time to procure that a Subsidiary lend any Cash Balance under paragraph (a) above:

(i) at a time when to do so would cause the Obligor or the Subsidiary (despite that person using all reasonable efforts to avoid the relevant Tax liability) to incur a materially greater Tax liability in respect of the Cash Balance than it would otherwise incur if the loan were made at a later date;

(ii) if (despite using all reasonable efforts to avoid the breach or result) to do so would breach any applicable law or result in personal liability for the Obligor or the Subsidiary or any of such person's directors or management; or

(iii) if it involves an amount which is less than £[ ] (or its equivalent).]

28.38 **Guarantors**

(a) The Parent shall ensure that at all times after the Closing Date, [the aggregate of earnings before interest, tax, depreciation and amortisation (calculated on the same basis as EBITDA)] / [the aggregate gross assets, aggregate net assets and
aggregate turnover] of the Guarantors (calculated on an unconsolidated basis and excluding all intra-group items and investments in Subsidiaries of any member of the Group) exceeds \( \lfloor \% \rfloor \) of \( \text{EBITDA} \) / \( \text{[the consolidated gross assets, consolidated net assets and consolidated turnover of the Group]} \).

(b) [The Parent need only perform its obligations under paragraph (a) above if it is not unlawful for the relevant person to become a Guarantor and that person becoming a Guarantor would not result in personal liability for that person's directors or other management. Each Obligor must use, and must procure that the relevant person uses, all reasonable endeavours lawfully available to avoid any such unlawfulness or personal liability. This includes agreeing to a limit on the amount guaranteed. The Agent may (but shall not be obliged to) agree to such a limit if, in its opinion, to do so would avoid the relevant unlawfulness or personal liability.]

28.39 Further assurance

(a) [Subject to the Agreed Security Principles,] each Obligor shall (and the Parent shall procure that each other member of the Group will) promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may reasonably specify (and in such form as the Security Agent may reasonably require in favour of the Security Agent or its nominee(s)):

(i) to perfect the Security created or intended to be created under or evidenced by the Transaction Security Documents (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Transaction Security) or for the exercise of any rights, powers and remedies of the Security Agent or the Finance Parties provided by or pursuant to the Finance Documents or by law;

(ii) to confer on the Security Agent or confer on the Finance Parties Security over any property and assets of that Obligor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to the Transaction Security Documents; and/or

(iii) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Transaction Security.

(b) Each Obligor shall (and the Parent shall procure that each other member of the Group will) take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Finance Parties by or pursuant to the Finance Documents.

28.40 Syndication

The Parent shall provide reasonable assistance to the Arranger in the preparation of the Information Memorandum and the primary syndication of the Facilities (including,
without limitation, by making Senior Management available for the purpose of making presentations to, or meeting, potential lending institutions) and will comply with all reasonable requests for information from potential syndicate members prior to completion of syndication.\textsuperscript{118}

28.41 Conditions subsequent

(a) [The Parent shall procure that within 30 days of the Closing Date [insert name of Borrower of the Term Facilities] enters into the Hedging Agreements.]

(b) The Parent shall procure that each member of the Group identified in Part III of Schedule 2 (Conditions precedent) accedes as an Additional Obligor and [, subject to the Agreed Security Principles] grants the Transaction Security and carries out any action to protect, perfect or give priority to the Transaction Security by the specified date identified opposite the name of that member of the Group in Part III of Schedule 2 (Conditions precedent).

(c) Each Obligor must use, and must procure that any other member of the Group that is a potential provider of Transaction Security uses, all reasonable endeavours lawfully available to avoid or mitigate the constraints on the provision of Security provided for in the Agreed Security Principles.

(d) [ ].

29. EVENTS OF DEFAULT

Each of the events or circumstances set out in this Clause 29 is an Event of Default (save for Clause 29.20 (Acceleration) [and Clause 29.21 (Clean-Up Period)].

29.1 Non-payment

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

(a) its failure to pay is caused by:

(i) administrative or technical error; or

(ii) a Disruption Event; and

(b) [payment is made within:

(i) (in the case of paragraph (a)(i) above), [ ] Business Days of its due date; or

(ii) (in the case of paragraph (a)(ii) above), [ ] Business Days of its due date]

\textsuperscript{118} This Clause should be deleted if there is a separate syndication side letter.
OR

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

29.2 Financial covenants and other obligations

(a) Any requirement of Clause 27 (Financial covenants) is not satisfied [or an Obligor does not comply with the provisions of Clause 26 (Information Undertakings)] [and/or Clause 28 (General Undertakings)]\(^{119}\).

(b) An Obligor does not comply with any provision of any Transaction Security Document.

29.3 Other obligations

(a) An Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 29.1 (Non-payment) and Clause 29.2 (Financial covenants and other obligations)).

(b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within [ ] Business Days of the earlier of (i) the Agent giving notice to the Parent or relevant Obligor and (ii) the Parent or an Obligor becoming aware of the failure to comply.

29.4 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 when made or deemed to be made.

29.5 Cross default

(a) Any Financial Indebtedness of any member of the Group is not paid when due nor within any originally applicable grace period.

(b) 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).

(c) 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).

(d) 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).

\(^{119}\) Subject to negotiation as no grace periods apply to breaches of the clauses referred to in Clause 29.2 (Financial covenants and other obligations).
(e) No Event of Default will occur under this Clause 29.5 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).

29.6 **Insolvency**

(a) A member of the Group:

(i) is unable or admits inability to pay its debts as they fall due;

(ii) [is deemed to, or is declared to, be unable to pay its debts under applicable law];

(iii) suspends or threatens to suspend making payments on any of its debts; or

(iv) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (excluding any Finance Party in its capacity as such) with a view to rescheduling any of its indebtedness.

(b) The value of the assets of any member of the Group is less than its liabilities (taking into account contingent and prospective liabilities).

(c) A moratorium is declared in respect of any indebtedness of any member of the Group. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

29.7 **Insolvency proceedings**

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

(i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any member of the Group;

(ii) a composition, compromise, assignment or arrangement with any creditor of any member of the Group;

(iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of any member of the Group or any of its assets; or

(iv) enforcement of any Security over any assets of any member of the Group, or any analogous procedure or step is taken in any jurisdiction.
(b) Paragraph (a) shall not apply to:

(i) any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within [14] days of commencement; or

(ii) any step or procedure contemplated by paragraph (b) of the definition of "Permitted Transaction".

29.8 Creditors' process

Any expropriation, attachment, sequestration, distress or execution [or any analogous process in any jurisdiction] affects any asset or assets of a [member of the Group]/[Obligor]/[Material Company] [having an aggregate value of [ ] [and is not discharged within [ ] days].

29.9 Unlawfulness and invalidity

(a) It is or becomes unlawful for an Obligor [or any other member of the Group that is a party to the Intercreditor Agreement] to perform any of its obligations under the Finance Documents or any Transaction Security created or expressed to be created or evidenced by the Transaction Security Documents ceases to be effective or any subordination created under the Intercreditor Agreement is or becomes unlawful.

(b) Any obligation or obligations of any Obligor under any Finance Documents [or any other member of the Group under the Intercreditor Agreement] are not (subject to the Legal Reservations) or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lenders under the Finance Documents.

(c) Any Finance Document ceases to be in full force and effect or any Transaction Security or any subordination created under the Intercreditor Agreement ceases to be legal, valid, binding, enforceable or effective or is alleged by a party to it (other than a Finance Party) to be ineffective.

29.10 Intercreditor Agreement

(a) Any party to the Intercreditor Agreement (other than a Finance Party or an Obligor) fails to comply with the provisions of, or does not perform its obligations under, the Intercreditor Agreement; or

(b) a representation or warranty given by that party in the Intercreditor Agreement is incorrect in any material respect,

and, if the non-compliance or circumstances giving rise to the misrepresentation are capable of remedy, it is not remedied within [ ] days of the earlier of the Agent giving notice to that party or that party becoming aware of the non-compliance or misrepresentation.
29.11 **Cessation of business**

Any member of the Group suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business [except as a result of a Permitted Disposal or a Permitted Transaction].

29.12 **Change of ownership**

(a) After the Closing Date, an Obligor (other than the Parent) ceases to be a wholly-owned Subsidiary of the Parent; or

(b) An Obligor ceases to own at least the same percentage of shares in a Material Company as on the Closing Date,

[except, in either case, as a result of a disposal which is a Permitted Disposal or a Permitted Transaction.]

29.13 **[Change of management]**

[ ] or [ ] ceases to be employed by [the Parent]/[the Company] or to devote the time and attention to the business, trade and offices of the Group or perform the functions required under the terms of [his/her] Service Contract and a replacement person approved in writing by the Majority Lenders (such approval not to be unreasonably withheld or delayed) has not given a legally binding acceptance to an offer of employment and resigned from [his/her] existing employment within [ ] days of that cessation. This Event of Default shall also apply to any replacement person as if references in this Clause 29.13 to [ ] or [ ] were references to that replacement person and references to "Service Contract" were references to the service contract of that person.

29.14 **Audit qualification**

The Parent's Auditors qualify the audited annual consolidated financial statements of the Parent.

29.15 **Expropriation**

The authority or ability of any member of the Group to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any member of the Group or any of its assets.

29.16 **Repudiation and rescission of agreements**

(a) An Obligor (or any other relevant party) rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document or any of the Transaction Security or evidences an intention to rescind or repudiate a Finance Document or any Transaction Security.

(b) Any party to the Acquisition Documents, the Shareholders' Agreement, the Intercreditor Agreement or the Loan Note Documents rescinds or purports to
rescind or repudiates or purports to repudiate any of those agreements or instruments in whole or in part where to do so has or is, in the reasonable opinion of the Majority Lenders, likely to have a material adverse effect on the interests of the Lenders under the Finance Documents.

29.17 **Litigation**

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

29.18 **Pensions**

The Pensions Regulator issues a Financial Support Direction or a Contribution Notice to any member of the Group unless the aggregate liability of the Obligors under all Financial Support Directions and Contributions Notices is less than \[ 120 \].

29.19 **Material adverse change**

Any event or circumstance occurs which the Majority Lenders reasonably believe has or is reasonably likely to have a Material Adverse Effect.

29.20 **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:

(a) by notice to the Parent:

   (i) cancel the Total Commitments each Available Commitment of each Lender and/or each Ancillary Commitment of each Ancillary Lender at which time they each such Available Commitment and Ancillary Commitment shall immediately be cancelled and each Facility shall immediately cease to be available for further utilisation;

   (ii) declare that all or part of the Utilisations, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, at which time they shall become immediately due and payable;

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120 This Event of Default should only be included if there is a defined benefit occupational pension scheme within the Group or if this Agreement does not contain a covenant prohibiting the existence within the Group of defined benefit pension schemes in the future. This Event of Default takes account of the Pensions Act 2004 and the power of the Pensions Regulator to require other members of the Group to provide financial support for the deficits in defined benefit pension schemes operated by other Group members.
(iii) declare that all or part of the Utilisations be payable on demand, at which time they shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders;

(iv) declare that cash cover in respect of each Letter of Credit is immediately due and payable at which time it shall become immediately due and payable;

(v) declare that cash cover in respect of each Letter of Credit is payable on demand at which time it shall immediately become due and payable on demand by the Agent on the instructions of the Majority Lenders;

(vi) declare all or any part of the amounts (or cash cover in relation to those amounts) outstanding under the Ancillary Facilities to be immediately due and payable, at which time they shall become immediately due and payable; and/or

(vii) declare that all or any part of the amounts (or cash cover in relation to those amounts) outstanding under the Ancillary Facilities be payable on demand, at which time they shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders; and/or

(b) exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

29.21 [Clean-Up Period]

Notwithstanding any other provision of any Finance Document:

(a) any breach of a Clean-Up Representation or a Clean-Up Undertaking; or

(b) any Event of Default constituting a Clean-Up Default,

which occurs during a Clean-Up Period will be deemed not to be a breach of representation or warranty, a breach of covenant or an Event of Default (as the case may be) if:

(i) it would have been (if it were not for this Clause 29.21) a breach of representation or warranty, a breach of covenant or an Event of Default only by reason of circumstances relating exclusively to:

(A) in the case of such a breach or Event of Default which occurs during the Initial Clean-Up Period, any member of the Target Group (or any obligation to procure or ensure in relation to a member of the Target Group); or

(B) in the case of such a breach or Event of Default which occurs during a Permitted Acquisition Clean-Up Period, the company (or any of its Subsidiaries) or the business or undertaking which is the subject of the relevant acquisition (or any obligation to procure or ensure in relation to that company, Subsidiary, business or undertaking)];
(ii) it is capable of remedy and reasonable steps are being taken to remedy it;

(iii) [in the case of the Initial Clean-Up Period,] the circumstances giving rise to it have not been procured by or approved by the Parent[, any Original Obligor] or [   ];

(iv) [in the case of a Permitted Acquisition Clean-Up Period, the circumstances giving rise to it have not been procured by or approved by the Parent [, any Obligor that was an Obligor immediately prior to the relevant acquisition] or [   ];] and

(v) it is not reasonably likely to have a Material Adverse Effect.

If the relevant circumstances are continuing on or after the end of that Clean-Up Period, there shall be a breach of representation or warranty, breach of covenant or Event of Default, as the case may be notwithstanding the above (and without prejudice to the rights and remedies of the Finance Parties).]
SECTION 9
CHANGES TO PARTIES

30. CHANGES TO THE LENDERS

30.1 Assignments and transfers by the Lenders

Subject to this Clause 30 and to [Clause 31 (Restriction on Debt Purchase Transactions)]/[Clause 31 (Debt Purchase Transactions)]\(^{121}\), a Lender (the "Existing Lender") may:

(a) assign any of its rights; or

(b) transfer by novation any of its rights and obligations,

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

30.2 [Parent consultation]\(^{122}\)

An Existing Lender must consult with the Parent for no more than [ ] days before it may make an assignment or transfer in accordance with Clause 30.1 (Assignments and transfers by the Lenders) unless the assignment or transfer is:

(a) to another Lender or an Affiliate of any Lender;

(b) to a fund which is a Related Fund of that Existing Lender;

(c) without prejudice to paragraph (a) above, to an Arranger or an Affiliate of an Arranger and made in connection with the facilitation of either the primary syndication of any Facility or first utilisation under this Agreement [or first utilisation of an Incremental Facility]; or

(d) made at a time when an Event of Default is continuing.\] / OR

OR

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121 Two (alternative) forms of Clause 31 are provided (see footnote to Clause 31 (Restriction on Debt Purchase Transactions)). Clause 30.1 (Assignments and transfers by the Lenders) should refer to whichever one is chosen to be included in the Agreement.

122 Two (alternative) forms of Clause 30.2 are provided. The first option (entitled "Parent consultation") envisages that the Parent must be consulted before a transfer is made.

The second option (entitled "Parent consent") envisages that the Parent's consent must be given before a transfer is made if the proposed New Lender is not named on the Pre-Approved New Lender List.

The two forms of Clause 30.2 are mutually exclusive. Accordingly, it is NOT recommended that users include both forms in the same Agreement.
[Parent consent]

(a) The consent of the Parent is required for an assignment or transfer by an Existing Lender, unless the assignment or transfer is:

(i) to any entity identified on the Pre-Approved New Lender List;

(ii) to another Lender or an Affiliate of any Lender;

(iii) to a fund which is a Related Fund of that Existing Lender;

(iv) without prejudice to paragraph (i) above, to an Arranger or an Affiliate of an Arranger and made in connection with the facilitation of either the primary syndication of any Facility or first utilisation under this Agreement [or first utilisation of an Incremental Facility]; or

(v) made at a time when an Event of Default is continuing.

(b) The consent of the Parent to an assignment or transfer must not be unreasonably withheld or delayed. The Parent 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 Parent within that time.

(c) [The consent of the Parent to an assignment or transfer must not be withheld solely because the assignment or transfer may result in an increase to the Mandatory Cost.]

(d) The Agent shall, within [ ] Business Days of a reasonable request by any Party, provide a copy of the Pre-Approved New Lender List to that Party.

30.3 Other conditions of assignment or transfer

(a) The consent of the Issuing Bank is required for any assignment or transfer by an Existing Lender of any of its rights and/or obligations under the Revolving Facility.

(b) [An assignment or transfer of part of a Lender's participation must be in an amount such that the Base Currency Amount of that Lender's remaining participation (when aggregated with its Affiliates' and Related Funds' participation) in respect of Commitments or Utilisations made under [Facility [A]/[B]/[C]/[each Incremental Facility]/[the Term Facilities (taken together)] is in a minimum amount of [ ].]

(c) [(Other than in the case of an assignment permitted by paragraph (b) of Clause 31.1 (Permitted Debt Purchase Transactions)) an] [An] assignment will only be effective on:

(i) receipt by the Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and

123 Include if the second form of Clause 31 is used. See footnote to Clause 31 (Restriction on Debt Purchase Transactions).
substance satisfactory to the Agent) that the New Lender will assume the same obligations to the other Finance Parties and the other Secured Parties as it would have been under if it had been an Original Lender;

(ii) the New Lender entering into the documentation required for it to accede as a party to the Intercreditor Agreement; and

(iii) performance by the Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Agent shall promptly notify to the Existing Lender and the New Lender.

(d) A transfer will only be effective if the New Lender enters into the documentation required for it to accede as a party to the Intercreditor Agreement and if the procedure set out in Clause 30.6 (Procedure for transfer) is complied with.

(e) If:

(i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and

(ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 20 (Increased Costs),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under that Clause to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred. This paragraph (e) shall not apply in respect of an assignment or transfer made in the ordinary course of the primary syndication of any Facility.

(f) 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.

30.4 Assignment or transfer fee

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

(b) No fee is payable pursuant to paragraph (a) above if:

(i) the Agent agrees that no fee is payable; or
(ii) the assignment or transfer is made by an Existing Lender:
   
   (A) to an Affiliate of that Existing Lender;
   
   (B) to a fund which is a Related Fund of that Existing Lender; or
   
   (C) in connection with primary syndication of any Facility.

### 30.5 Limitation of responsibility of Existing Lenders

(a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:

(i) the legality, validity, effectiveness, adequacy or enforceability of the Transaction Documents, the Transaction Security or any other documents;

(ii) the financial condition of any Obligor;

(iii) the performance and observance by any Obligor [or any other member of the Group] of its obligations under the Transaction Documents or any other documents; or

(iv) the accuracy of any statements (whether written or oral) made in or in connection with any Transaction Document or any other document, and any representations or warranties implied by law are excluded.

(b) Each New Lender confirms to the Existing Lender, the other Finance Parties and the Secured Parties that it:

(i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of 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 or any other Finance Party in connection with any Transaction Document or the Transaction Security; and

(ii) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.

(c) Nothing in any Finance Document obliges an Existing Lender to:

(i) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 30; or

(ii) 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 Transaction Documents or otherwise.
30.6 **Procedure for transfer**

(a) Subject to the conditions set out in Clause 30.2 [(Parent consultation)]/[Parent consent] and Clause 30.3 (Other conditions of assignment or transfer) a transfer is effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate.

(b) The Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.

(c) [Subject to Clause 30.11 (Pro rata interest settlement), on] the Transfer Date:

(i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents and in respect of the Transaction Security each of the Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and in respect of the Transaction Security and their respective rights against one another under the Finance Documents and in respect of the Transaction Security shall be cancelled (being the "Discharged Rights and Obligations");

(ii) each of the 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 or other member of the Group and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;

(iii) the Agent, the Arranger, the Security Agent, the New Lender, the other Lenders, the Issuing Bank and any relevant Ancillary Lender shall acquire the same rights and assume the same obligations between themselves and in respect of the Transaction Security as they would have acquired and assumed had the New Lender been an Original Lender with the rights, and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Agent, the Arranger, the Security Agent, the Issuing Bank and any relevant Ancillary Lender and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and

(iv) the New Lender shall become a Party as a "Lender".
30.7 Procedure for assignment

(a) Subject to the conditions set out in Clause 30.2 [(Parent consultation)]/[(Parent consent)] and Clause 30.3 (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.

(b) The Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.

(c) [Subject to Clause 30.11 (Pro rata interest settlement), on]/[On] the Transfer Date:

(i) the Existing Lender will assign absolutely to the New Lender its rights under the Finance Documents and in respect of the Transaction Security expressed to be the subject of the assignment in the Assignment Agreement;

(ii) the Existing Lender will be released from the obligations (the "Relevant Obligations") expressed to be the subject of the release in the Assignment Agreement (and any corresponding obligations by which it is bound in respect of the Transaction Security); and

(iii) the New Lender shall become a Party as a "Lender" and will be bound by obligations equivalent to the Relevant Obligations.124

(d) Lenders may utilise procedures other than those set out in this Clause 30.7 to assign their rights under the Finance Documents (but not, without the consent of the relevant Obligor or unless in accordance with Clause 30.6 (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 30.2 [(Parent consultation)]/[(Parent consent)] and Clause 30.3 (Other conditions of assignment or transfer).

124 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 30.7 (Procedure for assignment).
30.8 **Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Parent**

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

30.9 **Accession of Hedge Counterparties**

Any person which becomes a party to the Intercreditor Agreement as a Hedge Counterparty shall, at the same time, become a Party to this Agreement as a "Hedge Counterparty" in accordance with clause [22.11] (*Creditor Accession Undertaking*) of the Intercreditor Agreement.

30.10 **[Security over Lenders’ rights]**

In addition to the other rights provided to Lenders under this Clause 30, 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:

(a) any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and

(b) any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities,

except that no such charge, assignment or Security shall:

(i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security for the Lender as a party to any of the Finance Documents; or

(ii) require any payments to be made by 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.]

30.11 **[Pro rata interest settlement]**

(a) If the Agent has notified the Lenders that it is able to distribute interest payments on a "pro rata basis" to Existing Lenders and New Lenders then (in respect of any transfer pursuant to Clause 30.6 (*Procedure for transfer*) or any assignment pursuant to Clause 30.7 (*Procedure for assignment*) the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period):

(i) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to
accrue in favour of the Existing Lender up to but excluding the Transfer Date ("Accrued Amounts") and shall become due and payable to the Existing Lender (without further interest accruing on them) on the last day of the current Interest Period (or, if the Interest Period is longer than six Months, on the next of the dates which falls at six Monthly intervals after the first day of that Interest Period); and

(ii) the rights assigned or transferred by the Existing Lender will not include the right to the Accrued Amounts so that, for the avoidance of doubt:

(A) when the Accrued Amounts become payable, those Accrued Amounts will be payable for the account of the Existing Lender; and

(B) the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 30.11, have been payable to it on that date, but after deduction of the Accrued Amounts.

(b) In this Clause 30.11 references to "Interest Period" shall be construed to include a reference to any other period for accrual of fees.

(c) An Existing Lender which retains the right to the Accrued Amounts pursuant to this Clause 30.11 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.]

31. [RESTRICTION ON DEBT PURCHASE TRANSACTIONS]125

31.1 Prohibition on Debt Purchase Transactions by the Group

The Parent shall not, and shall procure that each other member of the Group shall not, enter into any Debt Purchase Transaction or [beneficially own all or any part of the share capital of a company that is][be] a Lender or a party to a Debt Purchase Transaction of the type referred to in paragraphs (b) or (c) of the definition of "Debt Purchase Transaction".

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125 Two (alternative) forms of Clause 31 are provided. The first option (entitled "Restriction on Debt Purchase Transactions") envisages that members of the Group are not allowed to purchase their own debt under the Agreement and, depending on the definition of "Debt Purchase Transaction", the Mezzanine Facility Agreement.

The second option (entitled "Debt Purchase Transactions") envisages that Borrowers are allowed, in certain circumstances, to purchase their own debt under the Agreement and regulates that process.

The two forms of Clause 31 are mutually exclusive. Accordingly, it is NOT recommended that users include both forms in the same Agreement.

The Agreement envisages that one of the two alternative forms of Clause 31 is included in the Agreement.
31.2 **Disenfranchisement of Sponsor Affiliates**

(a) For so long as a Sponsor Affiliate:

(i) beneficially owns a Commitment; or

(ii) has entered into a sub-participation agreement relating to a Commitment or other agreement or arrangement having a substantially similar economic effect and such agreement or arrangement has not been terminated,

in ascertaining:

(A) the Majority Lenders [or the Super Majority Lenders][or the Incremental Facility Majority Lenders]; or

(B) whether:

(1) any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments; or

(2) the agreement of any specified group of Lenders,

has been obtained to approve any request for a consent, waiver, amendment or other vote under the Finance Documents such Commitment shall be deemed to be zero and such Sponsor Affiliate or the person with whom it has entered into such sub-participation, other agreement or arrangement shall be deemed not to be a Lender for the purposes of paragraphs (A) and (B) above (unless in the case of a person not being a Sponsor Affiliate it is a Lender by virtue otherwise than by beneficially owning the relevant Commitment).

(b) Each Lender shall, unless such Debt Purchase Transaction is an assignment or transfer, promptly notify the Agent in writing if it knowingly enters into a Debt Purchase Transaction with a Sponsor Affiliate (a "**Notifiable Debt Purchase Transaction**"), such notification to be substantially in the form set out in Part I of Schedule 16 (*Forms of Notifiable Debt Purchase Transaction Notice*).

(c) A Lender shall promptly notify the Agent if a Notifiable Debt Purchase Transaction to which it is a party:

(i) is terminated; or

(ii) ceases to be with a Sponsor Affiliate,

such notification to be substantially in the form set out in Part II of Schedule 16 (*Forms of Notifiable Debt Purchase Transaction Notice*).

(d) Each Sponsor Affiliate that is a Lender agrees that:

(i) in relation to any meeting or conference call to which all the Lenders are invited to attend or participate, it shall not attend or participate in the
same if so requested by the Agent or, unless the Agent otherwise agrees, be entitled to receive the agenda or any minutes of the same; and

(ii) in its capacity as Lender, unless the Agent otherwise agrees, it shall not be entitled to receive any report or other document prepared at the behest of, or on the instructions of, the Agent or one or more of the Lenders.

31.3 Sponsor Affiliates’ notification to other Lenders of Debt Purchase Transactions

Any Sponsor Affiliate which is or becomes a Lender and which enters into a Debt Purchase Transaction as a purchaser or a participant shall, by 5.00 pm on the Business Day following the day on which it entered into that Debt Purchase Transaction, notify the Agent of the extent of the Commitment(s) or amount outstanding to which that Debt Purchase Transaction relates. The Agent shall promptly disclose such information to the Lenders.]

OR

31. [DEBT PURCHASE TRANSACTIONS

31.1 Permitted Debt Purchase Transactions

(a) The Parent shall not, and shall procure that each other member of the Group shall not (i) enter into any Debt Purchase Transaction other than in accordance with the other provisions of this Clause 31 or (ii) [beneficially own all or any part of the share capital of a company that is][be] a Lender or a party to a Debt Purchase Transaction of the type referred to in paragraphs (b) or (c) of the definition of "Debt Purchase Transaction".

(b) A Borrower may purchase by way of assignment, pursuant to Clause 30 (Changes to the Lenders), a participation in any Term Loan in respect of which it is the borrower and any related Commitment where:

(i) such purchase is made for a consideration of less than par;

(ii) such purchase is made using one of the processes set out at paragraphs (c) and (d) below;

(iii) such purchase is made at a time when no Default is continuing; and

(iv) the consideration for such purchase is funded from (1) that part of Excess Cashflow [for the Financial Year of the Parent immediately preceding the Financial Year of the Parent in which such purchase is to be made] 126.

126 Purchases of Revolving Facility Loans have not been permitted as purchase by assignment would, in any event, leave the assignor with the obligation to lend. The same rationale applies to other undrawn facilities (e.g. capex facilities). If a second lien facility is included provision would need to be made so that it could not be purchased while the “senior” facilities were outstanding. Consideration may also be given to further restrictions (if any) as to the order in which Facilities may be bought.

127 It should be explicitly stated that for Financial Years prior to the first year that it is swept, Excess Cashflow shall be deemed to be zero.
be made]128 which is not required to be applied in prepayment of the
Facilities pursuant to the other terms of this Agreement or (2) New
Shareholder Injections (as defined in Clause 27.1 (Financial
definitions)).

(c)

(i) A Debt Purchase Transaction referred to in paragraph (b) above may be
entered into pursuant to a solicitation process (a "Solicitation Process")
which is carried out as follows.

(ii) Prior to 11.00 am on a given Business Day (the "Solicitation Day") the
Parent or a financial institution acting on its behalf (the "Purchase
Agent") will approach at the same time each Lender which participates
in the relevant Term Facilities to enable them to offer to sell to the
relevant Borrower(s) an amount of their participation in one or more
Term Facilities. Any Lender wishing to make such an offer shall, by
11.00 am on the second Business Day following such Solicitation Day,
communicate to the Purchase Agent details of the amount of its
participations, and in which Term Facilities, it is offering to sell and the
price at which it is offering to sell such participations. Any such offer
shall be irrevocable until 11.00 am on the third Business Day following
such Solicitation Day and shall be capable of acceptance by the Parent
on behalf of the relevant Borrower(s) on or before such time by
communicating its acceptance in writing to the Purchase Agent or, if it
is the Purchase Agent, the relevant Lenders. The Purchase Agent (if
someone other than the Parent) will communicate to the relevant
Lenders which offers have been accepted by 12 noon on the third
Business Day following such Solicitation Day. In any event by 5.00 pm
on the fourth Business Day following such Solicitation Day, the Parent
shall notify the Agent of the amounts of the participations purchased
through the relevant Solicitation Process, the identity of the Term
Facilities to which they relate and the average price paid for the purchase
of participations in each relevant Term Facility. The Agent shall
promptly disclose such information to the Lenders.

(iii) Any purchase of participations in the Term Facilities pursuant to a
Solicitation Process shall be completed and settled on or before the fifth
Business Day after the relevant Solicitation Day.

(iv) In accepting any offers made pursuant to a Solicitation Process the
Parent shall be free to select which offers and in which amounts it
accepts but on the basis that in relation to a participation in a particular
Term Facility it accepts offers in inverse order of the price offered (with
the offer or offers at the lowest price being accepted first) and that if in
respect of participations in a particular Term Facility it receives two or

128 If included the bracketed wording would effectively block purchases for the period from the end of one
Financial Year until the annual accounts for that Financial Year are delivered.
more offers at the same price it shall only accept such offers on a *pro rata* basis.

(d)

(i) A Debt Purchase Transaction referred to in paragraph (b) above may also be entered into pursuant to an open order process (an "Open Order Process") which is carried out as follows.

(ii) The Parent (on behalf of the relevant Borrower(s)) may by itself or through another Purchase Agent place an open order (an "Open Order") to purchase participations in one or more of the Term Facilities up to a set aggregate amount at a set price by notifying at the same time all the Lenders participating in the relevant Term Facilities of the same. Any Lender wishing to sell pursuant to an Open Order will, by 11.00 am on any Business Day following the date on which the Open Order is placed but no earlier than the first Business Day, and no later than the fifth Business Day, following the date on which the Open Order is placed, communicate to the Purchase Agent details of the amount of its participations, and in which Term Facilities, it is offering to sell. Any such offer to sell shall be irrevocable until 11.00 am on the Business Day following the date of such offer from the Lender and shall be capable of acceptance by the Parent on behalf of the relevant Borrower(s) on or before such time by it communicating such acceptance in writing to the relevant Lender.

(iii) Any purchase of participations in the Term Facilities pursuant to an Open Order Process shall be completed and settled by the relevant Borrower(s) on or before the fourth Business Day after the date of the relevant offer by a Lender to sell under the relevant Open Order.

(iv) If in respect of participations in a Term Facility the Purchase Agent receives on the same Business Day two or more offers at the set price such that the maximum amount of such Term Facility to which an Open Order relates would be exceeded, the Parent shall only accept such offers on a *pro rata* basis.

(v) The Parent shall, by 5.00 pm on the sixth Business Day following the date on which an Open Order is placed, notify the Agent of the amounts of the participations purchased through such Open Order Process and the identity of the Term Facilities to which they relate. The Agent shall promptly disclose such information to the Lenders.

(e) For the avoidance of doubt, there is no limit on the number of occasions a Solicitation Process or an Open Order Process may be implemented.
In relation to any Debt Purchase Transaction entered into pursuant to this Clause 31.1, notwithstanding any other term of this Agreement or the other Finance Documents:

(i) on completion of the relevant assignment pursuant to Clause 30 (Changes to the Lenders), the portions of the Term Loans to which it relates shall be extinguished [and any related Repayment Instalments will be reduced pro-rata accordingly]129;

(ii) such Debt Purchase Transaction and the related extinguishment referred to in paragraph (i) above shall not constitute a prepayment of the Facilities;

(iii) the Borrower which is the assignee shall be deemed to be an entity which fulfils the requirements of Clause 30.1 (Assignments and transfers by the Lenders) to be a New Lender;

(iv) no member of the Group shall be deemed to be in breach of any provision [[SPECIFIED CLAUSES] of] Clause 28 (General Undertakings)130 solely by reason of such Debt Purchase Transaction;

(v) Clause 35 (Sharing among the Finance Parties) shall not be applicable to the consideration paid under such Debt Purchase Transaction; and

(vi) for the avoidance of doubt, any extinguishment of any part of the Term Loans shall not affect any amendment or waiver which prior to such extinguishment had been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement.

### 31.2 Disenfranchisement of Sponsor Affiliates

(a) For so long as a Sponsor Affiliate:

(i) beneficially owns a Commitment; or

(ii) has entered into a sub-participation agreement relating to a Commitment or other agreement or arrangement having a substantially similar economic effect and such agreement or arrangement has not been terminated,

in ascertaining:

(A) the Majority Lenders [or the Super Majority Lenders][or the Incremental Facility Majority Lenders]; or

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129 Bracketed wording to be included for amortising term loan facilities or if an Amortising Incremental Facility can be established.

130 Depending on the exact undertakings contained within Clause 28 (General Undertakings) consider whether all or specified undertakings should be the subject of the exemption.
whether:

(1) any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments; or

(2) the agreement of any specified group of Lenders,

has been obtained to approve any request for a consent, waiver, amendment or other vote under the Finance Documents such Commitment shall be deemed to be zero and such Sponsor Affiliate or the person with whom it has entered into such sub-participation, other agreement or arrangement shall be deemed not to be a Lender for the purposes of paragraphs (A) and (B) above (unless in the case of a person not being a Sponsor Affiliate it is a Lender by virtue otherwise than by beneficially owning the relevant Commitment).

(b) Each Lender shall, unless such Debt Purchase Transaction is an assignment or transfer, promptly notify the Agent in writing if it knowingly enters into a Debt Purchase Transaction with a Sponsor Affiliate (a “Notifiable Debt Purchase Transaction”), such notification to be substantially in the form set out in Part I of Schedule 16 (Forms of Notifiable Debt Purchase Transaction Notice).

(c) A Lender shall promptly notify the Agent if a Notifiable Debt Purchase Transaction to which it is a party:

(i) is terminated; or

(ii) ceases to be with a Sponsor Affiliate,

such notification to be substantially in the form set out in Part II of Schedule 16 (Forms of Notifiable Debt Purchase Transaction Notice).

(d) Each Sponsor Affiliate that is a Lender agrees that:

(i) in relation to any meeting or conference call to which all the Lenders are invited to attend or participate, it shall not attend or participate in the same if so requested by the Agent or, unless the Agent otherwise agrees, be entitled to receive the agenda or any minutes of the same; and

(ii) in its capacity as Lender, unless the Agent otherwise agrees, it shall not be entitled to receive any report or other document prepared at the behest of, or on the instructions of, the Agent or one or more of the Lenders.

31.3 Sponsor Affiliates’ notification to other Lenders of Debt Purchase Transactions

Any Sponsor Affiliate which is or becomes a Lender and which enters into a Debt Purchase Transaction as a purchaser or a participant shall, by 5.00 pm on the Business Day following the day on which it entered into that Debt Purchase Transaction, notify the Agent of the extent of the Commitment(s) or amount outstanding to which that Debt Purchase Transaction relates. The Agent shall promptly disclose such information to the Lenders.]

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32. **CHANGES TO THE OBLIGORS**

32.1 **Assignment and transfers by Obligors**

No Obligor [or any other member of the Group] may assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

32.2 **Additional Borrowers**

(a) Subject to compliance with the provisions of paragraphs (c) and (d) of Clause 26.10 ("Know your customer" checks), the Parent may request that any of its wholly owned Subsidiaries which is not a Dormant Subsidiary becomes a Borrower. That Subsidiary shall become a Borrower if:

(i) it is incorporated in the same jurisdiction as an existing Borrower and the Majority Lenders approve the addition of that Subsidiary or otherwise if all the Lenders approve the addition of that Subsidiary;

(ii) the Parent and that Subsidiary deliver to the Agent a duly completed and executed Accession Deed;

(iii) the Subsidiary is (or becomes) a Guarantor prior to becoming a Borrower;

(iv) the Parent confirms that no Default is continuing or would occur as a result of that Subsidiary becoming an Additional Borrower; and

(v) the Agent has received all of the documents and other evidence listed in Part II and, if applicable, Part III of Schedule 2 (Conditions precedent) in relation to that Additional Borrower, each in form and substance satisfactory to the Agent.

(b) The Agent shall notify the Parent 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 and, if applicable, Part III of Schedule 2 (Conditions precedent).

(c) 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.

32.3 **Resignation of a Borrower**

(a) In this Clause 32.3, Clause 32.5 (Resignation of a Guarantor) and Clause 32.7 (Resignation [and release of Security] on disposal), "Third Party Disposal" means the disposal of an Obligor to a person which is not a member of the Group where that disposal is permitted under Clause 28.17 (Disposals) or made with the approval of the Majority Lenders (and the Parent has confirmed this is the case).
(b) [With the prior consent of all the Lenders, the Parent may request that a Borrower ceases to be a Borrower by delivering to the Agent a Resignation Letter] [If a Borrower is the subject of a Third Party Disposal, the Parent may request that such Borrower (other than the Parent or the Company) ceases to be a Borrower by delivering to the Agent a Resignation Letter].

(c) The Agent shall accept a Resignation Letter and notify the Parent and the other Finance Parties of its acceptance if:

(i) the Parent has confirmed that no Default is continuing or would result from the acceptance of the Resignation Letter;

(ii) the Borrower is under no actual or contingent obligations as a Borrower under any Finance Documents;

(iii) where the Borrower is also a Guarantor (unless its resignation has been accepted in accordance with Clause 32.5 (Resignation of a Guarantor)), its obligations in its capacity as Guarantor continue to be legal, valid, binding and enforceable and in full force and effect (subject to the Legal Reservations) and the amount guaranteed by it as a Guarantor is not decreased (and the Parent has confirmed this is the case); and

(iv) the Parent has confirmed that it shall ensure that any relevant Disposal Proceeds will be applied in accordance with Clause 13.2 (Disposal, Insurance and Acquisition Proceeds and Excess Cashflow).

(d) Upon notification by the Agent to the Parent of its acceptance of the resignation of a Borrower, that company shall cease to be a Borrower and shall have no further rights or obligations under the Finance Documents as a Borrower [except that the resignation shall not take effect (and the Borrower will continue to have rights and obligations under the Finance Documents) until the date on which the Third Party Disposal takes effect].

(e) The Agent may, at the cost and expense of the Parent, require a legal opinion from counsel to the Agent confirming the matters set out in paragraph (c)(iii) above and the Agent shall be under no obligation to accept a Resignation Letter until it has obtained such opinion in form and substance satisfactory to it.

### 32.4 Additional Guarantors

(a) Subject to compliance with the provisions of paragraphs (c) and (d) of Clause 26.10 ("Know your customer" checks), the Parent may request that any of its [wholly owned] Subsidiaries become a Guarantor.

(b) The Parent shall ensure that each member of the Group identified in Part III of Schedule 2 (Conditions precedent) as an Additional Obligor shall become an Additional Guarantor and[, subject to the Agreed Security Principles,] shall grant the Transaction Security identified opposite the name of that member of

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131 To be used where Borrowers may resign (under paragraph (b)) when they are the subject of a Third Party Disposal.
the Group in Part III of Schedule 2 (Conditions precedent) on or prior to the
date specified in Part III of that Schedule.

(c) The Parent shall procure that any other member of the Group which is [a
Material Company]/[not a Dormant Subsidiary] shall, as soon as possible after
becoming a [Material Company]/[member of the Group (or ceasing to be a
Dormant Subsidiary)], become an Additional Guarantor and [, subject to the
Agreed Security Principles,] grant Security as the Agent may require [and shall
accede to the [Intercreditor Agreement]].

(d) A member of the Group shall become an Additional Guarantor if:

(i) the Parent and the proposed Additional Guarantor deliver to the Agent a
duly completed and executed Accession Deed; and

(ii) the Agent has received all of the documents and other evidence listed in
Part II and, if applicable, Part III of Schedule 2 (Conditions precedent)
in relation to that Additional Guarantor, each in form and substance
satisfactory to the Agent.

(e) The Agent shall notify the Parent and the Lenders promptly upon being satisf-
ied that it has received (in form and substance satisfactory to it) all the documents
and other evidence listed in Part II and, if applicable, Part III of Schedule 2 (Conditions precedent).

(f) 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 (e)
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.

32.5 Resignation of a Guarantor

(a) The Parent may request that a Guarantor (other than the Parent or 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 if:

(i) that Guarantor is being disposed of by way of a Third Party Disposal (as
defined in Clause 32.3 (Resignation of a Borrower)) and the Parent has
confirmed this is the case; or

(ii) subject to clause [3.4] (Restriction on amendments and waivers: SFA
guarantee) of the Intercreditor Agreement, all the Lenders have
consented to the resignation of that Guarantor.

(b) Subject to paragraph (a) of clause [22.14] (Resignation of a Debtor) of the
Intercreditor Agreement, the Agent shall accept a Resignation Letter and notify
the Parent and the Lenders of its acceptance if:

(i) the Parent has confirmed that no Default is continuing or would result
from the acceptance of the Resignation Letter;
(ii) no payment is due from the Guarantor under Clause 24.1 (Guarantee and indemnity);

(iii) where the Guarantor is also a Borrower, it is under no actual or contingent obligations as a Borrower and has resigned and ceased to be a Borrower under Clause 32.3 (Resignation of a Borrower); and

(iv) the Parent has confirmed that it shall ensure that the Disposal Proceeds will be applied in accordance with Clause 13.2 (Disposal, Insurance and Acquisition Proceeds and Excess Cashflow).

(c) The resignation of that Guarantor shall not be effective until the date of the relevant Third Party Disposal at which time that company shall cease to be a Guarantor and shall have no further rights or obligations under the Finance Documents as a Guarantor.

32.6 Repetition of Representations

Delivery of an Accession Deed constitutes confirmation by the relevant Subsidiary that the representations and warranties referred to in paragraph (e) of Clause 25.33 (Times when representations made) 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.

32.7 Resignation [and release of security] on disposal

If a Borrower or Guarantor is or is proposed to be the subject of a Third Party Disposal then:

(a) [where that Borrower or Guarantor created Transaction Security over any of its assets or business in favour of the Security Agent, or Transaction Security in favour of the Security Agent was created over the shares (or equivalent) of that Borrower or Guarantor, the Security Agent may, at the cost and request of the Parent, release those assets, business or shares (or equivalent) and issue certificates of non-crystallisation; and]

(b) any resignation of that Borrower or Guarantor [and related release of Transaction Security referred to in paragraph (a) above] shall become effective only on the making of that disposal.

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132 It is assumed that release of Security over assets disposed of in accordance with the terms of the Agreement (or pursuant to enforcement of Transaction Security) is dealt with in the trustee provisions of the Intercreditor Agreement. Clauses 13 (Non-Distressed Disposals) and 14 (Distressed Disposals and Appropriation) of the recommended form of LMA Intercreditor Agreement for Leveraged Acquisition Finance Transactions (Senior/Mezzanine) are intended to cover these areas.
SECTION 10
THE FINANCE PARTIES


33.1 Appointment of the Agent

(a) Each of the Arranger, the Lenders and the Issuing Bank appoints the Agent to act as its agent under and in connection with the Finance Documents.

(b) Each of the Arranger, the Lenders and the Issuing Bank 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.

33.2 Instructions

(a) The Agent shall:

(i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by:

(A) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision;

(B) [the Super Majority Lenders if the relevant Finance Document stipulates the matter is a Super Majority Lender decision;]

(C) [the Incremental Facility Majority Lenders if the relevant Finance Document stipulates the matter is an Incremental Facility Majority Lender decision;] and

(D) in all other cases, the Majority Lenders; and

(ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above.

(b) The Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Lender or group of Lenders, from that Lender or group of Lenders) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.

(c) Save in the case of decisions stipulated to be a matter for any other Lender or group of Lenders under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Agent by the Majority Lenders shall override any conflicting instructions given by any
other Parties and will be binding on all Finance Parties save for the Security Agent.

(d) The Agent may refrain from acting in accordance with any instructions of any Lender or group of Lenders until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability which it may incur in complying with those instructions.

(e) In the absence of instructions, the Agent may act (or refrain from acting) as it considers to be in the best interest of the Lenders.

(f) The Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (f) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Transaction Security Documents or enforcement of the Transaction Security or Transaction Security Documents.

33.3 **Duties of the Agent**

(a) The Agent's duties under the Finance Documents are solely mechanical and administrative in nature.

(b) Subject to paragraph (c) below, the Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party.

(c) Without prejudice to Clause 30.8 (Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Parent) and paragraph (e) of Clause 7.4 (Cash Collateral by Non-Acceptable L/C Lender and Borrower’s option to provide cash cover), paragraph (b) above shall not apply to any Transfer Certificate, any Assignment Agreement or any Increase Confirmation.

(d) Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.

(e) If the Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.

(f) If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Agent, the Arranger or the Security Agent) under this Agreement, it shall promptly notify the other Finance Parties.

(g) The Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).
33.4 **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.

33.5 **No fiduciary duties**

(a) Nothing in any Finance Document constitutes the Agent, the Arranger or the Issuing Bank as a trustee or fiduciary of any other person.

(b) None of the Agent, the Arranger, the Issuing Bank or any Ancillary Lender 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.

33.6 **Business with the Group**

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

33.7 **Rights and discretions**

(a) The Agent [and the Issuing Bank] may:

(i) rely on any representation, communication, notice or document (including, without limitation, any notice given by a Lender pursuant to paragraphs (b) or (c) of Clause 31.2 (Disenfranchisement of Sponsor Affiliates)) believed by it to be genuine, correct and appropriately authorised;

(ii) assume that:

(A) any instructions received by it from the Majority Lenders, any Lenders or any group of Lenders are duly given in accordance with the terms of the Finance Documents; and

(B) unless it has received notice of revocation, that those instructions have not been revoked; and

(iii) rely on a certificate from any person:

(A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or

(B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,

as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
(b) The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:

(i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 29.1 (Non-payment));

(ii) any right, power, authority or discretion vested in any Party or any group of Lenders has not been exercised;

(iii) any notice or request made by the Parent (other than a Utilisation Request or Selection Notice) is made on behalf of and with the consent and knowledge of all the Obligors; and

(iv) no Notifiable Debt Purchase Transaction:

(A) has been entered into;

(B) has been terminated; or

(C) has ceased to be with a Sponsor Affiliate.

(c) The Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.

(d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Agent (and so separate from any lawyers instructed by the Lenders) if the Agent in its reasonable opinion deems this to be desirable.

(e) The Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.

(f) The Agent may act in relation to the Finance Documents through its officers, employees and agents and the Agent shall not:

(i) be liable for any error of judgment made by any such person; or

(ii) be bound to supervise, or be in any way responsible for, any loss incurred by reason of misconduct, omission or default on the part of any such person,

unless such error or such loss was directly caused by the Agent's gross negligence or wilful misconduct.

(g) Unless a Finance Document expressly provides otherwise the Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.
(h) Without prejudice to the generality of paragraph (g) above, the Agent:

(i) may disclose; and

(ii) on the written request of the Parent or the Majority Lenders shall, as soon as reasonably practicable, disclose,

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

(i) Notwithstanding any other provision of any Finance Document to the contrary, none of the Agent, the Arranger or the Issuing Bank is obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.

(j) Notwithstanding any provision of any Finance Document to the contrary, the Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

33.8 Responsibility for documentation

None of the Agent, the Arranger, the Issuing Bank [or any Ancillary Lender] is responsible or liable for:

(a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Agent, the Arranger, the Issuing Bank, an Ancillary Lender, an Obligor or any other person in or in connection with any Finance Document or the Information Memorandum or the Reports or the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; [or]

(b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security; [or]

(c) any determination as to whether any information provided or to be provided to any Finance Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.]

33.9 No duty to monitor

The Agent shall not be bound to enquire:

(a) whether or not any Default has occurred;

(b) as to the performance, default or any breach by any Party of its obligations under any Finance Document; or
whether any other event specified in any Finance Document has occurred.

33.10 Exclusion of liability

(a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Agent, the Issuing Bank [or any Ancillary Lender]), none of the Agent, the Issuing Bank, [nor any Ancillary Lender] will be liable [(including, without limitation, for negligence or any other category of liability whatsoever)]\(^{133}\) for:

(i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document or the Transaction Security, unless directly caused by its gross negligence or wilful misconduct;

(ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Finance Document, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document or the Transaction Security; or

(iii) without prejudice to the generality of paragraphs (i) and (ii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:

(A) any act, event or circumstance not reasonably within its control; or

(B) the general risks of investment in, or the holding of assets in, any jurisdiction, including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

(b) No Party (other than the Agent, the Issuing Bank [or an Ancillary Lender] (as applicable)) may take any proceedings against any officer, employee or agent of the Agent, the Issuing Bank [or any Ancillary Lender], in respect of any claim it might have against the Agent, the Issuing Bank [or an Ancillary Lender] or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or any Transaction Document and any officer,

\(^{133}\) Only include words in brackets if optional Clause 36.11 (Disruption to payment systems etc.) has been included.
employee or agent of the Agent, the Issuing Bank or any Ancillary Lender may rely on this Clause paragraph (b) [subject to Clause 1.4 (Third party rights) and the provisions of the Third Parties Act].

(c) The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Agent if the Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Agent for that purpose.

(d) Nothing in this Agreement shall oblige the Agent or the Arranger to carry out:

   (i) any "know your customer" or other checks in relation to any person; or
   (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Lender [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.

(e) Without prejudice to any provision of any Finance Document excluding or limiting the Agent's liability, any liability of the Agent arising under or in connection with any Finance Document or the Transaction Security shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Agent or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Agent at any time which increase the amount of that loss. In no event shall the Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Agent has been advised of the possibility of such loss or damages.

33.11 Lenders' indemnity to the Agent

   (a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, within three Business Days of demand, against any cost, loss or liability [(including, without limitation, for negligence or any other category of liability whatsoever)]\(^{134}\) 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 36.11 (Disruption to payment systems etc.), notwithstanding the Agent's]

\(^{134}\) Users should consider including this wording if the optional Clause 36.11 (Disruption to payment systems etc.) has been included.
negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent)\(^{135}\) in acting as Agent under the Finance Documents (unless the Agent has been reimbursed by an Obligor pursuant to a Finance Document).

(b) Subject to paragraph (c) below, the Parent shall immediately on demand reimburse any Lender for any payment that Lender makes to the Agent pursuant to paragraph (a) above.

(c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Agent to an Obligor.

33.12 Resignation of the Agent

(a) The Agent may resign and appoint one of its Affiliates acting through an office [in the United Kingdom]\(^{136}\) as successor by giving notice to the Lenders and the Parent.

(b) Alternatively the Agent may resign by giving 30 days' notice to the Lenders and the Parent, in which case the Majority Lenders (after consultation with the Parent) may appoint a successor Agent.

(c) If the Majority Lenders have not appointed a successor Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Agent (after consultation with the Parent) may appoint a successor Agent [(acting through an office in the United Kingdom)]\(^{137}\).

(d) If the Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Agent is entitled to appoint a successor Agent under paragraph (c) above, the Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Agent to become a party to this Agreement as Agent) agree with the proposed successor Agent amendments to this Clause 33 [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.

(e) The retiring Agent shall, [at its own cost,] make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents. [The Parent shall, within three Business Days of demand, reimburse the retiring Agent for the amount of all costs and expenses

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\(^{135}\) Include words in brackets if optional Clause 36.11 \textit{(Disruption to payment systems etc.)} has been included.

\(^{136}\) This document assumes that the Agent is located in the United Kingdom. Accordingly users 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.

\(^{137}\) See footnote 136 above.
(including legal fees) properly incurred by it in making available such documents and records and providing such assistance.]

(f) The Agent's resignation notice shall only take effect upon the appointment of a successor.

(g) Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (e) above) but shall remain entitled to the benefit of Clause 21.3 (Indemnity to the Agent) and this Clause 33 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

(h) The Agent shall resign in accordance with paragraph (b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Agent pursuant to paragraph (c) above) if on or after the date which is [three] months before the earliest FATCA Application Date relating to any payment to the Agent under the Finance Documents, either:

(i) the Agent fails to respond to a request under Clause 19.8 (FATCA information) and [the Parent or] a Lender reasonably believes that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

(ii) the information supplied by the Agent pursuant to Clause 19.8 (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

(iii) the Agent notifies the Parent 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 Parent 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 Parent or] that Lender, by notice to the Agent, requires it to resign.

33.13 Replacement of the Agent

(a) After consultation with the Parent, the Majority Lenders may, by giving 30 days' notice to the Agent (or, at any time the Agent is an Impaired Agent, by giving any shorter notice determined by the Majority Lenders) replace the Agent by appointing a successor Agent [(acting through an office in the United Kingdom)].

(b) The retiring Agent shall (at its own cost if it is an Impaired Agent and otherwise at the expense of the Lenders) make available to the successor Agent such documents and records and provide such assistance as the successor Agent may
reasonably request for the purposes of performing its functions as Agent under the Finance Documents.

(c) The appointment of the successor Agent shall take effect on the date specified in the notice from the Majority Lenders to the retiring Agent. As from this date, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) above) but shall remain entitled to the benefit of Clause 21.3 \textit{(Indemnity to the Agent)} and this Clause 33 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date).

(d) Any successor Agent and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

33.14 
\textbf{Confidentiality}

(a) In acting as agent for the Finance Parties, the Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.

(b) If information is received by another division or department of the Agent, it may be treated as confidential to that division or department and the Agent shall not be deemed to have notice of it.

33.15 
\textbf{Relationship with the Lenders}

(a) [Subject to Clause 30.11 \textit{(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:

(i) [entitled to or liable for any payment due under any Finance Document on that day; and]

(ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,

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

(b) [Each Lender shall supply the Agent with any information required by the Agent in order to calculate the Mandatory Cost in accordance with Schedule 4 \textit{(Mandatory Cost formula)}.]

(e)(b) Any Lender may by notice to the Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender under the Finance Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under Clause 38.6 \textit{(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 38.2 (Addresses) and paragraph (a)(ii) of Clause 38.6 (Electronic communication) and the Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.

33.16 Credit appraisal by the Lenders, Issuing Bank and Ancillary Lenders

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

(a) the financial condition, status and nature of each member of the Group;

(b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document, the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;

(c) whether that Lender, Issuing Bank or Ancillary Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the Transaction Security, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;

(d) the adequacy, accuracy or completeness of the Information Memorandum, the Reports 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; and

(e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property.

33.17 Agent's management time

(a) Any amount payable to the Agent under Clause 21.3 (Indemnity to the Agent), Clause 23 (Costs and expenses) and Clause 33.11 (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 Parent and the Lenders, and is in addition to any fee paid or payable to the Agent under Clause 18 (Fees).

(b) [Any cost of utilising the Agent’s management time or other resources shall include, without limitation, any such costs in connection with Clause 31.2 (Disenfranchisement of Sponsor Affilies).]

33.18 Deduction from amounts payable by the Agent

If any Party owes an amount to the Agent under the Finance Documents the Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

33.19 Reliance and engagement letters

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

33.20 [Role of Reference Banks

(a) No Reference Bank is under any obligation to provide a quotation or any other information to the Agent.

(b) [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.

(c) 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 33.20 subject to Clause 1.4 (Third party rights) and the provisions of the Third Parties Act[1]]

33.21 [Third party Reference Banks

A Reference Bank which is not a Party may rely on Clause 33.20 (Role of Reference Banks), paragraph (a) of Clause 42.4 (Other exceptions) and Clause 44 (Confidentiality
**of Funding Rates [and Reference Bank Quotations]**) subject to Clause 1.4 (Third party rights) and the provisions of the Third Parties Act.

34. **CONDUCT OF BUSINESS BY THE FINANCE PARTIES**

No provision of this Agreement will:

(a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;

(b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or

(c) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

35. **SHARING AMONG THE FINANCE PARTIES**

35.1 **Payments to Finance Parties**

(a) Subject to paragraph (b) below, if a Finance Party (a "Recovering Finance Party") receives or recovers any amount from an Obligor other than in accordance with Clause 36 (Payment mechanics) (a "Recovered Amount") and applies that amount to a payment due under the Finance Documents then:

(i) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery, to the Agent;

(ii) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause 36 (Payment mechanics), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and

(iii) the Recovering 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 36.6 (Partial payments).

(b) Paragraph (a) above shall not apply to any amount received or recovered by an Issuing Bank or an Ancillary Lender in respect of any cash cover provided for the benefit of that Issuing Bank or that Ancillary Lender.

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138 If this Clause 33.21 (Third party Reference Banks) is included use the second option in Clause 1.4 (Third party rights).
35.2 **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 36.6 (Partial payments) towards the obligations of that Obligor to the Sharing Finance Parties.

35.3 **Recovering Finance Party's rights**

On a distribution by the Agent under Clause 35.2 (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.

35.4 **Reversal of redistribution**

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

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

(b) as between the 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.

35.5 **Exceptions**

(a) This Clause 35 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.

(b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:

(i) it notified the other Finance Party of the legal or arbitration proceedings; and

(ii) the other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.
35.6 Ancillary Lenders

(a) This Clause 35 shall not apply to any receipt or recovery by a Lender in its capacity as an Ancillary Lender at any time prior to the Agent exercising any of its rights under Clause 29.20 (Acceleration).

(b) Following the exercise by the Agent of any of its rights under Clause 29.20 (Acceleration), this Clause 35 shall apply to all receipts or recoveries by Ancillary Lenders [except to the extent that the receipt or recovery represents a reduction of [the Permitted Gross Outstandings of a Multi-account Overdraft to or towards an amount equal to its Designated Net Amount]/[the Gross Outstandings of a Multi-account Overdraft to or towards an amount equal to its Net Outstandings]].

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139 For use where provisions are included to facilitate Ancillary Lenders reporting Ancillary Facilities comprising group overdraft facilities "net" to the UK regulator. Use the first option if the commercial agreement is that such Ancillary Lenders are permitted to retain the proceeds of exercising set-off across accounts (without sharing those proceeds with the other Lenders) only within specified limits. Use the second option if the commercial agreement is that such Ancillary Lenders are permitted to retain the proceeds of exercising set-off across accounts (without sharing those proceeds with other Lenders) without limit. Users should note that the option chosen is likely to effect the extent to which such Ancillary Lenders are able to report group overdraft facilities on a net basis. It is assumed that Users will obtain regulatory advice in relation to the ability to report such facilities "net".
SECTION 11
ADMINISTRATION

36. PAYMENT MECHANICS

36.1 Payments to the Agent

(a) On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, excluding a payment under the terms of an Ancillary Document, that Obligor or Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.

(b) Payment shall be made to such account in the principal financial centre of the country of that currency (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.

36.2 Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 36.3 (Distributions to an Obligor) and Clause 36.4 (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).

36.3 Distributions to an Obligor

The Agent may (with the consent of the Obligor or in accordance with Clause 37 (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.

36.4 Clawback and pre-funding

(a) Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.

(b) Unless paragraph (c) below applies, if the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to
the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.

(c) If the Agent [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:

(i) [the Agent shall notify the Parent of that Lender’s identity and] the Borrower to whom that sum was made available shall on demand refund it to the Agent; and

(ii) the Lender by whom those funds should have been made available or, if that Lender fails to do so, the Borrower 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.

36.5 Impaired Agent

(a) If, at any time, the Agent becomes an Impaired Agent, an Obligor or a Lender which is required to make a payment under the Finance Documents to the Agent in accordance with Clause 36.1 (Payments to the Agent) may instead either:

(i) pay that amount direct to the required recipient(s); or

(ii) if in its absolute discretion it considers that it is not reasonably practicable to pay that amount direct to the required recipient(s), pay that amount or the relevant part of that amount to an interest-bearing account held with an Acceptable Bank within the meaning of paragraph (a) of the definition of “Acceptable Bank” and in relation to which no Insolvency Event has occurred and is continuing, in the name of the Obligor or the Lender making the payment (the “Paying Party”) and designated as a trust account for the benefit of the Party or Parties beneficially entitled to that payment under the Finance Documents (the “Recipient Party” or “Recipient Parties”).

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

(b) All interest accrued on the amount standing to the credit of the trust account shall be for the benefit of the Recipient Party or the Recipient Parties pro rata to their respective entitlements.

(c) A Party which has made a payment in accordance with this Clause 36.5 shall be discharged of the relevant payment obligation under the Finance Documents and shall not take any credit risk with respect to the amounts standing to the credit of the trust account.
(d) Promptly upon the appointment of a successor Agent in accordance with Clause 33.13 (Replacement of the Agent), each Paying Party shall (other than to the extent that that Party has given an instruction pursuant to paragraph (e) below) give all requisite instructions to the bank with whom the trust account is held to transfer the amount (together with any accrued interest) to the successor Agent for distribution to the relevant Recipient Party or Recipient Parties in accordance with Clause 36.2 (Distributions by the Agent).

(e) A Paying Party shall, promptly upon request by a Recipient Party and to the extent:

(i) that it has not given an instruction pursuant to paragraph (d) above; and

(ii) that it has been provided with the necessary information by that Recipient Party,

give all requisite instructions to the bank with whom the trust account is held to transfer the relevant amount (together with any accrued interest) to that Recipient Party.

36.6 Partial payments

(a) If the Agent receives a payment for application against amounts due in respect of any Finance Documents that is insufficient to discharge all the amounts then due and payable by an Obligor under those Finance Documents, the Agent shall apply that payment towards the obligations of that Obligor under the Finance Documents in the following order:

(i) **first**, in or towards payment pro rata of any unpaid amount owing to the Agent, the Issuing Bank (other than any amount under Clause 7.2 (Claims under a Letter of Credit) or, to the extent relating to the reimbursement of a claim (as defined in Clause 7 (Letters of Credit)), Clause 7.3 (Indemnities)) or the Security Agent under the Finance Documents;

(ii) **secondly**, in or towards payment pro rata of any accrued interest, fee or commission due but unpaid under those Finance Documents;

(iii) **thirdly**, in or towards payment pro rata of any principal due but unpaid under those Finance Documents and any amount due but unpaid under Clause 7.2 (Claims under a Letter of Credit) and Clause 7.3 (Indemnities); and

(iv) **fourthly**, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.

(b) The Agent shall, if so directed by the Majority Lenders, vary the order set out in paragraphs (a)(ii) to (a)(iv) above.
(c) Paragraphs (a) and (b) above will override any appropriation made by an Obligor.\(^{140}\)

36.7 **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.

36.8 **Business Days**

(a) Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

(b) During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

36.9 **Currency of account**

(a) 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.

(b) A repayment of a Utilisation or Unpaid Sum or a part of a Utilisation or Unpaid Sum shall be made in the currency in which that Utilisation or Unpaid Sum is denominated, pursuant to this Agreement, on its due date.

(c) Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated, pursuant to this Agreement, when that interest accrued.

(d) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.

(e) Any amount expressed to be payable in a currency other than the Base Currency shall be paid in that other currency.

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\(^{140}\) Clause 36.6 (Partial payments) is not intended to include the ranking of Obligor liabilities under the Hedging Agreements in an enforcement scenario. (It is assumed that this will be contained in the Intercreditor Agreement - this is the case in the recommended form of LMA Intercreditor Agreement for Leveraged Acquisition Finance Transactions (Senior/Mezzanine)). If it is used in this way (by cross-reference or otherwise) the Clause may require amendment.
36.10 **Change of currency**

(a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:

(i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Agent (after consultation with the Parent); and

(ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Agent (acting reasonably).

(b) If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Parent) 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.

36.11 **Disruption to payment systems etc.**

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

(a) the Agent may, and shall if requested to do so by the Parent, consult with the Parent with a view to agreeing with the Parent such changes to the operation or administration of the Facilities as the Agent may deem necessary in the circumstances;

(b) the Agent shall not be obliged to consult with the Parent in relation to any changes mentioned in paragraph (a) above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;

(c) the Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) above but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;

(d) any such changes agreed upon by the Agent and the Parent 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 42 (Amendments and Waivers);

(e) the Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) arising as a result
of its taking, or failing to take, any actions pursuant to or in connection with this Clause 36.11; and

(f) the Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.]

37. **SET-OFF**

(a) 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.

(b) Any credit balances taken into account by an Ancillary Lender when operating a net limit in respect of any overdraft under an Ancillary Facility shall on enforcement of the Finance Documents be applied first in reduction of the overdraft provided under that Ancillary Facility in accordance with its terms.

38. **NOTICES**

38.1 **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.

38.2 **Addresses**

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

(a) in the case of the Parent or the Company, that identified with its name below;

(b) in the case of each Lender, the Issuing Bank, each Ancillary Lender or any other Obligor, that notified in writing to the Agent on or prior to the date on which it becomes a Party; and

(c) in the case of the Agent or the Security Agent, that identified with its name below,

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

(a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:

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

(ii) if by way of letter, when it has been left at the relevant address or [five] Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 38.2 *(Addresses)*, if addressed to that department or officer.

(b) Any communication or document to be made or delivered to the Agent or the Security Agent will be effective only when actually received by the Agent or Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Agent's or Security Agent's signature below (or any substitute department or officer as the Agent or Security Agent shall specify for this purpose).

(c) All notices from or to an Obligor shall be sent through the Agent.

(d) Any communication or document made or delivered to the Parent in accordance with this Clause 38.3 will be deemed to have been made or delivered to each of the Obligors.

(e) Any communication or document which becomes effective, in accordance with paragraphs (a) to (d) above, after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

38.4 **Notification of address and fax number**

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

38.5 **Communication when Agent is Impaired Agent**

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

38.6 **Electronic communication**

(a) Any communication *or document* to be made between any two Parties *or delivered by one Party to another* under or in connection with the Finance Documents may be made *or delivered* by electronic mail or other electronic
means (including, without limitation, by way of posting to a secure website) if those two Parties:

(i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and

(ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.

(b) Any such electronic communication or delivery as specified in paragraph (a) above to be made between 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.

(c) Any such electronic communication or document as specified in paragraph (a) above made between any two Parties or delivered by one Party to another will be effective only when actually received (or made available) in readable form and in the case of any electronic communication or document made or delivered by a Party to the Agent or the Security Agent only if it is addressed in such a manner as the Agent or Security Agent shall specify for this purpose.

(d) Any electronic communication or document which becomes effective, in accordance with paragraph (c) above, after 5:00 p.m. in the place in which the Party to whom the relevant communication or document is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.

(e) Any reference in a Finance Document to a communication being sent or received or a document being delivered shall be construed to include that communication or document being made available in accordance with this Clause 38.6.

38.7 Use of websites

38.7 Direct electronic delivery by Parent

(a) The Parent may satisfy its obligation under this Agreement to deliver any information in relation to those Lenders (the "Website Lenders") who accept this method of communication by posting this information onto an electronic website designated by the Parent and the Agent (the "Designated Website") if a Lender by delivering that information directly to that Lender in accordance with Clause 38.6 (Electronic communication) to the extent that Lender and the Agent agree to this method of delivery.

(i) the Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;

(ii) both the Parent and the Agent are aware of the address of and any relevant password specifications for the Designated Website; and
the information is in a format previously agreed between the Parent and the Agent.

If any Lender (a "Paper Form Lender") does not agree to the delivery of information electronically then the Agent shall notify the Parent accordingly and the Parent shall at its own cost supply the information to the Agent (in sufficient copies for each Paper Form Lender) in paper form. In any event the Parent shall at its own cost supply the Agent with at least one copy in paper form of any information required to be provided by it.

(b) The Agent shall supply each Website Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by the Parent and the Agent.

(c) The Parent shall promptly upon becoming aware of its occurrence notify the Agent if:

(i) the Designated Website cannot be accessed due to technical failure;

(ii) the password specifications for the Designated Website change;

(iii) any new information which is required to be provided under this Agreement is posted onto the Designated Website;

(iv) any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or

(v) the Parent becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.

If the Parent notifies the Agent under paragraph (c)(i) or paragraph (c)(v) above, all information to be provided by the Parent under this Agreement after the date of that notice shall be supplied in paper form [unless and until the Agent and each Website Lender is satisfied that the circumstances giving rise to the notification are no longer continuing].

(d) Any Website Lender may request, through the Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Parent shall at its own cost comply with any such request within ten Business Days.

38.8 English language

(a) Any notice given under or in connection with any Finance Document must be in English.

(b) All other documents provided under or in connection with any Finance Document must be:

(i) in English; or
(ii) if not in English, and if so required by the Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

39. **CALCULATIONS AND CERTIFICATES**

39.1 **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.

39.2 **Certificates and determinations**

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

39.3 **Day count convention**

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days or, in any case where the practice in the Relevant Market differs, in accordance with that market practice.

40. **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.

41. **REMEDIES AND WAIVERS**

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

42. **AMENDMENTS AND WAIVERS**

42.1 **Intercreditor Agreement**

This Clause 42 is subject to the terms of the Intercreditor Agreement.
42.2 **Required consents**

(a) Subject to Clause 42.3 (*All Lender matters*) and Clause 42.4 (*Other exceptions*), any term of the Finance Documents (other than [the Mandate Letter]141) may be amended or waived only with the consent of the Majority Lenders and the Parent and any such amendment or waiver will be binding on all Parties.

(b) The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 42.

(c) Without prejudice to the generality of paragraphs (c), (d) and (e) of Clause 33.7 (*Rights and discretions*), the Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement.

(d) Each Obligor agrees to any such amendment or waiver permitted by this Clause 42 which is agreed to by the Parent. This includes any amendment or waiver which would, but for this paragraph (d), require the consent of all of the Guarantors.

(e) [Paragraph (c) of Clause 30.11 (*Pro rata interest settlement*) shall apply to this Clause 42]142.

42.3 **All Lender matters**

[Subject to [Clause 42.5 (*Replacement of Screen Rate*)] [and] [Clause 42.6 (*Structural Adjustment*)]], an amendment, waiver or (in the case of a Transaction Security Document) a consent of, or in relation to, any term of any Finance Document that has the effect of changing or which relates to:

(a) the definition of "Majority Lenders" [or "Super Majority Lenders"] [or "Incremental Facility Majority Lenders"] in Clause 1.1 (*Definitions*);

(b) an extension to the date of payment of any amount under the Finance Documents [(other than in relation to Clause 13 (*Mandatory prepayment and cancellation*))];143

(c) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;

(d) [a change in currency of payment of any amount under the Finance Documents;]

141 Consider whether other Finance Documents should not require Majority Lender consent to be amended.

142 Include if the optional Clause 30.11 (*Pro rata interest settlement*) is included.

143 Users should consider the extent to which an amendment or waiver relating to a deferral of any amount under the mandatory prepayment provisions in Clause 13 (*Mandatory prepayment and cancellation*) should require all Lender or Majority Lender consent. The language in square brackets should be included if the commercial agreement is that such amendments or waivers are to require Majority Lender consent only. Note that the extent to which any amendments or waivers which change or relate to Clause 13 (*Mandatory prepayment and cancellation*) itself are addressed in paragraph (h) of Clause 42.3 (*All Lender matters*) and any sensitivities are likely to be similar. See the footnote to that paragraph.
an increase in any Commitment or the Total Commitments, an extension of any Availability Period or any requirement that a cancellation of Commitments reduces the Commitments of the Lenders rateably under the relevant Facility;

(f) a change to the Borrowers or Guarantors other than in accordance with Clause 32 (Changes to the Obligors);

(g) any provision which expressly requires the consent of all the Lenders;

(h) Clause 2.4 (Finance Parties' rights and obligations), Clause 5.1 (Delivery of a Utilisation Request), Clause 12.1 (Illegality), Clause 13 (Mandatory prepayment and cancellation), Clause 13.1 (Exit), the definition of "Change of Control" in Clause 1.1 (Definitions), Clause 13.3 (Application of mandatory prepayments and cancellation), Clause 14.10 (Application of prepayments), Clause 30 (Changes to the Lenders), Clause 32 (Changes to the Obligors), this Clause 42, Clause 47 (Governing law) or Clause 48.1 (Jurisdiction of English courts);

(i) (other than as expressly permitted by the provisions of any Finance Document) the nature or scope of:

(i) the guarantee and indemnity granted under Clause 24 (Guarantee and Indemnity);

(ii) the Charged Property; or

(iii) the manner in which the proceeds of enforcement of the Transaction Security are distributed

(except in the case of paragraphs (ii) and (iii) above, insofar as it relates to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document);

(j) the release of any guarantee and indemnity granted under Clause 24 (Guarantee and Indemnity) or of any Transaction Security unless permitted under this Agreement or any other Finance Document or relating to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is permitted under this Agreement or any other Finance Document; [or

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Users should consider the extent to which amendments and waivers which change or relate to the mandatory prepayment provisions in Clause 13 (Mandatory prepayment and cancellation) should require all Lender or Majority Lender consent. A number of drafting options are provided and users should consider which, if any, of these options are suitable in the context of the relevant transaction and sensitivities which they may have. For example, an individual Lender may be sensitive to the consequences of being unwillingly bound by a Majority Lender decision in respect of a waiver of, or amendment to: (i) any threshold levels set under Clause 13.2 (Disposal, Insurance and Acquisition Proceeds and Excess Cashflow); and (ii) the Obligors' obligation to prepay the Facilities on a change of control, flotation or sale of all the Group's assets under Clause 13.1 (Exit).
(k) [any amendment to the order of priority or subordination under the Intercreditor Agreement]; or

(l) [ ],

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

42.4 Other exceptions

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

(b) [Any amendment which relates to the rights of the Lenders to waive prepayment of Facility B or Facility C [or a Waivable Bullet Incremental Facility] under Clause 14.8 (Prepayment elections) shall not be effected without the consent of the Lenders under Facility B or Facility C [or that Waivable Bullet Incremental Facility], as the case may be.]

(c) [Any amendment or waiver [(other than an amendment or waiver to which Clause 42.6 (Structural Adjustment) applies or would, but for this paragraph (c), apply)] which:

(i) relates only to the rights or obligations applicable to a particular Utilisation, Facility or class of Lender; and

(ii) does not [materially and] adversely affect the rights or interests of Lenders in respect of any other Utilisation or Facility or another class of Lender,

may be made in accordance with this Clause 42 but as if references in this Clause 42 to the specified proportion of Lenders (including, for the avoidance of doubt, all the Lenders) whose consent would, but for this paragraph (c), be required for that amendment or waiver were to that proportion of the Lenders participating in that particular Utilisation or Facility or forming part of that particular class.]

42.5 [Replacement of Screen Rate]

(a) Subject to paragraph (a)(a) of Clause 42.4 (Other exceptions), if a Screen Rate Replacement Event has occurred in relation to any Screen Rate is not

145 This paragraph may be removed if the Intercreditor Agreement covers this area. (Clause 28 (Consents, Amendments and Override) of the recommended form of LMA Intercreditor Agreement for Leveraged Acquisition Finance Transactions (Senior/Mezzanine) is intended to cover this area).

146 Insert if Clause 42.6 (Structural Adjustment) is included.

147 Users 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
available for a currency which can be selected for a Loan,\textsuperscript{148} any amendment or waiver which relates to:

(i) providing for another benchmark rate to apply the use of a Replacement Benchmark [in relation to that currency in place of that \textsuperscript{149}Screen Rate (or which relates to)]\textsuperscript{150}

(ii) (A) aligning any provision of a Finance Document to the use of that other benchmark rate) Replacement Benchmark;

(B) enabling that Replacement Benchmark to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Benchmark to be used for the purposes of this Agreement);

(C) implementing market conventions applicable to that Replacement Benchmark;

(D) providing for appropriate fallback (and market disruption) provisions for that Replacement Benchmark; or

(E) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Benchmark (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation)\textsuperscript{151}.

\textsuperscript{148} Users should include if it is appropriate that the provisions of Clause 42.5 (Replacement of Screen Rate) operate upon the occurrence of a trigger event.

\textsuperscript{149} Users should consider whether there might be situations in which parties may want flexibility to retain the ability to use either the existing Screen Rate or the Replacement Benchmark on transactions. If this is the case, delete "that" and substitute "(or in addition to) the affected" here.

\textsuperscript{150} If paragraph (b) of Clause 42.7 (Excluded Commitments) is not included consider whether a snooze/lose concept should apply to this Clause 42.5 (Replacement of Screen Rate).

\textsuperscript{151} Users 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).
may be made with the consent of the Agent (acting on the instructions of the [Majority Lenders] and the Parent) and the Parent.

(b) In this Clause 42.5:

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

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

(a) _formally designated, nominated or recommended as the replacement for a Screen Rate by:

   (i) the administrator of that Screen Rate [provided that the market or economic reality that such benchmark rate measures is the same as that measured by that Screen 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] and the Parent, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to a Screen Rate; or

(c) in the opinion of the [Majority Lenders] and the Parent, an appropriate successor to a Screen Rate.]

"Screen Rate Replacement Event" means, in relation to a Screen Rate:

(a) the methodology, formula or other means of determining that Screen Rate has [in the opinion of the [Majority Lenders] and the Parent] materially changed;

(b)   

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

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

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

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

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

(c) [the administrator of that Screen Rate determines that that Screen 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] and the Parent) temporary; or

(ii) that Screen Rate is calculated in accordance with any such policy or arrangement for a period no less than the period opposite that Screen Rate in Schedule 15 (Screen Rate contingency periods);159 [or]

(d) [in the opinion of the [Majority Lenders]160 and the Parent, that Screen Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.]]

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158 Users should insert the consent level that is appropriate in the context of the composition of the lending group.

159 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.

160 Users should insert the consent level that is appropriate in the context of the composition of the lending group.
42.6 [Structural Adjustment]

(a) In this Agreement:

(i) "Adjustment" means:

(A) the introduction of a New Tranche into the Finance Documents;

(B) an increase in any Existing Tranche; or

(C) an extension of the Availability Period applicable to the Revolving Facility.

(ii) "Consequential Amendment" means, in relation to a Major Structural Adjustment, a Minor Structural Adjustment or a Payables Reduction, any amendment, waiver or consent ([including]/[excluding] any Security Adjustment) of, or in relation to, any Finance Document consequential on, or required to implement or reflect, that Major Structural Adjustment, Minor Structural Adjustment or Payables Reduction.

(iii) "Existing Tranche" means any Commitment in respect of, and any Loan made under, an existing Facility.

(iv) "Facilities Amount" means at any time, the then aggregate (without double counting) of the amount in the Base Currency (as determined by the Agent by reference to the Agent’s Spot Rate of Exchange) of:

(A) the amounts borrowed and not repaid or prepaid; [and]

(B) the committed financial accommodation available (or potentially available); and

(C) the uncommitted financial accommodation potentially available by way of establishment of an Incremental Facility],

under the Finance Documents and, in the case of paragraph[s] (B) [and (C)] above, by reference to the application, at that time, of any relevant limitation on the potential amount of that financial accommodation.

(v) "Facilities Increase" means, in relation to an Adjustment, the extent to which the Facilities Amount immediately after that Adjustment would (as a result of that Adjustment and after taking account of any repayment of any Utilisation, or any cancellation of any Commitment, to be effected at the same time as, or immediately following that Adjustment) exceed the Facilities Amount immediately before that Adjustment.
(vi) "Major Structural Adjustment" means an amendment, waiver or consent that is not a Minor Structural Adjustment and that results in, or is intended to result in:

(A) an Adjustment where:

   (1) [the amount of any Facilities Increase does not exceed the Permitted Maximum; and]

   (2) the indebtedness in respect of any New Tranche introduced into the Finance Documents ranks pari passu with the indebtedness in respect of the Facilities;

(B) the introduction of a New Tranche into the Finance Documents where the indebtedness in respect of that New Tranche ranks junior to the indebtedness in respect of the Facilities;

(C) the transfer of an Existing Tranche (or any participation in an Existing Tranche) into any New Tranche described in paragraph (A) or paragraph (B) above; or

(D) a change in currency of any Existing Tranche or of any amount payable under any Finance Document.

(vii) "Minor Structural Adjustment" means an amendment, waiver or consent that results in, or is intended to result in:

(A) an Adjustment which would not result in a Facilities Increase or a change in currency of an Existing Tranche or of any amount payable under any Finance Document and where the indebtedness in respect of any New Tranche introduced pursuant to that Adjustment ranks pari passu with, or junior to, the indebtedness in respect of the Facilities; or

(B) the transfer of an Existing Tranche (or any participation in an Existing Tranche) into any New Tranche introduced pursuant to paragraph (A) above where each Lender which has an Existing Tranche (or a participation in that Existing Tranche) has the opportunity (but not the obligation) to transfer that Existing Tranche (or that participation) into that New Tranche.

(viii) "New Tranche" means any additional tranche, loan, facility or commitment.

(ix) "Payables Reduction" means an amendment, waiver or consent that results in, or is intended to result in:

(A) an extension to the date of payment of any amount under the Finance Documents; or

(B) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable.
(x)  "Permitted Maximum" means, in relation to any Major Structural Adjustment, the lesser of:

(A)  [ ]% of the Facilities Amount immediately prior to that Major Structural Adjustment; and

(B)  [insert amount] less the Facilities Increase relating to any other Major Structural Adjustment.

(xi)  "Security Adjustment" means any amendment, waiver or consent which:

(A)  results in changes to, the taking of, or the release coupled with the immediate retaking of, any Transaction Security or any guarantee and indemnity granted under Clause 24 (Guarantee and Indemnity); [and

(B)  would not have [an]/[a material] adverse effect on the Secured Parties provided that the release coupled with the immediate retaking of any Transaction Security or any such guarantee and indemnity (and the restarting of any related period during which Security, or any guarantee and indemnity, is capable of being avoided by virtue of any bankruptcy, insolvency, liquidation or similar laws), shall not, in itself, constitute such [an]/[a material] adverse effect].

(b)  If any amendment, waiver or consent is a Major Structural Adjustment, Minor Structural Adjustment or Payables Reduction (or, in each case, a Consequential Amendment relating to it) and would otherwise require the prior consent of all the Lenders pursuant to Clause 42.3 (All Lender matters), that amendment, waiver or consent may be made with the consent of the Parent and:

(i)  in the case of a Major Structural Adjustment (or a Consequential Amendment relating to it):

   (A)  each Lender that assumes a New Tranche or an increased Existing Tranche, whose Existing Tranche (or participation) is being transferred, whose Commitment is subject to an extended Availability Period or that has an Existing Tranche (or participation), or is owed any amount, which is subject, in each case, to a change in currency; and

   (B)  [the Super Majority Lenders]/[the Majority Lenders];

161 The extent to which any amendments to the Transaction Security and guarantees should be included in the Structural Adjustment concept should be considered on a transaction specific basis, together with the extent of any qualification.
(ii) in the case of a Minor Structural Adjustment (or a Consequential Amendment relating to it):

   (A) each Lender that assumes a New Tranche or an increased Existing Tranche, whose Existing Tranche (or participation) is being transferred or whose Commitment is subject to an extended Availability Period; and

   (B) [the Super Majority Lenders]/[the Majority Lenders]; or

(iii) in the case of a Payables Reduction (or a Consequential Amendment relating to it):

   (A) each Lender to whom any amount is owing in respect of which the date of payment is being extended or which is being reduced or whose Margin, fee or commission is being reduced; and

   (B) [the Super Majority Lenders]/[the Majority Lenders].]

42.7 Excluded Commitments

If:

(a) any Defaulting Lender fails to respond to a request for a consent, waiver, amendment of or in relation to any term of any Finance Document or any other vote of Lenders under the terms of this Agreement within [] Business Days of that request being made; or

(b) any Lender which is not a Defaulting Lender fails to respond to such a request [(other than an amendment, waiver or consent referred to in [paragraphs (b), (c) and (e) of Clause 42.3 (All Lender matters)] or [other])] or such a vote within [] Business Days of that request being made,162

(unless, [in either case,] the Parent and the Agent agree to a longer time period in relation to any request):

(i) 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 (including, for the avoidance of doubt, unanimity) of Total Commitments has been obtained to approve that request; and

(ii) 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.

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162 Users should note that this provision may not be appropriate in all cases for Lenders which are not Defaulting Lenders. Consider also whether there are any provisions which cannot be waived or amended using this provision for Lenders which are not Defaulting Lenders.
42.8 Replacement of Lender

(a) If:

(i) any Lender becomes a Non-Consenting Lender (as defined in paragraph (d) below); or

(ii) an Obligor becomes obliged to repay any amount in accordance with Clause 12.1 (Illegality) or to pay additional amounts pursuant to Clause 20.1 (Increased Costs), Clause 19.2 (Tax gross-up) or Clause 19.3 (Tax Indemnity) to any Lender,

then the Parent may, on [ ] Business Days' prior written notice to the Agent and such Lender, replace such Lender by requiring such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 30 (Changes to the Lenders) all (and not part only) of its rights and obligations under this Agreement to an Eligible Institution (a "Replacement Lender") which is acceptable (in the case of any transfer of a Revolving Facility Commitment) to the Issuing Bank and which confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with Clause 30 (Changes to the Lenders) for a purchase price in cash payable at the time of transfer in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Utilisations and all accrued interest and/or Letter of Credit fees [(to the extent that the Agent has not given a notification under Clause 30.11 (Pro rata interest settlement))], Break Costs and other amounts payable in relation thereto under the Finance Documents.

(b) The replacement of a Lender pursuant to this Clause 42.8 shall be subject to the following conditions:

(i) the Parent shall have no right to replace the Agent or Security Agent;

(ii) neither the Agent nor the Lender shall have any obligation to the Parent to find a Replacement Lender;

(iii) in the event of a replacement of a Non-Consenting Lender such replacement must take place no later than [ ]163 after the date on which that Lender is deemed a Non-Consenting Lender;

(iv) in no event shall the Lender replaced under this Clause 42.8 be required to pay or surrender to such Replacement Lender any of the fees received by such Lender pursuant to the Finance Documents; and

(v) the Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (a) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer.

163 Insert agreed time period.
(c) A Lender shall perform the checks described in paragraph (b)(v) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a) above and shall notify the Agent and the Parent when it is satisfied that it has complied with those checks.

(d) In the event that:

(i) the Parent or the Agent (at the request of the Parent) has requested the Lenders to give a consent in relation to, or to agree to a waiver or amendment of, any provisions of the Finance Documents;

(ii) the consent, waiver or amendment in question requires the approval of all the Lenders [or the Super Majority Lenders]; and

(iii) Lenders whose Commitments aggregate [either:]

(A) [in the case of a consent, waiver or amendment requiring the approval of all the Lenders,] more than [ ] per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than [ ] per cent. of the Total Commitments prior to that reduction); or

(B) in the case of a consent, waiver or amendment requiring the approval of the Super Majority Lenders, more than [ ] per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than [ ] per cent. of the Total Commitments prior to that reduction),

have consented or agreed to such waiver or amendment,

then any Lender who does not and continues not to consent or agree to such waiver or amendment shall be deemed a "Non-Consenting Lender".

42.9 Disenfranchisement of Defaulting Lenders

(a) For so long as a Defaulting Lender has any Available Commitment, in ascertaining:

(i) the Majority Lenders [or the Super Majority Lenders][or the Incremental Facility Majority Lenders]; or

(ii) whether:

(A) any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments under the relevant Facility/ies; or

(B) the agreement of any specified group of Lenders,

has been obtained to approve any request for a consent, waiver, amendment or other vote of Lenders under the Finance Documents,
that Defaulting Lender's Commitments under the relevant Facility/ies will be reduced by the amount of its Available Commitments under the relevant Facility/ies and, to the extent that that reduction results in that Defaulting Lender's Total Commitments being zero, that Defaulting Lender shall be deemed not to be a Lender for the purposes of paragraphs (i) and (ii) above.

(b) For the purposes of this Clause 42.9, the Agent may assume that the following Lenders are Defaulting Lenders:

(i) any Lender which has notified the Agent that it has become a Defaulting Lender;

(ii) any Lender in relation to which it is aware that any of the events or circumstances referred to in paragraphs (a), (b), (c) [or (d)] of the definition of "Defaulting Lender" has occurred,

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

42.10 Replacement of a Defaulting Lender

(a) The Parent may, at any time a Lender has become and continues to be a Defaulting Lender, by giving [ ] Business Days' prior written notice to the Agent and such Lender:

(i) replace such Lender by requiring such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 30 (Changes to the Lenders) all (and not part only) of its rights and obligations under this Agreement;

(ii) require such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 30 (Changes to the Lenders) all (and not part only) of the undrawn Revolving Facility Commitment of the Lender; or

(iii) require such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 30 (Changes to the Lenders) all (and not part only) of its rights and obligations in respect of the Revolving Facility,

to an Eligible Institution (a "Replacement Lender") which is acceptable (in the case of any transfer of a Revolving Facility Commitment) to the Issuing Bank and which confirms its willingness to assume and does assume all the obligations, or all the relevant obligations, of the transferring Lender in accordance with Clause 30 (Changes to the Lenders) [for a purchase price in cash payable at the time of transfer which is either:

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164 Include to the extent that paragraph (d) is included in the definition of "Defaulting Lender".
(i) in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Utilisations and all accrued interest and/or Letter of Credit fees [(to the extent that the Agent has not given a notification under Clause 30.11 (Pro rata interest settlement))]. Break Costs and other amounts payable in relation thereto under the Finance Documents; or

(ii) in an amount agreed between that Defaulting Lender, the Replacement Lender and the Parent and which does not exceed the amount described in paragraph (i) above.]

(b) Any transfer of rights and obligations of a Defaulting Lender pursuant to this Clause 42.10 shall be subject to the following conditions:

(i) the Parent shall have no right to replace the Agent or Security Agent;

(ii) neither the Agent nor the Defaulting Lender shall have any obligation to the Parent to find a Replacement Lender;

(iii) the transfer must take place no later than [ ]165 after the notice referred to in paragraph (a) above;

(iv) in no event shall the Defaulting Lender be required to pay or surrender to the Replacement Lender any of the fees received by the Defaulting Lender pursuant to the Finance Documents; and

(v) the Defaulting Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (a) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer to the Replacement Lender.

(c) The Defaulting Lender shall perform the checks described in paragraph (b)(v) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a) above and shall notify the Agent and the Parent when it is satisfied that it has complied with those checks.

43. CONFIDENTIAL INFORMATION

43.1 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 43.2 (Disclosure of Confidential Information) and Clause 43.3 (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.

165 Insert agreed time period.
43.2 Disclosure of Confidential Information

Any Finance Party may disclose:

(a) 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;

(b) to any person:

(i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Agent or Security Agent and, in each case, to any of that person's Affiliates, Related Funds, Representatives and professional advisers;

(ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any 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;

(iii) appointed by any Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph (b) of Clause 33.15 (Relationship with the Lenders));

(iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;

(v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;

(vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
(vii) [to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 30.10 (Security over Lenders' rights)]\textsuperscript{166};

(viii) who is a Party; or

(ix) with the consent of the Parent,

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

(A) in relation to paragraphs (b)(i), (b)(ii) and (b)(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;

(B) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;

(C) in relation to paragraphs (b)(v), (b)(vi) [and (b)(vii)]\textsuperscript{167} 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]

(c) to any person appointed by that Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Parent and the relevant Finance Party; [and]

\textsuperscript{166} Include if optional Clause 30.10 (Security over Lenders' rights) is included.

\textsuperscript{167} Include this reference if the optional paragraph (b)(vii) of Clause 43.2 (Disclosure of Confidential Information) is included.
(d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the 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.]

43.3 Disclosure to numbering service providers

(a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facilities and/or one or more Obligors the following information:

(i) names of Obligors;
(ii) country of domicile of Obligors;
(iii) place of incorporation of Obligors;
(iv) date of this Agreement;
(v) Clause 47 (Governing law);
(vi) the names of the Agent and the Arranger;
(vii) date of each amendment and restatement of this Agreement;
(viii) amounts of, and names of, the Facilities (and any tranches);
(ix) amount of Total Commitments;
(x) currencies of the Facilities;
(xi) type of Facilities
(xii) ranking of Facilities;
(xiii) Termination Date for the Facilities;
(xiv) changes to any of the information previously supplied pursuant to paragraphs (i) to (xiii) above; and
(xv) such other information agreed between such Finance Party and the Parent,

168 Term/Revolver etc.
to enable such numbering service provider to provide its usual syndicated loan numbering identification services.\textsuperscript{169}

(b) 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.

(c) [[The Parent] / [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.]\textsuperscript{170}

(d) [The Agent shall notify the Parent and the other Finance Parties of:

(i) the name of any numbering service provider appointed by the Agent in respect of this Agreement, the Facilities and/or one or more Obligors; and

\textsuperscript{169} 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.

\textsuperscript{170} 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 NSPs in this regard.

The second reason for restricting the information that can be disclosed to NSPs 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.
43.4 **Entire agreement**

This Clause 43 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.

43.5 **Inside information**

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

43.6 **Notification of disclosure**

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

(a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 43.2 (Disclosure of Confidential Information) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and

(b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 43.

43.7 **Continuing obligations**

The obligations in this Clause 43 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of [twelve] months from the earlier of:

(a) the date on which all amounts payable by the Obligors under or in connection with the Finance Documents have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and

(b) the date on which such Finance Party otherwise ceases to be a Finance Party.

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171 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, this clause can be deleted. Paragraph (d) of Clause 43.3 (Disclosure to numbering service providers) can be deleted.
44. CONFIDENTIALITY OF FUNDING RATES [AND REFERENCE BANK QUOTATIONS]

44.1 Confidentiality and disclosure

(a) 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.

(b) The Agent may disclose:

(i) any Funding Rate [(but not, for the avoidance of doubt, any Reference Bank Quotation)] to the relevant Borrower pursuant to Clause 15.4 (Notification of rates of interest); and

(ii) 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].

(c) The Agent may disclose any Funding Rate [or any Reference Bank Quotation], and each Obligor may disclose any Funding Rate, to:

(i) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives if any person to whom that Funding Rate [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;

(ii) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate [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;

(iii) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration,
administrative or other investigations, proceedings or disputes if the person to whom that Funding Rate [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

(iv) any person with the consent of the relevant Lender [or Reference Bank, as the case may be].

(d) [The Agent's obligations in this Clause 44 relating to Reference Bank Quotations are without prejudice to its obligations to make notifications under Clause 15.4 (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.]

44.2 Related obligations

(a) 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.

(b) 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]:

(i) of the circumstances of any disclosure made pursuant to paragraph (c)(ii) of Clause 44.1 (Confidentiality and disclosure) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and

(ii) upon becoming aware that any information has been disclosed in breach of this Clause 44.

44.3 No Event of Default

No Event of Default will occur under Clause 29.3 (Other obligations) by reason only of an Obligor's failure to comply with this Clause 44.

45. DISCLOSURE OF LENDER DETAILS BY AGENT

45.1 Supply of Lender details to Parent

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

45.2 Supply of Lender details at Parent's direction

(a) The Agent shall, at the request of the Parent, disclose the identity of the Lenders and the details of the Lenders’ Commitments to any:

(i) other Party or any other person if that disclosure is made to facilitate, in each case, a refinancing of the Financial Indebtedness arising under the Finance Documents or a material waiver or amendment of any term of any Finance Document; and

(ii) member of the Group.

(b) Subject to paragraph (c) below, the Parent shall procure that the recipient of information disclosed pursuant to paragraph (a) above shall keep such information confidential and shall not disclose it to anyone and shall ensure that all such information is protected with security measures and a degree of care that would apply to the recipient's own confidential information.

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

45.3 Supply of Lender details to other Lenders

(a) If a Lender (a "Disclosing Lender") indicates to the Agent that the Agent may do so, the Agent shall disclose that Lender's name and Commitment to any other Lender that is, or becomes, a Disclosing Lender.

(b) The Agent shall, if so directed by the Requisite Lenders, request each Lender to indicate to it whether it is a Disclosing Lender.

45.4 Lender enquiry

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

(a) that entity ceases to have an Investment Grade Rating; or

(b) an Insolvency Event occurs in relation to that entity,
the Agent shall, at the request of that Lender, indicate to that Lender the extent to which that entity has a Commitment.

45.5 Lender details definitions

In this Clause 45:

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

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

46. 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

47. **GOVERNING LAW**

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

48. **ENFORCEMENT**

48.1 **Jurisdiction of English courts**

(a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement [or any non-contractual obligation arising out of or in connection with this Agreement]) (a "Dispute").

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

(c) Notwithstanding paragraphs (a) and (b) above, no Finance Party or Secured 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 and Secured Parties may take concurrent proceedings in any number of jurisdictions.

48.2 **Service of process**

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

   (i) irrevocably appoints [the Parent]/[insert name of other Original Obligor which is appointed as agent] as its agent for service of process in relation

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172 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.

173 Users should consider the extent to which this Clause 48.1 (Jurisdiction of English courts) 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).

Users should 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 48.1 (Jurisdiction of English courts) 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).

174 To the extent that the square bracketed wording relating to non-contractual obligations in Clause 47 (Governing law) is included, this wording should be included in paragraph (a) of Clause 48.1 (Jurisdiction of English Courts).
to any proceedings before the English courts in connection with any Finance Document [(and the [Parent])][insert name of other Original Obligor which is appointed as agent] by its execution of this Agreement, accepts that appointment); and

(ii) agrees that failure by an agent for service of process to notify the relevant Obligor of the process will not invalidate the proceedings concerned.

(b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Parent (on behalf of all the Obligors) must immediately (and in any event within [ ] days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may appoint another agent for this purpose.

This Agreement has been entered into on the date stated at the beginning of this Agreement.
### SCHEDULE 1
THE ORIGINAL PARTIES

#### PART I
THE ORIGINAL OBLIGORS

<table>
<thead>
<tr>
<th>Name of Original Borrower</th>
<th>Registration number (or equivalent, if any) Original Jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Name of Original Guarantor</th>
<th>Registration number (or equivalent, if any) Original Jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
PART II

THE ORIGINAL LENDERS [- OTHER THAN UK NON-BANK LENDERS]\(^{175}\)

<table>
<thead>
<tr>
<th>Name of Original Lender</th>
<th>Facility A Commitment</th>
<th>Facility B Commitment</th>
<th>Facility C Commitment</th>
<th>Revolving Facility Commitment</th>
<th>Status (Non-Acceptable L/C Lender: Yes/No)</th>
<th>Treaty Passport scheme reference number and jurisdiction of tax residence (if applicable)(^{176})</th>
</tr>
</thead>
</table>

\(^{175}\) If no Original Lender is a UK Non-Bank Lender, delete the words in square brackets from the heading of this Part.

\(^{176}\) 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.
### PART III

**[THE ORIGINAL LENDERS – UK NON-BANK LENDERS]**

<table>
<thead>
<tr>
<th>Name of Original Lender</th>
<th>Facility A Commitment</th>
<th>Facility B Commitment</th>
<th>Facility C Commitment</th>
<th>Revolving Facility Commitment</th>
<th>Status (Non-Acceptable L/C Lender: Yes/No)</th>
</tr>
</thead>
</table>

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177 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.
PART IV
[THE ORIGINAL HEDGE COUNTERPARTIES]\(^{178}\)

\(^{178}\) If no Hedge Counterparties are Party to this Agreement at signing delete this part of the Schedule and all references to it in the body of the Agreement.
SCHEDULE 2
CONDITIONS PRECEDENT

PART IA
CONDITIONS PRECEDENT TO SIGNING OF THE AGREEMENT

1. Obligors

(a) A copy of the Constitutional Documents and of the constitutional documents of each other Original Obligor.

(b) A copy of a resolution of the board [or, if applicable, a committee of the board] of directors of each Original Obligor:

(i) approving the terms of, and the transactions contemplated by, the Transaction Documents to which it is a party and resolving that it execute, deliver and perform the Transaction Documents to which it is a party;

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

(iii) 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; and

(iv) in the case of an Obligor other than the Parent, authorising the Parent to act as its agent in connection with the Finance Documents.

(c) [If applicable, a copy of a resolution of the board of directors of the relevant company, establishing the committee referred to in paragraph (b) above.]

(d) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above in relation to the Finance Documents and related documents.

(e) [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.]

(f) [A copy of a resolution of the board of directors of each corporate shareholder of each Original Guarantor approving the terms of the resolution referred to in paragraph (e) above.]

(g) A certificate of the Parent (signed by a director) confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on any Original Obligor to be exceeded.
2. **Transaction Documents**

(a) A copy of each of the Acquisition Documents, the Shareholders’ Agreement and the other Transaction Documents (other than the Finance Documents) executed by the parties to those documents.

(b) A copy of each of the Service Contracts.

3. **Finance Documents**

(a) The Intercreditor Agreement executed by the members of the Group party to that Agreement [and the holders of the Loan Notes [and Vendor Notes.]]

(b) This Agreement executed by the members of the Group party to this Agreement.

(c) The Fee Letters executed by [the Parent].

(d) The Hedging Letter in agreed form and executed by the Parent.

(e) The Mezzanine Facility Agreement executed by the Company and other members of the Group party to that agreement.

(f) The Warrant Documents executed by [the Parent] and all other Mezzanine Finance Documents, other than:

   (i) the Transaction Security Documents listed in paragraph 2(c) of Part IB of this Schedule 2; [and]

   (ii) [the Mandate Letter (as defined in the Mezzanine Facility Agreement);] [and

   (iii) any fee letters setting out any of the fees referred to in the Mezzanine Facility Agreement].

(g) Each Parent Document executed by the Parent and any other member of the Group party to that agreement.
(h) At least two originals of the following Transaction Security Documents executed by the Original Obligors specified below opposite the relevant Transaction Security Document:

<table>
<thead>
<tr>
<th>Name of Original Obligor</th>
<th>Transaction Security Document</th>
</tr>
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<tbody>
<tr>
<td></td>
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</tr>
</tbody>
</table>

(i) A copy of all notices required to be sent under the Transaction Security Documents executed by [relevant Obligors] [duly acknowledged by the addressee].

(j) All share certificates, transfers and stock transfer forms or equivalent duly executed by the relevant Obligor in blank in relation to the assets subject to or expressed to be subject to the Transaction Security and other documents of title to be provided under the Transaction Security Documents.

4. **Insurance**

A letter from [ ] insurance broker [dated the date of this Agreement] addressed to the Agent, the Arranger[s], the Security Agent and the Lenders listing the insurance policies of the Group and confirming that they are on risk and that the insurance for the Group at the date of this Agreement is at a level acceptable to the Majority Lenders and covering appropriate risks for the business carried out by the Group.

5. **Contracts**

(a) Written acknowledgement in the agreed form executed by the Vendor acknowledging the Transaction Security over the Acquisition Agreement.

(b) [Others.]

6. **Legal opinions**

The following legal opinions, each addressed to the Agent, the Security Agent and the Original Lenders and capable of being relied upon by any persons who become Lenders pursuant to the primary syndication of the Facilities.

(a) A legal opinion of [ ], legal advisers to the Agent and the Arranger as to English law substantially in the form distributed to the Original Lenders prior to signing this Agreement.

(b) A legal opinion of the following legal advisers to the Agent and Arranger:

   (i) [insert name of law firm] as to [insert jurisdiction of incorporation] law; and

   (ii) [ ] as to [ ],
each substantially in the form distributed to the Original Lenders prior to signing this Agreement.

7. **Other documents and evidence**

   (a) Evidence that any process agent referred to in Clause 48.2 (*Service of process*), if not an Original Obligor, has accepted its appointment.

   (b) The Group Structure Chart which shows the Group assuming the Closing Date has occurred [and steps [ ] to [ ] of the Structure Memorandum have completed].

   (c) The Budget.

   (d) The Reports [and a copy of the agreed form report to be delivered by the [Parent's Auditors]/[Monitoring Accountants]/[Parent's Auditors or the Monitoring Accountants] pursuant to paragraph (c) of Clause 26.2 (*Provision and contents of Compliance Certificate*) together with confirmation from the [Parent's Auditors]/[Monitoring Accountants]/[Parent's Auditors and the Monitoring Accountants] that it can be relied upon by the Finance Parties].

   (e) A copy, certified by an authorised signatory of the Parent to be a true copy, of the Original Financial Statements of each Obligor.

   (f) A certificate signed by an authorised signatory of the Parent specifying each member of the Group (assuming the Closing Date has occurred) which is a Dormant Subsidiary as at the Closing Date together with certified copies (certified by such authorised signatory to be a true copy) of the last audited accounts of each such Dormant Subsidiary.

   (g) The Structure Memorandum.

   (h) A certificate of [the Parent's Auditors]/[reporting accountants] addressed to the Finance Parties confirming [which companies within the Group are Material Companies] [and] [that the aggregate of earnings before interest, tax, depreciation and amortisation (calculated on the same basis as EBITDA)]/[the aggregate gross assets, aggregate net assets and aggregate turnover] of the Original Guarantors (calculated on an unconsolidated basis and excluding all intra-Group items and investments in Subsidiaries of any member of the Group) exceeds [ ]% of [EBITDA] / [the consolidated gross assets, consolidated net assets and consolidated turnover of the Group].

   (i) A letter from the Parent to the Agent specifying the Holding Account and the Mandatory Prepayment Account including details of each account name, account number and the name and address of the bank where each account is held.

   (j) A letter of engagement with the Finance Parties and Secured Parties from each of:

   (i) the authors of the Accountants' Report; and
(ii) the [Parent's Auditors]/[the Monitoring Accountants]/[the Parent's Auditors and the Monitoring Accountants].

(k) [The Pre-Approved New Lender List.]

(l) In respect of each company incorporated in the United Kingdom whose shares are the subject of the Transaction Security (a "Charged Company"), either:

(i) a certificate of an authorised signatory of the Parent certifying that:

   (A) each member of the Group has complied within the relevant timeframe with any notice it has received pursuant to Part 21A of the Companies Act 2006 from that Charged Company; and

   (B) no "warning notice" or "restrictions notice" (in each case as defined in Schedule 1B of the Companies Act 2006) has been issued in respect of those shares,

   together with a copy of the "PSC register" (within the meaning of section 790C(10) of the Companies Act 2006) of that Charged Company, which, in the case of a Charged Company that is a member of the Group, is certified by an authorised signatory of the Parent to be correct, complete and not amended or superseded as at a date no earlier than the date of this Agreement; or

(ii) a certificate of an authorised signatory of the Parent certifying that such Charged Company is not required to comply with Part 21A of the Companies Act 2006.

(m) 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 Parent 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.
PART IB
CONDITIONS PRECEDENT TO INITIAL UTILISATION

1. Additional Obligors
   (a) Evidence that any members of the Group required to accede as Additional Obligors on or prior to the Closing Date in accordance with Clause 28.41 (\textit{Conditions subsequent}) (referred to in this Part IB as "relevant Obligors") have done so or will have done so at Completion including an Accession Deed executed by the relevant Obligor and the Parent.
   (b) Documentation equivalent to that referred in paragraphs 2 to 9 inclusive of Part II of Schedule 2 with respect to each relevant Obligor.
   (c) In relation to relevant Obligors incorporated in England and Wales, Scotland or Northern Ireland, evidence that members of the Group incorporated in England and Wales, Scotland or Northern Ireland have done all that is necessary (including, without limitation, by re-registering as a private company) to comply with sections 677 to 683 of the Companies Act 2006 in order to enable each relevant Obligor to enter into the Finance Documents and perform its obligations under the Finance Documents.
   (d) [If the relevant Obligor is not incorporated in England and Wales, Scotland or Northern Ireland, such documentary evidence as legal counsel to the Agent may require, that such Obligor has complied with any law in its jurisdiction relating to financial assistance or analogous process.]
   (e) [Others.]

2. Finance Documents
   (a) [The following Ancillary Documents: [ ]].
   (b) The following in relation to Transaction Security over Properties in England and Wales granted under the Transaction Security Documents given by [Insert names of relevant Obligors]:
      (i) Satisfactory priority searches of HM Land Registry and the Land Charges Register.
      (ii) An effective discharge of all Security affecting the Real Property (if any) or an undertaking regarding the release of such Security by the Parent’s English legal counsel in form and substance satisfactory to the Agent.
      (iii) Copies of (A) all notices of charge relating to all of the Real Property signed on behalf of the relevant Obligor, including a request to the recipient of the notice that it be returned to [ ] as solicitors to the Agent, [as to English law,] and if a relevant registration fee is required by the appropriate recipient then a cheque for such amount is to be provided within a reasonable time and (B) all consents to charge, signed by the relevant third party.
(iv) All deeds, documents and ancillary papers relating to the Real Property including official copies of HM Land Registry entries, counterpart leases, licences and any other deeds or documents necessary or desirable to assist the Security Agent to enforce the Transaction Security [in accordance with the schedule of deeds agreed between [insert name of Parent’s English Legal Counsel] and [ ] as solicitors to the Agent as to English law].

(v) [A letter of undertaking from [ ], [counsel to the Parent], concerning the registration of the charge over Properties and if a relevant registration fee is required, a cheque for such amount.]

(vi) [Others]

(c) At least two originals of the following Transaction Security Documents executed by the relevant Obligors specified below opposite the relevant Transaction Security Document:

<table>
<thead>
<tr>
<th>Name of relevant Obligor</th>
<th>Transaction Security Document</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(d) A copy of all notices required to be sent under the Transaction Security Documents executed by [relevant Obligors] [duly acknowledged by the addressee].

(e) All share certificates, transfers and stock transfer forms or equivalent duly executed by the relevant Obligor in blank in relation to the assets subject to or expressed to be subject to the Transaction Security and other documents of title to be provided under the Transaction Security Documents.

3. Insurance

(a) [All insurance policies subject to or expressed to be subject to the Transaction Security relating to the Charged Property.]

(b) [Written evidence that the insurance policy(ies) relating to the Charged Property contain (in form and substance reasonably satisfactory to the Security Agent) an endorsement naming the Security Agent as sole loss payee in respect of [ ].]

(c) [An original copy of the Key-man Polic[y]/[ies]].
4. **Legal opinions**

The following legal opinions, each addressed to the Agent, the Security Agent and the Original Lenders and capable of being relied upon by any persons who become Lenders pursuant to the primary syndication of the Facilities.

(a) A legal opinion of [ ], legal advisers to the Agent and the Arranger as to English law substantially in the form distributed to the Original Lenders prior to signing this Agreement.

(b) A legal opinion of the following legal advisers to the Agent and Arranger:

(i) [insert name of law firm] as to [insert jurisdiction of incorporation] law; and

(ii) [ ] as to [ ],

each substantially in the form distributed to the Original Lenders prior to signing this Agreement.

5. **Other documents and evidence**

(a) Evidence that the fees, costs and expenses then due from the Parent pursuant to Clause 18 (Fees), Clause 18.5 (Fees payable in respect of Letters of Credit), Clause 18.6 (Interest, commission and fees on Ancillary Facilities), Clause 19.6 (Stamp taxes) and Clause 23 (Costs and expenses) have been paid or will be paid by the first Utilisation Date.

(b) The Funds Flow Statement in a form agreed by the Parent and the Agent detailing the proposed movement of funds on or before the Closing Date.

(c) A certificate of the Parent (signed by a director) detailing the estimated Acquisition Costs.

(d) A certificate of the Parent (signed by a director) certifying that:

(i) each of the matters specified in clause [ ] of the Acquisition Agreement has been satisfied or, with the consent of the Agent, waived (other than payment of [the purchase price] under clause [ ] of the Acquisition Agreement which will be satisfied immediately following utilisation of the Term Facilities);

(ii) no Acquisition Document has been amended, varied, novated, supplemented, superseded, waived or terminated except with the consent of the Agent; and

(iii) the Parent is not aware of any breach of any warranty or any claim under the Acquisition Agreement.
(e) A certificate of the Parent (signed by a director) certifying that:

(i) the Shareholders’ Agreement and Structural Intra-Group Loans are in full force and effect;

(ii) the [Investors] [and Senior Management] have subscribed for [ ] ordinary shares and [ ] [Preference Shares]/[Loan Notes] in the [Parent] as required by the Shareholders’ Agreement;

(iii) those [ ] ordinary shares and [ ] [Preference Shares]/[Loan Notes] subscribed for have been issued fully paid;

(iv) a utilisation request requesting the advance of the full amount of the Mezzanine Facility on or before the Closing Date has been issued by the Company and each of the conditions precedent to such utilisation specified in clause [ ] of the Mezzanine Facility Agreement have been satisfied (other than utilisation of the Facilities);

(v) as a result of the above subscriptions or loans the Company has the sum available to it of [ ] made up of:

   ordinary shares [ ]
   Preference Shares [ ]
   Loan Notes [ ]
   Mezzanine Facility [ ]

or made up of any higher subscription amount in respect of ordinary shares to make up for any shortfall in the proceeds of any Loans requested or loans under the Mezzanine Facility requested to be utilised on the Closing Date as a result of the anticipated failure by a Lender or mezzanine lender to fund its participations on the Closing Date.

(vi) that sum of [ ] has been applied or will, simultaneously with first utilisation under this Agreement be applied for the same purpose as the proceeds of Facility A; and

(vii) [the Vendor has subscribed for the Vendor Note in the Parent and the Vendor Note has been or will, simultaneously with utilisation of Facility A, be issued to the Vendor.]

(f) [Utilisation Requests relating to any Utilisations to be made on the Closing Date.]

(g) The following documents in relation to Financial Indebtedness, Security and guarantees:

[describe documentary evidence, if any, of discharge of existing Financial Indebtedness or Security or guarantees which are not permitted by this Agreement.]
(h) In respect of each company incorporated in the United Kingdom whose shares are the subject of the Transaction Security (a "Charged Company"), either:

(i) a certificate of an authorised signatory of the Parent certifying that:

   (A) each member of the Group has complied within the relevant timeframe with any notice it has received pursuant to Part 21A of the Companies Act 2006 from that Charged Company; and

   (B) no "warning notice" or "restrictions notice" (in each case as defined in Schedule 1B of the Companies Act 2006) has been issued in respect of those shares,

   together with a copy of the "PSC register" (within the meaning of section 790C(10) of the Companies Act 2006) of that Charged Company which, in the case of a Charged Company that is a member of the Group, is certified by an authorised signatory of the Parent to be correct, complete and not amended or superseded as at a date no earlier than the Closing Date; or

(ii) a certificate of an authorised signatory of the Parent certifying that such Charged Company is not required to comply with Part 21A of the Companies Act 2006.

(i) [others e.g. competition consents/clearances, etc.].
PART II
CONDITIONS PRECEDENT REQUIRED TO BE DELIVERED BY AN ADDITIONAL OBLIGOR

1. An Accession Deed executed by the Additional Obligor and the Parent.

2. A copy of the constitutional documents of the Additional Obligor.

3. A copy of a resolution of the board [or, if applicable, a committee of the board] of directors of the Additional Obligor:
   
   (a) approving the terms of, and the transactions contemplated by, the Accession Deed and the Finance Documents and resolving that it execute, deliver and perform the Accession Deed and any other Finance Document to which it is party;
   
   (b) authorising a specified person or persons to execute the Accession Deed and other Finance Documents on its behalf;
   
   (c) 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 to which it is a party; and
   
   (d) authorising the Parent to act as its agent in connection with the Finance Documents.

4. [If applicable, a copy of a resolution of the board of directors of the Additional Obligor, establishing the committee referred to in paragraph 3 above.]

5. A specimen of the signature of each person authorised by the resolution referred to in paragraph 3 above.

6. [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.]

7. [A copy of a resolution of the board of directors of each corporate shareholder of each Additional Guarantor approving the terms of the resolution referred to in paragraph 6 above.]

8. A certificate of the Additional Obligor (signed by a director) confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on it to be exceeded.

9. 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 and has not been amended or superseded as at a date no earlier than the date of the Accession Deed.
10. 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 Deed or for the validity and enforceability of any Finance Document.

11. If available, the latest audited financial statements of the Additional Obligor.

12. The following legal opinions, each addressed to the Agent, the Security Agent and the Lenders:
   
   (a) A legal opinion of the legal advisers to the Agent in England, as to English law in the form distributed to the Lenders prior to signing the Accession Deed.
   
   (b) If the Additional Obligor is incorporated in or has its "centre of main interest" [or "establishment"] (as referred to in Clause 25.29 (Centre of main interests and establishments)) in a jurisdiction other than England and Wales or is executing a Finance Document which is governed by a law other than English law, a legal opinion of the legal advisers to the Agent in the jurisdiction of its incorporation, "centre of main interest" or "establishment" (as applicable) or, as the case may be, the jurisdiction of the governing law of that Finance Document (the "Applicable Jurisdiction") as to the law of the Applicable Jurisdiction and in the form distributed to the Lenders prior to signing the Accession Deed.

13. If the proposed Additional Obligor is incorporated in a jurisdiction other than England and Wales, evidence that the process agent specified in Clause 48.2 (Service of process), if not an Obligor, has accepted its appointment in relation to the proposed Additional Obligor.

14. [Any security documents] which [, subject to the Agreed Security Principles,] are required by the Agent to be executed by the proposed Additional Obligor.

15. Any notices or documents required to be given or executed under the terms of those security documents.

16. 
   
   (a) If the Additional Obligor is incorporated in England and Wales, Scotland or Northern Ireland, evidence that the Additional Obligor has done all that is necessary (including, without limitation, by re-registering as a private company) to comply with sections 677 to 683 of the Companies Act 2006 in order to enable that Additional Obligor to enter into the Finance Documents and perform its obligations under the Finance Documents.
   
   (b) [If the Additional Obligor is not incorporated in England and Wales, Scotland or Northern Ireland, such documentary evidence as legal counsel to the Agent may require, that such Additional Obligor has complied with any law in its jurisdiction relating to financial assistance or analogous process.]
**PART III**

**TRANSACTION SECURITY DOCUMENTS AND SECURITY RELATED DOCUMENTS TO BE DELIVERED BY ADDITIONAL OBLIGORS**

<table>
<thead>
<tr>
<th>Name of Additional Obligor</th>
<th>Capacity (Borrower and/or Guarantor)</th>
<th>Date by which must become Additional Obligor</th>
<th>Description of Transaction Security Document and Transaction Security</th>
<th>Date by which Transaction Security Document to be executed and delivered to Agent</th>
<th>Description of Security related documents and other action to be taken by Additional Obligor to protect or perfect or give priority to Transaction Security and date by which action is to be completed.</th>
</tr>
</thead>
<tbody>
<tr>
<td>[insert name]</td>
<td>[Borrower] [Guarantor]</td>
<td>[Closing Date]</td>
<td>[insert description]</td>
<td>[Closing Date]</td>
<td></td>
</tr>
</tbody>
</table>


SCHEDULE 3
REQUESTS AND NOTICES

PART I A
UTILISATION REQUEST
LOANS

From: [Borrower]/[Parent]*
To: [Agent]
Dated:

Dear Sirs

[Parent] – [ ] Senior Facilities Agreement
dated [ ] (the "Facilities Agreement")

1. We refer to the Facilities Agreement. This is a Utilisation Request. Terms defined in
the Facilities Agreement have the same meaning in this Utilisation Request unless given
a different meaning in this Utilisation Request.

2. We wish to borrow a Loan on the following terms:

(a) Borrower: [ ]

(b) Proposed Utilisation Date:
    [ ] (or, if that is not a Business Day, the next Business Day)

(c) Facility to be utilised:
    [Facility A]/[Facility B]/[Facility C]/[Revolving Facility]/[Incremental Facility with an Establishment Date of [ ]]*

(d) Currency of Loan:
    [ ]

(e) Amount:
    [ ] or, if less, the Available Facility

(f) Interest Period:
    [ ]

3. We confirm that each condition specified in Clause 4.2 (Further conditions precedent)
of the Facilities Agreement [or, to the extent applicable, Clause 4.5 (Utilisations during the Certain Funds Period) of the Facilities Agreement] is satisfied on the date of this Utilisation Request.

4. [This Loan is to be made in [whole]/[part] for the purpose of refinancing [identify maturing Revolving Facility Loan].]/[The proceeds of this Loan should be credited to [account].]

5. This Utilisation Request is irrevocable.
Yours faithfully

...........................................
authorised signatory for
[the Parent on behalf of [insert name of relevant Borrower]]/[insert name of Borrower]*

NOTES:

* Amend as appropriate. The Utilisation Request can be given by the Borrower or by the Parent.

** Select the Facility to be utilised and delete references to the other Facilities.
From: [Borrower]/[Parent]*
To: [Agent]
Dated: 

Dear Sirs

[Parent] – [ ] Senior Facilities Agreement dated [ ] (the "Facilities Agreement")
1. We refer to the Facilities Agreement. This is a Utilisation Request. Terms defined in the Facilities Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to arrange for a Letter of Credit to be issued by the Issuing Bank specified below (which has agreed to do so) on the following terms:
   (a) Borrower: [ ]
   (b) Issuing Bank: [ ]
   (c) Proposed Utilisation Date: [ ] (or, if that is not a Business Day, the next Business Day)
   (d) Facility to be utilised: Revolving Facility
   (e) Currency of Letter of Credit: [ ]
   (f) Amount: [ ] or, if less, the Available Facility in relation to the Revolving Facility
   (g) Beneficiary: [ ]
   (h) Term: [ ]
3. We confirm that each condition specified in paragraph (b) [(or, to the extent applicable, paragraph (c)],] of Clause 6.5 (Issue of Letters of Credit) of the Facilities Agreement is satisfied on the date of this Utilisation Request.
4. We attach a copy of the proposed Letter of Credit.
5. The purpose of this proposed Letter of Credit is [ ].
6. This Utilisation Request is irrevocable.
7. [Specify delivery instructions].
Yours faithfully,

………………………………
authorised signatory for
[the Parent on behalf of] [insert name of relevant Borrower]/[insert name of relevant Borrower]*

NOTES:

* Amend as appropriate. The Utilisation Request can be given by the Borrower or by the Parent.
PART II
SELECTION NOTICE
Applicable to a Term Loan

From: [Borrower]/[Parent]*
To: [Agent]
Dated:

Dear Sirs

[Parent] – [ ] Senior Facilities Agreement
dated [ ] (the "Facilities Agreement")

1. We refer to the Facilities Agreement. This is a Selection Notice. Terms defined in the Facilities Agreement have the same meaning in this Selection Notice unless given a different meaning in this Selection Notice.

2. We refer to the following [Facility [A]/[B]/[C]]/[Incremental Facility] Loan[s] with an Interest Period ending on [ ]**.

3. [We request that the above [Facility A]/[Incremental Facility] Loan[s] be divided into [ ] [Facility A]/[Incremental Facility] Loans with the following Base Currency Amounts and Interest Periods:]*

   or

   [We request that the next Interest Period for the above [Facility A]/[B]/[C]/[Incremental Facility] Loan[s] is [ ]].****

4. This Selection Notice is irrevocable.

   Yours faithfully

   ..................................
   authorised signatory for
   [the Parent on behalf of] [insert name of relevant Borrower] *****

NOTES:

* Amend as appropriate. The Selection Notice can be given by the Borrower or the Parent.

** Insert details of all Term Loans for the relevant Facility which have an Interest Period ending on the same date.

*** Use this option if division of Facility A Loans [or Incremental Facility Loans] is requested.

**** Use this option if sub-division is not required [or if Selection Notice relates to Facility B Loans or Facility C Loans].
***** Amend as appropriate. The Selection Notice can be given by the Borrower or the Parent.
The extent to which Mandatory Costs are chargeable to the borrower on any transaction, and the method for calculating any such Mandatory Costs, is a matter for commercial agreement between the parties. Users should refer to the LMA note entitled "Withdrawal of the Mandatory Costs Schedule" (available through the LMA website) for a discussion of some of the issues involved in formulating any calculation methodology.
FORM OF TRANSFER CERTIFICATE

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

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

Dated: [Parent] – [ ] Senior Facilities Agreement dated [ ] (the "Facilities Agreement")

1. We refer to the Facilities Agreement and to the Intercreditor Agreement (as defined in the Facilities Agreement). This agreement (the "Agreement") shall take effect as a Transfer Certificate for the purposes of the Facilities Agreement and as a Creditor Accession Undertaking for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.

2. We refer to Clause 30.6 (Procedure for transfer) of the Facilities Agreement:

   (a) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation and in accordance with Clause 30.6 (Procedure for transfer) of the Facilities Agreement all of the Existing Lender's rights and obligations under the Facilities Agreement, the other Finance Documents and in respect of the Transaction Security which relate to that portion of the Existing Lender's Commitment(s) and participations in Utilisations under the Facilities Agreement as specified in the Schedule.

   (b) The proposed Transfer Date is [ ].

   (c) The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 38.2 (Addresses) of the Facilities Agreement are set out in the Schedule.

3. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 30.5 (Limitation of responsibility of Existing Lenders) of the Facilities Agreement.

4. The New Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:

   (a) [a Qualifying Lender (other than a Treaty Lender);]

   (b) [a Treaty Lender;]

   (c) [not a Qualifying Lender]. 180

180 Delete as applicable. Each New Lender is required to confirm which of these three categories it falls within.
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:

(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.]^181

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

[5/6]. The New Lender confirms that it [is]/[is not]^*** a Sponsor Affiliate.

[6/7]. [The New Lender confirms that it [is]/[is not]^**** a Non-Acceptable L/C Lender.]^*****

[7/8]. We refer to clause [22.5] (Change of Senior Lender or Mezzanine Lender) of the Intercreditor Agreement. In consideration of the New Lender being accepted as a Senior Lender for the purposes of the Intercreditor Agreement (and as defined therein),

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^181 Include if New Lender comes within paragraph (a)(ii) of the definition of Qualifying Lender in Clause 19.1 (Definitions).

* Insert jurisdiction of tax residence.

** Include if the New Lender holds a passport under the HMRC DT Treaty Passport scheme and wishes that scheme to apply to the Facilities Agreement.

*** Delete as applicable.

**** Delete as applicable

***** Include only if the transfer includes the transfer of a Revolving Facility Commitment/a participation in the Revolving Facility.
the New Lender confirms that, as from the Transfer Date, it intends to be party to the Intercreditor Agreement as a Senior Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a Senior Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.

[8/9]. This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

[9/10]. This Agreement [and any non-contractual obligations arising out of or in connection with it] [is/are]182 governed by English law.

[10/11]. This Agreement has been entered into on the date stated at the beginning of this Agreement.

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

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182 This clause should follow the approach adopted as regards non-contractual obligations in Clause 47 (Governing Law). This should be done (and this footnote deleted) before the Agreement is signed.
THE SCHEDULE

Commitment/rights and obligations to be transferred

[Insert relevant details]

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

[Existing Lender] [New Lender]

By: By:

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

[Agent]

By:

[Security Agent]

By:
To: [ ] as Agent and [ ], [ ] as Security Agent, [ ] as Parent, for and on behalf of each Obligor

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

Dated:

[Parent] – [ ] Senior Facilities Agreement
dated [ ] (the "Facilities Agreement")

1. We refer to the Facilities Agreement and to the Intercreditor Agreement (as defined in the Facilities Agreement). This is an Assignment Agreement. This agreement (the "Agreement") shall take effect as an Assignment Agreement for the purposes of the Facilities Agreement and as a Creditor Accession Undertaking for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.

2. We refer to Clause 30.7 (Procedure for assignment) of the Facilities Agreement:

(a) The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Facilities Agreement, the other Finance Documents and in respect of the Transaction Security which correspond to that portion of the Existing Lender's Commitment(s) and participations in Utilisations under the Facilities Agreement as specified in the Schedule.

(b) The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender's Commitment(s) and participations in Utilisations under the Facilities Agreement specified in the Schedule.

(c) The New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph (b) above.\footnote{If the Assignment Agreement is used in place of a Transfer Certificate in order to avoid a novation of rights/obligations for reasons relevant to a civil jurisdiction, local law advice should be sought to check the suitability of the Assignment Agreement due to the assumption of obligations contained in paragraph 2(c). This issue should be addressed at Primary documentation stage. This footnote is not intended to be included in the scheduled form of Assignment Agreement in the signed Facilities Agreement.}

3. The proposed Transfer Date is [ ].

4. On the Transfer Date the New Lender becomes:

(a) Party to the relevant Finance Documents (other than the Intercreditor Agreement) as a Lender; and
(b) Party to the Intercreditor Agreement as a Senior Lender (as defined in the Intercreditor Agreement).

5. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 38.2 (Addresses) of the Facilities 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 30.5 (Limitation of responsibility of Existing Lenders) of the Facilities Agreement.

7. The New Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:
   
   (a) [a Qualifying Lender (other than a Treaty Lender);]
   (b) [a Treaty Lender;]
   (c) [not a Qualifying Lender]. 184

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:
   
   (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.] 185

8. [The New Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number [  ]) and is tax resident in [  ], so that interest payable to it

---

184 Delete as applicable. Each New Lender is required to confirm which of these three categories it falls within.

185 Include only if New Lender is a UK Non-Bank Lender ie falls within paragraph (i)(B)(a)(ii) of the definition of Qualifying Lender in Clause 19.1 (Definitions).

* Insert jurisdiction of tax residence.
by borrowers is generally subject to full exemption from UK withholding tax and requests that the Parent 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 Facilities Agreement.

[8/9] The New Lender confirms that it [is]/[is not]*** a Sponsor Affiliate.

[9/10] [The New Lender confirms that it [is]/[is not]**** a Non-Acceptable L/C Lender.*****

[10/11] We refer to clause [22.5] (Change of Senior Lender or Mezzanine Lender) of the Intercreditor Agreement. In consideration of the New Lender being accepted as a Senior Lender for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement), the New Lender confirms that, as from the Transfer Date, it intends to be party to the Intercreditor Agreement as a Senior Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a Senior Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.

[11/12] This Agreement acts as notice to the Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 30.8 (Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Parent), to the Parent (on behalf of each Obligor) of the assignment referred to in this Agreement.

[12/13] This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

[13/14] This Agreement [and any non-contractual obligations arising out of or in connection with it] [is/are]186 governed by English law.

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

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

---

** Include if the New Lender holds a passport under the HMRC DT Treaty Passport scheme and wishes that scheme to apply to the Facilities Agreement.

*** Delete as applicable.

**** Delete as applicable.

***** Include only if the assignment includes the assignment of a Revolving Facility Commitment / a participation in the Revolving Facility.

186 This clause should follow the approach adopted as regards non-contractual obligations in Clause 47 (Governing Law). This should be done (and this footnote deleted) before the Agreement is signed.
share in the Existing Lender's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.
THE SCHEDULE

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

[Insert relevant details]

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

[Existing Lender] [New Lender]

By: By:

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

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

[Agent]

By:

[Security Agent]

By:
To: [________] as Agent and [________] as Security Agent for itself and each of the other parties to the Intercreditor Agreement referred to below.

From: [Subsidiary] and [Parent]

Dated:

Dear Sirs

[Parent] – [________] Senior Facilities Agreement dated [________] (the "Facilities Agreement")

1. We refer to the Facilities Agreement and to the Intercreditor Agreement. This deed (the "Accession Deed") shall take effect as an Accession Deed for the purposes of the Facilities Agreement and as a Debtor Accession Deed for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Facilities Agreement have the same meaning in paragraphs 1-[3]/[4] of this Accession Deed unless given a different meaning in this Accession Deed.

2. [Subsidiary] agrees to become an Additional [Borrower]/[Guarantor] and to be bound by the terms of the Facilities Agreement and the other Finance Documents (other than the Intercreditor Agreement) as an Additional [Borrower]/[Guarantor] pursuant to Clause [32.2 (Additional Borrowers)]/[Clause 32.4 (Additional Guarantors)] of the Facilities Agreement. [Subsidiary] is a company duly incorporated under the laws of [name of relevant jurisdiction] and is a limited liability company with registered number [________].

3. [The Parent confirms that no Default is continuing or would occur as a result of [Subsidiary] becoming an Additional Borrower].

4. [Subsidiary's] administrative details for the purposes of the Facilities Agreement and the Intercreditor Agreement are as follows:

   Address:

   Fax No.:

   Attention:

5. [Subsidiary] (for the purposes of this paragraph [4]/[5], the "Acceding Debtor") intends to [incur Liabilities under the following documents]/[give a guarantee, indemnity or other assurance against loss in respect of Liabilities under the following documents]:

   [Insert details (date, parties and description) of relevant documents]

---

187 Include in the case of an Additional Borrower.
the "Relevant Documents".

IT IS AGREED as follows:

(a) Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Accession Deed, bear the same meaning when used in this paragraph [4]/[5].

(b) The Acceding Debtor and the Security Agent agree that the Security Agent shall hold:

(i) any Security in respect of Liabilities created or expressed to be created pursuant to the Relevant Documents;

(ii) all proceeds of that Security; and

(iii) all obligations expressed to be undertaken by the Acceding Debtor to pay amounts in respect of the Liabilities to the Security Agent as trustee for the Secured Parties (in the Relevant Documents or otherwise) and secured by the Transaction Security together with all representations and warranties expressed to be given by the Acceding Debtor (in the Relevant Documents or otherwise) in favour of the Security Agent as trustee for the Secured Parties, on trust for the Secured Parties on the terms and conditions contained in the Intercreditor Agreement.

(c) The Acceding Debtor confirms that it intends to be party to the Intercreditor Agreement as a Debtor, undertakes to perform all the obligations expressed to be assumed by a Debtor under the Intercreditor Agreement and agrees that it shall be bound by all the provisions of the Intercreditor Agreement as if it had been an original party to the Intercreditor Agreement.

(d) [In consideration of the Acceding Debtor being accepted as an Intra-Group Lender for the purposes of the Intercreditor Agreement, the Acceding Debtor also confirms that it intends to be party to the Intercreditor Agreement as an Intra-Group Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by an Intra-Group Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement].

6. This Accession Deed [and any non-contractual obligations arising out of or in connection with it] [is/are] governed by English law.

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188 Include to the extent that the Security created in the Relevant Documents is expressed to be granted to the Security Agent as trustee for the Secured Parties.

189 Include this paragraph in this Accession Deed if the Subsidiary is also to accede as an Intra-Group Lender to the Intercreditor Agreement.

190 This clause should follow the approach adopted as regards non-contractual obligations in Clause 47 (Governing Law). This should be done (and this footnote deleted) before the Agreement is signed.
THIS ACCESSION DEED has been signed on behalf of the Security Agent (for the purposes of paragraph [4]/[5] above only), signed on behalf of the Parent and executed as a deed by [Subsidiary] and is delivered on the date stated above.

[Subsidiary]

[EXECUTED AS A DEED
By: [Subsidiary]

______________________________________
Director

______________________________________
Director/Secretary]

OR

[EXECUTED AS A DEED
By: [Subsidiary]

_____________________________
Signature of Director

_____________________________
Name of Director

in the presence of

_____________________________
Signature of witness

_____________________________
Name of witness

_____________________________
Address of witness

_____________________________

__________
Occupation of witness]

The Parent

_____________________________
[Parent]

By:
The Security Agent

[Full Name of Current Security Agent]

By:

Date:
To: [ ] as Agent

From: [resigning Obligor] and [Parent]

Dated:

Dear Sirs

[Parent] – [ ] Senior Facilities Agreement
dated [ ] (the "Facilities Agreement")

1. We refer to the Facilities Agreement. This is a Resignation Letter. Terms defined in the Facilities Agreement have the same meaning in this Resignation Letter unless given a different meaning in this Resignation Letter.

2. Pursuant to [Clause 32.3 (Resignation of a Borrower)]/[Clause 32.5 (Resignation of a Guarantor)] of the Facilities Agreement, we request that [resigning Obligor] be released from its obligations as a [Borrower]/[Guarantor] under the Facilities Agreement and the Finance Documents (other than the Intercreditor Agreement).

3. We confirm that:
   
   (a) no Default is continuing or would result from the acceptance of this request; and
   
   (b) *(this request is given in relation to a Third Party Disposal of [resigning Obligor]);
   
   (c) [the Disposal Proceeds have been or will be applied in accordance with Clause 13.2 (Disposal, Insurance and Acquisition Proceeds and Excess Cashflow) of the Facilities Agreement;]**

   (d) [ ]***

4. This Resignation Letter [and any non-contractual obligations arising out of or in connection with it] [is/are]191 governed by English law.

   [Parent] [resigning Obligor]

   By: By:

---

191 This clause should follow the approach adopted as regards non-contractual obligations in Clause 47 (Governing Law). This should be done (and this footnote deleted) before the Agreement is signed.
NOTES:

* Insert where resignation only permitted in case of a Third Party Disposal.

** Amend as appropriate, e.g. to reflect agreed procedure for payment of proceeds into a specified account.

*** Insert any other conditions required by the Facilities Agreement.
To: [ ] as Agent

From: [Parent]

Dated:

Dear Sirs

[Parent] – [ ] Senior Facilities Agreement dated [ ] (the "Facilities Agreement")

1. We refer to the Facilities Agreement. This is a Compliance Certificate. Terms defined in the Facilities Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.

2. We confirm that:

[Insert details of covenants to be certified].

[We confirm that [Interest Cover]/[Senior [Adjusted] Leverage]/[[Adjusted] Leverage] is [ ]:1 and that, therefore, the Margin for each Loan under Facility A should be [ ]% and the Margin for each Loan under the Revolving Facility should be [ ]%.

3. [We confirm that no Default is continuing.]*

4. [We confirm that the following companies constitute Material Companies for the purposes of the Facilities Agreement: [ ].]

[We confirm that [the aggregate of the earnings before interest, tax, depreciation and amortisation (calculated on the same basis as EBITDA)] / [the aggregate gross assets, aggregate net assets and aggregate turnover] of the Guarantors (calculated on an unconsolidated basis and excluding all intra-group items and investments in Subsidiaries of any member of the Group) exceeds [ ]% of [EBITDA] / [the consolidated gross assets, consolidated net assets and consolidated turnover of the Group].]

Signed

Director
of
[Parent]

Director
of
[Parent]
[insert applicable certification language]\(^{192}\)

.................................

for and on behalf of
[name of [Parent's Auditors]/[Monitoring Accountants]]**

NOTES:

* 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.

** Only applicable if the Compliance Certificate accompanies the audited financial statements and is to be signed by the [Parent's Auditors]/[Monitoring Accountants]/[Parent's Auditors or the Monitoring Accountants]. To be agreed with the Parent's Auditors [and/or the Monitoring Accountants] prior to signing the Agreement.

\(^{192}\) To be agreed with the Parent's Auditors and/or the Monitoring Accountants and the Lenders prior to signing the Agreement.
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.
**Schedule 10**

**TIMETABLES**

**PART I**

**LOANS**

<table>
<thead>
<tr>
<th></th>
<th>Loans in euro</th>
<th>Loans in sterling</th>
<th>Loans in other currencies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agent notifies the Parent if a currency is approved as an Optional Currency in accordance with Clause 4.3 <em>(Conditions relating to Optional Currencies)</em></td>
<td>-</td>
<td>-</td>
<td>U-4</td>
</tr>
<tr>
<td>Delivery of a duly completed Utilisation Request *(Clause 5.1 <em>(Delivery of a Utilisation Request))</em> or a Selection Notice *(Clause 16.1 <em>(Selection of Interest Periods and Terms))</em></td>
<td>U-3</td>
<td>U-1</td>
<td>U-3</td>
</tr>
<tr>
<td></td>
<td>9.30am</td>
<td>9.30am</td>
<td>9.30am</td>
</tr>
<tr>
<td>Agent determines (in relation to a Utilisation) the Base Currency Amount of the Loan, if required under Clause 5.4 <em>(Lenders' participation)</em> and notifies the Lenders of the Loan in accordance with Clause 5.4 <em>(Lenders' participation)</em></td>
<td>U-3</td>
<td>U-1</td>
<td>U-3</td>
</tr>
<tr>
<td></td>
<td>Noon</td>
<td>Noon</td>
<td>Noon</td>
</tr>
<tr>
<td>Agent receives a notification from a Lender under Clause 8.2 <em>(Unavailability of a currency)</em></td>
<td>Quotation Day</td>
<td>-</td>
<td>Quotation Day</td>
</tr>
<tr>
<td></td>
<td>9.30am</td>
<td></td>
<td>9.30am</td>
</tr>
<tr>
<td>Agent gives notice in accordance with Clause 8.2 <em>(Unavailability of a currency)</em></td>
<td>Quotation Day</td>
<td>-</td>
<td>Quotation Day</td>
</tr>
<tr>
<td></td>
<td>5.30pm</td>
<td></td>
<td>5.30pm</td>
</tr>
</tbody>
</table>

---

194 When completing the timetables, not all times/days should be determined by reference to the Utilisation Date. In certain cases (ie in relation to Clause 8.2 *(Unavailability of a Currency)*) the time inserted should be determined by reference to the Quotation Day or the relevant day during the Interest Period.
<table>
<thead>
<tr>
<th>Conditions</th>
<th>Loans in euro</th>
<th>Loans in sterling</th>
<th>Loans in other currencies</th>
</tr>
</thead>
<tbody>
<tr>
<td>LIBOR or EURIBOR is fixed</td>
<td>Quotation Day 11:00 a.m. in respect of LIBOR and 11:00 a.m. (Brussels time) in respect of EURIBOR</td>
<td>Quotation Day 11:00 a.m.</td>
<td>Quotation Day 11:00 a.m.</td>
</tr>
<tr>
<td>[Benchmark Rate is fixed for a Loan in a Non-LIBOR Currency]</td>
<td>[-]</td>
<td>[-]</td>
<td>[As specified as such in respect of that currency in Schedule 17 (Other Benchmarks)]</td>
</tr>
<tr>
<td>[Reference Bank Rate calculated by reference to available quotations in accordance with Clause 17.2 (Calculation of Reference Bank Rate)]</td>
<td>[[Noon] on the Quotation Day in respect of LIBOR [and Quotation Day [11:30 a.m. (Brussels time)] in respect of EURIBOR]]</td>
<td>[[Noon] on the Quotation Day in respect of LIBOR [and Quotation Day [11:30 a.m. (Brussels time)] in respect of EURIBOR]]</td>
<td>[[Noon] on the Quotation Day in respect of LIBOR [and as specified as such in respect of the relevant currency in Schedule 17 (Other Benchmarks) in respect of a Benchmark Rate]]</td>
</tr>
</tbody>
</table>

"U" = date of utilisation or, if applicable, in the case of a Term Loan that has already been borrowed, the first day of the relevant Interest Period for that Term Loan.

"U – X" = X Business Days prior to date of utilisation
LETTERS OF CREDIT

Letters of Credit

Delivery of a duly completed Utilisation Request (Clause 6.2 
(*Delivery of a Utilisation Request for Letters of Credit*))

Agent determines (in relation to a Utilisation) the Base Currency 
Amount of the Letter of Credit if required under paragraph (f)\(^{195}\) of 
Clause 6.5 (*Issue of Letters of Credit*) and notifies the Issuing Bank 
and Lenders of the Letter of Credit in accordance with 
paragraph (f)\(^{196}\) of Clause 6.5 (*Issue of Letters of Credit*).

[Delivery of duly completed Renewal Request (Clause 6.6 
(*Renewal of a Letter of Credit*))]

\[U\] = date of utilisation[, or, if applicable, in the case of a Letter of Credit to be 
renewed in accordance with Clause 6.6 (*Renewal of a Letter of Credit*), 
the first day of the proposed term of the renewed Letter of Credit]

\[U-X\] = Business Days prior to date of utilisation

\(^{195}\) NB may need to be renumbered if paragraphs (c) and (d) of Clause 6.5 (*Issue of Letters of Credit*) are not 
included.

\(^{196}\) NB may need to be renumbered if paragraphs (c) and (d) of Clause 6.5 (*Issue of Letters of Credit*) are not 
included.
To: [Beneficiary](the "Beneficiary")

Date

Irrevocable Standby Letter of Credit no. [ ]

At the request of [ ], [Issuing Bank] (the "Issuing Bank") issues this irrevocable standby Letter of Credit ("Letter of Credit") in your favour on the following terms and conditions:

1. **Definitions**

In this Letter of Credit:

"**Business Day**" means a day (other than a Saturday or a Sunday) on which banks are open for general business in [London].*

"**Demand**" means a demand for a payment under this Letter of Credit in the form of the schedule to this Letter of Credit.

"**Expiry Date**" means [ ].

"**Total L/C Amount**" means [ ].

2. **Issuing Bank's agreement**

   (a) The Beneficiary may request a drawing or drawings under this Letter of Credit by giving to the Issuing Bank a duly completed Demand. A Demand must be received by the Issuing Bank by no later than [ ] p.m. ([London] time) on the Expiry Date.

   (b) Subject to the terms of this Letter of Credit, the Issuing Bank unconditionally and irrevocably undertakes to the Beneficiary that, within [ten] Business Days of receipt by it of a Demand, it must pay to the Beneficiary the amount demanded in that Demand.

   (c) The Issuing Bank will not be obliged to make a payment under this Letter of Credit if as a result the aggregate of all payments made by it under this Letter of Credit would exceed the Total L/C Amount.

3. **Expiry**

   (a) The Issuing Bank will be released from its obligations under this Letter of Credit on the date (if any) notified by the Beneficiary to the Issuing Bank as the date upon which the obligations of the Issuing Bank under this Letter of Credit are released.

   (b) Unless previously released under paragraph (a) above, on [ ] p.m. ([London] time) on the Expiry Date the obligations of the Issuing Bank under this Letter of Credit will cease with no further liability on the part of the Issuing Bank.
except for any Demand validly presented under the Letter of Credit that remains unpaid.

(c) When the Issuing Bank is no longer under any further obligations under this Letter of Credit, the Beneficiary must return the original of this Letter of Credit to the Issuing Bank.

4. **Payments**

All payments under this Letter of Credit shall be made in [ ] and for value on the due date to the account of the Beneficiary specified in the Demand.

5. **Delivery of Demand**

Each Demand shall be in writing, and, unless otherwise stated, may be made by letter, fax or telex and must be received in legible form by the Issuing Bank at its address and by the particular department or office (if any) as follows:

[ ]

6. **Assignment**

The Beneficiary's rights under this Letter of Credit may not be assigned or transferred.

7. **ISP 98**

Except to the extent it is inconsistent with the express terms of this Letter of Credit, this Letter of Credit is subject to the International Standby Practices (ISP 98), International Chamber of Commerce Publication No. 590.

8. **Governing Law**

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

9. **Jurisdiction**

The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Letter of Credit (including a dispute relating to any non-contractual obligation arising out of or in connection with this Letter of Credit).
Yours faithfully

[Issuing Bank]

By:

NOTES:

* This may need to be amended depending on the currency of payment under the Letter of Credit.
SCHEDULE

FORM OF DEMAND

To: [ISSUING BANK]

[Date]

Dears Sirs

Standby Letter of Credit no. [ ] issued in favour of [BENEFICIARY] (the "Letter of Credit")

We refer to the Letter of Credit. Terms defined in the Letter of Credit have the same meaning when used in this Demand.

1. We certify that the sum of [ ] is due [and has remained unpaid for at least [ ] Business Days] [under [set out underlying contract or agreement]]. We therefore demand payment of the sum of [ ].

2. Payment should be made to the following account:

   Name:
   
   Account Number:
   
   Bank:

3. The date of this Demand is not later than the Expiry Date.

Yours faithfully

(Authorised Signatory)   (Authorised Signatory)

For

[BENEFICIARY]
Schedule 13
SCHEDULE 12
MATERIAL COMPANIES
SCHEDULE 13
AGREED SECURITY PRINCIPLES

(A) Considerations

In determining what Security will be provided in support of the Facilities (and any related hedging arrangements in respect of the types of liabilities and/or risks which the Hedging Letter requires to be hedged) the following matters will be taken into account. Security shall not be created or perfected to the extent that it would:

(a) result in any breach of corporate benefit, financial assistance, fraudulent preference or thin capitalisation laws or regulations (or analogous restrictions) of any applicable jurisdiction;

(b) result in a significant risk to the officers of the relevant grantor of Security of contravention of their fiduciary duties and/or of civil or criminal liability; or

(c) result in costs that, in the opinion of the Agent, are disproportionate to the benefit obtained by the beneficiaries of that Security.

For the avoidance of doubt, in these Agreed Security Principles, "cost" includes, but is not limited to, income tax cost, registration taxes payable on the creation or enforcement or for the continuance of any Security, stamp duties, out-of-pocket expenses, and other fees and expenses directly incurred by the relevant grantor of Security or any of its direct or indirect owners, subsidiaries or Affiliates.

(B) Obligations to be Secured

1. Subject to (A) (Considerations) and to paragraph 2 below, the obligations to be secured are the Secured Obligations (as defined below). The Security is to be granted in favour of the Security Agent on behalf of each Lender from time to time, and the Agent, the Arranger, the Issuing Bank, any Hedge Counterparty and the agent, the arranger(s) and the lenders under the Mezzanine Facility Agreement.

For ease of reference, the following definitions should, to the extent legally possible, be incorporated into each Transaction Security Document (with the capitalised terms used in them having the meaning given to them in the Intercreditor Agreement):

"Secured Obligations" means all the Liabilities and all other present and future liabilities and obligations at any time due, owing or incurred by any member of the Group and by each Debtor to any Secured Party under the Debt Documents, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity.\(^{197}\)

"Secured Parties" means the Security Agent, any Receiver or Delegate and each of the Primary Creditors from time to time but, in the case of each Primary Creditor, only if it

\(^{197}\) This definition matches the definition of "Secured Obligations" in the LMA recommended form of Intercreditor Agreement for Leveraged Acquisition Finance Transactions (Senior/Mezzanine). It may need to be amended if that form of Intercreditor Agreement is not used on the transaction documented by this Agreement.
is a party to the Intercreditor Agreement or has acceded to the Intercreditor Agreement, in the appropriate capacity, pursuant to clause [22.11] (Creditor Accession Undertaking) of the Intercreditor Agreement.198

2. The secured obligations will be limited:

2.1 to avoid any breach of corporate benefit, financial assistance, fraudulent preference, thin capitalisation rules or the laws or regulations (or analogous restrictions) of any applicable jurisdiction; and

2.2 to avoid any risk to officers of the relevant member of the Group that is granting Transaction Security of contravention of their fiduciary duties and/or civil or criminal or personal liability.

(C) General

Where appropriate, defined terms in the Transaction Security Documents should mirror those in this Agreement.

The parties to this Agreement agree to negotiate the form of each Transaction Security Document in good faith and will ensure that all documentation required to be entered into as a condition precedent to first drawdown under this Agreement (or immediately thereafter) is in a finally agreed form as soon as reasonably practicable after the date of this Agreement. The form of guarantee is set out in Clause 24 (Guarantee and Indemnity) of this Agreement and, with respect to any Additional Guarantor, is subject to any limitations set out in the Accession Deed applicable to such Additional Guarantor.

The Security shall, to the extent possible under local law, be enforceable on the occurrence of [an Event of Default] / [an Event of Default in respect of which the Agent has exercised any of its rights under Clause 29.20 (Acceleration) (or the agent under the Mezzanine Facility Agreement has exercised any of its rights under clause [ ] of the Mezzanine Facility Agreement)].

(D) Undertakings/Representations and Warranties

Any representations, warranties or undertakings which are required to be included in any Transaction Security Document shall reflect (to the extent to which the subject matter of such representation, warranty and undertaking is the same as the corresponding representation, warranty and undertaking in this Agreement) the commercial deal set out in this Agreement (save to the extent that Secured Parties' local counsel deem it necessary to include any further provisions (or deviate from those contained in this Agreement) in order to protect or preserve the Security granted to the Secured Parties).

(E) [ ]

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198 This definition matches the definition of "Secured Parties" in the LMA recommended form of Intercreditor Agreement for Leveraged Acquisition Finance Transactions (Senior/Mezzanine). It may need to be amended if that form of Intercreditor Agreement is not used on the transaction documented by this Agreement.
Schedule 15

FORM OF INCREASE CONFIRMATION

To: [ ] as Agent, [ ] as Security Agent, [ ] as Issuing Bank* and [ ] as Parent, for and on behalf of each Obligor

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

Dated:

[Parent] – [ ] Senior Facilities Agreement
dated [ ] (the "Facilities Agreement")

1. We refer to the Facilities Agreement and to the Intercreditor Agreement (as defined in the Facilities Agreement). This agreement (the "Agreement") shall take effect as an Increase Confirmation for the purposes of the Facilities Agreement and as a Creditor Accession Undertaking for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.

2. We refer to Clause 2.3 (Increase) of the Facilities Agreement.

3. The Increase Lender agrees to assume and will assume all of the obligations corresponding to the Commitment(s) specified in the Schedule (the "Relevant Commitment(s)") as if it had been an Original Lender under the Facilities Agreement in respect of the Relevant Commitment(s).

4. The proposed date on which the increase in relation to the Increase Lender and the Relevant Commitment(s) is to take effect (the "Increase Date") is [ ].

5. On the Increase Date, the Increase Lender becomes:

(a) party to the relevant Finance Documents (other than the Intercreditor Agreement) as a Lender; and

(b) party to the Intercreditor Agreement as a Senior Lender (as defined in the Intercreditor Agreement).

6. The Facility Office and address, fax number and attention details for notices to the Increase Lender for the purposes of Clause 38.2 (Addresses) of the Facilities Agreement are set out in the Schedule.

7. The Increase Lender expressly acknowledges the limitations on the Lenders' obligations referred to in paragraph (k) of Clause 2.3 (Increase) of the Facilities Agreement.

8. The Increase Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:

(a) [a Qualifying Lender (other than a Treaty Lender);]

* Only if increase in the Total Revolving Facility Commitments.
(b) [a Treaty Lender;]
(c) [not a Qualifying Lender]. 199

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.] 200

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

(a) each Borrower which is a Party as a Borrower as at the Increase Date; and
(b) each Additional Borrower which becomes an Additional Borrower after the Increase Date,

that it wishes the scheme to apply to the Facilities Agreement.]

[9/10]. [The Increase Lender confirms that it is not a Sponsor Affiliate.]

[10/11]. [The Increase Lender confirms that it [is]/[is not]*** a Non-Acceptable L/C Lender.****

---

199 Delete as applicable. - Each Increase Lender is required to confirm which of these three categories it falls within.

200 Include only if Increase Lender is a UK Non-Bank Lender i.e. falls within paragraph (ii)(B)(a)(ii) of the definition of Qualifying Lender in Clause 19.1 (Definitions).

* Insert jurisdiction of tax residence.

** 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 Facilities Agreement.

*** Delete as applicable.

**** Include only if the increase involves the assumption of a Revolving Facility Commitment.
We refer to clause [22.11] (Creditor Accession Undertaking) of the Intercreditor Agreement. In consideration of the Increase Lender being accepted as a Senior Lender for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement), the Increase Lender confirms that, as from the Increase Date, it intends to be party to the Intercreditor Agreement as a Senior Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a Senior Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.

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

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

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

Note: The execution of this Increase Confirmation may not be sufficient for the Increase Lender to obtain the benefit of the Transaction Security in all jurisdictions. It is the responsibility of the Increase Lender to ascertain whether any other documents or other formalities are required to obtain the benefit of the Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

---

201 This clause should follow the approach adopted as regards non-contractual obligations in Clause 47 (Governing Law). This should be done (and this footnote deleted) before the Facility Agreement is signed.
THE SCHEDULE

Relevant Commitment(s)/rights and obligations to be assumed by the Increase Lender

[Insert relevant details]

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

[Increase Lender]

By:

This Agreement is accepted as an Increase Confirmation for the purposes of the Facilities Agreement by the Agent [and the Issuing Bank]*, and as a Creditor Accession Undertaking for the purposes of the Intercreditor Agreement by the Security Agent and the Increase Date is confirmed as [ ].

Agent

By:

[Issuing Bank

By:]*

Security Agent

By:

NOTE:

* Only if increase in the Total Revolving Facility Commitments.
## SCHEDULE 15
**[SCREEN RATE CONTINGENCY PERIODS]**

<table>
<thead>
<tr>
<th>Screen Rate</th>
<th>Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>LIBOR</td>
<td>[_____]</td>
</tr>
<tr>
<td>EURIBOR</td>
<td>[_____]</td>
</tr>
</tbody>
</table>
FORMS OF NOTIFIABLE DEBT PURCHASE TRANSACTION NOTICE

PART I
FORM OF NOTICE ON ENTERING INTO NOTIFIABLE DEBT PURCHASE TRANSACTION

To: [ ] as Agent

From: [The Lender]

Dated:

[Parent] – [ ] Senior Facilities Agreement dated [ ] (the "Facilities Agreement")

1. We refer to paragraph (b) of Clause 31.2 (Disenfranchisement of Sponsor Affiliates) of the Facilities Agreement. Terms defined in the Facilities Agreement have the same meaning in this notice unless given a different meaning in this notice.

2. We have entered into a Notifiable Debt Purchase Transaction.

3. The Notifiable Debt Purchase Transaction referred to in paragraph 2 above relates to the amount of our Commitment(s) as set out below.

<table>
<thead>
<tr>
<th>Commitment</th>
<th>Amount of our Commitment to which Notifiable Debt Purchase Transaction relates (Base Currency)</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Facility A Commitment]</td>
<td>[insert amount (of that Commitment) to which the relevant Debt Purchase Transaction applies]</td>
</tr>
<tr>
<td>Facility B Commitment</td>
<td>[insert amount (of that Commitment) to which the relevant Debt Purchase Transaction applies]</td>
</tr>
<tr>
<td>Facility C Commitment]</td>
<td>[insert amount (of that Commitment) to which the relevant Debt Purchase Transaction applies]</td>
</tr>
<tr>
<td>[Incremental Facility Commitment]</td>
<td>[insert amount (of that Commitment) to which the relevant Debt Purchase Transaction applies]</td>
</tr>
</tbody>
</table>

[Incremental Facility Commitment under the Incremental Facility with an Establishment Date of [ ]]*

[Lender]

By:

* Delete as applicable
PART II
FORM OF NOTICE ON TERMINATION OF NOTIFIABLE DEBT PURCHASE TRANSACTION / NOTIFIABLE DEBT PURCHASE TRANSACTION CEASING TO BE WITH SPONSOR AFFILIATE

To: [ ] as Agent

From: [The Lender]

Dated:

[Parent] – [ ] Senior Facilities Agreement dated [ ] (the "Facilities Agreement")

1. We refer to paragraph (c) of Clause 31.2 (Disenfranchisement of Sponsor Affiliates) of the Facilities Agreement. Terms defined in the Facilities Agreement have the same meaning in this notice unless given a different meaning in this notice.

2. A Notifiable Debt Purchase Transaction which we entered into and which we notified you of in a notice dated [ ] has [terminated]/[ceased to be with a Sponsor Affiliate].*

3. The Notifiable Debt Purchase Transaction referred to in paragraph 2 above relates to the amount of our Commitment(s) as set out below.

<table>
<thead>
<tr>
<th>Commitment</th>
<th>Amount of our Commitment to which Notifiable Debt Purchase Transaction relates (Base Currency)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facility A Commitment</td>
<td>[insert amount (of that Commitment) to which the relevant Debt Purchase Transaction applies]</td>
</tr>
<tr>
<td>Facility B Commitment</td>
<td>[insert amount (of that Commitment) to which the relevant Debt Purchase Transaction applies]</td>
</tr>
<tr>
<td>Facility C Commitment</td>
<td>[insert amount (of that Commitment) to which the relevant Debt Purchase Transaction applies]</td>
</tr>
<tr>
<td>[Incremental Facility Commitment under the Incremental Facility with an Establishment Date of [ ]][**]</td>
<td>[insert amount (of that Commitment) to which the relevant Debt Purchase Transaction applies]</td>
</tr>
</tbody>
</table>

* Delete as applicable
** Delete as applicable
[Lender]

By:
SCHEDULE 17
[OTHER BENCHMARKS]

[Part] [ ]
[Insert Benchmark label] Currency/ies

<table>
<thead>
<tr>
<th>[CURRENCY]:</th>
<th>[ ]</th>
</tr>
</thead>
</table>

Definitions

<table>
<thead>
<tr>
<th>Business Day:</th>
<th>[ ]</th>
</tr>
</thead>
</table>

Business Day Conventions (definition of "Month" and Clause 16.3 (Non-Business Days)):

<table>
<thead>
<tr>
<th>[Fallback Interest Period]:</th>
<th>[ ]</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Quotation Day:</th>
<th>[ ]</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>[Reference Bank Rate]:</th>
<th>[ ]</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Reference Banks:</th>
<th>[ ]</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Relevant Market:</th>
<th>[ ]</th>
</tr>
</thead>
</table>

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 Parent.

Interest Periods

Length of Interest Period in absence of selection (paragraph (c) of Clause 16.1 (Selection of Interest Periods and Terms)):

<table>
<thead>
<tr>
<th>[ ]</th>
</tr>
</thead>
</table>

Periods capable of selection as Interest Periods (paragraph (d) of Clause 16.1 (Selection of Interest Periods and Terms)):

<table>
<thead>
<tr>
<th>[ ]</th>
</tr>
</thead>
</table>

Length of Interest Period prior to Syndication Date (paragraph (h) of Clause 16.1 (Selection of Interest Periods and Terms)):

<table>
<thead>
<tr>
<th>[ ]</th>
</tr>
</thead>
</table>

Rate fixing timings

---

202 Complete a separate Part of this Schedule for each Non-LIBOR Currency.
<table>
<thead>
<tr>
<th>Time at which Benchmark Rate is fixed (Schedule 10 <em>(Timetables)</em>):</th>
</tr>
</thead>
<tbody>
<tr>
<td>[ ]</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Time at which Reference Bank Rate falls to be calculated by reference to available quotations (Schedule 10 <em>(Timetables)</em>):</th>
</tr>
</thead>
<tbody>
<tr>
<td>[ ]</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Deadline for quotations to establish a Reference Bank Rate (paragraph (b) of Clause 17.2 <em>(Calculation of Reference Bank Rate)</em>):</th>
</tr>
</thead>
<tbody>
<tr>
<td>[ ]</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Deadline for Lenders to report market disruption (Clause 17.3 <em>(Market disruption)</em>):</th>
</tr>
</thead>
<tbody>
<tr>
<td>[ ]</td>
</tr>
</tbody>
</table>
SCHEDULE 18
[FORM OF INCREMENTAL FACILITY NOTICE]

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

From: [ ] as the Parent and the entities listed in the Schedule as Incremental Facility Lenders (the "Incremental Facility Lenders")

Dated:

[Parent] – [ ] Senior Facilities Agreement dated [ ] (the "Facilities Agreement")

1. We refer to the Facilities Agreement and to the Intercreditor Agreement (as defined in the Facilities Agreement). This is an Incremental Facility Notice. This Incremental Facility Notice shall take effect as an Incremental Facility Notice for the purposes of the Facilities Agreement and as a Creditor Accession Undertaking for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Facilities Agreement have the same meaning in this Incremental Facility Notice unless given a different meaning in this Incremental Facility Notice.

2. We refer to Clause 10 (Establishment of Incremental Facilities) of the Facilities Agreement.

3. We request the establishment of an Incremental Facility with the following Incremental Facility Terms:

   (a) **Currency:**
       The Base Currency.

   (b) **Total Incremental Facility Commitments:**
       [ ]

   (c) **Margin:**
       [ ]

   (d) **Level of commitment fee payable pursuant to Clause 18.1 (Commitment fee) of the Facilities Agreement in respect of the Incremental Facility:**
       [ ]

   (e) **Borrower(s) to which the Incremental Facility is to be made available:**
       [ ]

   (f) **Purpose(s) for which all amounts borrowed under the Incremental Facility shall be applied pursuant to Clause 3.1 (Purpose) of the Facilities Agreement:**
       [ ]
(g) **Availability Period:**

[ ]

(h) **[Incremental Facility Conditions Precedent:]**

[ ]

(i) The repayment terms for the Incremental Facility for the purposes of Clause 11.1 (Repayment of Term Loans) of the Facilities Agreement [and the effect of cancellation and prepayment of the Incremental Facility for the purposes of Clause 11.4 (Effect of cancellation and prepayment on scheduled repayments and reductions) of the Facilities Agreement]:

[ ]

(j) [The Lenders under the Incremental Facility [are]/[are not]* permitted to elect to waive prepayments of the Incremental Facility under Clause 14.8 (Prepayment elections) of the Facilities Agreement]. 203

(k) **Termination Date:**

[ ]

4. The proposed Establishment Date is [   ].

5. The Parent confirms that:

(a) each of:

(i) the Incremental Facility Terms set out above;

(ii) the Aggregate Yield applicable to the Incremental Facility; and

(iii) the fees payable to any arranger of the Incremental Facility, comply with Clause 10.5 (Restrictions on Incremental Facility Terms and fees) of the Facilities Agreement;

(b) [the Incremental Facility Lenders and the Incremental Facility Commitments set out in this Incremental Facility Notice have been selected and allocated in accordance with Clause 10.1 (Selection of Incremental Facility Lenders) of the Facilities Agreement;] 204 /[the Incremental Facility Lenders set out in this Incremental Facility Notice comply with Clause 10.1 (Incremental Facility Lenders)] 205; and

---

203 Include only if the relevant Incremental Facility is a Bullet Incremental Facility.

204 Include if the first form of Clause 10.1 (entitled "Selection of Incremental Facility Lenders") is used.

205 Include if the second form of Clause 10.1 (entitled "Incremental Facility Lenders") is used.
(c) each condition specified in paragraph (a)(i) of Clause 10.6 (Conditions to establishment) of the Facilities Agreement is satisfied on the date of this Incremental Facility Notice.

6. Each Incremental Facility Lender agrees to assume and will assume all of the obligations corresponding to the Incremental Facility Commitment set opposite its name in the Schedule as if it had been an Original Lender under the Facilities Agreement in respect of that Incremental Facility Commitment.

7. On the Establishment Date each Incremental Facility Lender becomes:

(a) party to the relevant Finance Documents (other than the Intercreditor Agreement) as a Lender; and

(b) party to the Intercreditor Agreement as a Senior Lender (as defined in the Intercreditor Agreement).

8. Each Incremental Facility Lender expressly acknowledges the limitations on the Lenders' obligations referred to in Clause 10.12 (Limitation of responsibility) of the Facilities Agreement.

9. [Each Incremental Facility Lender confirms that it is not a Sponsor Affiliate.]

10. We refer to clause [22.11] (Creditor Accession Undertaking) of the Intercreditor Agreement. In consideration of each Incremental Facility Lender being accepted as a Senior Lender for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement), each Incremental Facility Lender confirms that, as from the Establishment Date, it intends to be party to the Intercreditor Agreement as a Senior Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a Senior Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.

11. This Incremental Facility Notice is irrevocable.

12. This Incremental Facility Notice 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 Incremental Facility Notice.

13. This Incremental Facility Notice [and any non-contractual obligations arising out of or in connection with it] [is/are] governed by English law.

14. This Incremental Facility Notice has been entered into on the date stated at the beginning of this Incremental Facility Notice.

Note: The execution of this Incremental Facility Notice may not be sufficient for each Incremental Facility Lender to obtain the benefit of the Transaction Security in all jurisdictions. It is the responsibility of each Incremental Facility Lender to ascertain whether any other documents or other formalities are required to obtain the benefit of

---

206 This clause should follow the approach adopted as regards non-contractual obligations in Clause 47 (Governing law). This should be done (and this footnote deleted) before the Facilities Agreement is signed.
the Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

* Delete as appropriate.
### THE SCHEDULE

<table>
<thead>
<tr>
<th>Name of Incremental Facility Lender</th>
<th>Incremental Facility Commitment</th>
</tr>
</thead>
</table>

...
The Parent

By: .........................................................

The Incremental Facility Lenders

[ ]

This document is accepted as an Incremental Facility Notice for the purposes of the Facilities Agreement by the Agent and as a Creditor Accession Undertaking for the purposes of the Intercreditor Agreement by the Security Agent and the Establishment Date is confirmed as [ ].

The Agent

By: .........................................................

The Security Agent

By: .........................................................]
SCHEDULE 19
[FORM OF INCREMENTAL FACILITY LENDER CERTIFICATE]

To: [ ] as Agent and [ ] as Parent

From: [The Incremental Facility Lender]

Dated: [Parent] – [ ] Senior Facilities Agreement
dated [ ] (the "Facilities Agreement")

1. We refer to the Facilities Agreement and to the Incremental Facility Notice dated [ ]. This is an Incremental Facility Lender Certificate. Terms defined in the Facilities Agreement have the same meaning in this Incremental Facility Lender Certificate unless given a different meaning in this Incremental Facility Lender Certificate.

2. We confirm, for the benefit of the Agent and without liability to any Obligor, that we are:
   (a) [a Qualifying Lender (other than a Treaty Lender);]
   (b) [a Treaty Lender;]
   (c) [not a Qualifying Lender.]

3. We confirm that the person beneficially entitled to interest payable to us 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

---

207 Delete as applicable - each Incremental Facility Lender is required to confirm which of these three categories it falls within.
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.]

4. [We confirm that we hold a passport under the HMRC DT Treaty Passport scheme (reference number [       ]) and are tax resident in [        ]* so that interest payable to us by borrowers is generally subject to full exemption from UK withholding tax and request that the Parent notify:

(a) each Borrower which is a Party as a Borrower as at the Establishment Date of the Incremental Facility requested in the Incremental Facility Notice referenced above; and

(b) each Additional Borrower which becomes an Additional Borrower after that Establishment Date,

that we wish that scheme to apply to the Facilities Agreement.]

5. The Facility Office and address, fax number and attention details for notices of the Incremental Facility Lender for the purposes of Clause 38.2 (Addresses) of the Facilities Agreement are:

[       ].

Incremental Facility Lender

[Incremental Facility Lender]

By:]

---

208 Include if the Incremental Facility Lender comes within paragraph (i)(B) of the definition of Qualifying Lender in Clause 19.1 (Definitions).

* Insert jurisdiction of tax residence.

** Include if the Incremental Facility Lender holds a passport under the HMRC DT Treaty Passport scheme and wishes that scheme to apply to the Facilities Agreement.
SIGNATURES

THE PARENT

[INSERT NAME OF PARENT]

By:
Address:
Fax:

THE ORIGINAL BORROWERS

[INSERT NAMES OF ORIGINAL BORROWERS]

By:
Address:
Fax:

THE ORIGINAL GUARANTORS

[INSERT NAMES OF ORIGINAL GUARANTORS]

By:
Address:
Fax:

THE ARRANGER

[ ]

By:
Address:
Fax:
Attention:
THE AGENT

[INSERT NAME OF AGENT]

By:
Address:
Fax:
Attention:

THE SECURITY AGENT

[INSERT NAME OF SECURITY AGENT]

By:
Address:
Fax:
Attention:

THE ORIGINAL ISSUING BANK[S]

[    ]

By:
Address:
Fax:
Attention:

THE ORIGINAL LENDERS

[    ]
[THE ORIGINAL HEDGE COUNTERPARTIES]\(^{209}\)

[ ]

\(^{209}\) Delete if no Hedge Counterparties are party to this Agreement at signing.